

STATE OF CALIFORNIA

**Energy Resources Conservation and
Development Commission**

In the Matter of:

The Application for Certification for the
*IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

Docket No. 07-AFC-5

**PREHEARING CONFERENCE STATEMENT OF THE
SIERRA CLUB**

November 16, 2009

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**PREHEARING CONFERENCE STATEMENT OF THE
SIERRA CLUB**

In response to the November 5, 2009, Notice of Prehearing Conference, this statement preliminarily identifies issues intervenor Sierra Club intends to raise at the public evidentiary hearings for the Ivanpah Solar Electric Generating System (ISEGS). Given the short time frame between the Notice of Prehearing Conference and the deadline for prehearing conference statements, Sierra Club submits this statement preliminarily and subject to change. Moreover, the staff's environmental review and analyses are incomplete in many respects, most significantly for biological resources. Specifically, the California Department of Fish and Game (CDFG) has not yet provided critical mitigation and minimization measures necessary to reduce the Project's impacts on the state and federally listed desert tortoise, and staff's avoidance measures for rare and sensitive plant species are skeletal at best. Finally, Sierra Club's review of the final staff assessment ("FSA") has been hampered by staff's failure to include studies and data

upon which its conclusions rely. Accordingly, the Sierra Club reserves the right to supplement and/or amend this statement.

The Project would pose significant, and so far, unmitigated impacts on numerous resource values. However, the Sierra Club will focus the scope of its case on two issues: (1) the Project applicant's failure to sufficiently mitigate impacts to biological resources and provide measures for avoidance of harm to the desert tortoise and rare and sensitive plant species; and (2) the staff's inadequate evaluation of feasible alternatives that would reduce the Project's impacts on all resource areas, including biological resources.

I. Topic Areas That Are Complete and Ready to Proceed to Evidentiary Hearing

Sierra Club will focus its case on the biological resources and alternatives analysis topic areas. As described below, these topic areas lack adequate analysis and therefore are incomplete.

II. Topic Areas That Are Not Complete and Not Yet Ready to Proceed to Evidentiary Hearing

There are fundamental unresolved issues in the areas of biological resources, specifically with regards to required mitigation for the desert tortoise and rare and sensitive plant species. The FSA is incomplete and numerous key decision-making documents and/or management plans remain outstanding. Moreover, key agency recommendations and analysis essential to decision-making have not occurred. Specifically, CDFG has not provided measures to mitigate impacts to the desert tortoise pursuant to the California Endangered Species Act (CESA). The U.S. Fish and Wildlife

Service (FWS) has not completed its Section 7 work pursuant to the federal Endangered Species Act (ESA). The Bureau of Land Management (BLM) cannot commit to specific mitigation measures because it has not completed its requisite National Environmental Policy Act (NEPA) review of mitigation measures that staff has identified as essential to reducing the Project's impacts on the desert tortoise. Finally, after rightfully rejecting the applicant's proposed mitigation for rare plant species, staff is still struggling to put together a package of measures to avoid imperiled plants and plant communities within the Project area. Given that parties had just over one week to review the 1,285-page FSA/DEIS, there are certain to be more deficiencies identified.

Without sufficient analysis of the proposed Project's impacts and unresolved and incomplete plans for mitigation, it is impossible to evaluate whether the Project will fully comply with relevant federal and state statutes and regulations, including California Environmental Quality Act (CEQA),¹ CESA,² NEPA, and the ESA. Moreover, the failure to adequately identify impacts and provide documentary evidence, or any adequate basis for the staff's conclusions, undermines adequate public participation in this process and is a violation of both CEQA and NEPA. Although the Commission proceeds under a CEQA-equivalent, certified regulatory program,³ its program must nevertheless meet all of CEQA's substantive requirements.⁴ Importantly, CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation

¹ As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has "[e]liminated or substantially lessened all significant effects on the environment where feasible." Hence, the FSA's conclusion that impacts to specific biological resources are unmitigable and unavoidable is unlawful in the absence of complete impacts and mitigation analyses.

² CDFG has not yet provided its guidance and recommendations concerning CESA compliance related to desert tortoise mitigation.

³ See Pub. Res. Code § 21080.5; CEQA Guidelines § 15251(j).

⁴ Pub. Res. Code §§ 21000, 21002; *Sierra Club v. Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Association v. Cal. Dept. of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 667-68.

measures can substantially lessen or avoid such impacts.⁵ Hence, the Commission cannot move forward without a comprehensive analysis of feasible mitigation measures that would reduce the proposed Project's significant impacts.

In this regard, the analysis and mitigation of the Project's impacts on biological resources is contingent on numerous unresolved issues, thereby rendering the proposed December 14 and 15 hearing dates premature. In the event the Commission decides to proceed with evidentiary hearings without sufficient analysis and plans for mitigation, Sierra Club will raise the following outstanding issues at the evidentiary hearings.

III. Topic Areas that Remain Disputed and Require Adjudication

A. Biological Resources

As described in the FSA, the Project would impact numerous plant and animal species including the state and federally threatened desert tortoise, and eight special-status plant species, of which impacts to two species (the Mojave milkweed and Rusby's desert-mallow) cannot be mitigated below significant levels under CEQA.⁶ The FSA did not propose adequate protections for the desert tortoise and rare and sensitive plant species, as well as several other biological resources impacted by the proposed Project.

(1) The Desert Tortoise

Individual tortoises present in the North Ivanpah Valley are part of the Northeastern Mojave Desert tortoise population, the most genetically distinct of all of California's desert tortoise populations. The North Ivanpah Valley makes up the Northeastern Mojave Desert tortoise's total habitat in California, and thus, is fully

⁵ Pub. Res. Code § 21002.

⁶ Final Staff Assessment (FSA) at 6.2-1.

protected under CESA. Given the Northeastern Mojave tortoise population's declining numbers, the Project must not contribute to additional loss of habitat.⁷

The proposed Project will directly, indirectly and cumulatively impact the Northeastern Mojave desert tortoise population by permanently destroying approximately 4,073 acres of high quality habitat, fragmenting and degrading habitat near the proposed Project site, causing "take" of Northeastern desert tortoises and compromising species viability. The FSA/DEIS acknowledged that the Project will significantly impact the tortoise with respect to NEPA significance criteria in 40 CFR 1508.27.⁸

So far, the agencies have not proposed plans to adequately minimize impacts to the desert tortoise. The FSA made no attempt to avoid impacts to the desert tortoise by reconfiguring the Project away from the highest quality desert tortoise habitat. Instead, the applicant proposes to move approximately 25 desert tortoises to lands adjacent to the proposed Project site. In addition to the high mortality rates associated with translocation and uncertainties related to long-term viability, the applicant failed to adequately survey the translocation sites for habitat suitability⁹ and consider the cumulative impacts of present and proposed development surrounding the proposed translocation sites that could result in further detrimental confinement.¹⁰

Moreover, the FSA proposed a piece-meal approach to mitigating habitat loss fraught with uncertainties and failed to meet CESA's standard for full mitigation. The

⁷ The Northeastern Mojave Recovery Unit has the lowest tortoise densities of the six recovery units recognized in the recovery plan.

⁸ FSA at 6.2-1.

⁹ "Because the vegetation data were collected during summer and well after the flowering period of most winter and spring annuals the focus of the study was on perennial shrubs and succulents alone." FSA at 6.2-50.

¹⁰ The locations proposed for translocation are located between the proposed project, Interstate 15 and the proposed DesertXpress High Speed Passenger Train. In addition, the development of other proposed solar projects, including the Optisolar power project adjacent to the ISEGS and the Eldorado-Ivanpah transmission line upgrade pose additional threats to the tortoise.

FSA side-stepped the state's 3:1 compensatory mitigation guidelines¹¹ by devising a conceptual framework for mitigation that would employ the BLM's 1:1 compensatory mitigation standard for one-third of the required mitigation. The CDFG has not yet evaluated whether this approach would meet CESA requirements.¹²

Despite the significance of these issues, few are close to resolution. Indeed, the FSA admitted that compliance with federal and state laws and regulations, including NEPA, CEQA, ESA and CESA remains outstanding, all of which reinforces the fact that none of the parties are ready to proceed.

(2) Special-status Plant Species

The proposed Project area supports high quality habitat for special-status plant species in terms of species richness, diversity, and low occurrences of non-native plants. The Project's direct impacts and the cumulative effects of present and anticipated energy and infrastructure development in the area will have significant impacts on these plant communities. The proposed Project would directly impact eight special-status plant species.¹³ Most of these species have a highly restricted range in California and the proposed Project site represents a substantial portion of their documented occurrences. "Of the remaining documented occurrences, many are threatened by livestock grazing, transmission line and access road maintenance, and non-native plants."¹⁴ Permanent shading caused by the heliostat infrastructure and continued mowing and mulching of plants in the Project vicinity would promote the proliferation of non-native invasive

¹¹ CDFG "typically uses a 3:1 ratio for good quality habitat such as that found at the ISEGS project site. The higher ratio reflects the limits to increases in carrying capacity that can be achieved on acquired lands, even with implementation of all possible protection and engagement measures." FSA at 6.2-51.

¹² FSA at 6.2-55.

¹³ *Id.* at 6.2-1.

¹⁴ FSA at 6.2-37, referencing CNDDDB 2009.

weeds and changes to soil characteristics, thereby permanently altering the plant communities in the region. Moreover, impacts to two plant species – the Mojave milkweed and Rusby’s desert-mallow – would remain significant pursuant to CEQA, even after implementation of the special-status plant impact avoidance and minimization measures proposed in the FSA.

The FSA’s proposed mitigation for special-status plant species is vague and highly uncertain. Minimal opportunities for avoidance and mitigation exist for the highly sensitive and rare plant communities found within the proposed Project site. After considering and ultimately rejecting several mitigation measures, the FSA merely offered a conceptual approach to avoidance through reconfiguration of the Project footprint.

As shown above, many issues related to plant species remain unresolved, rendering this resource area equally unready for evidentiary hearings.

(3) Other Biological Resources and Water Resources

The FSA/DEIS deferred mitigation and provided insufficient analysis of the Project’s impacts for a number of other sensitive species and environmental resources, including the Western Burrowing Owl, Golden Eagle, Loggerhead Shrike, Le Conte’s Thrasher, Crissal Thrasher, Vaux’s Swift, Brewer’s Sparrow, American Badger, Nelson’s Bighorn Sheep, Palled bat, Townsend’s big-eared bat and Banded Gila Monster.

The FSA/DEIS’s plan for compensatory mitigation is a so-called “nesting” scheme to provide compensatory mitigation for loss of habitat and individuals of several plant and wildlife species.¹⁵ Because the plan described in the FSA/DEIS only addressed

¹⁵ The FSA proposes to use the lands acquired for desert tortoise mitigation for the mitigation of impacts to other wildlife and plant species. This mitigation would be couched in the FSA’s proposed compensatory

desert tortoise habitat, it may in fact be inadequate to provide for the mitigation needs of the many other species that will be impacted by the Project.

Finally, the Project will degrade the almost 200 acres of state waters and 2,000 ephemeral drainages located throughout the Project site, and the FSA failed to analyze how such degradation will alter wildlife functions and values and further excluded any mitigation to reduce those impacts.

B. Alternatives Analysis

The FSA/DEIS's analysis of proposed Project alternatives is insufficient and violates CEQA, which requires a comparative analysis of a "range of reasonable alternatives to the project, or to the location of the Project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project."¹⁶ Importantly, an alternatives assessment must supply "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."¹⁷ Because the alternatives analysis is the "heart" of any environmental review, the failure to provide meaningful alternatives is fatal to this FSA/DEIS. Indeed, even the CDFG noted that a "full analysis" of alternate sites was still lacking in the FSA/DEIS.¹⁸ Unfortunately, rather than looking for meaningful alternatives that avoid significant impacts to the desert tortoise and other biological resources, the staff appears to simply accept the applicant's proposal and choice to build the proposed Project in "excellent tortoise habitat, with a low level of

mitigation, a 3:1 (habitat acquisition to habitat degraded) ratio for impacts to 4,073 acres of high quality desert tortoise habitat, of which at least two-thirds of the 3:1 mitigation would be achieved by direct land acquisition; the remaining third of the 3:1 compensatory mitigation would be developed in accordance with BLM's 1:1 desert tortoise mitigation requirements, which could include acquisition of lands or desert tortoise habitat enhancement or rehabilitation activities. FSA at 6.2-120

¹⁶ CEQA Guidelines § 15126.6(a).

¹⁷ *Id.* at § 15126.6(d).

¹⁸ CDFG Comments dated October 27, 2009 at 3.

disturbance and high plant species diversity,” even where “lower quality habitat is clearly within range to potentially reduce the overall Project impacts to endangered and sensitive species.”¹⁹

The FSA/DEIS’s alternatives analysis omitted any discussion of generally acknowledged viable options for Project reconfiguration on degraded land within the Ivanpah Basin. In addition, the FSA rejected Sierra Club’s proposed alternative,²⁰ which would have avoided many of the Project’s worst impacts.²¹ The current Project footprint, which was mapped out before any meaningful surveys of the site’s biological resources and drainage issues were conducted, is situated on the best habitat for wildlife and special-status plant species, while the most disturbed and developed lands exist closest to Interstate 15. Specifically, desert tortoise densities are significantly higher in the Project footprint’s highest elevations, ranging from 50-100 desert tortoises per square-mile; whereas the low-lying areas along Interstate 15 support, at best, 20-50 desert tortoises per square-mile or less than half.²² In short, the FSA/DEIS failed to adequately consider a reasonable range of alternatives, including proper analysis of the Sierra Club proposal.

IV. Witnesses, Topic Areas, Testimony

Given the short timeframe between release of the FSA/DEIS and the deadline for Prehearing Conference Statements, Sierra Club has not had sufficient time to identify

¹⁹ *Id.*

²⁰ The proposed “I-15 Alternative” would (1) relocate the Project’s three power blocks closer to the areas adjacent to Interstate 15; (2) leave the desert tortoise undisturbed and designate its habitat at Ivanpah as an area of permanent protection such as that provided by areas of critical environmental concern (ACEC); and (3) retire the Clark Mountain grazing allotment. *See*. Sierra Club proposed “I-15 Alternative,” p. 2, June 22, 2009.

²¹ FSA at 4-49.

²² Sierra Club proposed “I-15 Alternative,” p. 2., June 22, 2009 (Referencing data supplied by Western Watersheds Project).

specific witnesses. However, the Sierra Club intends to present one to three expert witnesses, including agency staff, to address impacts analysis and mitigation of impacts on biological resources, specifically on the desert tortoise and special-status plant species. In addition, the Sierra Club intends to present one to three expert witnesses, including agency staff, to address the FSA/DEIS's identification and selection of alternatives for review; the analysis of those alternatives; and the analysis of the feasibility of alternative sites. Sierra Club requests the right to amend this request.

V. Topic Areas for Cross-Examination

The Sierra Club intends to cross-examine staff and applicant witnesses concerning the topic areas in dispute and witnesses presented by other intervenors. Sierra Club anticipates that cross-examination will require no more than 30 minutes per witness. However, we cannot be certain how many witnesses will require cross-examination, or how extensive that examination may be, until we have seen the other parties' prehearing conference statements and supporting materials. In the absence of complete analyses as described above, it is impossible to fully define the scope of such cross-examination at this time.

VI. List of Exhibits and Declarations

In addition to re-submitting exhibits submitted with our earlier comments, Sierra Club anticipates providing a complete list of exhibits at the time of the final Prehearing Statement submission.

600. Sierra Club's Proposed Alternative

VII. Proposals for Briefing Deadlines and Scheduling Matters

The Sierra Club requests that the evidentiary hearings be scheduled for January 11 and 12, 2010, in order to provide sufficient time for all parties to review the FSA/DEIS and all supporting documents.

Given the sheer volume of resource issues in this case, many of which remain unresolved, Sierra Club requests that the opening briefs following the evidentiary hearings should be due no earlier than three weeks after the close of the evidentiary hearings.

VIII. Proposed Modifications to the Proposed Conditions of Certification

Sierra Club has not had sufficient time to review the Proposed Conditions of Certification for enforceability, comprehension, and consistency. Overall, the proposed conditions appear to be unlawfully vague and do not meet the CEQA requirements that mitigation measures be specific, feasible, and enforceable. Sierra Club reserves the right to provide proposed modifications for each of the conditions and additional proposed conditions at a later stage in this process.

IX. Alternative Schedule and Deadlines

The Sierra Club requests scheduling of the evidentiary hearings for January 11 and 12, 2010. If the evidentiary hearings are scheduled for January 11 and 12, the other deadlines should be scheduled as follows:

- Wednesday, December 30 - Staff and Intervenors file/serve opening testimony
- Tuesday, January 5 – Parties file final Prehearing Conference Statements
- Wednesday, January 6 – All parties file rebuttal testimony
- Thursday, January 7 – Second Prehearing Conference
- Monday and Tuesday, January 11 and 12, 2010 – Evidentiary Hearings

Dated: November 16, 2009

Respectfully submitted,

Original Signed By:

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**EXHIBIT 600
(Sierra Club)**



SAN GORGONIO CHAPTER

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*Regional Groups Serving Riverside and San Bernardino Counties: Big Bear,
Los Serranos, Mojave, Moreno Valley, Mountains, Santa Margarita, Tahquitz.*

June 22, 2009

Via Electronic Mail

Tom Hurshman
BLM Project Manager
2465 South Townsend Ave.
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Re: Draft Environmental Impact Statement for the Ivanpah Solar Electric Generating System

Dear Mr. Hurshman:

We write to propose a project alternative for incorporation into the BLM's upcoming draft environmental impact statement for the proposed Ivanpah Solar Electric Generating System project ("Project"). We provide this NEPA-based alternative in the spirit of cooperation, and with the goal of achieving timely resolution of the dual-track Project approval processes for the BLM and California Energy Commission so that the project can be under construction by 2010.

We strongly support environmentally responsible renewable energy, including appropriately-sited, large-scale solar development. Specifically, it is the Sierra Club's policy that large-scale, renewable energy be developed, whenever possible, on previously disturbed, preferably privately-held, lands.²³ Unfortunately, the Project as proposed would be built on unspoiled public land presenting significant, unmitigated impacts on the state and federally listed desert tortoise and on sensitive plant communities, some of which are also listed. Concerning desert tortoise, the Energy Commission staff determined:

²³ Testimony of Carl A. Zichella, Director of the Sierra Club's Western Renewables Program before the Subcommittee on Energy and Mineral Resources Committee on Natural Resources (May 11, 2009).

The applicant's proposed mitigation, acquisition, and enhancement of approximately 4,065 acres would be insufficient to avoid significant direct, indirect, and cumulative impacts to biological resources of the Ivanpah Valley, and fails to meet the California Department of Fish and Game's full mitigation standard for desert tortoise. Staff also believes this proposed mitigation will be inadequate to compensate for cumulatively significant impacts to other special-status plant and animals inhabiting the project site...²⁴

Many of the Project's negative effects occur because the proposed configuration was mapped out before anyone had conducted meaningful surveys of the site's biological resources and drainage issues. Indeed, the current footprint is situated on the best habitat for wildlife and special-status plant species, while the most disturbed lands, closest to existing development and Interstate 15 would serve as translocation lands for the listed desert tortoise. From a biological perspective, this is an utterly backward use of public land. Similarly, the Project would be built on lands with the most challenging drainage problems while the translocation lands are relatively flat and pose fewer drainage issues. In short, the lower elevation lands near Interstate 15 appear to be much more suitable for large-scale solar development than the current, upslope habitat where more than 20 desert tortoises and other imperiled species reside. The optimum lower elevation alternative in terms of protecting biological resources is the south end of the Ivanpah Dry Lake. If siting the Project on the dry lake is not feasible, we propose the following.

We request that the BLM include an EIS alternative that (1) relocates the Project's three power blocks closer to the areas adjacent to Interstate 15 currently mapped as translocation sites; (2) leaves the desert tortoise undisturbed and designates its habitat at Ivanpah as an area of permanent protection such as that provided by areas of critical environmental concern (ACEC); and (3) retires the Clark Mountain grazing allotment.

1. Biological Basis for the Sierra Club's Alternative

In a May 13, 2009, Energy Commission filing, the Western Watersheds Project presented evidence showing how the areas along Interstate 15, currently proposed as tortoise translocation areas 1 and 2, have historically supported few desert tortoises.²⁵ In that filing to the Energy Commission, Western Watersheds Project provided survey data from Kristin Berry estimating tortoise density in the Project footprint in the range 50-100 desert tortoises per square-mile; whereas the low lying areas along Interstate 15 supported approximately 20-50 desert tortoises per square-mile or less than half.

It is clear that the lands near Interstate 15 have served as a major sink for tortoises, depleting nearby populations, either as a result of cars colliding with tortoises, predation or possibly due to truck- and automobile-related pollutants in the soil, or all

²⁴ Preliminary Staff Assessment at p. 5.2-2.

²⁵ Letter to John Kessler, Commission staff project manager from Michael J. Connor, Western Watersheds Project (May 13, 2009) properly filed on or about June 17, 2009.

three factors. Translocating the listed tortoise to sites known not to support them simply makes no sense. Even a casual inspection of the Project site and the translocation areas shows that the native plant life at the Project site is much more extensive and varied than at the translocation lands. The areas currently designated as Ivanpah 2 and 3 provide the highest quality tortoise burrowing habitat and food sources. In contrast, due to the dirt road paralleling Interstate 15, and the grazing operations in and around the corral adjacent to the highway, the translocation lands are denuded and contain exotic plants. In short, completely avoiding habitat lands eliminates translocation, thereby, avoiding the Ft. Irwin pattern of desert tortoise mortalities. It is well established that desert tortoise translocation results in very high mortality.

Similarly, there are approximately 2,000 ephemeral washes that occur throughout the project site. The lower elevations adjacent to the highway present far fewer drainage challenges because of the reduced slope. Relocating the three power blocks to the lower elevations would reduce or eliminate drainage issues that arise with heavy rains.

The Sierra Club's Project alternative stems from a deep concern for the remaining tortoises in the California portion of the Northeastern Mojave Desert Tortoise Recovery Unit. This particular unit is one of six recovery units designated in the U.S. Fish and Wildlife Service's recovery plan.²⁶ Because the Mojave Desert tortoise is listed as a threatened species under state and federal law, and because the entire California population of this particular unit is found within the Ivanpah area, protecting these individuals must be a high priority for all of the approving agencies, including the BLM. A simple reconfiguration of the Project along with an ACEC designation for the most densely populated portions of Ivanpah Valley would significantly protect this recovery unit, and stands to facilitate timely resolution of Project approval.

2. The BLM Should Consider Analyzing the Designate Portions of the Current Project Footprint as Areas of Critical Environmental Concern

The BLM should include in the EIS an analysis of designating the portions of Ivanpah Valley currently proposed for development as Ivanpah 2 and 3 as areas of critical environmental concern. The Sierra Club seeks permanent protection for these lands because a reconfiguration of the Project footprint only makes sense if the habitat protected by the change remains off limits to development permanently.

A critical factor for whether an ACEC designation is appropriate in terms of species protection is whether the area contains wildlife resources, including habitat for endangered or threatened species, or habitat essential for maintaining species diversity. The area bounded on the west by the eastern portion of the Clark Mountains, on the north by the Nevada State line and on the south and east by I-15 fulfills this criterion. Project surveys to date document the presence of wildlife resources, namely desert tortoise, other wildlife of concern, and special-status plant species. The PSA is clear that the Project area is excellent tortoise habitat, with a low level of disturbance and high plant species

²⁶ Desert Tortoise (Mojave Population) Recovery Plan.

diversity.²⁷ In addition, the BLM designated portions of the valley as Category I desert tortoise habitat in its documentation for the Northern and Eastern Mojave Desert Management Plan (NEMO).²⁸ Although the NEMO boundary for the nearby Desert Wildlife Management Area excluded the Northern Ivanpah Valley Unit, an ACEC designation is necessary to protect the important biological resources throughout the higher elevation portions of the valley.

Permanent protection via an ACEC designation is further warranted because the desert tortoise population in Ivanpah Valley is unique given that the individuals residing there are at the highest elevation known anywhere in the state. The elevations range from approximately 3,150 to 2,850 feet above mean sea level. Given new impacts based on climate change affecting food availability and other vital factors, it has become increasingly important to protect higher elevation habitat.

3. The BLM Should Retire the Clark Mountain Grazing Allotment

Finally, the BLM should retire the Clark Mountain grazing allotment as a component of the ACEC designation. Grazing is simply not compatible with protecting wildlife and plant species in the Ivanpah Valley. This particular allotment is rarely used based on the records at the Needles Office. Those records reveal that no animal unit months were billed for the allotment from 2007 to 2009 (to the end of March). And it appears from the Moon's letter of September 4, 2008 to Sterling White of the Needles BLM Office that the permit holders are willing to accommodate a retirement of the allotment were the BLM to issue a right-of-way in connection with the Project.

4. Conclusion

NEPA requires the BLM to include a reasonable range of meaningful alternatives in its Project EIS. Specifically, BLM must "study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."²⁹ A full analysis of alternate siting scenarios is warranted for the Project given the potential conflict from developing renewable solar energy on intact desert public lands supporting imperiled plant and wildlife species. The Sierra Club believes such a conflict can be avoided in the Ivanpah Valley by situating the Project in a manner that completely avoids much of the highest quality desert tortoise habitat while keeping the Project at its proposed scale, thereby maximizing solar generation.

Respectfully Submitted
Sidney Silliman
Sierra Club San Gorgonio Chapter and Desert Committee

....To explore, enjoy and preserve the nation's forests, waters, wildlife, and wilderness.

²⁷ PSA, at 5.2-30.

²⁸ NEMO Appendix A.

²⁹ 42 U.S.C. § 4332(2)(E).



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5
PROOF OF SERVICE
(Revised 7/20/09)

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DECLARATION OF SERVICE

I, Violet Lehrer, declare that on Nov. 16, 2009, I served and filed copies of the attached, statement dated, Nov. 16 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[www.energy.ca.gov/sitingcases/ivanpah\]](http://www.energy.ca.gov/sitingcases/ivanpah).

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at Sierra Club
85 2nd St.
SE, CA 94105 with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Violet Lehrer