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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
The Application for Certification	)	DOCKET NO. 07-AFC-5
for the Ivanpah Solar Electric	)	
Generating System	)	

INTERVENOR CALIFORNIA NATIVE PLANT SOCIETY

Opening Briefs of the California Native Plant Society

Docket 07-AFC-5

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Opening Briefs of Intervenor California Native Plant Society

CNPS List 1 and 2 plant taxa meet the definition of rare under CEQA

Throughout the evidentiary hearings, the applicant has expressed skepticism that plant taxa that are neither State nor Federally listed as rare, threatened, or endangered meet the definition of rare, threatened, or endangered under CEQA and therefore do not require consideration during assessment of the project's environmental impacts.

We disagree with the applicant's interpretation relating to rare plant status, and agree with California Energy Commission staff's conclusions in the Final Staff Assessment report (Exhibit #300 pp. 6.2-38 - 6.2-39) that the CNPS List 1 and 2 plant taxa identified on the project site meet the definition of rare as defined by the California Environmental Quality Act (CEQA) Guidelines (Title 14, California Code of Regulations [14 CCR]) Section 15380, and represent genetically important peripheral populations.

For the purpose of determining whether a species meets the criteria of rare in CEQA Guideline section 15380, the Commission must make the determination based on the species range within California. Since the intent of CEQA is to prevent the elimination of plant and animal species and preserve representations of all plant and animal communities within the State [(Public Resources Code Sections 21001(a) and (c)], and since the State has no authority to manage rare plants outside of California, the Commission must implement its responsibility, consistent with the Public Resources Code, where it does have authority. The intent of CEQA cannot be met by assuming that species meeting the criteria under CEQA Guidelines Section 15380 will be protected elsewhere.

CNPS List 2 plants represent peripheral populations of their species, and are important for the long-term conservation of genetic diversity and evolutionary potential of their species, particularly within the context of uncertain climatic changes to their habitat (see Exhibits #1004, #1010, #1011).

Project impacts to rare plants have not been fully assessed

CNPS brought the need to include late summer/early fall botanical surveys (hereafter referred to as "summer botanical surveys") to the Commission's attention during the ISEGS PSA comment period (February 2009). During cross-examination questioning on the 01-12-10 Evidentiary Hearing date, CEC staff stated their awareness of the need to require summer botanical surveys arrived too late in the project's data acquisition process. However, the applicant was required to perform expedited tortoise habitat quality surveys during the summer of 2009 (Exhibit #46). Staff now realizes the need to include summer botanical surveys during project impact assessments, but is requiring (in Bio 18) subsequent surveys to be performed only within "no go" areas of the project. Under this requirement, summer/fall flowering rare plants that might occur within active construction and operation areas will be ignored. Staff's rationale for limiting summer botanical surveys only to "no go" areas was that since they had (at that time) concluded impacts to rare plants were unmitigable and remained significant under CEQA even after full implementation of (then) BIO-18 mitigation requirements, any subsequent summer/fall flowering rare plants found throughout the site would also fall under the "significant under CEQA" umbrella for plant impacts. Staff's original rationale for limiting the extent of supplemental botanical surveys was explained during cross-examination on January 12, 2010. Summer botanical surveys would be limited to non-construction and operation areas,

"(Ms. Milliron) Because we were already saying the impact was

significant with respect to rare plants. So I don't know if anything was found it wouldn't change -- it's already being considered significant. So it wouldn't be a wholesale change." (ISEGS Hearings Transcripts from 01-12-10, p. 196).

...and later during cross-examination by staff counsel:

"(Mr. Ratliff) If you had found through fall surveys an additional plant or two additional plants or any number of additional plants, would it have changed your conclusions regarding the significance of impacts to the rare species that we've discussed today?

(Ms. Milliron) No. I think I mentioned that. We had already concluded the impact to special status plant species was considered(inaudible)"[most likely the word "significant"] (ISEGS Hearings Transcripts from 01-12-10, p. 215).

However, in response to the applicant's Mitigated 3 project design, staff has now concluded plant impacts to be less than significant under CEQA, without changing their consideration of the extent to which impacts to summer/fall flowering taxa might occur throughout the project site. Staff's original rationale for limiting supplemental summer botanical surveys from covering the entire site is no longer a valid one. Therefore, the staff's current conclusion that plant impacts have been reduced to less than significant fails to include a full assessment of potential impacts. It is not possible to develop mitigation measures that reduce impacts to rare plants to less than significant when the full extent of impacts are unknown.

The Commission should require supplemental late summer/early fall botanical surveys be performed for the entire project site so that additional rare plant findings, should they occur, can be incorporated into the existing Bio-18 Conditions of Certification and so the Commission can fulfill their obligations to fully assess project impacts pursuant to CEQA.

Project will fragment rare plant habitat, rare plant mitigation measures are untested and speculative, and there is a high probability the project will lead to increased listing status and possible extirpation of plants from California.

The revised project presented in the Applicant's Mitigated Ivanpah 3 design (Exhibit #88) reduces the project's Block 3 footprint and provides avoidance areas for plants in this northern avoidance area that are contiguous with surrounding areas. Nevertheless, the Mitgated Ivanpah 3 project still relies on the fenced "halo" method of addressing impacts to rare plant occurrences within the heliostat fields, as described in Applicant's Exhibit #81. Mojave Milkweed and Desert Pincushion are especially reliant upon Exhibit #81's "halo" design since both species are distributed widely across the project site and benefit little from the Block 3 avoidance area. The "halo" plan is fraught with obstacles to the long-term success of self-sustaining plant populations as detailed in CNPS's previous Opening, Rebuttal, and Supplemental Testimonies (Exhibits #1014, #1012, and #1015, respectively), as well as described during oral testimony and cross-examination of both intervenor and CEC staff witnesses during the January 12, 2010 and March 22, 2010 Evidentiary Hearing dates. Project impacts the "halo" approach is meant to mitigate for Rusby's desert mallow, Mojave milkweed, and Desert pincushion include:

- altered hydrology
- altered soil nutrient chemistry
- altered light regime
- introduction of invasive species

- fragmentation of habitat
- interruption of biological processes (e.g., pollination, dispersal)

The Committee should not consider the "halo" approach to rare plant impacts as "avoidance" or as an on-site mitigation measure that will result in long-term, self-sustaining populations of rare plants. Mitigation practices certified on this project will be precedent-setting for subsequent project applications and should be based on sound scientific information. The extent of protection afforded to plants within the proposed "halos" remains speculative at best.

The benefit of preserving intact habitat and connectivity with surrounding areas inherent in the decision to reduce the Block 3 footprint is precisely why it is important to preserve the intact nature of the current, pre-project condition with the rest of the undeveloped Ivanpah Valley. The difficulties in deciding if and how to avoid, minimize, and mitigate project impacts become moot when one considers turning to the alternatives of distributed photo-voltaic solar generation and utility-scale projects sited on low-impact lands to provide the MW of electricity that the Ivanpah Solar Electric Generating System (ISEGS) project would produce.

The Desert Renewable Energy Conservation Plan (DRECP), and the Bureau of Land Management's (BLM's) Solar Energy Study Area (SESA) Program have identified some low-impact siting areas and conservation opportunity areas at the landscape scale to address long-term viability of desert ecosystems confronted by fragmentation and other direct and indirect impacts resulting from large-scale development, other human land-use intrusions, and climate change. Yet, the Commission is considering siting the project in an area that will fragment intact wildlands in the absence of a comprehensive conservation plan (e.g., the DRECP, and BLM's SESA program).

The Commission should deny the ISEGS application for certification of the Mitigated Ivanpah 3 project design because of the significant ecological impacts the project will have to intact wildlands. Rather than expedite project certification applications outside of a comprehensive conservation planning process, the Commission should expedite the relocation of poorly-sited projects to low-impact areas while encouraging the development of distributed photo-voltaic solar generation to the extent that Commissioners and staff are able to do so.

Mitigation Measure BIO-18 needs additional requirements to increase efficacy

There are several draft plans associated with Biological Resource related Conditions of Certification. The Conditions of Certification have been revised following the March 22, 2010 Supplemental Evidentiary Hearing. CNPS will address issues relating to the revised Conditions of Certification in our Reply Briefs submittal on April 16, 2010.

The ISEGS project is precedent-setting, will irreversibly and negatively impact intact wildlands, and a statement of overriding considerations should not be issued.

Plants, desert tortoise, humans, etc., are biological organisms living in a biologically defined and limited planet. Humanity does not operate outside the biological system but rather is limited by it. The ecosystem is the foundation upon which social structures and economic systems are built, and while important, social and economic structures do not exist as co-equal with ecological needs. Rather, social and economic structures must fit within the biological system.

The ISEGS project has the potential to become the first example of transformative energy generation practices in California, in terms of both scale and technology. Unfortunately, the applicant has chosen an ecologically high-impact location for this project. In good faith, the applicant has responded by developing, at great expense, high quality (though still incomplete)

botanical surveys, and special-status plant mitigation plans in addition to extensive animal mitigation, and engineering plans.

The challenges associated with reviewing the ISEGS project's application for certification have been extensively discussed and reported, and should be met with equally transformative decision-making. CNPS endorses the concept of State and Federal governments making an example of this project by calculating the amount the applicant has expended on site planning thus far, and applying those funds as a joint state and federal credit to the applicant toward obtaining a right of way on public lands or the purchase of private lands elsewhere on ecologically low-impact lands. This would thereby provide the means and incentives to relocate the project to a less damaging location, while establishing the precedent for what types of lands are and are not suitable for utility-scale renewable energy generation. This type of solution honors the economic and political expenditures of the applicant and others involved in the certification process, while recognizing that the preservation of ecosystem is paramount to all discretionary actions.

The Commissioners must consider and make sustainable management decisions that are firmly grounded on science-based ecological principles and that recognize the inherent value of the landscapes that contain the structures, composition and processes that support and enhance biodiversity, heterogeneity and complexity. As the decision-making body for this and subsequent utility-scale solar energy projects, the Commission becomes our representative to future generations. If the decision is to build the project as proposed by relying on mitigation concepts with no scientific foundation, and on statements of overriding consideration, then we will have set a very low bar for how our generation chooses to transform how we generate energy while cohabiting the planet, and will have hastened the type of ecological destruction for which the ISEGS project is meant to mitigate.

California Energy Resources Conservation and Development Commission

In the Matter of:	
APPLICATION FOR CERTIFICATION FOR THE IVANPAH SOLAR ELECTRIC GENERATING SYSTEM	DOCKET NO. 07-AFC-5

DECLARATION OF SERVICE

I, Greg Suba, declare that on April 1, 2010, I served and filed copies of the attached Opening Briefs of Intervenor California Native Plant Society, dated April 1, 2010. 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]. The document has been sent to 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:

__X__ sent electronically to all email addresses on the Proof of Service list;
__X__ by personal delivery or by depositing in the United States mail at 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:
__X__ 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.
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I declare under penalty of perjury that the foregoing is true and correct.

Greg Suba

Greg Suba

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