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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the IVANPAH)
SOLAR ELECTRIC GENERATING SYSTEM)
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)
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Docket No. 07-AFC-5

**APPLICANT'S OPPOSITION TO
THE PETITION FOR RECONSIDERATION
By
BASIN AND RANGE WATCH**

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1 **I. INTRODUCTION**

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Pursuant to the Commission’s *Notice of Hearing on Petition for Reconsideration of*

ISEGS Final Decision By Intervenor Basin and Range Watch,¹ Solar Partners I, LLC, Solar

Partners II, LLC and Solar Partners VIII, LLC (collectively, the “Applicant”)², the owners of the

three separate solar plant sites collectively referred to as the Ivanpah Solar Electric Generating

System (the “Ivanpah Solar Project” or “ISEGS”) hereby file this *Applicant’s Opposition to the*

Petition For Reconsideration by Basin and Range Watch (“BRW”) (this “Opposition”).

Section 1720(a) of the Commission’s Rules of Practice and Procedure (the

“Commission’s Rules”)³ provides that a petition for reconsideration must do more than simply

re-litigate issues already decided:

A petition for reconsideration must specifically set forth either: **1) *new evidence that*** despite the diligence of the moving party ***could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law.*** The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. [emphasis added]⁴

¹ *Notice of Hearing on Petition for Reconsideration of ISEGS Final Decision By Intervenor Basin and Range Watch and Any Other Subsequently Filed Petition(s); (2) Order on Responses to Petition(s); and (3) Official Notice of USFWS Biological Opinion*, Docket No. 07-AFC-5 (October 12, 2010; docketed October 13, 2010), available at http://www.energy.ca.gov/sitingcases/ivanpah/notices/2010-10-13_Note_of_Petition_for_Reconsideration.pdf).

² These three companies are Delaware limited liability companies. BrightSource Energy Inc. (BSE), a Delaware corporation, is a technology and development company, and is the sole managing member of the Solar Partners entities.

³ 20 C.C.R. § 1716.5. The Commission’s Rules of Practice and Procedure Relating to Power Plant Site Certification are set forth in Title 20, Division 2 of the California Code of Regulations.

⁴ Section 1720(a) reads, in part:

“Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision....”

1 The BRW Petition for Reconsideration (the “Petition”) fails to make the showing required by the
2 Commission’s Rules.

3 As we explain below, the Petition fails to present new evidence, let alone evidence that
4 despite the diligence of BRW could not have been produced during evidentiary hearings on the
5 case. BRW’s Petition is nothing more than a reiteration of its disagreement with certain
6 conclusions reached by the Commission; as such, it is solely an attempt to re-litigate matters of
7 fact or law already litigated before and determined by the Commission. Simple disagreement
8 with the Commission’s conclusions is not evidence of any kind, and certainly not new evidence,
9 nor is it an error in fact or change or error of law as required by the Commission’s Rules to
10 support a petition for reconsideration. BRW should not be permitted to re-litigate these issues.
11 For these reasons, and as explained in further detail below, BRW’s Petition for Reconsideration
12 must be denied.

13 **II. BRW HAS FAILED TO MEET ITS BURDEN TO SET FORTH ANY NEW**
14 **EVIDENCE THAT COULD NOT HAVE BEEN PRODUCED DURING**
15 **EVIDENTIARY HEARINGS.**

16
17 Where either new information or errors are alleged, the Petitioners must explain fully
18 why the alleged matters could not have been presented during the evidentiary hearings.⁵ In an
19 effort to bootstrap vintage materials into a petition for reconsideration, BRW states that it “has
20 obtained new information concerning the conservation status of the Northeastern Recovery Unit
21 of Desert tortoise”, and that the “source of the new information” is the September 16, 2010,
22 Biological Opinion for the Silver State Solar Project (“Silver State Biological Opinion”), a
23 photovoltaic power plant.⁶ However, a closer examination of the source that BRW relies on

⁵ 20 C.C.R. § 1702(a).

⁶ *Petition for Reconsideration of Decision by Intervenor Basin and Range Watch*, p. 3, Docket No. 07-AFC-5 (Sept. 30, 2010) (*hereinafter* “BRW Petition for Reconsideration”). The Silver State Project, which had been proposed by

1 reveals that the allegedly “new information” is actually a hodgepodge of materials that either (1)
2 have already been introduced into the record, or (2) pre-date the evidentiary hearings, and could
3 have been produced by BRW at evidentiary hearings, but were not.

4 For example, portions of the purportedly “new” information -- like the first items BRW
5 references, the 1994 Desert Tortoise Recovery Plan and the Draft 2008 Desert Tortoise Recovery
6 Plan-- were in fact introduced into the record.⁷ The U.S. Fish and Wildlife Service (“USFWS”)
7 1994 and Draft 2008 Desert Tortoise Recovery Plans are cited throughout the Staff Assessment
8 (Ex. 300) as “USFWS 1994, 2008” (*passim*). Portions of the USFWS 1994 Desert Tortoise
9 Recovery Plan were sponsored into evidence by Intervenor Defenders of Wildlife, and admitted
10 into evidence on January 14, 2010 as Exhibit 706. Similarly, Exhibits 516 and 518 from
11 Intervenor Western Watersheds Project also include materials from the 2008 Draft Desert
12 Tortoise Recovery Plan, and were docketed January 5, 2010, sponsored into evidence by
13 Intervenor Western Watersheds Project, and admitted into evidence on January 14, 2010.⁸
14 Clearly, the 1994 Desert Tortoise Recovery Plan and 2008 Draft Desert Tortoise Recovery Plan
15 are not “new” evidence.⁹

16 In addition to the 1994 Desert Tortoise Recovery Plan and 2008 Draft Desert Tortoise
17 Recovery Plan, BRW cites to other “new information” contained within the same source to
18 support its Petition. However, these materials in fact *pre-date* the evidentiary hearings held for
19 this proceeding. For example, the BRW Petition relies on the following series of citations:

- 20
- Page 4: First full paragraph: Cites to a 2004 study, “Tracy et al. 2004”

Silver State Solar Power North, LLC, is “proposed for a Right-of-Way of 7,925 acres in desert tortoise habitat on Bureau of Land Management land in Clark County, Nevada, located in the northern Ivanpah Valley on the other side of Primm and Ivanpah Dry Lake from the proposed ISEGS project site.” (BRW Petition, p.3.)

⁷ BRW Petition, p. 3.

⁸ Exhibit List

⁹ BRW, p. 3.

- 1 • Page 4: Second full paragraph: Cites to Walker and Woodman 2002, Young et al. 2002,
2 Goodlett and Woodman 2003.
- 3 • Page 5: First full paragraph: Cites to USFWS 1994.
- 4 • Page 5: Third full paragraph: Cites to 1997 paper by Kristin H. Berry.
- 5 • Page 5: Fourth full paragraph: Cites to 1997 paper by Kristin H. Berry, which internally
6 cites to USFWS, 1994a, Ryder 1986 and Waples 1991.
- 7 • Page 5, Fifth paragraph continuing on to the first full paragraph of page 6: Cites to 1997
8 paper by Kristin H. Berry, which internally cites to USFWS, 1994a, Ryder 1986 and
9 Waples 1991.

10 These materials are apparently characterized as “new” solely because they are referenced
11 in the Silver State Biological Opinion, but in fact *all* of these materials pre-date the evidentiary
12 hearings held for this proceeding. The sources are, in actuality, papers published in the 1980s,
13 the 1990s, and the first nine years of the new millennium, 2000-2009, any and all of which could
14 have been produced during evidentiary hearings for the Ivanpah Solar Project, but were not.¹⁰

15 The BRW Petition characterizes the Silver State Biological Opinion as providing “new”
16 evidence regarding tortoises in the Northeastern Mojave Recovery Unit, and that such evidence
17 was “not available during the CEC evidentiary hearings.”¹¹ As support, the BRW Petition cites
18 the following segment from the Silver State Biological Opinion:

19 Density estimates of adult tortoises varied among recovery units
20 and years. **Over the first six years of range-wide monitoring**
21 **(2001-2005, 2007), tortoises were least abundant in the**
22 **Northeast Mojave Recovery Unit (1 to 3.7 tortoises per**

¹⁰ The first evidentiary hearing for the Ivanpah Project was held on December 14, 2009. Other evidentiary hearings in this proceeding were held from January 11 -14, 2010, and on March 22, 2010.

¹¹ BRW Petition, pp. 3, 4.

1 kilometer₂ [2 to 10 tortoises per mile₂]...” (p.27). (quotations and
2 emphasis retained)¹²
3

4 However, BRW’s characterization of the information in the Silver State Biological Opinion
5 regarding the abundance of the Northeastern Mojave Recovery Unit as “new” and “not
6 available” is misleading. The ellipses in BRW’s “quote” above leaves out the source that is cited
7 in the Silver State Biological Opinion for the information emphasized by BRW: a document
8 issued by the U.S. Fish and Wildlife Service (“USFWS”) entitled, *Range-wide Monitoring of the*
9 *Mojave Population of the Desert Tortoise: 2007 Annual Report* (“2007 Annual Report”).¹³ The
10 *2007 Annual Report* was published by USFWS in October 2009, well in advance of the
11 evidentiary hearings for the Ivanpah Project.¹⁴ This document could have been produced during
12 the evidentiary hearings for the Ivanpah Project, but was not. BRW should not be allowed to
13 cure its lack of diligence and failure to produce this document during evidentiary hearings by
14 presenting the information in this study as “new” solely because the study was cited in a
15 document that post-dated evidentiary hearings. Therefore, as BRW failed to produce this
16 information during evidentiary hearings, and has failed to meet its burden to demonstrate why
17 this information could not have been produced, BRW’s Petition for Reconsideration must be
18 denied.

¹² BRW Petition, pp. 3, 4.

¹³ BRW Petition, p. 4 (citing to p. 27 of the Silver State Solar Project Biological Opinion); *Biological Opinion for the Silver State Project*, p. 27, USFWS File No. 84320-2010-F-0208 (Sept. 16, 2010) available at http://www.blm.gov/pgdata/etc/medialib/blm/nv/field_offices/las_vegas_field_office/energy/nextlight_-_other/NextLight_BO.Par.54027.File.dat/NextLight_Silver_State_Solar_BO%20.pdf. The Silver State Biological Opinion refers to *Range-wide Monitoring of the Mojave Population of the Desert Tortoise: 2007 Annual Report* as “Service 2009b”.

¹⁴ U.S. Fish and Wildlife Service. 2009. *Range-wide Monitoring of the Mojave Population of the Desert Tortoise: 2007 Annual Report*. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. A copy of this report is available at http://www.deserttortoise.gov/documents/RPT_2007_Rangewide_DT_Population_Monitoring_AllisonL_102709.pdf.

1 As such, the only potentially relevant portions of the Silver State Biological Opinion,
2 including those cited by BRW, are comprised of vintage citations that do not constitute the sort
3 of new information required to support a petition for reconsideration. To the extent the
4 information might be relevant to the Ivanpah Project, the Silver State Biological Opinion itself
5 does not discuss these articles or any other evidence in any way that has not been fully addressed
6 in the Ivanpah proceeding

7 BRW was granted Intervenor status in the Commission proceedings and accepted the
8 rights, duties, and responsibilities of a party.¹⁵ Those rights, duties, and responsibilities include,
9 among other things, “the responsibility to comply with the requirements for filing and service of
10 documents, the presentation of witnesses and evidence, and any other reasonable conditions
11 which may be imposed by order of the presiding member.”¹⁶

12 BRW has failed to meet its burden to show why these materials were not produced during
13 evidentiary hearings. In fact, given that the materials cited pre-date the CEC’s evidentiary
14 hearings, BRW cannot meet this burden. BRW has not provided sufficient grounds to support its
15 Petition. Furthermore, BRW’s suggestion that the information it presents is “new”, and its
16 citations to the Silver State Biological Opinion, are nothing more than a pretext, and an
17 impermissible bootstrapping that the Commission must not tolerate.

18 In short, new evidence has not been submitted by BRW, and the dates of the materials cited
19 by BRW clearly show that these documents could have been produced by BRW during
20 evidentiary hearings on the case, but were not. Other materials referenced by BRW are in fact,
21 already a part of the evidentiary record for the Ivanpah Project, and do not constitute new

¹⁵ *Committee Order Granting Petition to Intervene of Basin and Range Watch*, Docket No. 07-AFC-05 (July 2, 2009), available at http://www.energy.ca.gov/sitingcases/ivanpah/notices/2009-07-02_ORDER_GRANTING_BASIN+RANGE_WATCH_PETITION_INTERVENE.PDF.

¹⁶ 20 CCR § 1712(b)-(c).

1 evidence. Thus, BRW has failed to meet its burden under Section 1720(a) to set forth new
2 evidence and to make a showing that despite the diligence of BRW, this evidence could not be
3 produced during evidentiary hearings. Accordingly, the BRW Petition must be denied.¹⁷

4 **III. BRW HAS FAILED TO MEET ITS BURDEN TO SET FORTH ANY ERROR IN**
5 **FACT, OR CHANGE OR ERROR OF LAW, MADE BY THE COMMISSION.**
6

7 Where errors in fact, or change or error of law, are alleged, the petitioner must fully
8 explain the bases for those allegations, and explain why those allegations could not have been
9 presented during the evidentiary hearings. BRW makes three claims of “error”: (1) that a
10 statement by the Commission regarding the genetic uniqueness of the Ivanpah Valley desert
11 tortoise population was in error;¹⁸ (2) that the Commission’s Decision does not discuss the
12 details of the desert tortoise translocation plan in sufficient detail;¹⁹ and (3) that the Commission
13 made a mistake of fact in its conclusions regarding tortoise mitigation measures.²⁰ None of these
14 claims are sufficient to meet the requisite standard for granting reconsideration.

15 **A. Disagreement With The Commission’s Conclusions Are Insufficient Grounds To**
16 **Support Reconsideration.**

17 The first claim of error alleged by BRW is based on the following statement by the
18 Commission:

19 Several commentators mentioned the genetic uniqueness of the
20 desert tortoises in the Ivanpah Valley as justifying a heightened
21 level of concern and protection. When pressed, however, no
22 definitive evidence or rationale for doing so was presented.

¹⁷ Section 1720 of the Commission’s regulations does not require consideration of the merits of the issues raised in the Petition. In deciding the issue on reconsideration, the Commission does not re-litigate the merits of the issues raised. Nevertheless, for the completeness of the record, the Applicant reiterates that the issue of genetic uniqueness was actually litigated and determined in this proceeding. See, for example, record citations on the issue of genetic uniqueness in Applicant’s Reply Brief, IV.A.11, pp. 37-38.

¹⁸ BRW Petition, pp. 2-9.

¹⁹ BRW Petition, p.7.

²⁰ BRW Petition, p.9.

1 (8/24/10 RT, pp. 150-153) At this point, we consider the concern
2 to be speculative.²¹
3

4 In its Petition BRW stated its belief that “this statement is in error because there is ample
5 information in the record...to show the genetic uniqueness of this population of desert
6 tortoise.”²² This, on its face, does not allege an error in fact, but a difference in opinion; the
7 Commission did not state there was no evidence, or attempt to quantify the amount of
8 evidence—it merely stated its opinion, well within its discretion, that the evidence was not
9 “definitive.” The Commission need go no further to reject this claim as a basis for granting
10 reconsideration.

11 Further, BRW’s Petition fails to cite to any source in the evidentiary record to support its
12 beliefs regarding the genetic uniqueness of the Ivanpah Valley population of the desert tortoise.
13 In fact, an examination of the evidentiary record shows that there has been no scientific evidence
14 presented indicating that the tortoises within the Ivanpah Valley, and more specifically, the
15 Project site, are genetically distinct from the rest of the Northeastern Recovery Unit of desert
16 tortoise. Thus, although BRW might disagree with the Commission’s conclusion regarding the
17 weight of the evidence of the genetic uniqueness of the Ivanpah Valley population of the desert
18 tortoise, disagreement with a conclusion of the Commission is not grounds for reconsideration.
19 Accordingly, the BRW Petition must be denied.²³

²¹ BRW Petition, p. 2 (citing to page 33 of the *Errata to the Presiding Member’s Proposed Decision*).

²² BRW Petition, p. 3.

²³ It is not surprising that the BRW Petition is silent on compensatory mitigation for the Silver State Solar Project given the following comparison:

Project Name	Project Location	Project Acreage	Estimated Compensatory Mitigation Bond Required	<i>Per Acre Compensation</i>
Silver State Solar Project	2 miles east of Primm, Nevada	2,966 acres	\$2,295,684*	\$774 per acre

1 **B. There is No Basis for the Commission to Depart from Precedent and Delay This**
2 **Proceeding Related to the Exclusively Federal Desert Tortoise Translocation**
3 **Plan.**

4 BRW claims fault in the Commission’s Decision on the grounds that the Silver State
5 Biological Opinion “discusses the desert tortoise translocation plan in much greater detail than
6 for ISEGS.”²⁴ First, BRW fails to identify how this argument constitutes grounds for
7 reconsideration under Section 1720(a), as BRW does not identify any errors in fact or of law in
8 the Commission’s conclusions regarding the desert tortoise translocation plan. Therefore this
9 argument should be dismissed as irrelevant

10 Second, even if BRW was able to identify how this perceived fault allegedly relates to the
11 permissible categories for reconsideration of Section 1720(a), granting reconsideration under
12 these circumstances would be inconsistent with Commission precedent. The BRW Petition
13 suggests that the Commission should “delay” the Ivanpah case to allow consideration of the
14 federal Biological Opinion for ISEGS.²⁵ While BRW suggests that the Commission cannot
15 proceed without the federal Biological Opinion, this is simply untrue as a matter of law, and
16 inconsistent with the Commission’s past practices as a matter of fact. Moreover, since the
17 ISEGS desert tortoise translocation plan is discussed in more than adequate detail, consistent
18 with Commission precedent, there is simply no basis to grant any delay.

Ivanpah SEGS	4.5 miles southwest of Primm, Nevada	3,582 acres	\$33,909,523**	\$9,466 per acre
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* *Biological Opinion for the Silver State Project*, p. 59, Terms and Conditions 4.c., USFWS File No. 84320-2010-F-0208 .

** CEC, *Final Commission Decision for the Ivanpah Solar Electric Generating System*, pp. 69-81, BIO-17, CEC-800-2010-004 CMF, Docket No. 07-AFC-5 (September 2010).

²⁴ BRW Petition, p. 7.

²⁵ BRW Petition, p. 9.

1 As a matter of law, the Biological Opinion is a creature of *federal law*. The federal
2 Endangered Species Act (“ESA”)²⁶ prohibits the “take” of endangered fish and wildlife.²⁷ It also
3 requires each federal agency in consultation with the USFWS to ensure that any action it
4 undertakes is not likely to jeopardize the continued existence of a listed species.²⁸ After
5 conclusion of such consultation, the Secretary must provide a written opinion on the impact.²⁹
6 Federal regulations define this written opinion as a Biological Opinion.³⁰ The ESA allows an
7 agency to conduct an action that will result in take that is incidental to an otherwise lawful
8 activity if certain conditions are met and impacts are mitigated, as defined in a written statement
9 issued by USFWS.³¹ The issues raised in the BRW Petition related to the Biological Opinion
10 and desert tortoise relocation plans subsumed within the Biological Opinion are therefore
11 exclusively federal issues. There are no decisions that the Commission can or must make on
12 these federal issues, and thus no reason for delay of these state law proceedings.

13 Third, as a matter of state law, the Commission has properly conditioned the Ivanpah
14 Project on receipt of these federal materials. For example, Condition BIO-7 provides, among
15 other things, that “The BRMIMP shall incorporate avoidance and minimization measures
16 described in final versions of the Desert Tortoise Translocation Plan....” Similarly, BIO-9
17 requires, “The project owner shall develop and implement a final Desert Tortoise
18 Relocation/Translocation Plan (Plan) that is consistent with current USFWS approved
19 guidelines, and meets the approval of BLM, USFWS, CDFG and Energy Commission staff.”

²⁶ 16 U.S.C. §§ 1531-1599.

²⁷ *Id.* at § 1538(a)(1)(B).

²⁸ *Id.* at § 1536 (a)(2).

²⁹ 50 C.F.R. § 402.14.

³⁰ 50 C.F.R. § 402.02.

³¹ *Id.* at §§ 1536(a)(4), 1536 (O)(2).

1 The PMPD covers all aspects of translocation. There are no gaps, no inconsistencies, and no
2 bases for the Commission to reconsider what it has already carefully reviewed and approved.

3 Fourth, the Commission’s judicially-affirmed precedent confirms that the Commission
4 need not have a final federal Biological Opinion before it acts to certify a project. The Sutter
5 Powerplant Project, the Delta Energy Center, and the Metcalf Energy Center, to name just a few,
6 were all certified before the final federal Biological Opinions for those projects were issued. The
7 Commission’s final decisions for each of these projects contained Conditions similar to BIO-7,
8 BIO-9 and related Conditions in the PMPD. There were no defects in those prior cases given the
9 imposition of appropriate Conditions of Certification, and there are no defects here.

10 The federal nature of the Biological Opinion means that the Commission need not make
11 any decision related to these issues before certifying the project. This prudent practice by the
12 Commission has been judicially affirmed, since the Commission’s decisions on powerplant siting
13 matters have all withstood legal challenges before the California Supreme Court. Thus, as BRW
14 has failed to identify any errors in fact or of law made by the Commission in relation to the
15 desert tortoise translocation plan, the Commission should deny the BRW Petition for
16 Reconsideration.

17 **C. The Commission Should Not Permit Re-Litigation of its Conclusions That**
18 **Mitigation Measures Will Benefit The Desert Tortoise Population.**

19 In closing, the BRW Petition disagrees with the Commission’s conclusions regarding the
20 benefits of mitigation measures for the desert tortoise, but not any factual matters, as would be
21 required for the Commission to grant reconsideration. Specifically, at page 9, the BRW Petition
22 disputes the Commission’s conclusion that “the enhanced habitat compensation lands that will be
23 created will allow other tortoises and their offspring to thrive, resulting in no net loss in the

1 tortoise population due to this project.”³² BRW argues that the Commission’s conclusion is
2 incorrect: “[t]his sentence is not supported by the evidence, and is a mistake of fact.” The sentence
3 that BRW takes issue with is a *conclusion*, based on the factual record. The conclusion reflects the
4 Commission’s studied analysis of potential effect based on the factual record. This conclusion is not
5 a fact, and thus could not be a “mistake of fact.” Again, the Commission has acted well within its
6 discretion to draw its own conclusions from the factual record, and disagreement with those
7 conclusions does not form a permissible basis for reconsideration.

8 BRW also raises disputed matters in another proceeding, which have no relevance
9 whatsoever to this proceeding. Specifically, the BRW Petition cites to a transcript of certain
10 disputed testimony in the Calico Solar Project proceeding. However, the disputed factual record
11 in the Calico proceeding is not relevant to any decision the Commission must make in the
12 Ivanpah Solar Project proceeding, as provided in the Commission’s Rules: “The presiding
13 member's proposed decision shall be based exclusively upon the hearing record, including the
14 evidentiary record, of the proceedings on the application.”³³ The disputed testimony in the Calico
15 case does not constitute any basis for reconsideration, as it is neither new evidence in the
16 Ivanpah case nor an error in fact in the Ivanpah proceeding.

17 As Commissioner Weisenmiller correctly stated at the September, 22, 2010 Business
18 Meeting, “[W]e are basing our decision on the record in this case”³⁴ The Commission
19 properly has based the PMPD on the record in this proceeding. Forum shopping is outside the
20 scope of the proper basis for the Commission’s decision in this matter.³⁵

³² BRW Petition, p. 9, citing to p. 3 of the PMPD.

³³ 20 CCR §175, “Presiding Member's Proposed Decision; Basis.”

³⁴ 9/22/10 RT 116.

³⁵ 20 C.C.R. § 1712.

1 BRW's improper attempt to re-litigate the weight of the evidence in this proceeding, and
2 not actually present new evidence, is explicit in BRW's summation: "The evidence shows...."³⁶
3 BRW is challenging the Commission's decision based on the record. BRW is not presenting
4 new evidence that despite the diligence of BRW could not have been produced during
5 evidentiary hearings on the case, or any error in fact. Disagreement with a conclusion of the
6 Commission is not grounds for reconsideration. The BRW Petition must be denied.

7 **IV. CONCLUSION**

8 As discussed above, the BRW Petition fails entirely to offer new evidence that despite the
9 diligence of the moving party could not have been produced during the hearing or to allege with
10 specificity any error in fact or change or error of law as required by Section 1720 of Title 20 of
11 the California Code of Regulations. Therefore, BRW's Petition for Reconsideration and Request
12 for Stay should be denied in its entirety.

13 Dated: October 25, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

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³⁶ BRW Petition, p. 10.

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Application for Certification for the IVANPAH)
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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on October 25, 2010, I served the attached *Applicant's Opposition to the Petition for Reconsideration by Basin and Range Watch* via electronic and U.S. mail to all parties on the attached service list.

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



Karen A. Mitchell

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