

Memorandum

Date: February 15, 2012
Telephone: (916) 654-4894
File: 11-AFC-2

To: Commissioner Karen Douglas, Presiding Member
 Commissioner Carla Peterman, Associate Member
 Hearing Officer Kenneth Celli

From: California Energy Commission - Mike Monasmith
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 Sacramento, CA 95814-5512

DOCKET 11-AFC-2

DATE	<u>FEB 15 2012</u>
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RECD.	<u>FEB 16 2012</u>
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Subject: HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2)
 STATUS REPORT #2

Per the November 16, 2011 Committee scheduling order, attached is Energy Commission staff's Status Report #2 for the Hidden Hills Solar Electric Generating System (HHSEGS).

This status report will discuss and update issues that Energy Commission staff first identified in its January 17, 2012 Status Report #1, and subsequently discussed with the Committee, Applicant and other parties to this proceeding during the January 24, 2012 Status Conference. Based upon the issue discussions contained within this Status Report (#2), staff reiterates the need for additional time (reflected in the updated schedule on page 7) to complete its Preliminary Staff Assessment. This new PSA publication date of April 13, 2012 was initially presented for Committee consideration in Status Report #1. Staff looks forward to the opportunity to discuss this new date and the issues outlined in this report with the Committee at the upcoming February 28, 2012 Status Conference.

cc: Proof of Service List
 Docket 11-AFC-2

PROJECT REVIEW UPDATE

In the two week interim period since Staff last reported to the Hidden Hills Committee at the January 24, 2012 Status Conference, progress has occurred in a number of technical areas, most notably Biological Resources, Cultural Resources, Water Resources, Visual Resources and Alternatives.

Biological Resources

Desert Tortoise. Staff is coordinating with Bureau of Land Management (BLM), California and Nevada, the United State Fish & Wildlife Service (USFWS), California and Nevada, and California Department of Fish and Game (CDFG) to determine appropriate and suitable mitigation. The applicant has proposed a 1:1 compensatory mitigation ratio for the site. Staff is currently discussing various options with the CDFG, including impact minimization and avoidance measures, and plans to discuss approaches during the upcoming February 22, 2012 Issues Resolution Workshop.

USFWS continues to consider desert tortoise translocation planning in collaboration with its interested agency partners, including the Energy Commission, BLM and CDFG. Pursuant to the federal Endangered Species Act Section 7 process, the USFWS is the lead federal agency with jurisdiction over desert tortoise. The BLM will submit a biological assessment (BA) to the USFWS and request a Section 7 consultation. The USFWS will then issue a Biological Opinion to BLM for the Hidden Hills project, and a desert tortoise translocation plan may be required since tortoise are known to occur on the project site. Staff is consulting with CDFG regarding potential legal and species concerns if it is determined by USFWS that California tortoise should be translocated across the state border into Nevada, where the USFWS has indicated the best suitable habitat for translocated desert tortoise exists.

Desert Kit Fox. Desert kit fox burrows, burrow complexes, and sign (scat, tracks, and dens) were observed throughout the project site, generally aligned with the eastern boundary of the project site (along the California-Nevada border). Surveys performed adjacent to the project site in Nevada located another 6 canid burrows, located within 150 meters of the proposed site. In total, 46 burrow complexes were found on the site (a complex is defined as numerous burrows within a 3 to 250 square meter area used by a family group), of which 19 appeared active. Another 30 isolated burrows were located. On November 17, 2011 staff filed Data Request 78 which stated, "*As indicated in AFC Appendix 5.2F, please provide a discussion of the type of kit fox sign found during field surveys and a map showing the locations of kit fox sign. If potential kit fox dens or complexes were observed, identify the number of burrows and whether they are likely to be natal or satellite dens.*" On December 17, 2011, the applicant provided a partial response to Data Request 78 in Data Response Set 1C, stating "...no time or effort was put into determining whether the burrows were likely to be natal or satellite dens."

Subsequent to Applicant's Data Response Set 1C, concerns have been elevated regarding large solar project impacts to the desert kit fox as a result of ongoing deaths

(15 at present time) associated with the Genesis Solar Energy Project construction site in Riverside County. Several of these deaths have been caused by canine distemper, a disease that had not been documented in desert kit fox until construction of the Genesis project. Although the relation of the disease outbreak to project construction is not known at this time, staff believes additional caution will be necessary for the Hidden Hills project, as desert kit fox is a protected furbearer, and attainment of California Code of Regulations Title 14 prohibits take, defined as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” Typical procedures used to evict kit fox from the site prior to construction include passive hazing to encourage the fox to leave the site. While effective to a degree on smaller sites, the use of the methods on large solar sites has had only mixed results.

Because burrow classification is critical to understanding the full nature of kit fox presence on the site, and given the applicant’s partial response to Data Request 78 filed on December 17, 2011, staff is currently developing a new data request to better understand and address desert kit fox issues associated with the Hidden Hills site. Staff is collaborating with CDFG on the development of this data request, and anticipates publishing it in late-February, 2012. Further discussion of this issue may also occur at the February 22, 2012 Issues Resolution Workshop.

Special-status Plants. Staff will discuss which special-status plant impacts may be significant, and how to mitigate impacts to ten special-status plant species identified on-site during focused botanical surveys, at the upcoming February 22, 2012 Issues Resolution Workshop. Some plants occur in very large densities throughout the project site, including the recent California Native Plant Society-listed gravel milk-vetch and Nye milk-vetch, which are very rare in California and were not known to exist on the proposed project site or in the region until they were discovered during special-status plant surveys completed for the proposed project.

Status of Outstanding Reports:

1. 1st Quarterly *Anabat* Report (*Anabat* device has been installed and is operating and the first preliminary bat survey results may be provided in spring 2012)
2. Phase III Burrowing Owl Survey report (surveys will be performed beginning February 1, 2012)
3. Draft State Water Delineation Report (Staff requested this report in Data Request Set 1C; applicant’s response received on December 17, 2011, stated the draft delineation would be submitted by January 2012. Staff has yet to receive this report)
4. Golden Eagle Pedestrian Survey Report (expected June 2012)
5. Reports from ongoing Songbird Point Counts (Staff anticipates updated survey data by late February, 2012)

Status of Submitted Reports:

1. Golden Eagle Fall Helicopter Survey Report (Docketed on January 31, 2012 and currently under review)
2. Offsite Botanical Survey Reports (Docketed on January 31, 2012 and currently under review)

Cultural Resources

Following the January 24, 2012 Committee Status Conference, the applicant agreed to undertake and respond to Data Requests 125, 127 and 128. The information regarding Data Request 125 responses is anticipated at the end of February, 2012. The applicant has not yet committed to undertaking the completion of Data Requests 121 and 134, and has requested further clarification from staff regarding the scope for Data Requests 105 and 106 which is forthcoming. Staff is hopeful that the issues regarding the outstanding Data Requests will be resolved and the required research designs will be submitted for staff's review and approval as soon as possible. The studies associated with Data Requests 105/106 and 127/128 are not likely to be completed for incorporation into the PSA, which will impact staff's discussion and conclusions. Staff has officially withdrawn Data Requests 129-132, and is moving forward with the research internally. Data Request 109 will also be undertaken by staff.

Land Use

Staff continues to work diligently with Inyo County representatives related to a myriad of land use issues given its determination that the proposed HHSEGS project is inconsistent with Inyo County's general plan designation and zoning code. The Renewable Solar and Wind Energy General Plan Amendment (REGPA) was the applicable general plan land use designation that would have allowed the applicant to submit the proposed project consistent with the general plan in any zone under Title 18 pursuant to further requirements under Title 21. However, as was explained in detail in Status Report #1, given that the REGPA was repealed by the county due to legal ramifications with its implementation, staff continues to work with all parties to best resolve the project's inconsistency with the county's general plan and zoning codes.

Staff has requested that the applicant provide Inyo County applications as necessary for consistency with LORS and to work with Inyo County so that staff can consider pertinent county input when developing proposed conditions of certification. Inyo County has indicated that the applicant has submitted a "Renewable Energy Development Application," although the County has stated that this is not the proper submittal to remedy the land use inconsistency, and instead prefers a General Plan Amendment or a Zone Change and Renewable Energy Permit. Staff and Inyo County representatives will confer and may provide the Committee an update on the status of these land use issues at the January 28, 2012 Status Conference (following their discussion at the February 22, 2012 Issues Resolution Workshop).

Water Resources

Applicant proposes to meet Hidden Hills Solar Energy Generating Station (HHSEGS) project needs with groundwater from the Pahrump Valley groundwater basin. Data for characterization of the Pahrump Valley groundwater basin is limited. The water unit staff continues to raise concerns about the viability of the proposed water supply. However, the applicant has yet to provide staff with data that assures the groundwater basin can furnish enough water for the life of the project. Accordingly, after the applicant provided data about a limited pump test that failed due to declining water levels, staff issued

several additional data requests on January 10, 2012 in Data Requests Set 2A that the applicant responded to on February 9, 2012. These responses included specifics on pump test parameters of sufficient duration and flow to demonstrate that the aquifer can provide a reliable supply of groundwater for Hidden Hills' constructions and operation. Applicant submitted a request for additional time to conduct the pump tests, and anticipates completion of the pump test and preparation of a report summarizing the findings by February 29, 2012.

Staff is also hopeful that the applicant will soon provide a mitigation plan for the use of groundwater during project construction and operation. In their response to Data Request 39 from Data Request Set 1A, they said, ".....Applicant is developing a mitigation plan which will describe its proposed mitigation for the HHSEGS. It anticipates submitting the plan in January 2012." No plan has yet been submitted.

Visual Resources

Given concerns related to the accuracy and appropriateness of several of the Hidden Hills Key Observation Point (KOP) simulations, Energy Commission retained a consultant (William Kanemoto) to review (and where necessary, augment) the Hidden Hills KOPs located in California. Staff's concerns stem from several factors, including the fact that no KOP included views of the transmission poles proposed for the project site in California. Typically, all major project structures appear in the simulations. Applicant has provided staff with additional information as to why project transmission poles are not shown in the simulation for KOP-4. Applicant indicates that the poles are not visible due to foreground interference within the view cone. Staff is evaluating this information. Moreover, the applicant provided staff with an additional KOP as requested (KOP-7) for the Old Spanish Trail, a National Historic Trail. However, research conducted by the applicant appears incomplete, as the members of the Old Spanish Trail Association (now an Intervenor in this proceeding) that reviewed the selected KOP-7 location indicated that it was not located on the Old Spanish Trail trace, but instead on the Mormon Trail.

Another issue with which the Energy Commission Visual Resources (and Traffic and Transportation) staff has indicated concern is in regard to glint and glare impacts of the proposed project. This concern resulted in the addition of a glint and glare specialist to the project team (Dr. Gregg Irvin). Following Dr. Irvin's review of the material, and after consultation with staff, several new visual (and traffic and transportation) data requests were issued on February 3, 2012 as part of Data Request Set 2C in the following areas: glint and glare from the power towers and panels, visibility of reflected dust particles and plans and elevations of the heliostat structures.

Alternatives

After staff reviewed inadequate responses to important Alternatives-based data requests (from Data Requests Set 1C issued on November 17, 2011) regarding the Sandy Valley site alternative, the decision was made to provide more background information and re-issue the data requests (along with other questions on alternative technology). This was done in Data Requests Set 2A, issued on January 10, 2012, with responses received on February 9, 2012. While the quality of the Set 2A Data

Responses improved compared to those of Set 1C, staff will need to augment information provided by the applicant, and re-configure the Sandy Valley site footprint to include parcels in both Inyo County and San Bernardino County (applicant's responses to Set 2A included only parcels on the Inyo County side of Sandy Valley).

Other Issues Summary

As was first described in Status Report #1, the Hidden Hills SEGS Preliminary (and Final) Staff Assessment will be comprised of 21 distinct, technical discussions. Air Quality staff have issued a number of new data requests, including Set 2B questions posed to the applicant on projected emissions associated with mirror washing, and an inquiry as to whether or not the air impacts analysis should include project commissioning because those values shown for commissioning are higher than those for a cold start (if not, the applicants should justify why they did not include these values in their modeling). Staff still awaits responses to these questions, due on February 17, 2012.

Staff is also working diligently to conclude their initial investigations and discovery on issues related to Waste Management (both hazardous and non-hazardous for construction and operation) and seeks clarification on issues related to the delivery of California-generated waste into Class III Nevada landfills. Worker Safety / Fire Protection inquiries related to a Fire Risk Assessment and a Fire Protection Needs Assessment asked of the applicant in Data Request #96 are also still outstanding.

PROJECT SCHEDULE

As was indicated in the Issues Identification Report and in Status Report #1, meeting the proposed project schedule depends upon a number of factors, including: the applicant's timely response to staff's data requests, and the involvement and timely input by other local, state and federal agencies. And while the over-all tone of applicant-staff cooperation has been good, and the adequacy of data responses from the applicant in key technical disciplines has been improving, there still continues to be data gaps in key technical disciplines including Biological Resources, Cultural Resources, Water Resources and Visual Resources. Accordingly, completion of the Preliminary Staff Assessment has not progressed at the rate necessary to meet its February 29, 2012 publication date adopted by the Committee in the November 16, 2011 scheduling order. Accordingly, staff reiterates its need for an additional six weeks (from February 29, 2012 to April 13, 2012) to publish a *relatively complete* Preliminary Staff Assessment.

STAFF'S REVISED SCHEDULE – Hidden Hills SEGS - (11-AFC-2)

ACTIVITY	DATE
AFC filed	08-05-11
AFC Data Adequacy determination at Commission Business Meeting	10-05-11
Staff files Data Requests (Set 1A)	10-17-11
Data Request Workshop (Sacramento) – Sacramento	10-21-11
Field Visit + Data Request Workshop – Tecopa	10-27-11
Information hearing and site visit (Tecopa)	11-03-11
Staff files Data Requests (Set 1B)	11-04-11
Applicant files Data Responses (Set 1A)	11-16-11
Staff files Data Requests (Set 1C)	11-17-11
Data Request / Data Response Workshop – Sacramento	11-18-11
Data Request / Data Response Workshop – Sacramento	12-01-11
Staff files Data Requests (Set 1D)	12-06-11
Applicant files Data Responses (Set 1B)	12-07-11
Data Request / Data Response Workshop – Sacramento	12-16-11
Applicant files Data Responses (Set 1C)	12-17-11
Applicant files Supplement Data Responses Set 1A	12-30-11
Staff files Data Requests (Set 2A)	01-06-12
Status Report #1 / Staff files Data Requests (Set 2B)	01-17-12
Data Response / Issues Resolution Workshop – Tecopa	01-18-12
Committee Status Conference	01-24-12
Data Response / Issues Resolution Workshop – Sacramento	01-25-12
Staff files Data Requests (Set 2C)	01-30-12
Status Report #2	02-15-12
Data Response / Issues Resolution Workshop – Sacramento	02-22-12
Committee Status Conference	02-28-12
Status Report #3	03-15-12
Committee Status Conference	04-03-12
Preliminary Staff Assessment filed (in lieu of Status Report #4)	04-13-12
PSA Workshop – Shoshone	04-26-12
Committee Status Conference	05-01-12
PSA Public Comment period concludes	05-14-12
Status Report #5	05-15-12
Committee Status Conference	05-22-12
Final Staff Assessment filed	06-15-12



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**APPLICATION FOR CERTIFICATION
FOR THE *HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM***

DOCKET NO. 11-AFC-2
PROOF OF SERVICE
(Revised 2/1/2012)

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DECLARATION OF SERVICE

I, Elizabeth Stewart, declare that on February 15, 2012, I served and filed copies of the attached Status Report #2 for the Hidden Hills Solar Electric Generating System (11-AFC-2) dated February 15, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/hiddenhills/index.html].

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 or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally signed by
Elizabeth Stewart