STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: The Application for Certification for the Calico Solar Project	Docket No. 08-AFC-13

SIERRA CLUB OPENING BRIEF

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Gloria D. Smith
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
(415) 977-5532 Voice
(415) 977-5739 Facsimile
gloria.smith@sierraclub.org

Travis Ritchie
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
(415) 977-5727 Voice
(415) 977-5739 Facsimile
travis.ritchie@sierraclub.org

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I. INTRODUCTION

Sierra Club strongly urges the California Energy Commission ("Commission") to reject the application for certification submitted by Tessera Solar (the "Applicant") for the Calico Solar Project ("Project"). Sierra Club actively facilitates the development of alternative energy sources, such as solar thermal power, in California and across the nation. The consequences of global warming and the severe detrimental impacts created by coal and other polluting technologies demand that society seek alternative solutions to provide sufficient electricity generation. Sierra Club therefore commends the Commission on its efforts to develop appropriate solar energy supplies in California. However, Sierra Club adamantly opposes the Calico Project because of its dramatic and unmitigated impacts on a unique and vital area of the Mojave Desert. The Calico Project, though well intentioned, is simply the wrong Project in the wrong location. Its impacts cannot be mitigated, and they cannot be accepted.

Of the fourteen solar thermal projects recently proposed for permitting in California's deserts, the Calico Project is the **only** project that Sierra Club opposed outright. For the

remaining projects, Sierra Club either supported the development, remained neutral, or – in the case of Ivanpah – attempted to work with parties to achieve a superior alternative. Sierra Club's opposition position in this proceeding resulted from the clear fact that this particular Project will have substantial impacts that do not justify the attendant destruction of such a valuable natural resource. The Project, as currently proposed, would devastate over 6,000 acres of vital and irreplaceable habitat in the Mojave Desert. It would result in the deaths of hundreds of threatened desert tortoises, result in the local extinction of the Mojave fringe-toed lizard, destroy an exceedingly rare desert plant, obstruct bighorn sheep movement, risk the survival of local golden eagles and impact burrowing owls, desert kit fox, and American badger. The mere fact that each of these species is even present on the Calico site is astounding. The fact that the Calico site provides an irreplaceable balance for the overall ecosystem of the desert and the long-term survival of these species is treasured. This is a resource that we simply cannot sacrifice.

Sierra Club recognizes the immense time pressures imposed on the Commission, its Staff, the Applicant, and all of the parties in this proceeding. There is an undeniable push to complete this proceeding in time for the artificial deadline imposed by the availability of funding from the American Recovery and Reinvestment Act ("ARRA"). There is also substantial public and political pressure to increase California's renewable generation capacity. These pressures, however, do not absolve the Commission from its legal duties to comply with the California Environmental Quality Act ("CEQA"), the Warrant-Alquist Act, or any other state or federal law. More importantly, these pressures do not justify the reckless and irresponsible sacrifice of an irreplaceable resource. Additional funding sources will appear in the future, and California's need for renewable electricity will certainly persist, but the impacts to the desert that would result from the Project are permanent. The desert is an exceedingly fragile habitat that cannot

recover from the impacts that this Project would create. It is therefore incumbent upon the Commission to ensure that the development of California's solar resources proceeds in a manner that appropriately contemplates and protects the desert habitats. The current proceeding and the Calico Project do not achieve that goal. This fast-tracked proceeding simply did not identify or mitigate the substantial impacts that will result from the Project. As a result, the Commission must reject the application for certification.

II. BACKGROUND

The Applicant, through its subsidiary Calico Solar, LLC, submitted its Application for Certification of the Calico Solar Project to the Commission on December 2, 2008. The Applicant seeks to develop an 850 MW electric-generating facility using 34,000 individual "SunCatchers," which are systems designed to convert solar energy into electricity via a Stirling Engine. (SSA, ES-3.) The Project would cover approximately 6,215 acres of primarily undisturbed desert habitat in the Mojave Desert. The area consists of a large alluvial fan that spreads out from the Cady Mountains to the north across the desert bajadas to the south. The area is covered with several sensitive desert flora and fauna such as crucifixion thorn, white-margined beardtongue, desert tortoise, Nelson's bighorn sheep, Mojave fringe-toed lizard, and Golden Eagle. The site also provides habitat to burrowing owl, desert kit fox, American badger, and several other desert species. In addition to the diverse species that are thriving on or near the Project site, the area provides essential connectivity corridors between the Western Mojave recovery unit, the Eastern Mojave recovery unit, and the Colorado Recovery unit. It is a vital and irreplaceable component of the Mojave Desert's sensitive and fragile ecosystem.

III. STANDARD OF REVIEW

Under the Warren-Alquist Act, the Commission has exclusive power to certify sites and related facilities for thermal power plants in California. (Cal. Pub. Res. Code § 25500 (2009).)[1] A certificate issued by the Commission operates in lieu of many permits and supersedes otherwise applicable ordinances, statutes, and regulations. (*Id.*) The Warren-Alquist Act generally prohibits the Commission from certifying an application if the facility does not conform with any applicable laws, ordinances, regulations and standards ("LORS"). (§ 25525.) Accordingly, the Commission itself must determine whether the Project adequately and lawfully protects biological resources, complies with air and water quality standards, and "other applicable local, regional, state, and federal standards, ordinances, or laws." (§ 25523(d); *see also* Siting Regs. § 1752(a).) The Commission may not certify any project that does not comply with applicable state, local, or regional LORS unless the Commission finds both (1) that the project "is required for public convenience and necessity" and (2) that "there are not more prudent and feasible means of achieving public convenience and necessity." (§ 25525; Siting Regs. § 1752(c).) With respect to federal LORS, "[t]he commission may not make a finding in conflict with applicable federal law or regulation." (§ 25525.)

The Commission also serves as lead agency for purposes of the California Environmental Quality Act ("CEQA"). (§ 25519(c).) Under CEQA, the Commission may not certify the Project unless it specifically finds either (1) that changes or alterations have been incorporated into the Project that "mitigate or avoid" any significant effect on the environment, or (2) that

[1] All statutory references herein are to the Public Resources Code unless otherwise specified. Citations herein to "Siting Regs." refer to the Commission's Power Plant Site Certification Regulations, codified in Title 20 of the California Code of Regulations. Citations herein to "CEQA Guidelines" refer to regulations codified in Title 14 of the California Code of Regulations.

mitigation measures or alternatives to lessen these impacts are infeasible, and specific overriding benefits of the Project outweigh its significant environmental effects. (§ 21081; Siting Regs. § 1755.) These findings must be supported by substantial evidence in the record. (§ 21081.5; CEQA Guidelines §§ 15091(b), 15093; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222-24.)

The Applicant bears the burden of providing sufficient substantial evidence to support each of the findings and conclusions required for certification of the Project. (Siting Regs. § 1748(d).)

IV. ARGUMENT

The proposed Calico project would be massive. It would permanently alter over 6,000 acres of desert habitat, much of which remains completely untouched by significant human interference. This location is of vital importance to the Mojave Desert's broader ecosystem. The diversity of species present on the site is astounding. It contains one of the most densely populated communities of desert tortoise, which is a threatened species that has faced considerable decline in recent years. It provides foraging habitat for Golden Eagles, a federally protected and undeniably majestic bird. Other species include Nelson's bighorn sheep, the Mojave fringe-toed lizard, burrowing owl, desert kit fox, American badger and the white-margined beardtongue, which is an exceedingly rare and beautiful species of desert flower. In addition to the variety of individual species present on the site, the area plays a critical role in the interconnected desert ecosystem. The proposed Calico site stands at the junction of three important recovery areas. Ms. Blackford of the U.S. Fish and Wildlife Service explained the importance of the area during her testimony:

> [F]olks have laid out clearly that this particular area…does serve a very important function for the connectivity between the Western

> Mojave recovery unit, the Eastern Mojave recovery unit, and the Colorado recovery unit. (Blackford, Tr., Aug. 5, 2010, p.225.)

In other words, the Calico site is special beyond the sum of its parts. It is one of the few remaining pristine locations in the desert that allow species to migrate and flow between the Eastern and Western Mojave. This connectivity is incredibly important for the long-term genetic diversity of several species. The destruction of this unique area cannot be mitigated through compensatory land purchases or ill-advised translocation efforts. If the Calico Project is built, the conservation value of the land and its importance to the Mojave Desert will be irreversibly compromised.

A. The Project Information is Incomplete

Despite the massive and undeniable land-use impacts that would result from Project approval, this Commission consistently and repeatedly ignored its obligation to develop a meaningful public record in this proceeding. The Staff's review of the Project failed to identify and address several significant environmental impacts, particularly with respect to biological resources. For the other impacts that Staff identified, Staff completely omitted a sound mitigation strategy, deferred mitigation measures in the proposed conditions of certification, or proposed completely ineffectual measures. As a result, the Staff's conclusions that the project will not have a significant impact on various biological resources are either unsupported or flat wrong. The Commission cannot possibly make an informed decision on this matter based on the record that currently exists.

The Commission's process of review for this Project application was completely inadequate both for purposes of CEQA and the Warren-Alquist Act. The Commission and the Applicant freely admitted that the Commission fast-tracked this Project, along with several other utility-scale solar projects, in order to meet federal funding deadlines related to the American

Reinvestment and Recovery Act ("ARRA"). (*See, e.g.,* Gallagher, Hr'g Tr., Aug. 4, 2010, p. 51, Kramer, Hr'g Tr., Aug. 5, 2010, p.52; Bellows, Hr'g Tr., Aug. 5, 2010, p.87.) While it is understandable that the Applicant would want to benefit from available federal funding, the potential to receive ARRA funding did not waive the Commission's obligation to comply with CEQA. It also did not justify the Commission's outright rejection of adherence to its own regulatory procedures.

i. The Commission denied intervenors an opportunity to meaningfully participate.

Throughout this proceeding, the Commission denied Sierra Club and other intervenors the opportunity to meaningfully participate and comment on vital aspects of the Project. For example, the Applicant's proposed desert tortoise translocation plan, which is a highly technical and complicated undertaking that requires substantial review, was distributed to the parties **on the day of** evidentiary hearings. (Gannon, Hr'g Tr., Aug. 5, 2010, p.43.) Despite intervenor objections, the Commission permitted the Applicant to provide further testimony addressing a plan that other parties neither had time to review nor to analyze with their own experts. The Commission justified its actions by assuring intervenors that hearing transcripts would be made available and an opportunity for cross-examination would occur at a later evidentiary hearing on August 18, 2010. (Kramer, Hr'g Tr., Aug. 5, 2010, p.52.) However, the Commission failed to provide these transcripts, despite the fact that it made transcripts **from every other day of testimony** available.

It is inexcusable that the Commission would withhold transcripts from the August 5, 2010 hearing when that was the only day that involved a discussion of biological resources, and it was the only day where the parties discussed the late-filed translocation plan. The Commission's actions substantially prejudiced Sierra Club's ability to review and comment on

the desert translocation plan. In fact, the Commission did not release the August 5 hearing transcript until August 18, 2010, which occurred **during the later hearing**. This circumstance violated CEQA's requirement to promote meaningful public participation. (CEQA Guidelines § 15201 ("Public participation is an essential part of the CEQA process"); *Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass'n.* (1986) 42 Cal.3d 929, 935-937 (finding that the public holds a privileged position in the CEQA process); *Schoen v. Dep't. of Forestry and Fire Prot.* (1997) 58 Cal.App.4th 556, 572-3.) The Commission's actions also resulted in an inadequate record of information upon which it can make an informed decision. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106 ("The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and **informed public participation**" (emphasis added).) Other examples of actions that prejudiced public involvement included the release of the additional Staff testimony in the translocation plan after 5:00 pm on August 17, 2010, the day before evidentiary hearings on the matter, and repeated instances where Staff and the Applicant submitted additions or modifications to conditions of certification without providing the public an opportunity to review or comment. Overall, the "fast-tracking" of this proceeding resulted in a complete abandonment of CEQA's procedural requirements that are necessary for meaningful public participation and for the development of a complete record upon which the Commission can make an informed decision.

ii. The Staff did not evaluate or analyze a complete layout of the project site.

During evidentiary hearings held in Barstow, California from August 4 through 6, 2010, it became evident that the Applicant still had not finalized, nor had Staff analyzed, several critical aspects of the proposed Project. For example, the Applicant did not provide, and

apparently had not even developed, a layout of actual SunCatcher locations. (Byall, Hr'g Tr., Aug. 6, 2010, p.31.) It was therefore impossible for the parties to engage in any meaningful comment regarding the specific environmental impacts that the Project would have as a result of the SunCatchers' positions. Once all phases of a project have been defined, as they have here, CEQA required staff analysis of all potentially significant impacts. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443-4.*)* Without agency analysis of the specific impacts associated with the SunCatcher locations, the Commission, other agencies, and parties cannot evaluate the effect that specific SunCatcher locations would have on storm-water runoff, noise impacts to migrating animals, impacts to sand dunes and other off-site terrain features, and a myriad of other related issues.

Similarly, the Applicant has not provided the final location and orientation of the proposed detention basins. (Weaver, Hr'g Tr., Aug. 6, 2010, p.42 ("Tessera indicated the debris basin design is preliminary and will be better designed following a drainage hydrology report.").) The Applicant's storm water plan was also incomplete and therefore could not be analyzed. (Weaver, Hr'g Tr., Aug. 6, 2010, p.47.) It is inconceivable that the Commission would authorize the destruction and alteration of sensitive desert habitat without first having evaluated a specific storm water plan. As a comparison, the Commission faced similar issues with respect to the Ivanpah application for certification (07-AFC-5). That proceeding also involved "fast-tracked" review and was far from ideal procedurally due to the constraints of ARRA funding. However, in that proceeding the the applicant filed its storm water drainage plan on March 25, 2009, over **eight months before** Staff issued the final staff assessment on November 4, 2009. In stark contrast, the Applicant in this proceeding has still not filed a complete storm water plan despite the fact that the presiding officers proposed decision ("PMPD") is expected next week. It is not

possible for the wildlife agencies, the public, Staff or the Commission to review the Calico storm water plan without analyzing the actual layout of SunCatcher units, and therefore it is not possible for the Commission to know, or even to estimate, the impact that the Project would have on the site and surrounding areas.

A Commission decision based on the paucity of information available for the Calico site would violate CEQA because it would not include an analysis of the Project's impacts where the overall phased development of the project was known. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 431.) The Commission cannot avoid conducting an analysis of impacts or defer mitigation of those impacts on the grounds that the Applicant did not provide sufficient data to it as a result of a fast-tracked review process. (*City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 915-6.) The primary purpose of CEQA is to generate the necessary information upon which the lead agency can base an informed decision. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106.) In this case, the Commission cannot make an informed decision because it does not have sufficient information.

iii. The Applicant did not provide adequate data on the reliability of the proposed technology.

The Commission lacked adequate data to consider and evaluate the reliability and efficiency of the solar technology contained in the application. The Applicant's only pilot project evaluation of the technology at commercial operations began in March of 2010 at the Maricopa site in Arizona. (Votaw, Hr'g Tr., Aug. 4, 2010, p.185.) At the time Staff released the SSA, the Applicant had generated less than four months of data on a single pilot project from which to draw its conclusions regarding the reliability of the SunCatcher technology. The Maricopa plant contains only 60 individual SunCatchers operating in a single unit block. The

Calico Project, if approved, would create a 576-fold magnification of the Maricopa pilot project, which in turn would replicate several hundred times over any unrealized problems, serial defects, or other issues that are related to the use of SunCatchers to generate utility-scale power. (*See* Reiff, Hr'g Tr., Aug. 4, 2010, p. 194.) During commercial operation, the Maricopa plant experienced only one wind event that required the SunCatchers to move into the "stow" position. (Votaw, Hr'g Tr., Aug. 4, 2010, p.190.) The Applicant simply does not know how the SunCatchers will hold up in the face of real-world environmental pressures that exist on the Calico site. Despite this overwhelming lack of data, the Applicant requested that the Commission approve a permanent sacrifice of over 6,000 acres of predominantly undisturbed desert habitat. The Applicant's only apparent rationale for proceeding blindly in this approach appeared to result from the pressure to begin construction before 2010 in order to receive ARRA funding. This rationale simply does not justify risking over 6,000 acres of desert habitat on an unproven technology.

Even if the project works perfectly as planned, which is entirely speculative, Calico would still represent one of the least efficient solar thermal plant projects from a land use perspective. (SSA, D.3-7.) Efficiency Table 1 in the SSA shows several Projects currently under consideration or recently considered by the Commission. The Calico Project, at peak capacity, would generate only 296 MWh/acre-year. This compares to much more efficient projects such 120,936 MWh/acre-year for Avenal Energy and 1,209 MWh/acre-year for San Joaquin Solar Hybrid. In fact, the only proposed project with a lower land use efficiency is Ivanpah, which project involved a substantially smaller footprint than Calico. The Calico Project represents the largest cost in terms of land use disturbance, yet it produces one of the least efficient energy returns for that land. Moreover, the majority of the disruptive land use would

occur on undisturbed, pristine desert habitat that supports a vibrant and thriving ecosystem. In short, this project is a bad deal. It is the wrong technology in the wrong location.

Construction of the Calico Project would permanently and irreversibly destroy the undisturbed desert ecosystem at the site. The data supporting the Project simply did not justify this sacrifice. Even in a best-case scenario that assumes the Calico Project will work perfectly as planned, which scenario is doubtful given the lack of adequate data, the Commission's approval of the Project would trade thousands of acres of undisturbed desert habitat for approximately 40 years of power generation. In a more likely scenario, the Applicant will face substantial problems that have not been analyzed or considered at this date because the reliability of the proposed technology was simply unknown and unproven at the time of the application. Similarly, the Project relied on one of the most inefficient solar thermal technologies currently under consideration by the Commission. It is irresponsible for the Commission to approve this Project where the lack of information to support it was due solely to the external pressures of a federal funding deadline. If the Applicant cannot provide a **proven** reliable technology at an appropriate price for utility-scale generation, then the Commission should not approve the Project at this time. To do otherwise risks irreversible harm to a vast amount of pristine desert land.

B. Biological Resources

i. Desert Tortoise

The desert tortoise is a state and federally listed species. (SSA, C.2-3.) As a threatened species, the desert tortoise is protected by the California Endangered Species Act ("CESA"), which provides, "it is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat." (Cal. Fish & Game Code § 2052

(2009).) A thriving population of juvenile and adult desert tortoises exists on the Project site and within its footprint at very high densities. (SSA, C.2-3.) Staff's most recent calculation estimated that the site contains approximately 189 desert tortoises, and it could contain as many as 281 tortoises. (Staff's Second Errata to the SSA, Table 6a, p.5.) In addition, 436 eggs may be present in the Project footprint. (*Id.* at 12.) According to Staff estimates, the Calico Project and the proposed translocation plan would result in the destruction of over 6,000 acres of high quality desert tortoise habitat, the mortality of up to 282 individual desert tortoises, and the destruction of 863 desert tortoise eggs. (Staff's Second Errata to the SSA, p.14.) This proposed travesty directly contradicts the clearly articulated policy of the State of California that requires this Commission to **conserve, protect, restore, and enhance** the desert tortoise and its habitat.

The dramatic impacts that the Project would have on the desert tortoise population require the Commission to reject this Project. Even if the Commission is willing to accept this substantial loss of life to a threatened species, which would be abhorrent, the mitigation requirements of CESA legally preclude the Project because the record showed that the Applicant cannot possibly mitigate for the loss of desert tortoise. CESA requires that any take of desert tortoise be **fully mitigated**. "The impacts of the authorized take shall be minimized and **fully mitigated**...All required measures shall be capable of successful implementation." (Cal. Fish & Game Code § 2081(b)(2) (2009) (emphasis added).) The California Department of Fish and Game ("DFG") is responsible for issuing take permits for desert tortoise, and it may only do so if the impacts are fully mitigated. "At the heart of CESA is the obligation to mitigate such takes." (*Envtl. Prot. Info. Ctr. v. California Dep't. of Forestry and Fire Prot.* (2008) 44 Cal.4th 459, 507.) Ms. Moore of DFG stated during evidentiary hearings on August 18, 2010 that DFG in its history has **never** permitted such a large take of desert tortoise. (Moore, Hr'g Tr., Aug. 18,

2010, p.265.) Moreover, Ms. Moore resolutely disagreed with Staff's conclusion that the proposed take of desert tortoise would be fully mitigated by the conditions of certification. (Moore, Hr'g Tr., Aug. 18, 2010, p.266 ("the department's disagreeing with the conclusion that was made that [the Project is] fully mitigated for").) As explained in more detail below, the Project and the proposed translocation plan would result in dramatic and irreversible impacts to a vital population of desert tortoise. Approval of the Project by this Commission would constitute a violation of CESA because the Project and the translocation plan would result in unmitigated impacts to desert tortoise. In addition, approval of the Project would violate CEQA because the Commission does not have sufficient information at this time to determine what the impacts of the translocation plan will be on both the translocated tortoises and the host tortoises at the receptor sites.

1. The desert tortoise population at the Calico site is a healthy and important population.

The Applicant proposed to construct the Project in the middle of a large swath of high quality desert tortoise habitat. (Cashen, Hr'g Tr., Aug. 5, 2010, p.186.) Construction at the site would result in the elimination of this habitat, and it would fragment the remaining portions of high quality desert tortoise habitat that surrounds the site. (*Id.*) As explained by the desert tortoise recovery plan, habitat connectivity is an incredibly important factor regarding the overall success of the species in the region. (*Id.*; Aarhahl, Hr'g Tr., Aug. 5, 2010, p.212.) It allows generational gene flow between distinct populations or communities, which in turn benefits the biodiversity of the species. Habitat connectivity and the resulting biodiversity also protects sensitive populations against disruptive shocks such as disease outbreaks or migratory pressures due to climate change. (*See* Ex. 424, Cashen Rebuttal Testimony, July 29, 2010, p.5.) By fragmenting the desert tortoise population at the Calico site, the Project would risk the long-term

survival of the species in the entire region. In other words, the Project would not just impact the estimated 189 individuals located on site, it would risk the broader survival of the species as a whole.

The Applicant's desert tortoise surveys showed a very dense population located within the Project's proposed boundaries. (Cashen, Hr'g Tr., Aug. 5, 2010, p.186; Aardahl, Hr'g Tr., Aug. 5, 2010, p.207 ("I am not aware of any area in the Western Mojave currently that has a density of tortoises [as high as the project site]").) Sites with high densities of desert tortoise, such as the Calico site, provide strong evidence that the location supports a regional "source population." (Ex. 424, Cashen Rebuttal Testimony, July 29, 2010, p.7.) Source populations are healthy and reproducing populations that are critical to the long-term survival of a sensitive species such as the desert tortoise. (Cashen, Hr'g Tr., Aug. 5, 2010, p.190-91.) Most desert tortoise populations are declining; therefore, source populations (healthy populations that are not in decline) are vital for the long-term survival of the species. Source populations allow for the re-settlement of depopulated areas, as well as the potential for emigration to neighboring populations through connectivity corridors. (*Id.*) A source population is therefore important both from an individual-based perspective (i.e. total number of desert tortoise) as well as an overall species management and survival perspective (i.e. importance to long-term survivability of the species).

As Mr. Cashen explained, source populations are "extremely important in light of our knowledge that tortoise populations are declining across the Western Mojave, and there are very few source populations out there that would be capable of having individuals disperse to re-colonize other areas." (Cashen, Hr'g Tr., Aug. 5, 2010, p.191.) The Calico Project would destroy a potential source population and therefore risks impacts to the species as a whole that

are not addressed or mitigated by the SSA nor any of the proposed conditions of certification. Even if the proposed translocation and compensatory mitigation measures were 100% successful, which is extremely improbable, the proposed mitigation measures would not compensate for the loss of a source population. The Project as proposed would therefore violate CESA's requirement to fully mitigate the impacts to desert tortoise. (Cal. Fish & Game Code § 2081(b)(2) (2009).) As Mr. Cashen further explained during his testimony of August 18, 2010, the Calico site is a unique location that cannot be mitigated because of its vital importance to the ecosystem and the desert tortoise species as a whole.

2. Compensatory land purchases will not fully mitigate impacts to desert tortoise.

The SSA relied on compensatory land purchases as a proposed measure to mitigate the Project's impacts on desert tortoise. Compensatory mitigation relies on the concept that habitat lost to development could be compensated for by providing substitute land elsewhere. (CEQA Guidelines § 15370(e).) However, providing compensatory lands elsewhere is not an adequate strategy to mitigate direct and indirect mortality to a listed species in its established habitat.

The SSA erroneously concluded that condition of certification BIO-17 would "fully mitigate for the potential take of desert tortoise." (SSA p.C.2-216.) This recommendation is red herring and is not supported by fact or law. Furthermore, even if this strategy was acceptable, which it is not, the SSA omitted any specific acquisition proposal that would allow the Commission to evaluate the potential success of compensatory land purchases to mitigate for lost habitat. In fact, it remained unclear whether sufficient land was even available for purchase. The Applicant admitted that it had not determined whether such land is available for acquisition, (Brizzee/Bellows, Hr'g Tr., Aug. 5, 2010, p.95.) and Ms. Fesnock of BLM further explained the

strain on mitigation land inventory that will result from the current rush of proposed solar projects.

> [W]e have 75,000 acres of projects proposed in the desert that haven't been proposed before. If you look historically at the number of acres that BLM has been trying to mitigate on an annual basis, we're not even close to that…there's going to be a huge demand for the remaining supply that exists. (Fesnock, Hr'g Tr., Aug. 5, 2010, p.147.)

In addition, BIO-17 relied on the notion that the acquired compensatory lands could be enhanced by the Applicant in order to increase carrying capacity. (SSA p.C.2-216.) Carrying capacity is, however, very difficult to measure, and the SSA did not provide any information on the availability or effectiveness of the proposed "enhancements." (Cashen, Hr'g Tr., Aug. 5, 2010, p.194.) Similarly, BIO-17 would require acquisition of lands with habitat quality that is equal to or better than the Project site, yet there is no indication that such land exists. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727-8 (holding that requirement that project applicant pay funds to purchase replacement groundwater was not adequate mitigation because it was not known whether groundwater was available).) According to USGS habitat grading and the Applicant's surveys, the Calico site consists of very high quality habitat. (Cashen, Hr'g Tr., Aug. 5, 2010, p.186.) The SSA did not disclose or analyze whether similarly appropriate compensatory lands existed or are feasibly available for purchase. Finally, the compensatory mitigation proposed by BIO-17 did nothing to address the detrimental impacts caused by habitat fragmentation or the impacts to a potential source population. (Cashen, Hr'g Tr., Aug. 5, 2010, p.195.)

In sum, BIO-17 violates LORS because there is no evidence that the proposed land purchases would lead to full mitigation of impacts to desert tortoise caused by the Calico Project.

3. Translocation is a failed measure that does not mitigate impacts.

Translocation of desert tortoises does not work. Recent experiences from the Fort Irwin translocation program clearly demonstrated that the practice of translocating desert tortoises will result in substantial mortality. A study conducted as part of the Fort Irwin translocation project involved the tracking of 158 desert tortoises that had been translocated from Fort Irwin's Southern Expansion Area in the spring of 2008. (Ex. 439, App. 3, Gowan and Berry 2009, *Progress Report on the Health Status of Translocated Tortoises in the Southern Expansion Area*.) During evidentiary hearings on August 18, 2010, every expert agreed that the 2009 Gowan and Berry study provided the most comprehensive and up-to-date analysis of desert tortoise translocation. After only two years, the study found that over half of the translocated tortoises were dead or missing. "Combining the data from 2008 and 2009, from the time of initial translocation of 158 tortoises in March-April of 2008, 70 (44.3%) tortoises have died and an additional 20 (12.7%) are missing." (Ex. 439, App. 3, Gowan and Berry 2009 at p.10.) The study also found incidences of disease among the tortoises that died in 2009, and significant weight loss among the remaining tortoises. (*Id.* at 11.) Disease and weight loss are important factors for overall health and can also make tortoises more susceptible to predation. (*Id.*)

The Fort Irwin translocation effort marshaled considerable financial and personnel resources, as well as rigorous scientific study, monitoring, health assessments and laboratory analysis, and it still resulted in unfathomably high mortality. (Ex. 443, Cashen Testimony on the Desert Tortoise Translocation Plan, p.3.) Importantly, there is no indication that the rate of mortality among the translocated tortoises will decrease in the coming years. (Gowan and Berry 2009 at p.9.) One could therefore expect continued levels of high total mortality in future years. In light of such unacceptably high mortality, translocation will contribute to declines in

translocated, host and control populations. This strategy utterly flies in the face of CESA's mandate that agencies fully mitigate impacts to desert tortoise.

The Applicant's half-baked translocation plan presents an even bleaker outlook for the translocation than the Fort Irwin project. According to Staff, the proposed translocation plan will actually result in impacts to three times as many tortoises as are encountered on the Project site. For each of the expected 189 tortoises that must be translocated from the Calico site, the Applicant will also handle and disturb one tortoise at the receptor site and one tortoise at the control site. Staff estimated that as many as **897 tortoises** could be impacted by the translocation plan. (Staff's Second Errata to the SSA, Table 6a, p.5) Even relying on the middle range estimate, Staff concluded that the translocation plan would likely result in the handling, radio tagging, and long term monitoring of 642 tortoises. (*Id.* at 14.) Of these impacted tortoises, an expected 282 tortoises will die. (*Id.*) **The impacts of the proposed translocation plan would therefore result in the deaths of more desert tortoises (282) than the estimated number of desert tortoises on the site (189)**. This level of mortality in a threatened species is simply unacceptable, and it clearly violates CESA's requirement to protect the desert tortoise. It further defies logic to consider the translocation plan a mitigation measure when it would result in far more harm than good.

Despite claiming familiarity with the Fort Irwin translocation project, the Applicant apparently believed that mortality from the Fort Irwin project was "only" sixteen percent. (Miller, Hr'g Tr., Aug. 5, 2010, p.61.) This mischaracterization demonstrated that the Applicant had not studied the Fort Irwin results and was therefore insufficiently aware of the grim consequences that the proposed Calico translocation plan could present. In short, the Applicant's proposed translocation plan failed to adequately consider and improve on the tragic lessons

learned from Fort Irwin. Thus there is every indication that the desert tortoise translocated from Calico site would suffer greater mortality than that at Fort Irwin. Finally, unlike the Fort Irwin project, which involved extensive planning prior to implementation, the Applicant did not even provide the proposed Calico translocation plan prior to the SSA, and it remained in "draft form" through evidentiary hearings and leading up to the deadline for the PMPD. By comparison, in Ivanpah the applicant provided its desert tortoise translocation plan on March 19, 2009, nearly nine months before the final staff assessment was released on November 4, 2009, which provided Staff, the wildlife agencies, parties and the public with at least some time to review and analyze the complicated plan. The Calico translocation plan remained unfinished at the time of Staff's assessment, and it was simply not ready for this Commission to approve. The Calico translocation plan was vastly underdeveloped as compared to the Fort Irwin plan because it failed to consider any measures that would address the known failures involved with translocation.

Under CEQA, a proposed mitigation measure is inappropriate where there is no evidence in the record showing that the proposed measure would be effective. (*See Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116.) In this case, there was no evidence in the record that translocation would be successful at the Calico site, and in fact there was substantial evidence presented indicating that translocation would result in disaster for the desert tortoise. The evidence on the record clearly indicated that translocation will likely result in the direct mortality of over half of the translocated tortoises within the first two years of moving them, not to mention the impacts that the translocation plan would have on the host and control tortoise populations. The Commission's approval of the Project and the proposed translocation plan

would therefore violate both CESA's requirement to fully mitigate the impacts to desert tortoise and CEQA's requirement to fully analyze and address the Project's impacts.

4. The translocation plan does not contain sufficient information on the availability of suitable receptor sites or the impact that the plan would have on those sites.

Staff's review of the Applicant's proposed translocation plan revealed that the Applicant did not identify sufficient receptor sites to receive the expected number of desert tortoises from the Project site. "Based on the number of tortoises expected to occur in the project area and the tortoise density at the proposed translocation sites the applicant will be required to find additional translocation areas to accommodate the number of tortoises that may require translocation." (Staff's Second Errata to the SSA, p.25.) The proposed translocation plan also revealed that, even for the few sites that had been identified, additional surveys would be required to assess the suitability of the receptor sites. (Ex. 93, Desert Tortoise Translocation Plan, pp. 2-18:19.) Translocation would require the Applicant to fence-off the project site to exclude desert tortoise from entering, and it would then involve the physical removal of the desert tortoise remaining within the fenced boundary to "relocation sites" beginning in Fall of 2010. Yet as it stands now, the Applicant only identified one short distance translocation site in the Pisgah ACEC that would be ready to receive tortoises in 2010, and two DWMA translocation sites in the Ord-Rodman Mountains that will not be ready until later years. (Ex. 93, Desert Tortoise Translocation Plan, pp. 2-14:19.)

During evidentiary hearings in Barstow, the Applicant claimed that it would move as many as 10 tortoises into the Pisgah ACEC. (Miller, Hr'g Tr., Aug. 5, 2010, p.60.) However, Staff's review of the translocation plan prompted the Applicant to change its testimony during the August 18, 2010 hearing to a revised estimate of carrying capacity in the Pisgah ACEC of **only two** tortoises. Staff also eliminated the Applicant's proposal to move tortoises into the

crowded northern linkage area. As a result, the "short distance" receptor site identified by the translocation plan can only accommodate two tortoises. Given that the Applicant intends to begin moving tortoises before October 2010, there will be insufficient space to locate and disease test those tortoises by the time the Project commences. The proposed translocation plan does not explain how the Applicant will deal with the translocation of tortoises in the fall of 2010 if, as is likely, it finds more than two tortoises in Phase 1a of the Project. This situation is unacceptable. A fully realized and vetted plan must be in place prior to the removal of any tortoises.

The proposed translocation plan similarly fails to include a sufficient analysis of the long-distance receptor sites. The two DWMA sites in the Ord-Rodman Mountains do not have sufficient carrying capacity to receive all of the tortoises that are expected to be found at the Calico site. (Staff's Second Errata to the SSA, p.25.) In addition, the **only** metric that the Applicant evaluated thus far is the density of the host population at those receptor sites. The Applicant did not complete disease testing, and therefore further reductions to carrying capacity may be necessary following the delayed analysis of such disease testing. (Staff's Second Errata to the SSA, p.9.) In sum, the proposed translocation plan remains woefully incomplete. Based on current estimates, the Applicant cannot place the expected number of tortoises into adequate receptor sites. In addition, the proposed translocation plan does not provide any standard or criteria for selecting additional receptor sites. BLM staff conceded during evidentiary hearings on August 18, 2010 that data was not available to analyze the metrics necessary to fully evaluate the carrying capacity of the identified receptor sites, let alone the unknown receptor sites. In fact, the proposed translocation plan does not even contain an explanation of the standards or criteria that would be used to evaluate the receptor sites if such data becomes available. It is a violation of CEQA to defer the analysis of mitigation measures without either setting standards

or demonstrating how the impact can be mitigated. (*City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 915-6 ("Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described"); *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669-70 (rejecting mitigation measures calling for future surveys for special status species and development of unidentified habitat management plan in response to surveys).)

In addition to the previously identified flaws, the Commission's adoption of the Applicant's proposed translocation plan would also violate CEQA because neither the translocation plan nor the SSA addressed the significant impacts that the translocation plan **itself** would have on the environment. (CEQA Guidelines § 15126.4(a)(1)(D); *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986, 998-9.) The SSA acknowledged that the desert tortoise clearance surveys (BIO-15) and the translocation plan (BIO-16), "have inherent risks and could themselves result in direct effects such as mortality, injury or harassment of desert tortoises…" (SSA p.C.2-73.) Despite acknowledging these risks, Staff concluded that the adverse impacts associated with the proposed translocation plan would be minimized. However, Staff made this conclusion **before the translocation plan was even released**. (SSA p.C.2-75.) The translocation plan itself did not contain any discussion or analysis of the negative impacts it would have on the relocation areas, nor did it include any proposed mitigation measures to address those impacts. During evidentiary hearings on August 18, 2010, Ms. Moore testified that the information provided by Staff and the Applicant was inadequate for the California DFG to determine whether impacts to the desert tortoise would be fully mitigated. Specifically, Ms. Moore stated there was insufficient information to address the impacts to the host populations of

desert tortoise that would be affected at the receptor sites. (Moore, Hr'g Tr., Aug. 18, 2010, p.270 ("we [DFG] cannot anticipate and/or analyze what will happen to the reciepient/host…population with the information that we have").)

The proposed translocation plan failed as a mitigation strategy because it would not fully mitigate the impacts to desert tortoise, as required by CESA. Approval of the proposed translocation plan would also violate CEQA because it failed to identify and analyze a sufficient amount of receptor site areas to contain the translocated tortoises. Finally, approval of the translocation plan would violate CEQA because Staff did not analyze the impacts that the translocation plan itself would have on the receptor sites.

5. Staff did not devise any conditions of certification that mitigate the substantial impacts to desert tortoise.

The Calico Project and the proposed translocation plan would result in the destruction of over 6,000 acres of high quality desert tortoise habitat, the mortality of up to 282 individual desert tortoises, and the destruction of 863 desert tortoise eggs. (Staff's Second Errata to the SSA, p.14.) This Project would clearly create a substantial and significant impact to the desert tortoise. The SSA recommends nothing to mitigate this substantial impact. As discussed above, compensatory mitigation (BIO-17) and translocation (BIO-15 and BIO-16) are ineffectual measures that will not reduce the impacts to desert tortoise. Staff's other purported mitigation measures (BIO 1 through BIO 9) are merely standard avoidance measures related to on-site activities, and those measures do not address or mitigate the significant impacts to desert tortoise that would result from translocation. As a matter of law, the SSA failed to establish conditions of certification that would reduce the substantial impacts to desert tortoise to less-than-significant levels, as required by CEQA, and it failed to fully mitigate the impacts to desert tortoise, as required by CESA.

ii. Golden Eagle

Golden eagles are known to nest within a few miles of the Project site. (Ex. 424, Cashen Rebuttal Testimony, July 29, 2010, p.9.) The golden eagle is a federally protected species. Based on U.S. Fish and Wildlife Service's analysis of golden eagle populations across the nation, there is no safely allowable take level for golden eagles. (Blackford, Hr'g Tr., Aug. 5, 2010, p.269.) In other words, the status of the golden eagle is so dire that the U.S. Fish and Wildlife Service completely prohibits the taking of a golden eagle. A "take" means to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb." (50 C.F.R. § 22.3 (2010).) Further, "disturb means to agitate or bother a bald or golden eagle to a degree that

causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." (*Id.*) Therefore, it is completely prohibited to create a disturbance that will substantially interfere with the breeding, feeding or sheltering behavior of a golden eagle.

The Project will affect 6,215 acres of golden eagle foraging habitat. The SSA did not and cannot analyze the full impacts that the Project would have on the golden eagle because there was insufficient information on the existing population near the Project. The U.S. Fish and Wildlife Service witness stated that the Applicant should conduct golden eagle surveys during the breeding season in order to determine the impact that the Project would have on golden eagle foraging and other behavior and to determine whether an Avian Bat Protection Plan should be developed. (Blackford, Hr'g Tr., Aug. 5, 2010, p.270.) However, deferral of wildlife surveys and management plans as a mitigation measure would clearly violate CEQA. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669-70 (rejecting mitigation measure calling for surveys for special status species and development of undefined habitat management plan in response to surveys).) In addition, the Warren-Alquist Act prohibits the Commission from acting in a manner that would conflict with a federal statute or regulation, such as the eagle act. "The commission may not make a finding in conflict with applicable federal law or regulation." (§ 25525.) Therefore, the Commission cannot proceed with permitting of the Project until the Applicant provides sufficient information to determine that the Calico Project will not result in a take of golden eagle by disrupting normal foraging behavior or by creating other impermissible disturbances.

Staff acknowledged that the potential impacts to golden eagles colliding with SunCatchers while foraging remains unclear. "We don't know what effects the SunCatchers will have on bird collisions. We know from other studies in other projects in the region that birds do collide with these kinds of structures." (Huntley, Hr'g Tr., Aug. 5, 2010, p.281.) Despite this recognized risk of harm, the SSA's only proposed mitigation to address this potential impact involves pre-construction surveys and the general requirement that the Applicant prepare an avian protection plan. As discussed above, this type of deferred mitigation failed to meet the requirements imposed by CEQA. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669-70 (rejecting mitigation measure calling for surveys for special status species and development of undefined habitat management plan in response to surveys).)

iii. Bighorn Sheep

The Project would result in significant impacts to Nelson's bighorn sheep, a federal sensitive species. The SSA omitted information on the regional movement of bighorn sheep along the base of the Caddy Mountains and therefore the Commission cannot make an informed conclusion regarding the Project's potential impacts to the population. Dr. Bleich explained the importance of this regional movement during his testimony in Barstow:

> The project site is on a direct line between the south end of the Cady Mountains and the north end of the Rodman Mountains. And connectivity among these sub-populations that we have been talking about, including the Cady Mountains, is contingent upon – or metapopulation is contingent upon continued connectivity. So there is the potential for this project to disrupt metapopulation function and movement from the Cady Mountains to the south, and equally importantly, from the Rodman Mountains northward to the Cady Mountains. (Bleich, Hr'g Tr., Aug. 5, 2010, p.307.)

There is no question that the Cady Mountains are an essential linkage corridor for both the bighorn sheep and other species. (*See, e.g.,* Aardhal, Hr'g Tr., Aug. 5, 2010, p.323-24.)

Staff's analysis therefore did not include sufficient information to assess the impact that the Project would have on the overall connectivity for bighorn sheep populations in the region. The SSA also did not provide any effective mitigation whatsoever for the impacts to bighorn sheep. Dr. Bleich explained that BIO-23, the only bighorn sheep related condition of certification, would likely cause more harm than good because it would result in the start-and-stop of project noise in a manner that would likely aggravate nearby bighorn sheep. (Bleich, Hr'g Tr., Aug. 5, 2010, p.312 ("I view [BIO-23] as really being worse than no mitigation…").) The Commission's approval of the Project would therefore violate CEQA both because the SSA failed to identify and analyze significant impacts to bighorn sheep and because the proposed mitigation measure would be completely ineffectual.

iv. White-margined Beardtongue

The Project would result in substantial direct impacts to white-margined beardtongue, which is a CNPS 1B special status species. (SSA C.2-57.) The SSA failed to provide sufficient information or quantitative data to fully evaluate or mitigate the impacts that the Project would have on white-margined beardtongue and other sensitive plant species. Staff's conclusion that the proposed condition of certification BIO-12 would mitigate the impacts to white-margined beardtongue is unsupported by the record. The white-margined beardtongue, like many desert plants, does not germinate every year. (Ex. 601, Andre Rebuttal Test., July 29, 2010, p.3.) However, the SSA based its evaluation and proposed mitigation of the white-margined beardtongue on the 2010 spring surveys prepared by the Applicant. Given the nature of the white-margined beardtongue, a single survey in spring is not adequate to determine the presence of the plant on the site. Mr. Andre explained in his written testimony that, "a large percentage of the seed bank will not germinate and many living plants remain dormant underground." (Ex.

601, Andre Rebuttal Test., July 29, 2010, p.3.) The SSA's evaluation of the 2010 botany surveys would therefore only provide information on the bare minimum of existing plants on the site. It is extremely likely that several additional unidentified plants are located on the project site. The Staff's failure to obtain sufficient information on the presence of this species prior to conducting its analysis violated CEQA's requirement that the lead agency use its best efforts to disclose all that it reasonably can about the impacts of the proposed project. (CEQA Guidelines § 15144; *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs of Oakland* (2001) 91 Cal.App.4th 1344, 1370.)

The SSA also failed to explain how the proposed mitigation measure to create a 250-foot buffer around existing white-margined beardtongue within the Project site would prevent direct impacts to the population. The white-margined beardtongue exhibits population fluctuation within its habitat. (Ex. 70, Johnson Prepared Direct Testimony, June 30, 2010, A.7.) Therefore, although the 250-foot buffer may protect an individual plant during one season, the shifting nature of the species over time would likely result in the extirpation of the on-site population. (Andre, Hr'g Tr., Aug. 5, 2010, p.399.) There is no evidence showing that this population could survive in the 250-foot buffers that would be surrounded by the wholly altered landscape among the SunCatchers. Under CEQA, a proposed mitigation measure is inappropriate where there is no evidence in the record showing that the proposed measure would be effective. (*See Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116.) Therefore, the Commission's adoption of the ineffectual measure for the white-margined beardtongue would violate CEQA.

v. Mojave Fringe-Toed Lizard

The Mojave fringe-toed lizard is a BLM sensitive species and a California species of special concern. (SSA, C.2-4.) Ms. Cunningham of Basin and Range Watch explained in her

testimony that the Mojave fringe-toed lizard exists in genetically distinct population lineages at different locations. (Cunningham, Hr'g Tr., Aug. 5, 2010, p.317.) The Mojave fringe-toed lizard present at the Calico site represents one such distinct lineage. The SSA concluded that the Project would result in the extirpation of the Mojave fringe-toed lizard on the Project site. (SSA, C.2-68.) The SSA further concluded that the Project would fragment remaining habitat and would likely disrupt important connectivity linkages. (*Id.*) Staff acknowledged that local mitigation measures would not mitigate the Project's impacts. As a result, the only mitigation measure proposed for the impacts to the Mojave fringe-toed lizard involved the purchase of compensatory lands at off-site locations. However, as discussed above with respect to desert tortoise compensatory lands, there was no evidence in the record that such lands existed or that they would be available for purchase. Approval of this measure as a mitigation strategy would therefore violate CEQA. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (holding that requirement that project applicant pay funds to purchase replacement groundwater was not adequate mitigation because it was not known whether groundwater was available).)

The SSA failed to account for the potential impacts that the Project would have on off-site populations of Mojave fringe-toed lizard in the Pisgah ACEC or other nearby areas. The Applicant did not provide a complete storm water drainage or a final layout of SunCatchers. As a result, Staff could not analyze the extent of geomorphic impacts on the Project site. (Weaver, Hr'g Tr., Aug. 6, 2010, p.46.) The unfinished nature of the Project's design makes it similarly impossible to determine or analyze the impacts to dunes and other geomorphology that exists off-site in the nearby Pisgah ACEC or other areas. The change in storm patters, wind drift, and other factors will likely result in impact to Mojave fringe-toed lizard habitat outside of the

Project boundaries. Under CEQA, the Commission must identify and analyze these impacts before issuing its decision.

V. CONCLUSION

For the foregoing reasons, Sierra Club strongly urges the Commission to reject the application for certification submitted by the Applicant for the Calico Project. Approval of the Project would result in substantial and unmitigated impacts to a valuable and irreplaceable desert habitat. In addition, the fast-tracked nature of this proceeding deprived Sierra Club, other parties and members of the public from meaningfully participating, as required by both the Warren-Alquist Act and CEQA. The Commission's approval of this Project would therefore violate not only those two statutes but numerous other LORS. Accordingly, such a decision would likely face subsequent judicial review and reversal.

Dated: August 23, 2010

Respectfully submitted,

Travis Ritchie
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
(415) 977-5727 Voice
(415) 977-5739 Facsimile
travis.ritchie@sierraclub.org

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION

***For the CALICO SOLAR** (Formerly SES Solar One)*

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 8/9/10)

APPLICANT
Felicia Bellows
Vice President of Development
& Project Manager
Tessera Solar
4800 North Scottsdale Road,
#5500
Scottsdale, AZ 85251
felicia.bellows@tesserasolar.com

CONSULTANT
Angela Leiba
AFC Project Manager
URS Corporation
1615 Murray Canyon Rd.,
#1000
San Diego, CA 92108
angela_leiba@URSCorp.com

APPLICANT'S COUNSEL
Allan J. Thompson
Attorney at Law
21 C Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

Ella Foley Gannon, Partner
Bingham McCutchen, LLP
Three Embarcadero Center
San Francisco, CA 94111
ella.gannon@bingham.com

INTERESTED AGENCIES
California ISO
e-recipient@caiso.com

Jim Stobaugh
BLM – Nevada State Office
P.O. Box 12000
Reno, NV 89520
jim_stobaugh@blm.gov

Rich Rotte, Project Manager
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
richard_rotte@blm.gov

Becky Jones
California Department of
Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

INTERVENORS
County of San Bernardino
Ruth E. Stringer,
County Counsel
Bart W. Brizzee,
Deputy County Counsel
385 N. Arrowhead Avenue,
4th Floor
San Bernardino, CA 92415-
bbrizzee@cc.sbcounty.gov

California Unions for Reliable
Energy (CURE)
c/o: Loulena A. Miles,
Marc D. Joseph
Adams Broadwell Joseph
& Cardozo
601 Gateway Boulevard, Ste. 1000
South San Francisco, CA 94080
lmiles@adamsbroadwell.com

Defenders of Wildlife
Joshua Basofin
1303 J Street, Suite 270
Sacramento, California 95814
e-mail service preferred
jbasofin@defenders.org

Society for the Conservation of
Bighorn Sheep
Bob Burke & Gary Thomas
P.O. Box 1407
Yermo, CA 92398
cameracoordinator@sheepsociety.com

Basin and Range Watch
Laura Cunningham &
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
atomictoadranch@netzero.net

*indicates change

INTERVENORS CONT.

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, CA 91773
e-mail service preferred
ochsjack@earthlink.net

Gloria D. Smith, Senior Attorney
*Travis Ritchie
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org

Newberry Community
Service District
Wayne W. Weierbach
P.O. Box 206
Newberry Springs, CA 92365
newberryCSD@gmail.com

Cynthia Lea Burch
Steven A. Lamb
Anne Alexander
Katten Muchin Rosenman LLP
2029 Century Park East,
Ste. 2700
Los Angeles, CA 90067-3012
Cynthia.burch@kattenlaw.com
Steven.lamb@kattenlaw.com
Anne.alexander@kattenlaw.com

ENERGY COMMISSION

ANTHONY EGGERT
Commissioner and Presiding Member
aeggert@energy.state.ca.us

JEFFREY D. BYRON
Commissioner and Associate Member
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Lorraine White, Adviser to
Commissioner Eggert
e-mail service preferred
lwhite@energy.state.ca.us

Kristy Chew, Adviser to
Commissioner Byron
e-mail service preferred
kchew@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Steve Adams
Co-Staff Counsel
sadams@energy.state.ca.us

Christopher Meyer
Project Manager
cmeyer@energy.state.ca.us

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us

*indicates change

DECLARATION OF SERVICE

I, Jeff Speir, declare that on August 23, 2010, I served and filed copies of the attached Opening Brief, dated August 23, 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/solarone]**.

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:

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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, 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.

Jeffrey B. Speir