

STATE OF CALIFORNIA
**Energy Resources Conservation
and Development Commission**

California Energy Commission
DOCKETED
09-AFC-7C
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In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PROJECT

DOCKET NO. 09-AFC-7C

STATUS REPORT (SECOND)

CENTER FOR BIOLOGICAL DIVERSITY

May 8, 2013

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Phone: 415-632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

INTRODUCTION

Pursuant to the Committee Scheduling Order dated March 6, 2013 and the email from Hearing Office Celli indicating that the date for the second status report would be continued to May 8, 2013, Intervenor Center for Biological Diversity (the “Center”) timely provides this second status report regarding proposed amendment to the Final Decision for the Palen Solar Power Project. The Order stated: “Status reports shall inform the Committee whether or not case development is progressing satisfactorily, and bring potential schedule delays and other relevant matters to the Committee’s attention.”

The Center raised many concerns in our first status report regarding the lack of current, relevant data on many of the environmental resources and much of that data has not yet been provided by the applicant. As a result we oppose issuance of the PSA at the scheduled time as it will not be able to adequately identify the impacts of the proposed amended project or analyze those impacts. Issuing the PSA prematurely will be a waste of time and energy by Staff and provide little new information or analysis regarding the impacts of the proposed amended project. More importantly, it will send a false and incorrect signal to the public that the Commission values moving forward quickly with the proposed amendment over providing substantive information and analysis as required by CEQA.

Among the concerns raised previously by the Center that have not yet been addressed, and which will require potential schedule delays, are the following (*updated information provided in italics*):

- New desert tortoise surveys are needed because the surveys relied on for the original application are now more than five years out of date¹. *To date, it is the Center’s understanding that the Applicant has not*

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http://www.fws.gov/ventura/species_information/protocols_guidelines/docs/dt/DT%20Pre-project%20Survey%20Protocol_2010%20Field%20Season.pdf at pg. 5

undertaken these needed surveys and the spring survey window is rapidly drawing to a close. Therefore, the earliest time that these necessary surveys could be conducted is the fall of 2013—the PSA schedule must be delayed until after these surveys have been conducted and the data provided to all parties for analysis.

- Additional analysis is needed regarding impacts to desert tortoise and other species connectivity in light of the new information available regarding this issue over the last four years including but not limited to the U.S. Fish and Wildlife Service’s Priority Desert Tortoise Connectivity Habitat², the Linkage Network for the California Deserts³, and the BLM’s Final Solar PEIS. As part of the Final Solar PEIS, two north-south wildlife connectivity corridors are to be established through the Riverside East Solar Energy Zone (Solar PEIS at 9.4-50). Based on the need to identify the location of these corridors, an analysis must be done of the potential impact from this project to these crucial wildlife corridors. *To date, the Center is unaware of any information indicating that Staff or the applicant has undertaken this critical analysis.*
- Additional appropriate avian species surveys are needed due to the change in technology (power tower) which will have much greater impacts to avian species than the approved project. These types of impacts were not addressed in the earlier environmental review. *At recent workshops the Applicant indicated that they have begun some avian surveys but there remain questions regarding the appropriateness of the methodology used, appropriate seasons and scope of the surveys. The Applicant also indicated that they may not be undertaking needed bat surveys and*

² http://solareis.anl.gov/documents/fpeis/maps/FWS_Desert_Tortoise_Connectivity.pdf

³ <http://www.scwildlands.org/reports/ALinkageNetworkForTheCaliforniaDeserts.pdf>

monitoring at this time. Moreover, as far as the Center is aware, none of the avian data, other than the Winter 2013 Golden Eagle Survey Results, collected to date by the Applicant have yet been provided to all parties and therefore would not be available for inclusion in the PSA if it is issued on the current, rushed, schedule.

- New Mojave fringe toed lizard surveys are needed because the surveys relied on for the original application are 5 years out of date. In order to adequately assess the current distribution and density of Mojave fringe-toed lizards on the project site and assess direct, indirect, and cumulative impacts to the local population and its habitat, updated surveys are necessary, and must also consider potential impacts from construction and operation activities in the up wind areas of the sand transport corridor which include several large solar projects. In addition, the Center has been informed and is investigating reports that construction activities for the Colorado River substation and use of the access road has had a very high impact on Mojave fringe-toed lizards—the potential for roads near and in sand habitat to become population sinks must be considered in this review. *To date the Center is unaware of any new data or updated survey information regarding sand habitat and Mojave fringe-toed lizards being collected by the Applicant or provided by the Applicant to all parties. Alternatives must be considered that avoid all of the sand dune habitat on proposed site and avoid, minimize and mitigate any remaining impacts to the sand dunes natural communities and Mojave fringe-toed lizard.*
- Alternatives that could avoid impacts to the Mojave fringe-toed lizard and its rare sand dune and stabilized sand habitats, soils and surface waters, desert tortoise movement, avian impacts from solar flux and heliostat

collision and other resources must be re-considered in light of the new power tower proposal which the applicant has in the past stated has more flexibility in site design as compared with the solar trough project originally approved. *This information should be included in the PSA when issued but cannot be included without the needed additional data on avian species and other resources.*

- New detailed surveys of kit fox on the site are also needed. Due to the unfortunate outbreak of canine distemper in the state protected desert kit fox population in the vicinity of the Palen project, additional analysis of project impacts to this species is required. *To date the Center is unaware of any new data or surveys for desert kit fox being collected by the Applicant or provided by the Applicant to all parties.*
- Additional analysis of all cumulative impacts is needed in light of additional projects that have been proposed and approved in this area subsequent to the original decision including Desert Harvest and McCoy solar projects as well as the adoption of the BLM Solar PEIS after that time and any new information learned from the construction of Desert Sunlight and Genesis projects and updating all new information on the Eagle Mountain Pumped Storage Project. *This analysis should be included in the PSA when issued but cannot be included without the needed additional data on avian species and other resources.*

The Center also asserts that additional information is needed on the following issues:

Environmental justice concerns. At a recent workshop the Applicant or Staff stated that there are no environmental justice concerns associated with this project and relied on an analysis utilizing a 6 mile radius from the project site. The Center strongly disagrees

with the premise of this analysis—that it be based on a 6 mile limit. First, the impacts of a project may spread far outside of the project boundary – in this case the impacts to species, soils, air quality, human health (particularly from valley fever), landscapes, and visual resources will reach far outside of the project boundaries.

“[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12(e).) The California Attorney General has provided helpful information on how environmental justice concerns might be incorporated into CEQA review. (Office of the California Attorney General, Environmental Justice at the Local and Regional Level, Legal Background, Updated 7/10/12⁴). The AG notes that environmental justice concerns must be considered in many aspects of the CEQA process including environmental setting (id. at 3), cumulative impacts (id. at 3-4), and alternatives and mitigation (id. at 4-5).

The Energy Commission has not adopted any policy or regulations for addressing environmental justice. It may be useful and instructive to look to the policy adopted by State Lands Commission on incorporating environmental justice into its work⁵ as this document is particularly relevant here (indeed the Energy Commission should consider adopting similar guidance):

The Commission pledges to continue and enhance its processes, decisions, and programs with environmental justice as an essential consideration by:

1. Identifying relevant populations that might be adversely affected by Commission programs or by projects submitted by outside parties for its consideration.

⁴ Available at http://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf

⁵ Available at http://www.slc.ca.gov/policy_statements/Env_Justice/Environmental%20Justice%20Policy%20Final%20Web.pdf

2. Seeking out community groups and leaders to encourage communication and collaboration with the Commission and its staff.
3. Distributing public information as broadly as possible and in multiple languages, as needed, to encourage participation in the Commission's public processes.
4. Incorporating consultations with affected community groups and leaders while preparing environmental analyses of projects submitted to the Commission for its consideration.
5. Ensuring that public documents and notices relating to human health or environmental issues are concise, understandable, and readily accessible to the public, in multiple languages, as needed.
6. Holding public meetings, public hearings, and public workshops at times and in locations that encourage meaningful public involvement by members of the affected communities.
7. Educating present and future generations in all walks of life about public access to lands and resources managed by the Commission.
8. Ensuring that a range of reasonable alternatives is identified when siting facilities that may adversely affect relevant populations and identifying, for the Commission's consideration, those that would minimize or eliminate environmental impacts affecting such populations.
9. Working in conjunction with federal, state, regional, and local agencies to ensure consideration of disproportionate impacts on relevant populations, by instant or cumulative environmental pollution or degradation.
10. Fostering research and data collection to better define cumulative sources of pollution, exposures, risks, and impacts.
11. Providing appropriate training on environmental justice issues to staff and the Commission so that recognition and consideration of such issues are incorporated into its daily activities.
12. Reporting periodically to the Commission on how environmental justice is a part of the programs, processes, and activities conducted by the Commission and proposing modifications as necessary.

(Environmental Justice Policy, California State Lands Commission at 1-2 [emphasis added].) Of particular relevance is the need to: identify the community early in the process, include the community in the process, ensure that alternatives identify and address those impacts falling most heavily on the local community; and work with other agencies and the community to ensure consideration and avoidance of the direct, indirect, and cumulative impacts that would disproportionately fall on the community. Because these issues go to the very heart of the CEQA process, the Commission must undertake this analysis early in the environmental review process for the proposed amended project.

As to the local community here, the closest community, Desert Center is a community that appears to have many attributes that clearly require a detailed and robust environmental justice analysis— Desert Center has between 10-20% of residents below the poverty line and also has a high minority population (over 40% in much of the area).⁶ In addition, Desert Center community will experience significant cumulative impacts from this proposed amended project, other large-scale solar projects, and other projects (such as the pump storage proposal and new power line) approved and proposed in the vicinity. Indeed, the area surrounding Desert Center has and will in a few short years experience a sea-change from being surrounded primarily by undisturbed wildlands and small scale agriculture to being surrounded by large-scale industrial development. If the Commission finds that Desert Center (or any other affected local community) is an environmental justice community, it must provide environmental review that, at minimum, takes the disproportionate burden of impacts on the local community into consideration in formulating alternatives that would avoid disproportionate impacts as well as fully considering appropriate minimization and mitigation measures. These issues need to be fully evaluated in the PSA and must include the consideration of environmental justice concerns—that many of the impacts of the project are falling disproportionately on low income and minority communities.

Impacts from glare, glint, and the light at the receiver. It is unclear at this time how Staff is approaching the potential impacts to car and truck traffic, air planes, hikers, rock climbers, and other humans who will experience these effects within the sight lines from the project mirrors and two 750 foot towers. (The Staff has acknowledged that impacts of these sources of light on biological resources – for example ocular impacts to avian species-- must be dealt with as well in those sections of the environmental review.) The few prior discussions of “glint and glare” from mirrors has not been particularly

⁶ 2010 demographic information from: <http://epamap14.epa.gov/ejmap/ejmap.aspx>

enlightening and appeared to assume that there is no focused light “glinting” or “glaring” from the mirrors except where they are “aimed”—the top of the tower or a ring around it. Recent experience at the Ivanpah site is far different. For example, the picture below shows significant “glint” or “glare” from the mirrors during a recent overflight of the Ivanpah project and the Center is informed from those in the plane that it was quite a strong “glare” or “glint” of light that was visible as they flew over the project area.



Photo: Ivanpah solar project, TWS, April 19, 2013

Utilizing testimony from other matters before the Commission? The Center understands from discussions in recent workshops that the Applicant and/or Staff may propose that testimony previously submitted in the Hidden Hills SEGS Application (DOCKET NO. 11-AFC-2) now suspended, be re-submitted in this matter without additional hearings. While the Center certainly has no objection to the Staff or Applicant submitting the same written testimony or submitting transcripts of the hearing testimony from HHSEGS hearings in this matter *as testimony*, that testimony must be resubmitted in a form that is readily accessible to the public and the parties, sponsored by the same person providing

the earlier testimony, and all parties to *this* matter must be provided a full and fair opportunity to rebut and cross-examine the testifying witnesses at hearing to the extent that the re-submitted testimony relates to this proposed project amendment and the resources that may be affected at this site.

Respectfully submitted,

Date: May 8, 2013



Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Phone: 415-632-5307
Fax: 415-436-9683
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.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**

**AMENDMENT
FOR THE PALEN SOLAR ELECTRIC
GENERATING SYSTEM**

**Docket No. 09-AFC-7C
PROOF OF SERVICE
(Revised 4/24/2013)**

SERVICE LIST:

APPLICANT

Palen Solar Holdings, LLC
Clay Jensen
410 South Rampart Blvd., Suite 390
Las Vegas, NV 89145
cjensen@brightsourceenergy.com

Palen Solar Holdings, LLC
Charlie Turlinski
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cturlinski@brightsourceenergy.com

APPLICANT'S CONSULTANT

Centerline
Andrea Grenier
1420 E. Roseville Parkway
Suite 140-377
Roseville, CA 95661
andrea@agrenier.com

APPLICANT'S COUNSEL

Scott Galati, Esq.
Marie Fleming
Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mfleming@gb-llp.com

INTERESTED AGENCY

California ISO
e-recipient@caiso.com

County of Riverside
Office of Riverside County Counsel
Tiffany North
3960 Orange Street, Suite 500
Riverside, CA 92501
tnorth@co.riverside.ca.us

INTERVENORS

Center for Biological Diversity
Lisa T. Belenky, Senior Attorney
351 California St., Suite 600
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

Center for Biological Diversity
Ileene Anderson
Public Lands Desert Director
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
ianderson@biologicaldiversity.org

Basin and Range Watch
Kevin Emmerich
Laura Cunningham
P.O. Box 153
Baker, CA 92309
atomictoadranch@netzero.net
bluerockiguana@hughes.net

Californians for Renewable Energy
Alfredo Acosta Figueroa
424 North Carlton Avenue
Blythe, CA 92225
lacunadeaztlan@aol.com

California Unions for Reliable Energy
Tanya A. Gulesserian
Elizabeth Klebaner
Adams Broadwell Joseph & Cardoza
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com
eklebaner@adamsbroadwell.com

Hildeberto Sanchez, Eddie Simmons,
and Laborers' International Union of
North America, Local Union No. 1184
c/o Richard T. Drury
Christina M. Caro
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
richard@lozeaudrury.com
christina@lozeaudrury.com

ENERGY COMMISSION STAFF

Christine Stora
Project Manager
christine.stora@energy.ca.gov

Jennifer Martin-Gallardo
Staff Counsel
jennifer.martin-gallardo@energy.ca.gov

**ENERGY COMMISSION –
PUBLIC ADVISER**

Blake Roberts
Assistant Public Adviser
publicadviser@energy.ca.gov

COMMISSION DOCKET UNIT

California Energy Commission
Docket Unit
Attn: Docket No. 09-AFC-07C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

*Indicates change

OTHER ENERGY COMMISSION
PARTICIPANTS (LISTED FOR
CONVENIENCE ONLY):

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Commissioner and Presiding Member

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Commissioner and Associate
Member

*Kenneth Celli
Hearing Adviser

Galen Lemei
Adviser to Presiding Member

Jennifer Nelson
Adviser to Presiding Member

Jim Bartridge
Adviser to Associate Member

Kelly Foley
Adviser to Associate Member

Eileen Allen
Commissioners' Technical
Adviser for Facility Siting

DECLARATION OF SERVICE

I, Lisa T. Belenky, declare that on May 8, 2013, I served and filed copies of the attached Status Report (Second), dated May 8, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: <http://www.energy.ca.gov/sitingcases/palen/compliance/>.

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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, and that I am over the age of 18 years.

Dated: May 8, 2013

/s/ Lisa T. Belenky