

**DOCKET**

**09-AFC-7**

DATE OCT 04 2010

RECD. OCT 04 2010

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

In the Matter of:

APPLICATION FOR CERTIFICATION  
FOR THE PALEN SOLAR POWER  
PROJECT

DOCKET NO. 09-AFC-7

**PREHEARING CONFERENCE STATEMENT**  
**INTERVEOR CENTER FOR BIOLOGICAL DIVERSITY**

October 4, 2010

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

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION  
FOR THE PALEN SOLAR POWER  
PROJECT

DOCKET NO. 09-AFC-7

**PREHEARING CONFERENCE STATEMENT  
INTERVEOR CENTER FOR BIOLOGICAL DIVERSITY**

Pursuant to the September 21, 2010 NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING ORDER and the September 28, 2010 REVISION TO NOTICE OF EVIDENTIARY HEARINGS, NOTICE OF ADDITIONAL, EVIDENTIARY HEARING DATE, and REVISED COMMITTEE SCHEDULE, Intervenor Center for Biological Diversity (the “Center”) provides this Prehearing Conference Statement.

As the Committee is aware, key issues continue to evolve and change as staff and the applicant provide new information regarding the proposed project, survey results, etc. and as the workshops are continuing. Revisions are still ongoing. The Center does not object to the ongoing process in which the parties continuing to assess the environmental impacts of the project and staff and the parties are revising conditions and providing additional information. However, such a process does make it difficult for the Center to evaluate the issues and topic areas as the discussions continue to evolve and the Staff’s assessment of various issues and topics is revised and supplemented. As a result, the Center reserves the right to respond to any new information submitted by the Applicant

or the Staff on all topics including, but not limited to, survey information and analysis of impacts to biological resources, water resources, site configuration, the alternatives analysis, license conditions and/or mitigation/avoidance measures.

The Center intends to provide testimony and rebuttal testimony, and reserves the right to provide additional prehearing testimony and documentary evidence along with written rebuttal up to and including and evidentiary hearings on this matter. Given the extremely short schedule, the Center also requests that the Committee allow testimony at the hearings to encompass issues that arguably could have been raised on rebuttal.

**a) The topic areas that are complete and ready to proceed to Evidentiary Hearing;**

The Center is preparing to proceed to hearing on the following topics on October 27, 2010: Air Quality, Alternatives, Biological Resources and Soil & Water Resources. However, the Center does not view these topics as complete and ready for final hearing given the lack of adequate identification and analysis of the impacts of the proposed project provided in the Revised Staff Assessment (“RSA”). The Center is particularly concerned with the inadequacies in the identification and analysis of impacts to biological resources, inadequacies in the water resources analysis (particularly as to cumulative impacts), inadequacies in the alternatives analysis, and lack of adequate mitigation measures for the impacts of the project.

**b) The topic areas that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefor;**

The Center believes that there remain fundamental unresolved issues in many areas including Project Description, Purpose and Need, Air Quality, Biological Resources, Alternatives Analysis, Soil and Water Resources. As noted above, the Center does not view these topics as complete and ready for final hearing given the lack of

adequate identification and analysis of the impacts of the proposed project provided in the RSA. The Center is particularly concerned with inadequacies in the identification and analysis of impacts to biological resources, inadequacies in the identification and analysis of impacts to water resources, lack of adequate identification of specific, enforceable mitigation measures and plans, and the lack of robust alternatives analysis. Given these inadequacies in the RSA, it is impossible to evaluate at this time whether the project will fully comply with relevant federal and state laws.

While the Center is well aware that the Commission proceeds under a certified regulatory program that is intended to be the CEQA equivalent and which provides some flexibility to the Commission (*see* § 21080.5; CEQA Guidelines § 15251(j).), that program does not allow the Commission to shift the Commission's duty to provide for adequate CEQA review, including identification and analysis of environmental impacts and alternatives, onto other parties or members of the public. It is the Commission's duty to comply with CEQA's substantive and procedural mandates. Cal. Pub. Res. Code §§ 21000, 21002; *Sierra Club v. Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Association v. Cal. Dept. of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 667-68.

**c) The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic;**

The topic areas that the Center disputes and which require adjudication include, but are not limited to: **Air Quality, Alternatives, Biological Resources and Soil & Water Resources**. Given the short time since the RSA was issued and the ongoing workshops, the Center has not yet fully determined the nature of the dispute for each of the topics.

Many of the disputed issues identified by the Center involve both legal and factual disputes while others are predominantly legal issues. The Center therefore respectfully reserves the right to address each disputed issue, and any other disputed issues identified at the prehearing conference at later stages of this process including in briefing following the evidentiary hearing.

**d) The identity of each witness sponsored by each party (note: witnesses must have professional expertise in the discipline of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; the time required to present direct testimony by each witness; and whether the party seeks to have the witness testify in person or telephonically;**

The Center intends to present or rely on expert witnesses on the following topics. The Center requests that if necessary expert witnesses be allowed to testify by telephone. While in-person testimony is preferred and at this time both of the Center's witnesses are available to testify in person in Sacramento on October 27, 2010, given the expedited schedule and other time limitations phone testimony may be necessary. All experts listed below will submit testimony and their qualifications by October 6, 2010. The Center reserves the right to submit additional testimony by way of rebuttal or initial testimony on any late-filed information or changes that emerge from the workshops or otherwise before the evidentiary hearing for each topic. Below the Center provides a summary of the topic areas and time estimates for the witnesses already identified.

- **Bill Powers: Alternatives:** Mr. Powers' direct testimony is estimated to take no more than 30 minutes.

- **Ileene Anderson: Impacts to Sensitive Plants and Wildlife:** Ms. Anderson's direct testimony is estimated to take no more than 45 minutes.

**e) Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of each such cross-examination (including voir dire of any witness' qualifications), and the time desired for each such cross-examination;**

**Biological Resources:** CEC Staff, CDFG staff, FWS staff, BLM staff, Applicant witnesses, and witnesses presented by other Intervenors regarding assessment of impacts to biological resources and appropriate avoidance, minimization, and mitigation strategies.

**Soils and Water Resources:** CEC Staff, BLM Staff, Applicant witnesses regarding the impacts to soil and water resources and any contrary conclusions; the appropriate avoidance, minimization, and mitigation strategies; and the efficacy and enforceability of mitigation measures suggested.

**Air Quality:** CEC Staff, BLM Staff, Applicant witnesses, and witnesses presented by other Intervenors regarding the impacts to air quality; the appropriate avoidance, minimization, and mitigation strategies; and the efficacy and enforceability of mitigation measures suggested.

**Alternatives:** CEC Staff, BLM Staff, Applicant witnesses, and witnesses presented by other Intervenors regarding identification and selection of alternatives for review; the analysis of those alternatives; and the analysis of the feasibility of alternative sites.

**f) A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply (as explained in the following section on Formats for Presenting Evidence);**

The Center will provide a list of exhibits and the exhibits with the opening testimony and rebuttal testimony; declarations will be provided with the testimony from Bill Powers and Ileene Anderson. The Center reserves the right, if necessary, to provide additional exhibits at hearing.

**g) Topic areas for which the Applicant will seek a commission override due to public necessity and convenience pursuant to Pub. Res. Code § 25525.**

N/A

**h) Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters; and**

N/A

**i) For all topics, any proposed modifications to the proposed Conditions of Certification listed in the Revised Staff Analysis (RSA) based upon enforceability, ease of comprehension, and consistency with the evidence.**

Center has reviewed the Proposed Conditions of Certification in the RSA for enforceability, comprehension, and consistency. However, given the short time since the RSA was issued the Center is not at this time prepared to provide specific language for any proposed modifications to any of the Proposed Conditions of Certification.

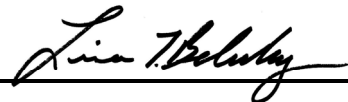
The Center is concerned that Conditions for all biological resources are inadequate because the identification and analysis of impacts is incomplete and inadequate. The same is true in other areas including air quality and impacts to soil and water resources. The Center also asserts that failure to adequately identify and analyze impacts and then engage with the alternatives analysis is fatal to this proposal. The alternatives analysis should have provided additional information on ways to avoid and minimize impacts in addition to the site reconfiguration proposed by the Applicant. The failure to adequately engage those initial steps has resulted in a proposed project that

unlawfully includes significant but avoidable impacts. Given this circumstance, the Center asserts that approving the project as proposed is unlawful. If the Commission nonetheless intends to approve the project as proposed it must at minimum ensure full mitigation of all impacts under the CESA, ESA, and other laws. While the staff has provided some good proposed conditions in the RSA because most of the mitigation measures and plans relied on are not fully developed and do not have enforceable standards they fail to provide the required specificity needed.

Overall, many of the proposed conditions appear to be unlawfully vague and do not meet the CEQA requirements that mitigation measures be specific, feasible, and enforceable. In addition, the environmental impacts that may be caused by the proposed mitigation measures are not addressed. The Center reserves the right to provide proposed modifications for each of the conditions and additional proposed conditions after hearings or in briefing.

Dated: October 4, 2010

Respectfully submitted,



---

Lisa T. Belenky, Senior Attorney  
Center for Biological Diversity  
351 California St., Suite 600  
San Francisco, CA 94104  
Direct: 415-632-5307  
Fax: 415-436-9683  
[lbelenky@biologicaldiversity.org](mailto:lbelenky@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](http://WWW.ENERGY.CA.GOV)

**APPLICATION FOR CERTIFICATION  
FOR THE PALEN SOLAR POWER  
PLANT PROJECT**

**Docket No. 09-AFC-7**

**PROOF OF SERVICE  
(Revised 8/27/10)**

**APPLICANT**

Alice Harron  
Senior Director of Project Development  
\*1111 Broadway, 5<sup>th</sup> Floor  
Oakland, CA 94607  
[harron@solarmillennium.com](mailto:harron@solarmillennium.com)

\*Michael Cressner, Project  
Development & Permitting  
Solar Millennium, LLC  
1111 Broadway, 5<sup>th</sup> Floor  
Oakland, CA 94709  
[cressner@solarmillennium.com](mailto:cressner@solarmillennium.com)

Arrie Bachrach  
AECOM Project Manager  
1220 Avenida Acaso  
Camarillo, CA 93012  
[arrie.bachrach@aecom.com](mailto:arrie.bachrach@aecom.com)

Ram Ambatipudi  
Chevron Energy Solutions  
150 E. Colorado Blvd., Ste. 360  
Pasadena, CA 91105  
[rambatipudi@chevron.com](mailto:rambatipudi@chevron.com)

**Co-COUNSEL**

Scott Galati, Esq.  
Marie Mills  
Galati/Blek, LLP  
455 Capitol Mall, Suite 350  
Sacramento, CA 95814  
[sgalati@gb-llp.com](mailto:sgalati@gb-llp.com)  
[mmills@gb-llp.com](mailto:mmills@gb-llp.com)

**Co-COUNSEL**

Peter Weiner, Matthew Sanders  
Paul, Hastings, Janofsky &  
Walker LLP  
55 2nd Street, Suite 2400-3441  
San Francisco, CA 94105  
[peterweiner@paulhastings.com](mailto:peterweiner@paulhastings.com)  
[matthewsanders@paulhastings.com](mailto:matthewsanders@paulhastings.com)

**INTERVENORS**

California Unions for Reliable Energy  
(CURE)  
c/o Tanya A. Gulesserian,  
Marc D. Joseph  
Jason W. Holder  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard,  
Suite 1000  
South San Francisco, CA 94080  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[jholder@adamsbroadwell.com](mailto:jholder@adamsbroadwell.com)

Michael E. Boyd, President  
Californians for Renewable Energy  
(CARE)  
5439 Soquel Drive  
Soquel, CA 95073-2659  
[michaelboyd@sbcglobal.net](mailto:michaelboyd@sbcglobal.net)

Alfredo Figueroa  
Californians for Renewable Energy  
(CARE)  
424 North Carlton  
Blythe, CA 92225  
[lacunadeaztlan@aol.com](mailto:lacunadeaztlan@aol.com)

Basin and Range Watch  
Kevin Emmerich  
Laura Cunningham  
P.O. Box 153  
Baker, CA 92309  
[atomicoadranch@netzero.net](mailto:atomicoadranch@netzero.net)

Lisa T. Belenky, Senior Attorney  
Center for Biological Diversity  
351 California St., Suite 600  
San Francisco, CA 94104  
[lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)  
Ileene Anderson  
Public Lands Desert Director  
Center for Biological Diversity  
PMB 447, 8033 Sunset Boulevard  
Los Angeles, CA 90046  
[ianderson@biologicaldiversity.org](mailto:ianderson@biologicaldiversity.org)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Holly L. Roberts, Project Manager  
Bureau of Land Management  
Palm Springs-South Coast  
Field Office  
1201 Bird Center Drive  
Palm Springs, CA 92262  
[CAPSSolarBlythe@blm.gov](mailto:CAPSSolarBlythe@blm.gov)

**ENERGY COMMISSION**

ROBERT WEISENMILLER  
Commissioner and Presiding Member  
[rweisenm@energy.state.ca.us](mailto:rweisenm@energy.state.ca.us)

KAREN DOUGLAS  
Chairman and Associate Member  
[kldougla@energy.state.ca.us](mailto:kldougla@energy.state.ca.us)

Raoul Renaud  
Hearing Officer.  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

Alan Solomon  
Siting Project Manager.  
[asolomon@energy.state.ca.us](mailto:asolomon@energy.state.ca.us)

Lisa DeCarlo  
Staff Counsel  
[ldecarlo@energy.state.ca.us](mailto:ldecarlo@energy.state.ca.us)

Jennifer Jennings  
Public Adviser's Office  
*e-mail service preferred*  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Lisa Belenky, declare that on Oct 4, 2010, I served and filed copies of the attached Prochany conf. statement, dated Oct 4, 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:  
[\[http://www.energy.ca.gov/sitingcases/solar\\_millennium\\_palen\]](http://www.energy.ca.gov/sitingcases/solar_millennium_palen)

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:

**(Check all that Apply)**

**FOR SERVICE TO ALL OTHER PARTIES:**

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States 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 "email preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

**OR**

- depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-7  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto: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.

