

DOCKETED

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

Petition for Amendment)	DOCKET NO. 09-AFC-7C
FOR THE PALEN SOLAR)	
ELECTRIC GENERATING SYSTEM)	
_____..)		

OPENING BRIEF
Basin and Range Watch

November 26, 2013

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OPENING BRIEF

Basin & Range Watch wishes to address the following issues which the Committee listed:

1. Regarding the Federal Migratory Bird Act, the Bald and Golden Eagle Protection Act, and the Fully Protected Species Act, please brief whether incidental take permits are available, necessary, and at what point permits would be required for a project's take of species covered under the above-mentioned laws.

The project should be required to apply for a take permit for eagles under the Bald and Golden Eagle Protection Act since the project's impacts will be similar to wind projects which recently have been responsible for eagle mortality. US Fish and Wildlife Service has been considering issuing take permits for wind projects, and solar power tower will have impacts similar to wind towers in eagle territories.

No take permits for the MBTA have been issued by USFWS because the original intent of the law was not set up for this purpose, but for making illegal the intentional killing of birds for their feathers during the earlier part of the 20th century when fashion dictated the use of feathers. USFWS has not decided on how to place value on birds not covered by other protective means. We believe take permits for birds protected under the MBTA would not serve to avoid significant impacts to the many species covered, but under the law the incidental mortality of birds that would be killed by solar flux or collision would be illegal. Thus, before the project is approved we would like to see a discussion by the agencies and experts in the field about whether take permits for birds under the MBTA should be issued or not. This is a complex question that requires more time to weigh the advantages and disadvantages before more solar projects are constructed.

2. Based on evidence in the record, what should the Committee conclude about the likely or potential magnitude of the impact of this project on avian mortality? What metrics should the Committee consider applying to weigh this impact as called for in Public Resources Code §§ 21081 and 25525?

Before the project is approved, an avian mortality study should be designed and undertaken for 3 years at the Ivanpah Solar Electric Generating System during its full operation (not testing) to determine a baseline data set of how many birds are dying from solar flux and mirror impacts, a range of species, and times of day and month such deaths are happening. Are there peaks of mortality during spring and fall migration? Are local breeding bird populations represented strongly, or migrants? Then using this baseline a threshold can be decided upon when a certain number of birds is killed, or a certain species which is considered significant is represented in high numbers, so that avoidance or compensation measures can be taken.

3. Should the Energy Commission require the project to take additional steps to avoid avian mortality, including possible curtailment, if project operations were to result in excessive avian mortality? If so, what metric should be used to establish a maximum limit that would trigger a curtailment recommendation?

When a predetermined threshold of mortality has been reached, the project owner should be required to curtail solar power tower operation during certain seasons, such as spring weeks during peak migration and nesting. Using offsets to compensate for bird mortality by regional mitigation programs will not necessarily be local enough to avoid impacts to birds in the Chuckwalla Valley, but if such joint ventures are used for compensation they should be very local to the project site.

A permitted monthly mortality number could be determined. Should the petitioner exceed a monthly kill number, the project should be curtailed for period lasting up to two weeks.

4. Regarding the Technical Advisory Committee (TAC), what modifications to Condition of Certification BIO-16b would best facilitate public transparency?

The TAC should hold meetings in public so that public input can be considered, and local expert knowledge can be gained. Bird-watching groups may have expertise and ideas about mitigation and compensation measures. Public comments should be taken and evaluated, since this is such a new type of project in remote wildlands.

Making a "statement of overriding considerations" will not prevent significant avoidable damage to the environment. The specific benefits of the project do not outweigh its unavoidable environmental effects. Some of the best alternatives to avoid adverse impacts to the environment were not considered in detail.

5. Regarding the subject of Air Quality, the Committee should adopt additional mitigation measures.

Existing solar projects (Genesis and Desert Sunlight) currently under construction to the east and west of the project site have experienced vey, large, uncontrolled fugitive dust events. These events have been the most intense on days of high wind speeds. The Committee should require a wind speed curtailment to construction. Wind speeds of 20 MPH and higher that are consistent throughout the project site will potentially raise fugitive dust and threaten public health. Curtailment of construction during high winds would significantly reduce the direct and cumulative impacts of fugitive dust events caused by construction.

and Development Commission

In the Matter of:

Petition for Amendment for the PALEN
SOLAR ELETRIC GENERATING
SYSTEM

DOCKET NO. 09-AFC-7C

DECLARATION OF SERVICE

I, Laura Cunningham, declare that on November 26, 2013, I served and filed copies of the attached Opening Brief, dated November 26, 2013. 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/ivanpah]. The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, 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 or by depositing in the United States mail at with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above 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

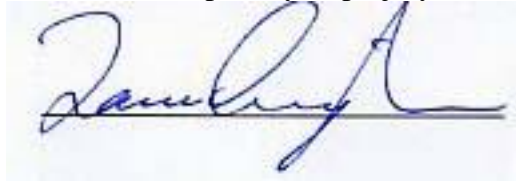
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1516 Ninth Street, MS-4

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

A handwritten signature in blue ink, appearing to read "Laura Cunningham", written over a horizontal line.

Laura Cunningham

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