

DOCKET

07-AFC-5

State Of California

Memorandum

DATE APR 15 2009

The Resources Agency of California

RECD. APR 15 2009

Date: April 15, 2009
Telephone: (916) 654-4679

To: Commissioner Jeffrey Byron, Presiding Member
Commissioner James D. Boyd, Associate Member

From: **California Energy Commission** – John Kessler, Project Manager
1516 Ninth Street
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Subject: **STATUS REPORT #8**
IVANPAH SOLAR ELECTRIC GENERATING SYSTEM (07-AFC-5)

Ivanpah Solar Electric Generating System (ISEGS) Project continues to progress through its review by Bureau of Land Management (BLM), Energy Commission staff, and responsible agencies, including California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (FWS). The ISEGS Project schedule has been hampered by the additional time needed by the applicant to prepare a number of studies and plans focusing on site drainage and biological issues. The applicant's completion and submittal of these key elements are necessary for the BLM and Energy Commission staff to complete important sections of the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS). The information is necessary to adequately describe the proposed project and address Biological Resources mitigation.

The complexity of this large project on a sloping alluvial fan below a mountain range has required several rounds of BLM/Energy Commission data requests and interaction with the applicant. The grading and drainage plans currently under development are necessary to define the physical layout of the project and the extent of ground disturbance with respect to site grading and drainage features. These plans will enable BLM and Energy Commission staff to assess project impacts and to identify impact avoidance and mitigation measures. Similarly, development of a comprehensive Biological Resources mitigation plan for protecting wildlife and rare plants is critical to BLM and Energy Commission staff's preparation of the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS).

The Preliminary Staff Assessment (PSA) published on December 9, 2008 served to identify the additional information/agency coordination needs, which were discussed and clarified during the PSA Workshop conducted on January 9, 2009. As a follow-up to the workshop, on January 15, 2009

PROOF OF SERVICE (REVISED 3/25/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/15/09

the BLM and Energy Commission staff provided the applicant with a list of, and a draft schedule for, the needed deliverables. The deliverables have required substantial planning and preparation work by the applicant.

BLM and Energy Commission staff will continue to coordinate the activities and information needs of our own and other responsible agencies in support of the right-of-way and licensing processes. The applicant has dedicated significant resources to preparing its grading and drainage plans, and BLM and Energy Commission staff are encouraged by recent progress.

UPDATE TO THE STATUS OF OUTSTANDING INFORMATION NEEDED FOR PREPARATION OF THE FSA/DEIS

DRAFT DOCUMENTS RECEIVED TO DATE

The following is a summary of the status of draft documents received from the applicant, which have been reviewed and commented on by BLM and Energy Commission staff, and are pending revision by the applicant. The revisions are necessary before the BLM and Energy Commission staff can prepare the FSA/DEIS. The applicant's draft plans need to be prepared to a quality that adequately describes the proposed project and supports the assessment of potential impacts and identification of necessary mitigation measures to avoid or lessen impacts to a level below significant. While the number of activities may seem limited, the volume of information and analysis generated by the applicant within these activities is substantial. The information developed under the grading and drainage plans is pivotal to the applicant's ability to progress to preparation of subsequent plans and permit applications, many of which can be developed concurrently. These are discussed as follows:

Closure, Revegetation and Rehabilitation Plan – BLM and Energy Commission staff provided extensive comments on March 21, 2009 in response to the draft plan filed by the applicant on January 28, 2009. Because the draft plan primarily listed options for rehabilitating the site after project closure, and did not address what the applicant actually proposed in a manner sufficient to protect and restore soil and vegetation resources, it needs to be revised to adequately address the issues raised in staff's comments and filed prior to preparation of the FSA/DEIS.

Desert Tortoise Translocation and Relocation Plan - The applicant filed its draft Desert Tortoise Translocation and Relocation Plan on March 19, 2009. Staff representatives of BLM, USFWS, CDFG, and the Energy Commission are currently preparing comments to the draft plan and expect to provide comments to the applicant in late April.

Hydrology Studies – The applicant has been working diligently to complete its hydrology studies assessing the site infiltration and runoff characteristics, and the

significant runoff through the ISEGS from upstream of the site. This work will lead to the application of appropriate design criteria to accommodate the stormwater flows that would need to be managed on the site.

Grading and Drainage Plans – The applicant has developed an alternate approach to its grading and drainage plans differing from those submitted previously, by applying low-impact development principles for its revised plans. The approach seeks to minimize grading and disturbance to existing vegetation, and to have stormwater move through the site according to its natural drainage patterns within the ephemeral washes. The applicant plans to design the pylons supporting the heliostats so as to resist damage from stormwater flows by driving them deeper underground. This is intended to ensure that changes in the course and depth of the washes over time will not significantly affect the integrity of the heliostats. The use of this revised low-impact development plan eliminates previously contemplated drainage control structures and allows applicant to fill in additional space with heliostats, increasing the total number from approximately 240,000 previously to 280,000 as currently proposed.

The applicant is also exploring equipment and site access options that would be used during construction that minimize site disturbance. While staff is encouraged by the revised site preparation approach overall, it is necessary for staff to evaluate and for the applicant to demonstrate that multiple assumptions in the low impact design are reasonably achievable. These include assumptions that vegetation changes will not significantly alter stormwater runoff, and that the heliostat field construction can be accomplished without significantly removing or damaging vegetation. On April 8, 2009 BLM and Energy Commission staff submitted detailed comments to the applicant on the revised low impact development proposal that are expected to result in the applicant's need to re-calculate stormwater flows and to revise plan drawings before BLM and Energy Commission staff can prepare the FSA/DEIS.

DRAFT DOCUMENTS STILL OUTSTANDING

The following is a summary of the documents that are still under development and have yet to be received from the applicant. This list is consistent with the one provided by BLM and Energy Commission staff to the applicant on January 15, 2009, and previously noted in Status Reports 6 and 7. This information needs to be developed in sufficient detail to describe the proposed project, support the assessment of potential impacts and identify the necessary mitigation measures to avoid or lessen impacts below significant. Depending on the quality of the initial drafts, they may require revision by the applicant and re-submittal before the preparation of the FSA/DEIS. Staff is sensitive to the need to complete the information/plan review and revision process; it is working diligently with the applicant to identify the most critical items.

BIOLOGY

- 1) Mitigation Proposal – Staff of BLM, FWS, CDFG and Energy Commission are holding bi-weekly teleconferences to discuss the impact analysis and mitigation options needed to address the loss of habitat for desert tortoise, loss of rare plants and other sensitive species, and impacts to state waters and potentially waters of the US. This information is needed to complete the FSA/DEIS. In addition, we understand the applicant is holding periodic meetings with CDFG headquarters office to discuss these same issues.
- 2) Biological Assessment (BA) – The applicant's draft BA needs to be revised to address BLM's comments and to include the Translocation Plan filed on March 19, 2009. Staff understands this information, which is needed to complete the FSA/DEIS, is still under development by the applicant. Once filed by the applicant, the BA would be finalized by BLM and submitted to USFWS close to the time the FSA/DEIS is circulated for public review and comment.
- 3) Incidental Take Permit - Staff understands that the applicant has compiled much of the information needed for submittal of this permit application to the Energy Commission and CDFG, and will also incorporate the Desert Tortoise Translocation Plan into this application. This information is needed to complete the FSA/DEIS.
- 4) Streambed Alteration Agreement Application - Staff understands the applicant has developed much of the information needed for submittal of this application to CDFG and the Energy Commission, but that its completion and filing is subject to completion of ISEGS site grading and drainage plans as discussed more fully below.

SOILS AND WATER RESOURCES

Several Soil and Water Resource issues were identified in the PSA, and plans/studies currently under development by the applicant are intended to address those issues and support preparation of the FSA/DEIS.

- 1) Drainage, Erosion and Sediment Control Plan and the Storm Water Pollution Prevention Plan – When the applicant completes its grading and drainage plans, they will be updating their Drainage, Erosion and Sediment Control Plan and the Storm Water Pollution Prevention Plan to demonstrate they have identified and propose implementation of adequate Best Management Practices (BMPs). These plans for implementing, monitoring and maintaining BMPs during both construction and operations will support staff in completing the analysis of potential impacts from wind and water erosion and for considering the

potential for degradation of water quality. This information is needed to complete the FSA/DEIS.

- 2) Army Corps of Engineers (ACOE) Jurisdictional Determination and Permit – The ACOE is still considering whether there are waters of the U.S. that would be affected by the proposed project. Although the most recent signal from the ACOE is that the project will not affect waters of the U.S. and thus would not require a permit, the applicant, BLM and staff are awaiting a final determination. This information is needed to complete the FSA/DEIS, and influences whether the Lahontan Regional Water Quality Control Board (Lahontan RWQCB) would need to issue a Clean Water Act Section 401 Water Quality Certification
- 3) Groundwater Study - Staff and BLM are working with the applicant to evaluate the potential for migration of brackish groundwater westward towards the existing and proposed project wells due to existing and proposed pumping by ISEGS.
- 4) Lahontan RWQCB Permits – Staff and BLM understand that conditions associated with a number of permits are required from the Lahontan RWQCB so that they may be integrated with the Energy Commission's Final Decision. These are related to the treatment and discharge of sanitary wastewater for landscape irrigation, the dredge and fill within onsite ephemeral streams that are considered waters of the state, and management of storm water during construction and operations. Staff is encouraging the applicant to coordinate its plans with the Lahontan RWQCB as soon as possible so that these permit requirements can be integrated with the Energy Commission's Conditions of Certification.

HEALTH AND SAFETY

Staff understands that the applicant is working to complete the draft Health and Safety Plan for both the construction and operational phases of the project in order to support BLM's analysis that is necessary for the DEIS.

SCHEDULE

The key milestone that triggers when the clock can begin for all subsequent schedule activities is the applicant providing all information necessary to adequately describe the proposed project and address the Biological Resources mitigation required to support BLM and CEC staff in preparing the FSA/DEIS. While the applicant was targeting to complete preparation of all plans necessary by late April, it does not appear to staff that this will feasibly occur before May at the earliest. Staff does not have firm information as to when all studies and plans necessary for preparing the FSA/DEIS will be available, and cannot presume that all of the plans will be considered final.

Also, in fairness to the applicant, staff acknowledges the difficulty in coordinating the interests of BLM and CDFG who are guided by their respective regulations. These regulations currently preclude the development of criteria for biological resources mitigation so that habitat compensation lands for desert tortoise can meet the requirements of both agencies, as well as USFWS and the Energy Commission. The consequence of not developing mutually acceptable criteria is that the mitigation necessary to individually satisfy BLM's and CDFG's requirements could potentially be additive. The primary issue impeding development of common criteria is that BLM's regulations, unlike CDFG's, do not include provisions in the form of policy and funding to maintain the conservation lands in perpetuity. Permanent conservation status would preclude federal permitting of multiple land uses that could potentially harm desert tortoise. Top-level management representing BLM, USFWS, CDFG and the Energy Commission are working diligently to explore options for developing common criteria for the biological resources mitigation that would satisfy the requirements of both BLM and CDFG and work within the confines of their respective charters.

RESPONSE TO THE ORDER DIRECTING COMMENT ON A REVISED COMMITTEE SCHEDULE

In the interest of being fully responsive to the Committee's Order Directing Comment on a Revised Committee Schedule dated March 20, 2009, staff has updated the schedule previously provided in Status Report #7 based on the sequence of activities as provided in the Committee's Revised Schedule dated October 29, 2008. Rather than providing specific dates for achieving milestones based on an assumed delivery data of outstanding data, staff has provided the time increments, or a range of time increments that would follow for all subsequent steps.

Staff also offers a comment to the Committee's October 29, 2008 schedule from a procedural and sequencing standpoint in that this schedule anticipates issuing the Energy Commission's Presiding Member's Proposed Decision (PMPD) at about the same time as the FSA/DEIS comment period ends, rather than incorporating BLM and the Energy Commission staff's response to comments to the FSA/DEIS. Staff wishes to note the following considerations with respect to this issue:

1. The applicant's proposed grading and drainage plans have changed substantially since staff published the PSA, which has an effect on the assessment of potential impacts and the identification of avoidance and mitigation measures to lessen the significance of impacts;
2. Comments from agencies, parties and the public on the FSA/DEIS are expected to be extensive;

3. Staff anticipates the need to prepare revisions to the FSA/DEIS that will be reflected in the Final EIS;
4. If the Committee were to consider in its PMPD the BLM and the Energy Commission staff responses to comments to the FSA/DEIS, the FEIS and PMPD would be potentially more consistent as documents supporting the respective decision-makers of BLM and the Energy Commission; The comment periods for the FEIS and PMPD would then be more closely aligned in time and sequencing, which could also best serve the public and interest groups who are following the project.
5. If the PMPD were to incorporate BLM and the Energy Commission staff responses to comments received in the FSA/DEIS, although it would delay the schedule for the PMPD and Energy Commission Decision by about 2 months, it would not delay the overall project schedule (Please see notes in bold on the attached schedule).
6. Finally, staff believes that more time is probably necessary between the issuance of the FSA/DEIS and the commencement of the hearings phase (i.e., the Pre-hearing Conference is now scheduled two weeks following publication). Typically, a Pre-hearing Conference is called by the assigned committee to determine what, if any issues, are to be adjudicated, and the timing for any further testimony on such issues. Such an approach will probably require more than the scheduled two weeks due to the number of interveners participating in this proceeding.

Comparison of the Revised Committee Schedule as of 10/29/08 and Currently

| Event | Revised Committee Schedule (10/29/08) | Committee Schedule Under Current Conditions |
|--|---|--|
| Parties file Status Reports | December 5, 2008 & every 6 weeks thereafter | December 5, 2008 |
| Staff publishes Preliminary Staff Assessment | December 5, 2009 | December 9, 2009 |
| Staff conducts PSA workshops | Early January 2009 | January 9, 2009 |
| <u>Applicant completes Ivanpah 1 90% grading plans and other project plans and permit applications prerequisite to preparing the FSA/DEIS</u> | Not included | To be Determined (TBD) |
| Local, State and federal Agency final comments and determinations, including air district's final DOC filed | December 30, 2008 | TBD + 15 to 30 days |
| <u>BLM and Staff substantially complete FSA/DEIS</u> | | TBD + 45 days |
| <u>BLM obtains Headquarters approval of Notice of Availability of DEIS (45 – 60 days following substantial completion of DEIS)</u> | | TBD + 90 to 105 days |
| BLM files Notice of Availability (NOA) of DEIS | March 3, 2009 | TBD + 90 to 105 days |
| <u>Staff and BLM file FSA/DEIS</u> , and BLM issues Biological Assessment (starts 135-day clock for receiving Biological Opinion) | March 3, 2009 | TBD + 90 to 105 days |
| Prehearing Conference (15 days following filing of FSA/DEIS) (Staff recommends 15 – 30 days to prepare for hearings considering the number of interveners) | March 18, 2009 | TBD + 105 to 145 days |
| Evidentiary Hearings (15 -20 days following Prehearing Conference) | April 2, 2009 | TBD + 120 to 165 days |
| Applicant completes Ivanpah 2 and 3 90% grading plans | | TBD + 120 to 165 days |
| <u>Presiding Member's Proposed Decision (PMPD) issued for 30-day comment period (8 weeks after Evidentiary Hearings)</u> (If the Committee were to agree that the PMPD should be issued after BLM and Staff substantially complete the FEIS, the PMPD could be issued approximately 2 months later than previously scheduled. This assumes that a draft PMPD could be updated with the FEIS information in about 1 month. Please see staff's comments regarding considerations for the schedule of the PMPD on pages 6 and 7.) | May 28, 2009 | TBD + 176 to 221 days (or issue PMPD at TBD + 240 to 255 days which would be 5 to 5.5 months following FSA/DEIS publication) |

| | | |
|--|----------------------------------|--|
| <u>BLM's 90-Day DEIS comment period ends</u> | June 1, 2009 | TBD + 180 to 195 days |
| Federal Biological Opinion issued | June 17, 2009 or soon thereafter | TBD + 225 to 240 days |
| PMPD Comment Hearing (Approx. 25 days after PMPD issued) | June 29, 2009 | TBD + 201 to 246 days |
| <u>BLM and Staff substantially complete the FEIS and Recommended Changes to PMPD</u> | | TBD + 210 to 225 days |
| Revised PMPD issued for 15-day review period (35 days after PMPD issued) | July 9, 2009 | TBD + 211 to 256 days |
| <u>Energy Commission Decision</u> adoption hearing (as FEIS approaches publication) (If the Committee were to issue the PMPD after BLM and Staff substantially complete the FEIS, the Energy Commission adoption hearing would occur approximately 2 months later than previously scheduled and at about the same time as BLM's Record of Decision, without extending the overall schedule.) | August – September 2009 | TBD + 240 to 286 days (or consider Energy Commission Decision at TBD + 300 to 315 days which would be about 7 months following FSA/DEIS publication) |
| <u>BLM obtains Headquarters approval of Notice of Availability of FEIS (45 – 60 days following substantial completion of FEIS)</u> | | TBD + 255 to 285 days |
| BLM issues NOA of FEIS | October 2, 2009 | TBD + 255 to 285 days |
| <u>Staff and BLM file FEIS and Recommended Changes to the PMPD</u> | October 2, 2009 | TBD + 255 to 285 days |
| Judicial review period for Energy Commission Decision ends (30 days after Commission adoption hearing) | September – October 2009 | TBD + 270 to 316 days |
| FEIS protest period ends (30 days after NOA and FEIS is published) | November 3, 2009 | TBD + 285 to 315 days |
| BLM issues Record of Decision, Right of Way grant and Plan Amendment (assumes no protests to BLM LUP Amendment and Governor completes consistency review) | November 3, 2009 | TBD + 285 to 315 days |
| Governor's consistency review period ends (60 days after FEIS is published - assuming Governor completes his review in 30 days) | December 2, 2009 | TBD + 315 to 345 days |
| BLM's resolution of any protests of its Land Use Plan Amendment proposed Decision(+ 120 days following BLM's FEIS) | | TBD + 375 to 405 days |

cc: Docket (07-AFC-5)
Proof of Service List



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 3/25/09)

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DECLARATION OF SERVICE

I, Hilarie Anderson, declare that on April 15, 2009, I served and filed copies of the attached Status Report #8. 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 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:

 x sent electronically to all email addresses on the Proof of Service list;

 x by personal delivery or by depositing in the United States mail at Sacramento, CA 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:

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

Original Signature in Dockets

Hilarie Anderson