



**California Office**

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[www.defenders.org](http://www.defenders.org)

May 1, 2009

To: California Energy Commission staff  
Commissioner Jeffrey Byron, Presiding Member  
Commissioner James D. Boyd, Associate Member  
Paul Kramer, Hearing Officer

From: Defenders of Wildlife – Joshua Basofin, California Representative  
1303 J Street, Suite 270  
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916-313-5800  
[jbasofin@defenders.org](mailto:jbasofin@defenders.org)

Subject: Request for Distribution of Applicant's Draft Desert Tortoise  
Translocation/Relocation Plan, Opportunity for Comment, and  
Disclosure of Communications

<b>DOCKET</b>	
<b>07-AFC-5</b>	
DATE	May 01 2009
RECD.	May 01 2009

This letter responds to staff's April 28, 2009 memorandum regarding the Applicant's Draft Desert Tortoise Translocation/Relocation Plan ("Draft Plan"). According to the memo, the Applicant submitted the Draft Plan on March 16, 2009. Defenders of Wildlife ("Defenders") was not aware that the Applicant had submitted the Draft Plan. Defenders was not a party to this proceeding on March 16, 2009, and therefore cannot independently determine whether the Applicant distributed the Draft Plan to the service list on that date. However, the Draft Plan has not been posted on the Ivanpah proceeding's dedicated website.

As the parties are undoubtedly aware, the rules provided for by the California Government Code regarding ex parte communications are broad and apply to all adjudicative proceedings conducted by the California Energy Commission ("CEC"). 20 CCR 1216(a). While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. Cal Government Code § 11430.10(a).

Not only is disclosure of the Draft Plan required by law, the document is of material concern to Defenders, whose involvement in this proceeding is predicated on assuring that adequate wildlife protections are considered during the site certification process. Therefore, Defenders requests that staff distribute the Draft Plan to the service list, provide the parties with an opportunity for comment, and disclose any communications related to the Draft Plan, the Applicant's proposal for desert tortoise mitigation, and any other substantive desert tortoise issues.

## **I CEC Regulations Require Disclosure of the Draft Plan**

Parties to a CEC site certification proceeding are required to serve all written material on every other party to the proceeding. 20 CCR 1210(a). As indicated above, Defenders has a particular interest in the Draft Plan. Desert tortoises are fragile and can respond negatively to translocation. Translocation also could potentially result in heightened incidences of disease, predation and genetic dilution among sub-populations. These issues are central to this proceeding. The parties should be given ample opportunity to comment on the Draft Plan as it has implications not only for the CEC proceeding, but for the Applicant's compliance with

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BLM regulations, the federal Endangered Species Act, the California Endangered Species Act and the National Environmental Policy Act.

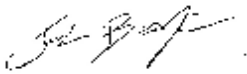
Further, as stated in staff's April 28, 2009 memorandum, the Draft Plan will inform staff's analysis in the Final Staff Assessment/Environmental Impact Report ("FSA/EIS") concerning minimization of desert tortoise impacts. The FSA/EIS is the seminal CEC document in this proceeding and has overriding importance. The parties must have notice of all materials concerning desert tortoise issues in order to comment and be assured that staff possess sufficient scientific information and data.

**II CEC Staff Should Disclose Communications Related to the Draft Plan; Future Communications Concerning the Draft Plan and Desert Tortoise Issues Should Involve All Parties**

As stated above, the California Government Code prohibits direct and indirect communication regarding any issue in the proceeding to the presiding officer without notice and opportunity for all parties to participate in the communication. Cal Government Code § 11430.10(a). This includes communications made to a commissioner's adviser or any other member of a commissioner's staff. 20 CCR 1216 (a) and (b). Defenders is particularly concerned with staff's suggestion in the April 28, 2009 memorandum that the Applicant should contact staff to "discuss [the] review of the draft plan." Such communications should involve all parties to this proceeding. Therefore, Defenders requests that staff disclose any communications related to the Draft Plan, the Applicant's proposal for desert tortoise mitigation, and any other substantive desert tortoise issues.

I trust these omissions were mere oversights and expect that the materials referenced above will be disclosed promptly. Defenders looks forward to working with the Applicant and the CEC to ensure this proceeding continues expeditiously, and in a manner that affords all parties ample opportunity to address their concerns. Thank you for your attention to this matter.

Sincerely,



Joshua Basofin  
California Representative

Cc: Ivanpah SEGS service list  
Loreen McMahon, Associate Public Adviser



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
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APPLICATION FOR CERTIFICATION  
FOR THE *IVANPAH SOLAR ELECTRIC  
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE  
(Revised 4/16/09)

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**DECLARATION OF SERVICE**

I, Joshua Basofin, declare that on May 1, 2009, I served and filed copies of the Attached Request for Distribution of Applicant's Draft Desert Tortoise Translocation/Relocation Plan, Opportunity for Comment, and Disclosure of Communications. 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**

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**

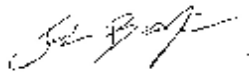
Attn: Docket No. 07-AFC-5

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.



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