



California Office
1303 J Street, Suite 270 | Sacramento, CA 95814 | tel 916.313.5800 | fax 916.313.5812
www.defenders.org

May 21, 2009

Mr. John Kessler
Project Manager
California Energy Commission
1516 9th Street, MS 15
Sacramento, CA 95814-5504

DOCKET

07-AFC-5

DATE MAY 21 2009

RECD. MAY 21 2009

SUBJECT: Comments on the Draft Desert Tortoise Translocation/Relocation Plan for the Ivanpah Solar Electric Generating System (07-AFC-5)

Dear Mr. Kessler:

On behalf of Defenders of Wildlife (“Defenders”) and our more than half a million members and supporters in the U.S., 200,000 of which are in California, we are writing to provide comments on the Draft Desert Tortoise Translocation/Relocation Plan for the proposed Ivanpah Solar Electric Generating System (ISEGS) (07-AFC-7).

Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, Defenders employs science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

Defenders strongly supports the emission reduction goals found in AB 32, including the development of renewable energy in California. However, we urge that in the quest for renewable power that project proponents design their projects in the most sustainable manner possible. This is essential to ensure that project approval moves forward expeditiously and in a manner that does not sacrifice our fragile desert landscape and wildlife in the effort to meet our renewable energy goals.

We reviewed the comment letters from the California Energy Commission (CEC), Department of Fish and Game (CDFG), and U.S. Fish and Wildlife Service (USFWS) on the Draft Desert Tortoise Translocation/Relocation Plan for the proposed ISEGS project. A translocation/relocation plan is required in order for ISEGS to obtain incidental take authorizations for the Desert Tortoise from USFWS under 16 U.S.C. § 1536(b)(4) CDDFG under California Fish and Game Code § 2081. The translocation/relocation plan specifies how ISEGS plans to minimize the take of Desert Tortoises to the lowest possible level while conforming to standard capture, handling, release and monitoring guidelines issued by the regulatory agencies. We are confident that the technical aspects of the relocation plan when finalized and implemented will conform to the requirements and guidelines imposed on the project proponent through oversight and enforcement by the wildlife and regulatory agencies.

Relocation plan goals (Draft Plan, page 2): Goals of the Draft Plan should not simply be to conform to the procedural guidelines of the wildlife and regulatory agencies and minimize impacts to tortoises outside the fenced project areas. We believe the goal of this effort should be to achieve 100 percent success in the translocation/relocation effort and full integration of relocated animals into the host population. Success should entail no mortality due to the relocation project over the three year monitoring period. Naturally, since Desert Tortoise relocation projects continue to be categorized as experimental, we have no way of assuring that the project will be 100 percent successful, but striving to achieve that goal is entirely reasonable in light of the goals and requirements of both the California Endangered Species Act and the (federal) Endangered Species Act. Considering the widespread and severe declines in tortoise populations throughout the various designated critical habitat units in California, maximizing protection of remaining populations and individuals comprising those populations becomes

National Headquarters

1130 17th Street, N.W.

Washington, D.C. 20036-4604

tel 202.682.9400 | fax 202.682.7331

even more important. There is now thought being given to the importance of lower density tortoise populations on the fringes of the species range because the incidence of upper respiratory tract disease is less or even non-existent compared to those in core areas of the major recovery units.

Project clearance surveys (Draft Plan, page 3): We recommend that authorized biologists accompanied by tortoise monitors carefully survey the fenced project areas during and after the vegetation removal and grading phases to detect and document any Desert Tortoises remaining after site clearance surveys. Documentation should also account for any animals that were killed during the vegetation removal and grading. We believe this is important in judging the adequacy of clearance surveys and tortoise removals from the fenced project areas.

Transportation and release (Draft Plan, page 5): The Draft Plan needs to conform to all project guidelines dated 12/12/08 submitted by the USFWS to the project proponent. For example, the Draft Plan does not indicate how captured tortoises would obtain drinking water prior to being released into relocation areas.

Scheduling (Draft Plan, page 5): Defenders recommends that tortoise translocation/relocation be done in the fall season when daily high temperatures are gradually diminishing. In the Mojave Desert region, including the Ivanpah Valley, fall season relocations should generally not be scheduled in August due to the likelihood of high daily temperatures. We believe a relocation window in the fall from early October to early November is reasonable. Spring season relocations should be scheduled no later than the middle of April in order to avoid the possibility of high daily temperatures. We do not support any summer season relocations.

Monitoring and Reporting (Draft Plan, page 6): Monitoring the status of the relocated animals is required to test the validity of translocation/relocation as a means of reducing take to the extent necessary so that it becomes “incidental” to the project. The California Endangered Species Act § 2081(B)(2) requires that the impacts of authorizing incidental take are minimized and fully mitigated. Monitoring will help in determining if those standards are being met and if project goals are being achieved, including preventing mortality attributed to the relocation project. We recommend that any relocated and monitored tortoises be subjected to the absolute minimum amount of human handling or manipulation and that observation of marked animals be done at the farthest possible distance in the shortest period of time needed to obtain essential monitoring information. Defenders is of the opinion that tortoise predators such as Common Ravens and Coyotes may be attracted to areas within their home range frequented by humans, which may result in abnormally high rates of tortoise encounters and predation losses in relocation areas.

Defenders strongly recommends that further investigation into the existing Desert Tortoise population in Ivanpah Valley be performed, combined with a habitat suitability determination that will provide additional insight into the potential for either success or failure of the relocation. The existing golf course in Ivanpah Valley located approximately 1.5 miles to the east of the proposed ISEGS project contains open water ponds, trees and grass that may support unnaturally high numbers of Ravens, Coyotes and Desert Kit Foxes, all predators of the Desert Tortoise. The habitat suitability determination needs to address effects of these predators on the existing tortoise population and potential for abnormally high mortality to both the host and relocated tortoises.

The relocation plan should include a section on alternative courses of action that will be mandatory and take effect immediately if mortality of relocated animals exceeds the 10 percent threshold as per the USFWS relocation guidelines for the project. We believe prior agreement on alternative actions should be part of the plan because reinitiating consultation may be triggered by unforeseen higher rates of mortality.

During a field tour of the proposed ISEGS on May 18th, 2009, representatives from Defenders, BLM, CDFG and the project proponent observed that livestock watering and holding facilities are located within or near the proposed translocation/relocation areas. Livestock operations associated with these facilities may seriously impact the Desert Tortoise translocation/relocation and we strongly recommend that this issue be resolved. Furthermore, it was observed that the watering troughs contained water which potentially attracts and supports predators of the Desert Tortoise as mentioned above.

Defenders requests that the suitability of the proposed translocation areas adjacent to Interstate 15 be given further study. We recognize that the project would include installation of Desert Tortoise barrier fencing along Interstate 15 prior to any necessary animal translocation. However, we are concerned about the condition of the habitat, increased noise and pollutants associated with the heavy traffic using the highway, the possible increased frequency of predators/scavengers attracted by road-killed animals, and the potential for higher than normal predation on Desert Tortoises translocated to these areas.

General concerns about Desert tortoise relocation projects: Although tortoises have been subject to several relocation efforts as a means of minimizing take in portions of its range in California, Nevada, Utah and Arizona, the practice continues to be experimental due to limited data, lack of analyses and uncertainties with regard to the efficacy of relocation, and in some cases significant, unforeseen losses of relocated tortoises even though relocation plans were carefully developed and implemented.

Adverse effects of relocation can include increased mortality due to predation, human interactions such as vehicle kill or collection, and exposure to extreme heat or cold. These mortality-related factors are often directly attributed to the effects of the relocation effort, especially during the first year following relocation.

Relocated animals may attempt to return to their home range, make long-distance movements, experience aggressive interactions with the host tortoise population possibly resulting in displacement of less dominant members of the population, etc. The common factor in the increased mortality appears to be the amount of time spent by individual tortoises above ground in the absence of known sheltering, feeding and resting areas. This increased time above ground exposes individuals to predation, environmental stress, collection, and vehicle kill.

Recent tortoise relocation projects have been associated with significant losses of individuals in both the host and relocated populations due to Coyote predation. The most prominent case is the large relocation effort at the National Training Center at Fort Irwin, which was suspended in October 2008 by the Army due to excessively high tortoise mortality from Coyote predation (Los Angeles Times, October 11, 2008). Although the FWS and others involved in investigating the mortality issue have reported that the relocation project had no relationship to the high mortality, Defenders is skeptical of the veracity of that conclusion, as well as conclusions or statements suggesting that the high mortality was due to drought conditions that had reduced populations of Jackrabbits and other prey species of Coyotes, thereby causing them to seek Desert Tortoises as an alternative prey. Drought is a relative term, and we consider drought to be the norm in the Mojave Desert, with non-drought periods occurring infrequently. Initial assessments by the U.S. Geological Survey, FWS and others indicated significantly higher levels of Coyote predation on tortoises in the study area frequented by the researchers on both the host and relocated animals.

Abnormally high mortality may be the result of several of the effects of relocation causing Desert Tortoises to spend increased time above ground, thereby increasing vulnerability to predators and exposure to intolerably high or low temperature. Defenders is also of the opinion that natural predators of the Desert Tortoise, such as the Coyote, Desert Kit Fox, and Common Raven may be attracted to areas within their home ranges that are frequented by humans, such as during Desert Tortoise relocation efforts.

General conditions and site preparation recommendations for Ivanpah Valley: Defenders believes the habitat conditions in the relocation and surrounding areas must be as conducive to tortoise survival and population viability as possible. If these conditions are not provided, then the goal of the relocation is compromised from the beginning, and questions arise whether or not mortality due to the relocation can be deemed "incidental."

The proposed relocation and translocation zones need to be free of as many human related threats as possible in order to increase the likelihood that the relocation will succeed (i.e., relocated tortoises are integrated into the host population with the mortality rate of the entire population at a normal level). We believe it is essential that off-road vehicle use and livestock grazing in the portion of Ivanpah Valley required to support both host and resident tortoise populations be eliminated. This is an action that would be required by the Bureau of Land Management (BLM) that could be recommended by the CEC and CDFG. The Colosseum dirt road should be closed and not reconstructed through the proposed relocation zone between project units one and two. All other unnamed dirt roads within the proposed relocation and translocation zones should be permanently closed to vehicle use unless

permitted by the BLM for land management or maintenance of utilities. Casual and permitted off-road vehicle use should be prohibited. Livestock grazing in Ivanpah Valley north of Interstate 15 on the Clark Mountain Allotment administered by BLM should be terminated. During the field tour of the proposed project area on May 14 one member of the group observed several free-roaming wild burros in the area. As with livestock, their presence in the translocation/relocation areas could compromise the success of the effort, and Defenders recommends that these animals be captured and removed by BLM.

Defenders recommends that the agencies consider installation of a segment of Desert Tortoise barrier fence in an appropriate location between the proposed SEGS Unit 1 and the golf course or adjacent area as a means of preventing tortoises from moving closer to sources of human encounter and potentially higher predation.

Concern over cumulative impacts: The California Environmental Quality Act (CEQA) requires analysis of a project's cumulative impacts when its incremental effect is cumulatively considerable. Calif. Pub. Res. Code § 15130. Cumulative impacts to the Desert Tortoise population and its habitat in Ivanpah Valley north of Interstate 15 are of concern considering the potential for a large commercial airport on or near Ivanpah Dry Lake, the existing casinos and hotels at Primm and Jean, the nearby golf course, Interstate 15 and electrical transmission lines.

Defenders is aware that another solar energy developer, OptiSolar, has applied to the BLM for a 4160 acre right of way for a 380 MW photovoltaic facility immediately adjacent to the NW facing side of the ISEGS. If a second facility were to be permitted and constructed, additional tortoise relocations may become necessary. This possibility raises questions about the ability of the tortoise population to remain viable, including its ability to tolerate additional effects of a potential second relocation. Based on the need to consider translocation/relocation of an estimated 25 Desert Tortoises from the proposed ISEGS site alone, the additional existing and future projects referenced above will likely result in the need to consider additional translocations/relocations. As mandated by CEQA, a complete analysis of cumulative impacts must be conducted to determine and disclose the impacts to the Desert Tortoise in the affected area from past, present and reasonably foreseeable projects or human activities.

Defenders appreciates the opportunity to provide comments on the draft relocation plan and we hope they are useful to the CEC and CDFG finalizing the plan.

Sincerely,

Jeff Aardahl
California Representative

Cc: Ray Bransfield, FWS, Ventura
Scott Flint, CDFG, Sacramento
Bruce Kinney, CDFG, Bishop
Greg Miller, BLM, Moreno Valley



**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**

APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 4/16/09)

APPLICANT

Solar Partners, LLC
John Woolard,
Chief Executive Officer
1999 Harrison Street, Suite #500
Oakland, CA 94612

Steve De Young, Director
Project Manager
Ivanpah SEGS
Environmental, Safety
and Health
1999 Harrison Street, Ste. 2150
Oakland, CA 94612
sdeyoung@brightsourceenergy.com

APPLICANT'S CONSULTANTS

John L. Carrier, J. D.
2485 Natomas Park Dr. #600
Sacramento, CA 95833-2937
jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Jeffery D. Harris
Ellison, Schneider
& Harris L.L.P.
2600 Capitol Avenue, Ste. 400
Sacramento, CA 95816-5905
jdh@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com
Tom Hurshman,
Project Manager
Bureau of Land Management
2465 South Townsend Ave.
Montrose, CO 81401
tom_hurshman@blm.gov

Sterling White, Field Manager
Bureau of Land Management
1303 South Highway 95
Needles, CA 92363
sterling_white@blm.gov

Becky Jones
California Department of
Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfqpalm@adelphia.net

INTERVENORS

California Unions for Reliable
Energy ("CURE")
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph &
Cardozo
601 Gateway Boulevard, Ste 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

*Gloria Smith, Joanne Spalding
Sidney Silliman, Sierra Club
85 Second Street, 2nd Fl.
San Francisco, CA 94105
gloria.smith@sierraclub.org
joanne.spalding@sierraclub.org
gssilliman@csupomona.edu
E-mail Preferred

Joshua Basofin, CA Rep.
Defenders of Wildlife
1303 J Street, Ste. 270
Sacramento, CA 95814
jbasofin@defenders.org

ENERGY COMMISSION

JEFFREY D. BYRON
Commissioner and Presiding
Member
jbyron@energy.state.ca.us

JAMES D. BOYD
Vice Chairman and
Associate Member
jboyd@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

John Kessler
Project Manager
jkessler@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Elena Miller
Public Adviser
publicadviser@energy.state.ca.us

!

DECLARATION OF SERVICE

I, Joshua Basofin, declare that on May 21, 2009, I served and filed copies of the Attached Comments on the Draft Desert Tortoise Translocation/Relocation Plan for the Ivanpah Solar Electric Generating System (07-AFC-5). 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

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


