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July 29, 2009

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

From: Defenders of Wildlife – Joshua Basofin, California Representative
1303 J Street, Suite 270
Sacramento, CA 95814

DOCKET

07-AFC-5

DATE Jul 29 2009

RECD. Jul 30 2009

Subject: Defenders of Wildlife's Comments on the July 15, 2009 Revised Committee Scheduling Order

Dear Mr. Byron and Mr. Boyd:

This letter responds to the Scheduling Order dated July 15, 2009. Defenders of Wildlife ("Defenders") is very concerned that the Committee has begun the 45-day FSA administrative draft period notwithstanding the absence of crucial documentation related to desert tortoise translocation and mitigation. The Applicant should provide this information before CEC staff begin drafting the FSA. To do otherwise would compromise the integrity of the FSA and the CEC's underlying mission to prevent environmental degradation in the siting process.

The July 15 Scheduling Order failed to recognize that the Applicant has not submitted any information whatsoever to date regarding the prospective location of compensatory mitigation areas for desert tortoise. CEC staff repeatedly requested this information at the beginning of this proceeding. In its Preliminary Staff Assessment, CEC staff stated:

The applicant has not yet provided specific information on how to compensate for loss of habitat for desert tortoise, for loss of rare plants and other sensitive species, or for impacts to state waters. Staff has concluded that applicant's proposed mitigation, acquisition, and enhancement of approximately 4,065 acres would be insufficient to avoid significant direct, indirect, and cumulative impacts to biological resources of the Ivanpah Valley, and fails to meet the California Department of Fish and Game's full mitigation standard for desert tortoise. Staff also believes this proposed mitigation will be inadequate to compensate for cumulatively significant impacts to other special-status plant and animals inhabiting the project site and to offset permanent loss of waters of the state.

The lack of a compensatory mitigation plan threatens to derail this project. A robust plan, including full mitigation as required by Cal. Pub. Res. Code section 2081, is essential to ensure compliance with CEQA, NEPA, CESA and the federal ESA.

Although the CEC's site certification process has been certified as a CEQA functional equivalent by the California Natural Resources Agency, CEC staff must nonetheless comply with the substantive provisions of CEQA. Mitigation measures must be included in any draft Environmental Impact Report ("dEIR"). Cal. Pub. Res. Code § 21100(b)(3). CEQA Guidelines section 15126.4 states in relevant part:

An EIR shall describe feasible measures which could minimize significant adverse impacts... The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included

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but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

The ISEGS would significantly impact the quality of habitat for desert tortoises in the Ivanpah Valley, potentially jeopardizing the tortoise's ability to forage, breed, burrow and migrate. The absence of a final translocation/relocation plan and compensatory mitigation plan in the Final Staff Assessment compromises the entire CEQA process and is non-compliant with section 2080 of the California Endangered Species Act.

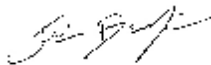
According to the Department of Fish and Game's ("DFG") July 8th comments on the second Draft Desert Tortoise Translocation/Relocation Plan:

Fundamentally, the project site is good quality desert tortoise habitat that has sustained desert tortoise population for many decades. It would be inappropriate to move tortoises into low quality habitat which has not been shown to sustain desert tortoise. It would be more appropriate to locate energy facilities in low quality desert tortoise habitat, avoiding the better habitat with a larger sustaining species population.

The translocation receiving site identified in the Applicant's current translocation/relocation plan is inadequate. Identifying a new receiving site may entail a reconfiguration of the project. As such, it is crucial that the Applicant submit additional information as soon as possible. In its July 8th comments, DFG also requested additional surveys and habitat assessments, which have not been forthcoming.

Finally, DFG has traditionally maintained its authority to process 2081 permits during the CEC's site certification process. Defenders can ascertain no reason to alter this process. DFG's expertise is particularly useful during the instant proceeding, which is the first to certify a utility-scale solar thermal plant. Sound public policy dictates that DFG should process the 2081 permit for the ISEGS.

Sincerely,



Joshua Basofin
California Representative

Cc: Paul Kramer, hearing officer

John Kessler, project manager

DECLARATION OF SERVICE

I, Joshua Basofin, declare that on July 29, 2009, I served and filed copies of the Attached Cumulative Impacts Analysis letter and Comments on the July 15, 2009 Revised Committee Scheduling Order. The original documents, filed with the Docket Unit, are 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 and 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

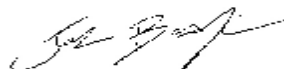
Attn: Docket No. 07-AFC-5

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





**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 7/20/09)

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