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August 7, 2009

John Kessler, Project Manager  
Ivanpah Solar Project (07-AFC-5)  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Dear Mr. Kessler:

Thank you for your leadership at the recent Issue Resolution Workshop. The forum was both enlightening and productive. Per the discussion at the workshop, the purpose of this letter is to memorialize the Applicant's position on biological resources mitigation.

As stated during the workshop, regarding Ivanpah Solar Project's overall Biological Resources plan, it is important to distinguish between: (1) what the law requires, and (2) what additional measures the Applicant may be willing to agree to contribute towards California's environmental interests and in order to resolve the issues related to biological mitigation. The following discussion reflects the settlement framework we first presented to CDFG and the Resources Agency in December of 2008.

On federal Endangered Species Act ("ESA") issues, the law is clear. The project has certain mitigation obligations under the federal ESA. Those mitigation obligations are implemented by the BLM through its fee programs and the inclusion of certain project-specific mitigation measures, such as desert tortoise fencing, relocation and translocation protocols and alike.

On California ESA ("CESA") issues, the law is also clear. Significantly, there are no substantive differences between ESA mitigation and CESA "full mitigation." California case law supports this conclusion.

On all non-CESA state law issues, commonly referred to as California Environmental Quality Act ("CEQA") issues, we will of course do what the law requires. This will include compliance with applicable provisions related to streambed crossing and rare plants. But again, what is legally required on these non-CESA issues is much less than what some have suggested. The Applicant is willing to contribute more than is legally required, but the Commission and all concerned must recognize that putting too much economic burden on renewable energy projects will cause them—and both the California RPS program and its ambitious climate objectives – to

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fail. Current discussions on adopting a 33% RPS program have focused sharply on costs, including the 33% RPS analysis performed by the Public Utilities Commission, to which the Energy Commission contributed. It is not in any of the State's environmental interests, including desert ecosystem concerns, to slow or stop the displacement of conventional energy with renewable resources.

The attached Table 1, entitled "Legal Requirements," is a summary of the Applicant's mitigation obligations under California and federal law.

While what the law requires is clear, the Applicant has also prepared a proposal aimed at contributing more than what is legally required to contribute towards California's environment and to resolve these issues. The Applicant has made clear; it is the Applicant and its parent company's policies to go beyond the minimum that the law requires. In accordance with this direction, we have prepared the attached Table 2, entitled "Applicant's Comprehensive Settlement Proposal."

The Applicant's Comprehensive Settlement Proposal greatly exceeds the mitigation required by the BLM, which is the only mitigation required in other neighboring Western States and, in combination with the funds to be provided to CDFG and for tortoise education, compensates at a ratio greater than 3:1 at the BLM in-lieu fee rates.

The BLM's 1:1 mitigation is consistent with the recommendations in the Final EIS for the Northern and Eastern Mojave Desert Management Plan (the "NEMO"). The additional 2:1 mitigation funds could be given to CDFG to be used for any additional mitigation CDFG seeks on CESA and non-CESA issues. Any remaining monies could serve as seed money for the Desert Renewable Energy Conservation Plan ("DRECP"), which is in development.

The Applicant's Comprehensive Settlement Proposal is intended to allow the parties to "agree to disagree" while still reaching a successful outcome in this permitting proceeding. The Applicant believes the its proposed mitigation package goes well beyond satisfying all applicable legal requirements, and it establishes sound precedent for future projects.

Again, thank you for your help in bringing the parties together to discuss these important issues.

Sincerely,



Ellison, Schneider & Harris L.L.P.  
Jeffery D. Harris  
Attorneys for the Applicant

**IVANPAH SOLAR PROJECT MITIGATION PACKAGE  
WHAT THE LAW REQUIRES**

**TABLE 1**

<b>FEDERAL MITIGATION</b>		
<b>Desert Tortoise</b>	<b>Mitigation Fees</b>	<b>ENFORCEMENT VEHICLE</b>
BLM mitigation fees: 4,060 acre project site		
BLM Mitigation Fees: (1) BLM Management Fee plus (2) Land Acquisition Fee <sup>1</sup> Ratio: One-to-one	(BLM Mitigation Fees) X (4,060 acres) X (1:1 ratio)	Right-of-way grant condition Monies to be used by BLM for project mitigation.
<b>CALIFORNIA MITIGATION</b>		
CESA “full mitigation” and non-CESA mitigation <sup>1</sup>	Satisfied by the federal mitigation	Satisfied by the federal mitigation

1: In addition to the land mitigation fees, additional administration fees may be required per BLM regulations.

**IVANPAH SOLAR PROJECT  
 APPLICANT’S COMPREHENSIVE SETTLEMENT PROPOSAL**

**TABLE 2**

<b>FEDERAL MITIGATION</b>		
<b>Desert Tortoise</b>	<b>Mitigation Fees</b>	<b>ENFORCEMENT VEHICLE</b>
BLM Mitigation Fees: 4,060 acre project site		
BLM mitigation fees: (1) BLM management fee plus (2) land acquisition fee <sup>1</sup> Ratio: One-to-one	(BLM mitigation fees) X (4,060 acres) X (1:1 ratio)	Right-of-way grant condition Monies to be used by BLM for project mitigation.
<b>CALIFORNIA MITIGATION</b>		
CESA “full mitigation” and non-CESA mitigation <sup>1</sup>  Ratio: Two-to-one	(BLM mitigation fees) X (4,060 acres) X (2:1 ratio)	Surety bond agreement (due upon commencement of construction)  Monies to be used by CDFG for activities deemed necessary by CDFG: (1) for CESA, and (2) for non-CESA biological resources [rare plants, streambeds, etc.]. Any remaining funds to be used as “seed money” for DRECP programs.
Restoration Contingency Funding (Endowment)  Under existing law, the Ivanpah Solar Project has an obligation to restore the site and revegetate at the end of the BLM right-of-way grant. If at a later date via Act of Congress the project’s restoration obligations are removed, then the land will be permanently removed as potential habitat. Under an agreed to CEC Condition of Certification, if the Ivanpah Solar Project is relieved of its land restoration obligations, then and only then, the Restoration Contingency Fund will be due and owing.	An amount equal to the BLM Site Restoration bonding requirements, per BLM’s Right of Way Regulations, as determined by BLM upon issuance of the Right of Way grant	CEC Condition of Certification
Desert Tortoise Education Activities	\$250,000	Agreement between Ivanpah Solar Project and an appropriate non-governmental organization (NGO)
<b><i>Notes: Federal and California Mitigation equals a 3:1 ratio. The Desert Tortoise Education Activities funding represents the Ivanpah Solar Project’s commitment to fund these activities, and was not requested by CDFG or BLM.</i></b>		

1: In addition to the land mitigation fees, additional administration fees may be required per BLM regulations and the CDFG’s surety bond provisions.

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the IVANPAH )  
SOLAR ELECTRIC GENERATING SYSTEM ) Docket No. 07-AFC-5  
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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on August 7, 2009, I served the attached *Letter dated August 7, 2009 to John Kessler regarding Biological Resources Mitigation* via electronic mail and United States Mail to all parties on the attached service list.

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



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Karen A. Mitchell



**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 7/2/09)

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