

DOCKET

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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE IVANPAH SOLAR
ELECTRIC
GENERATING SYSTEM

DOCKET NO. 07-AFC-5

***PRELIMINARY PREHEARING CONFERENCE STATEMENT OF
INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY***

November 16, 2009

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Pursuant to the Notice of Prehearing Conferences and Evidentiary Hearing, Intervenor Center for Biological Diversity (the “Center”) provides this Preliminary Prehearing Conference Statement. The Center will be represented by Ileene Anderson at the Initial Prehearing Conference on November 18, 2009, using the teleconference option.

1. The topic areas that are complete and ready to proceed to evidentiary hearing:

The Center has not yet had sufficient time to complete review of all of the topic areas that we wish to pursue at the evidentiary hearing. At this time the Center cannot agree that any topic areas are complete and ready to proceed to evidentiary hearing.

2. The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore:

The topic areas that the Center intends to pursue at the evidentiary hearing but that are not complete at this time include all of the topic areas listed below in Section 3 as disputed issues. As of the date of this submission the over 1,200 page FSA/DEIS has only been available for 12 days and only in electronic form and a printed copy has not yet been received in our San Francisco office to date. Lack of time to fully review the document is the primary reason that the Center has not yet completed preparation of topics for the evidentiary hearings.

In addition to the lack of time, several structural issues have made review of the FSA/DEIS more time consuming and inhibit the Center's ability to prepare for the evidentiary hearing. For example, many of the references in the FSA/DEIS must be collected from the CEC website and other sources elsewhere and some of the referenced documents were not made available to the public by the Energy Commission or BLM. In addition, in several instances the FSA/DEIS relies on personal communications without any documentation for critical assumptions such as the success of desert tortoise translocation, ignoring other data and scientific evidence. For example, the FSA states "Mortality for translocated desert tortoise has been estimated at approximately 15 percent (Sullivan 2008)." FSA/DEIS 6.2-49. The reference given is "Sullivan, C. 2008. Personal communication between Susan Sanders and Charles Sullivan, Bureau of Land Management. Wildlife Biologist, Needles Office. Meeting on November 5, 2008." No other references are discussed or provided for this critical issue. In contrast, as the Center pointed out to the Staff in our comments dated July 8, 2009, the actual mortality data from the recent translocations at Fort Irwin was over 22% in just the first year. It does not appear that Staff has had sufficient time or made sufficient effort to obtain current information or to accurately address the issue of mortality to the desert tortoise from translocation as well as many other issues. Similarly, the FSA/DEIS cites "Jaeger 2009" for several key conclusions regarding impacts to bighorn sheep (FSA/DEIS at 6.2-46, 6.2-89), however there is no listing in the references for this citation nor is there any other information provided as to the basis of these conclusions which are stated generally to be based on "a review of the literature." The FSA/DEIS does not describe whether any surveys were conducted for bighorn or sign, the methodology and results of such surveys if any, and if no surveys were conducted the reason for that omission.

Moreover, for other statements and conclusions in the FSA/DEIS no references or source material is provided at all. *See, e.g.*, FSA/DEIS at 6.9-36 (conclusions with no

references or analysis regarding impacts on seeps and springs in Clark Mountains), 6.9-45 (same).¹

The Center believes that the failure to adequately identify impacts, analyze those impacts and provide documentary evidence or any other adequate basis for the staff's conclusions undermines public participation in this process is a violation of both CEQA and NEPA. Where relevant information is incomplete or inadequate the agency must explain that circumstance and why the agency could not obtain the needed information. Although the Commission proceeds under a certified regulatory program that is intended to be the CEQA equivalent and provides some flexibility to the Commission (*see* § 21080.5; CEQA Guidelines § 15251(j).), that program does not allow the Commission to shift the Commission's duty to provide for adequate CEQA review, including identification and analysis of environmental impacts, onto other parties or members of the public. It is the Commission's duty to comply with CEQA's substantive and procedural mandates. Cal. Pub. Res. Code §§ 21000, 21002; *Sierra Club v. Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Association v. Cal. Dept. of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 667-68.

3. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic:

¹ From our investigation of this question, the Center understands that this area may be connected to the Death Valley aquifer and others in Nevada which function in unique ways such that pumping down gradient can often cause impacts to springs and seeps in mountain areas far up stream, contrary to the conclusory statements in the FSA/DEIS. *See* Deacon, James E., Williams, A.E., Williams, C.D., and Williams, J.E.; September 2007, Fueling Population Growth in Las Vegas: How Large-scale Groundwater Withdrawal Could Burn Regional Biodiversity, *BioScience* Vol. 57 No. 8 688-698 (map at 690 showing this area as part of the larger interconnected basins). Because staff provides no basis for its statements and conclusions, it is impossible to discern whether staff has specific evidence regarding this aquifer and the connections between the area where the proposed ground water pumping would occur and the mountain springs were actually considered or whether staff is simply making assumptions about the functioning of the aquifer in this area.

This is only a partial list of issues provided for this *Preliminary Prehearing Conference Statement*, the Center respectfully reserves the right to identify other issues as review of the FSA/DEIS proceeds during this pre-hearing period. Overall, the Center stresses that the FSA/DEIS is incomplete and appears to have been prepared in a rush rather than to be the result of adequate analysis and research regarding impacts to the environment. As just one example, the citation to “San Bernardino County 2007” at 4.12-72 regarding identification of archeological sites is a reference to the following “San Bernardino County, 2007 [Citation from Aspen’s canned cumulative analysis]” FSA/DEIS at 4.12-94 (highlighting in original). Indeed, the FSA/DEIS appears to rely heavily on “canned” analysis and conclusory statements. Moreover, many critical issues have not been fully identified and analyzed in the FSA/DEIS, including the impacts and efficacy of many of the mitigation requirements which have been unlawfully deferred for later development without sufficient, specific, and enforceable performance standards. *See Gray v. County of Madera*, (2008) 167 Cal. App.4th 1099, 1119-20.

Many of the disputed issues identified below involve both legal and factual disputes while others are predominantly legal issues. The Center therefore respectfully reserves the right to address each disputed issue, and any other disputed issues identified at the preliminary prehearing conference at later stages of this process including in briefing following the evidentiary hearing.

Project Description: The project description is too narrow and segments environmental review of this project from other connected projects that are necessary for the project to proceed including the substation and transmission line projects which should have been included in project description and for which coordinated environmental review should have been provided.

Purpose and Need: The purpose and need statements in the FSA/DEIS fail to address the true nature of the project relying heavily on the *applicant’s* purpose without considering the need to protect public land resources including increasingly scarce intact habitat and at-risk species.

Moreover, in its discussion of the need for renewable energy production the FSA/DEIS fails to address risks associated with global climate change in context including both the need for climate change mitigation strategies (e.g., reducing greenhouse gas emissions) and the need for climate change adaptation strategies (e.g., conserving intact wild lands and the corridors that connect them). Renewable energy projects, including the proposed ISEGS project, are elements of a national climate change mitigation strategy to reduce greenhouse gas emissions. Several California state, national, and international climate change reports describing climate change adaptation strategies underline the importance of protecting intact wild lands and associated wildlife corridors as a priority adaptation strategy measure.

As the FSA/DEIS admits building the proposed ISEGS project at the proposed location “would have major impacts to the biological resources of the Ivanpah Valley, substantially affecting many sensitive plant and wildlife species and eliminating a broad expanse of relatively undisturbed Mojave Desert habitat.” (FSA/DEIS p. 1-17), including, “Permanent loss of 4,073+ acres of Mojave creosote scrub and other native plant communities, including approximately 6,400 barrel cacti; permanent loss of cover, foraging, breeding habitat for wildlife; habitat fragmentation and loss of connectivity for terrestrial wildlife; disturbance/dust to nearby vegetation and wildlife; increased predation due to increased raven/predator presence; spread of non-native invasive weeds; and direct, indirect, cumulative impacts to special status plant species.” (FSA/DEIS p. 6.2-72)

The habitat fragmentation, loss of connectivity for terrestrial wildlife, and introduction of predator and invasive weed species associated with the proposed ISEGS project in the proposed location are contrary to an effective climate change adaptation strategy. Siting the proposed ISEGS project in the proposed location in Ivanpah Valley confounds our climate change adaptation strategy with a poorly executed climate change mitigation strategy. The Center believes that the solution to this problem is to build and operate the proposed ISEGS project (to implement the mitigation strategy) in an alternative site away from intact wild lands (to implement the climate change adaptation strategy). The way to maintain healthy, vibrant ecosystems is not to fragment them and reduce their biodiversity. The FSA/DEIS improperly assumes, to the contrary, that the proposed ISEGS plant must be built at this location and as a result the limited purpose and need statement undermines a fair and full review of alternatives that would avoid significant impacts of the proposed project.

Air Quality 6.1: The FSA/DEIS fails to adequately address several air quality issues including but not limited to PM 10. Of particular concern is that plans to minimize air quality impacts from construction, operations, and decommissioning are all deferred to later development with no clear standards.

Biological Resources 6.2: The identification and analysis of impacts to all biological resources is inadequate and little to no attempt is made to avoid impacts to these resources or minimize the impacts as required under CEQA (as well as NEPA). Moreover, there is insufficient identification and analysis of impacts to show that the

proffered mitigation measures will provide adequate mitigation. Overall, the mitigation measures that are discussed are far too vague and uncertain (unlawfully) leaving development of critical mitigation plans to a later time.

a. Bighorn: The FSA/DEIS fails to fully identify and analyze likely impacts to bighorn, provide alternatives to avoid impacts, or provide measures to minimize impacts. For example, the suggested mitigation measure of adding an artificial water source in the Clark Mountain or Stateline area will not mitigate for the loss of alluvial fan/bajada foraging habitat. The FSA/DEIS also fails to identify and analyze the impacts associated with construction and maintenance of the artificial water source suggested as a mitigation measure.

b. Desert tortoise: The FSA/DEIS discussion of desert tortoise impacts and the proposed mitigation is wholly inadequate. The Center intends to provide detailed information on the disputed factual issues regarding impacts to the desert tortoise and its habitat going forward. As an initial matter, the FSA/DEIS fails to adequately address the following issues and the proposed mitigation is inadequate in the following ways:

- The tortoises present in the North Ivanpah Valley are part of the Northeastern Mojave desert tortoise population which are an Evolutionary Significant Unit and a distinct population segment of the species.
- Northeastern Mojave desert tortoises are the most genetically distinct population of California's desert tortoises.
- Northeastern Mojave desert tortoises have a limited range in California. The North Ivanpah Valley contains a significant portion of this range in California.
- The proposed project will directly, indirectly and cumulatively impact the Northeastern Mojave population. The impacts include destruction and loss of habitat, take of Northeastern desert tortoises, population fragmentation, and compromised viability.
- The Northeastern Mojave tortoise population is declining, and recent studies show that decline in the Northeastern Mojave area including the Ivanpah Valley is lower than other areas including the Eastern Mojave. *See* 2007 Rangewide Monitoring Report at 39 (decline of 9% from 2005). Tortoise densities within the Northeastern Mojave Recovery Unit are the lowest of the six Recovery Units recognized in the Recovery Plan however the survivorship is better. Therefore the loss of the desert tortoise population in the part of the Ivanpah Valley where the project is proposed will likely deal a heavy blow to the desert tortoise Recovery Unit that is historically low, but has relatively good survivorship compared to other Recovery Units. The FSA/DEIS fails to adequately consider the importance of maintenance of this distinct population segment of tortoises to the species as a whole.

- The FSA/DEIS proposes mitigating impacts by acquiring habitat and implementing recovery actions in the Eastern Mojave Desert Tortoise Recovery Unit, an area occupied by a different Evolutionary Significant Unit of desert tortoise.
- The mitigations proposed for the project do not meet CESA's fully mitigated standard.
- The mitigations are not adequate to protect any translocated tortoises. For example, the FSA notes that FWS stated that fencing along I-15 is critical before any tortoise translocations are under taken (FSA/DEIS at 6.2-50) however Bio-9 for tortoise does not require that the fencing be in place.

c. Other Wildlife: The FSA/DEIS fails to fully analyze impacts to gila monsters, burrowing owl, other bird species, bats, and other wildlife or to provide alternatives to avoid impacts, or provide measures to minimize impacts. For example, the FSA/DEIS provides little information or analysis of impacts to birds from solar facilities although at least one study found that birds have been killed and maimed both from collisions and burning associated with similar solar power plants.² The FSA/DEIS mentions this study (FSA/DEIS at 6.2-65) but appears to misinterpret its results which include that “[f]rom the location of birds in relation to structures, most (>75%) died from colliding with the mirrored heliostats” and that 13 birds from 7 species had “the heavily singed flight and contour feathers indicated that the birds burned to death.” McCrary (1986).

d. Habitat Loss and Compensatory Mitigation: The compensatory mitigation plan relies on so-called “nesting” to provide compensatory mitigation for loss of habitat and individuals for multiple several plants and animal species. Because the plan described in the FSA/DEIS only addresses desert tortoise habitat, it may in fact be inadequate to provide for the mitigation needs of the many other species that will be impacted by the project. For example, the FSA/DEIS fails to identify or analyze the importance of alluvial fan habitat to multiple species and the effect of the structural loss

² McCrary et al., Avian Mortality at a Solar Energy Power Plant, *J. Field Ornithol.*, 57(2): 135-141. 1986. Solar One 4 km east of Daggett, San Bernardino County, California. During approximately 40 wks of study, the study documented 70 bird fatalities involving 26 species, most from collisions with both heliostats and tower, but thirteen (19%) birds (7 species) died from burning in the standby point. Heavily singed flight and contour feathers indicated that the birds burned to death. Six (46%) of these fatalities involved aerial foragers (swifts and swallows) which are apparently more susceptible to this form of mortality because of their feeding behavior.

Available at

http://cochise.az.gov/uploadedFiles/Planning_and_Zoning/Agendas_and_Meeting_Minutes/Solar%20One%20Avian%20Mortality%20Study.pdf

of habitat on this alluvial fan/bajada on the remaining habitat in the area.³ The Center believes that the staff has failed to adequately explain how the so-called “nesting” of mitigation actually provides for compensatory mitigation for each species of rare or sensitive plant and animal, including listed species as well as Gila monster, burrowing owl, nesting bird species, badger, and Nelson bighorn sheep.

e. Rare Plants and Special Status Plant Communities: For rare plants and special status plant communities the FSA/DEIS provides too little analysis of impacts, inadequate discussion of alternatives that could avoid impacts, and inadequate information about the proposed mitigation strategy. The FSA/DEIS concludes that the proposed ISEGS project will result in “impacts to Mojave milkweed and Rusby’s desert-mallow” that “would remain significant in a CEQA context even after implementation of the special-status plant impact avoidance and minimization measures described in Energy Commission staff’s proposed conditions of certification.” (FSA/DEIS at 1-18) The CEC staff was unable to identify private lands with existing occurrences of impacted rare plants that would serve as suitable rare plant mitigation lands. Furthermore, for implementing of many of the suggested protection measures on public lands there would need to be additional NEPA analysis, which is deemed too lengthy a process to perform for this project. The best way to avoid CEQA-significant impacts to rare plants occurring at this site is to relocate the project to another, lower resource value site which was not adequately considered in the FSA/DEIS.

From an initial review it also appears that the FSA/DEIS fails to adequately consider CNPS List 2 plants (rare in California but more common elsewhere) meet the definition of “rare” under CEQA (CEQA Guidelines Section 15380). CNPS List 2 plants represent important peripheral populations of rare plant taxa (Leppig and White, 2006) restricted to narrow growth conditions.

In addition, the FSA/DEIS fails to identify and analyze the loss of carbon sequestration that will occur under the proposed project. Desert vegetation types are able to sequester atmospheric carbon dioxide (greenhouse gas) 24 hours/day, unlike other vegetation communities which are able to sequester CO₂ only during daylight hours. ISEGS and all desert utility-scale projects to follow will decrease the carbon sequestration benefits from desert vegetation. (Wohlfahrt et al. 2008) This impact should have been identified and analyzed in the FSA/DEIS.

Special-Status Plants Impact Avoidance and Minimization. The measures provided in the FSA/DEIS are also inadequate for the following reasons

³ The importance of alluvial fan habitat has been long recognized by the State of California. The Department of Water Resources in conjunction with the Water Resources Institute convened a task force to expressly examine the issues associated with development of alluvial fans and preservation of these important habitats and landscape features. See <http://aftf.csusb.edu/>

- the mitigation requirements to address rare plant impacts do not represent mitigation when full implementation of all measures still result in significant impacts under CEQA.
- Transplantation is not a successful mitigation practice for rare plants since current knowledge of conditions favorable to plant survival are incomplete.
- The lack of fall surveys under-represents the full suite of rare plant taxa occurring on site - these need to be done on this site and all desert project sites.
- No detail is provided on how the applicant will reconfigure the project features within the northern portions of the proposed ISEGS project site to avoid areas that support the highest density and diversity of rare plant species.
- The FSA/DEIS fails to explain how the acquisition of lands for desert tortoise habitat represent appropriate lands for desert rare plants. As presented in the FSA/DEIS, the proposed 3:1 "nesting" approach to mitigation land acquisition could completely fail to provide any actual mitigation for the rare plants affected by the proposed project.
- No mitigation measures are provided for the loss of carbon sequestration from desert vegetation types which are able to sequester atmospheric carbon dioxide (greenhouse gas) 24 hours/day, unlike other vegetation communities which are able to sequester CO₂ only during daylight hours.

f. Limiting the Spread of Invasive Non-Native Plants/Weeds: While the FSA/DEIS notes that the project will increase the ability of invasive non-native plants/weeds to proliferate both on and off site as part of the proposed action, it fails to provide a final weed management plan for these impacts—again deferring the final plan to a later date. The draft weed management plan is not included as part of the FSA/DEIS, but relegated to an Appendix that is not publicly available.

g. Impacts to National Park Service Lands and Resources: The FSA/DEIS fails to adequately address the impacts to National Park Service Lands and resources including potential impacts to water resources (springs and seeps); impacts to dark night skies due to night lighting at the project site; impacts to bighorn that live in the Clark Mountains area; and others. *See* below re cumulative impacts as well. No measures are provided to avoid or minimize and mitigate these impacts.

Cultural Resources and Native American Values 6.3: The Center is informed and believes and based thereon alleges that several Native American tribes with interests in this area have not been properly notified of the proposed project concerning the impacts to cultural resources and Native American values.

Land Use 6.5: Under both local and federal plans this area is inappropriate for the proposed exclusive industrial use of public lands to the exclusion of all other uses. The

FSA/DEIS fails to adequately address this question from either a factual or legal perspective. In addition, the proposed project when seen in the context of other connected projects (including multiple solar projects, two substations and additional transmission lines) will create a *de facto* “solar zone” in this area undermining the PEIS planning process undertaken by the BLM. This critical issue regarding planning on public lands is not adequately addressed in the FSA/DEIS.

Soil and Water Resources 6.9:

Water Resources: The FSA/DEIS fails to adequately address the hydrology of the groundwater basins that are proposed to be pumped by the applicant and the likely impacts to other area waters including surface waters. As noted above, the FSA/DEIS simply assumes there will be no impacts to springs utilized by wildlife in the surrounding mountains and wilderness areas, no information regarding the basis of this conclusion is provided. The FSA/DEIS identifies impacts to surface drainages on the bajada/alluvial fan that would be destroyed by the project but fails to adequately address avoidance and minimization of these impacts. The FSA/DEIS also fails to provide any specific discussion of mitigation for these impacts—again deferring the plan to a later date.

Soils: Damage to intact desert soils and the resulting increased siltation during flooding and dust are not adequately analyzed in the FSA/DEIS. For example, off-site impacts from silt washed down through the site during flood events and the impacts of those events on habitat for desert tortoise and rare plants are not fully examined, avoided, minimized, and mitigated.

Cumulative Impacts and Growth Inducing Impacts: The Cumulative Scenario omits several key projects and fails to adequately analyze the scope of the cumulative impacts in this area. The FSA/DEIS fails to adequately consider that the California population of the Northeastern Mojave Desert Tortoise Recovery Unit in the northern Ivanpah Valley is unique in California and is at risk from the cumulative effects of this project, the Optisolar (now First Solar) power project adjacent to ISEGS, the proposed DesertXpress High Speed Passenger Train, and the upgrade of the Eldorado-Ivanpah transmission line in California alone.

The FSA/DEIS fails to adequately identify and analyze both the cumulative impacts and the growth inducing impacts which in this instance are closely tied together. While review of the Optisolar application has yet to begin, the high cost of the Eldorado-Ivanpah transmission upgrade provides a compelling economic incentive for approval of the Optisolar project, virtually ensuring yet another solar power project on prime desert tortoise habitat in the northern Ivanpah Valley. Arguably, neither project alone could amortize the cost of the proposed Eldorado-Ivanpah upgrade, which involves the construction of 35 miles of high voltage lines from California into Nevada and separate telecommunications pathways. The cumulative impacts from these two projects on the northern Ivanpah Valley are not adequately assessed and the growth inducing impacts from the approval of one project on the entire area is not adequately assessed or analyzed.

Moreover, in addition to proposed ISEGS project and the proposed Optisolar (First Solar) project on the northeastern slopes of the Clark Mountains, two solar energy generation facilities are proposed by NextLight Renewable Power on 7,840 acres of public lands on the eastern side of the Ivanpah Valley. These lands are also high quality desert tortoise habitat with intact and robust populations of desert tortoise. The FSA/DEIS fails to adequately assess the cumulative impacts to tortoise in this Recovery Unit from these projects and several other solar projects on the Nevada side of the border. In combination, the cumulative impacts of these developments severely threaten the Northeastern Desert Tortoise Recovery Unit in the entire Ivanpah basin.

Cumulative impacts to special status plants are recognized (Executive Summary, FSA/DEIS, p. 1-15) but the FSA/DEIS has failed to adequately analyze these cumulative impacts across the range of these species and ways to avoid and minimize these impacts. In addition, as noted above, the provisions for “nesting” mitigation do not ensure that the loss of the individual plants and the cumulative impacts from those losses will in fact be adequately compensated.

Cumulative impacts will convert the Northern Ivanpah Valley into a *de facto* solar zone and industrial zone. The cumulative impacts to species across the zone and across the state line into the eastern Ivanpah Valley are not adequately addressed as well as the conversion of a largely natural area – the Ivanpah Valley and dry lake area as a whole—into a largely industrialized area with more than 6 large scale solar plants, the accompanying substations and power lines, glare and heat islands that will be created across the “zone.”

National Park lands resources will also be cumulatively impacted. The Clark Mountains, part of the Mojave National Preserve, rise to almost 8,000 feet from the Ivanpah Valley and are home to bighorn sheep and other species that may be directly, indirectly, and cumulatively impacted by the proposed project and other proposed projects in the area. As another example, migratory birds that frequent the Preserve, including raptors, may similarly be impacted by the project as well as other proposed projects in the area

The Center respectfully reserves the right to provide additional information regarding the cumulative impacts of the proposed project as our review of the FSA/DEIS is completed.

Alternatives Analysis: The FSA/DEIS fails to provide any feasible alternatives that would avoid significant impacts of the project particularly the significant impacts to biological resources. The FSA/DEIS examines several project alternatives that staff had already determined would not meet the purpose and need of the project in what appears to be an elevation of form over substance. Because the alternatives analysis is the “heart” of any environmental review, the failure to provide meaningful alternatives is fatal to this FSA/DEIS. Indeed, even the CDFG noted that a “full analysis” of alternate sites was still lacking in the FSA/DEIS. CDFG Comments dated October 27, 2009 at 3. Unfortunately, rather than looking for meaningful alternatives that avoid significant impacts to the desert

tortoise and other biological resources, the Staff appears to simply accept the applicant's proposal and choice to build the proposed project in "excellent tortoise habitat, with a low level of disturbance and high plant species diversity," even where "lower quality habitat is clearly within range to potentially reduce the overall Project impacts to endangered and sensitive species." *Id.* The question of how alternatives were identified and analyzed is a significant factual issue that the Center intends to pursue through the evidentiary hearing process.

4. The identity of each witness sponsored by each party (note: expert witnesses must have professional expertise in the scope of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness:

The Center intends to present or rely on expert witnesses on the following topics and is coordinating with several other Intervenors regarding expert witnesses to the extent possible:

- bighorn sheep
- desert tortoise impacts and translocation issues (Michael J. Connor PhD)
- BLM special status species and birds
- Mitigation adequacy and funding
- Rare desert plant occurrences and biology (Jim Andre, PhD and Ileene Anderson)
- Hydrology and water resource impacts

5. Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for such cross-examination:

The Center requests the opportunity to cross-examine Staff and Applicant witnesses on all topic areas in dispute and witnesses presented by other Intervenors. Until we see other parties' prehearing conference statements, witness lists, and exhibit lists, we cannot be certain about the nature or extent of cross-examination and the Center reserves the right to cross-examine any witnesses presented. The Center anticipates that cross-examination will require no more than 30 minutes per witness. However, we cannot be certain how many witnesses will require cross-examination, or how extensive

that examination may be, until we have seen the other parties' prehearing conference statements and supporting materials.

As an initial matter, the Center anticipates that the scope of cross-examination will include at least the following:

Biological Resources: CEC Staff, CDFG staff, FWS staff, BLM staff, and Applicant witnesses regarding assessment of impacts to biological resources and appropriate avoidance, minimization, and mitigation strategies.

Water Resources, Soils, Air Quality: CEC Staff, BLM Staff, and Applicant witnesses regarding the basis for Staff's conclusions on the impacts to water resources and soils and air quality; the appropriate avoidance, minimization, and mitigation strategies; and the efficacy and enforceability of mitigation measures suggested.

Alternatives: CEC Staff, BLM Staff, Applicant witnesses regarding identification and selection of alternatives for review; the analysis of those alternatives; and the analysis of the feasibility of alternative sites.

6. A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply:

In addition to re-submitting exhibits submitted with our earlier comments, the Center anticipates providing a complete list of exhibits along with the final Prehearing Statement.

7. Proposals for briefing deadlines, vacation schedules, and other scheduling matters:

As an initial matter, the Center requests that the evidentiary hearing be continued until January 11 and 12, 2010, in order to provide sufficient time for all parties to review the FSA/DEIS and all supporting documents.⁴

⁴ In addition, at this time, Lisa Belenky has a previously scheduled status conference set for December 14, 2009 at 9 a.m. in Federal District Court in Los Angeles in another matter which will likely be quite short but may require a personal appearance (although a telephone appearance will be requested).

Given the extent of the factual issues remaining at this time and that the Center anticipates will be part of the evidentiary hearings, the Center requests that the opening briefs following the evidentiary hearings should be due no earlier than 3 weeks after the close of the evidentiary hearings. The Center respectfully reserves the right to modify this request.

8. For all topics, the parties shall review the Proposed Conditions of Certification listed in the Final Staff Assessment (FSA) for enforceability, comprehension, and consistency with the evidence, and submit any proposed modifications.

The Center has not had sufficient time to review all of the Proposed Conditions of Certification for enforceability, comprehension, and consistency. Overall, the proposed conditions appear to be unlawfully vague and do not meet the CEQA requirements that mitigation measures be specific, feasible, and enforceable. In addition, the environmental impacts that may be caused by the proposed mitigation measures is not address, for example, BIO-19 proposes construction of a new artificial water source or “guzzler” in “in the eastern part of the Clark Mountain range or in the State Line Hills outside of designated Wilderness” but provides no identification and analysis of the impacts of such an action. The Center reserves the right to provide proposed modifications for each of the conditions and additional proposed conditions at a later stage in this process.

9. For the preliminary statement only, for discussion at the November 18 Prehearing Conference:

a) any comments the party wishes to make about this schedule, including any alternative schedule proposals.

The Center requests that the evidentiary hearing be continued until at least January 11 and 12, 2010. If the evidentiary hearings are continued until January 11 and 12, the other deadlines should be continued as well as follows:

Staff and Intervenors file and serve opening testimony: **Wednesday, December 30, 2009**

Parties file Final Prehearing Conference Statements: **Tuesday, January 5, 2010**

All parties file rebuttal testimony: **Wednesday, January 6, 2010**

Second Prehearing Conference: **Thursday, January 7, 2010**

Evidentiary hearings: **Monday and Tuesday January 11 and 12, 2010.**

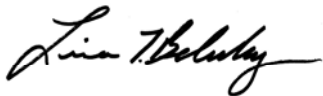
Request for Site Visit by the Commission: At this time all of the Prehearing conferences and evidentiary hearings on this matter are scheduled to take place in Sacramento, California. the Center believes that there is a need for a site visit by all of the members of the Commission in order to fully appreciate the current resources found on the proposed site for this project, the size of the proposed project within the landscape, and the potential for alternative configurations of the proposed project in this area and/or at other alternative sites. the Center therefore requests that at least one site visit by all of the Commissioners and all parties should be scheduled during the pre-hearing process. In addition, the Center requests that the Commission and hearing officer consider holding at least some of the hearings on this matter in closer proximity to the site to facilitate participation by all parties and share the burden of travel equally.

b) updated information about the remaining steps in the BLM process, including a projected timetable, to assist the Committee in coordinating this AFC process with BLM's process.

The Center has no additional information regarding the BLM timetable at this time.

Dated: November 16, 2009

Respectfully submitted,



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**California Energy Resources Conservation
and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE IVANPAH SOLAR
ELECTRIC
GENERATING SYSTEM

DOCKET NO. 07-AFC-5

DECLARATION OF SERVICE

I, Lisa T. Belenky, declare that on November 16, 2009, I served and filed copies of the attached **PRELIMINARY PREHEARING CONFERENCE STATEMENT OF INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY** dated November 16, 2009. 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 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:

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

by personal delivery or by depositing in the United States mail at 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:

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.

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.



Lisa T. Belenky

Sent via email to: sdeyoung@brightsourceenergy.com; tstewart@brightsourceenergy.com; jcarrier@ch2m.com; jdh@eslawfirm.com; e-recipient@caiso.com; tom_hurshman@blm.gov; Raymond_Lee@ca.blm.gov; dfgpalm@adelphia.net; tgulesserian@adamsbroadwell.com; mjconnor@westernwatersheds.org; gloria.smith@sierraclub.org; joanne.spalding@sierraclub.org; gssilliman@csupomona.edu; jbasofin@defenders.org; atomicoadranch@netzero.net; gsuba@cnps.org; thansen@cnps.org; granites@telis.org; jbyron@energy.state.ca.us; jboyd@energy.state.ca.us; pkramer@energy.state.ca.us; jkessler@energy.state.ca.us; dratliff@energy.state.ca.us; publicadviser@energy.state.ca.us; docket@energy.state.ca.us

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