

Memorandum

Date: February 9, 2010
 Telephone: (916) 654-4679

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

From: **California Energy Commission** – John Kessler, Project Manager
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DOCKET
07-AFC-5

DATE	<u>02/09/10</u>
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RECD.	<u>02/10/10</u>
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Subject: **IVANPAH SOLAR ELECTRIC GENERATING SYSTEM (07-AFC-5)
 STAFF'S PROPOSED REVISIONS TO CONDITIONS OF CERTIFICATION
 BIOLOGICAL RESOURCES, HAZARDOUS MATERIALS, NOISE &
 VIBRATION, AND SOIL & WATER RESOURCES**

SUMMARY

Energy Commission staff is providing a fifth round of edits to its proposed Conditions of Certification as included in staff's and BLM's Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS). The purpose of these proposed edits are to conform with staff's standard format for conditions of certification, moving time requirements for applicant filings from the Condition to the Verification section. This allows the Compliance Project Manager to approve changes in the timelines as needed, without requiring an amendment to the license and potential project delays should the project be approved. Staff also previously proposed edits to its Conditions of Certification in Exhibit 302 as filed on December 14, 2009, Exhibit 303 as filed on January 4, 2010, Exhibit 305 as filed on January 4, 2010, and Exhibit 312 as filed on January 12, 2010. The edits contained herein reflect all changes proposed since publication of the FSA/DEIS as pertaining to the following conditions:

- Biological Resources: BIO-16 and BIO-18
- Hazardous Materials: HAZ-4
- Noise & Vibration: NOISE-1
- Soil and Water Resources - SOIL&WATER-8

Staff is distinguishing the most recent edits by highlighting them in yellow compared to underline and strikeouts proposed previously that are not highlighted.

Docket (07-AFC-5)
 Webworks
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PROOF OF SERVICE (REVISED 11/23/09) FILED WITH
 ORIGINAL MAILED FROM SACRAMENTO ON 2/10/10

MS

Proposed Changes to Conditions of Certification for Topics Addressed in This Filing

BIOLOGICAL RESOURCES

BURROWING OWL IMPACT AVOIDANCE AND MINIMIZATION MEASURES

- BIO-16** The project owner shall implement the following measures for the burrowing owl:
1. Complete a pre-construction survey for burrowing owls for any areas subject to disturbance from construction ~~no less than 30 days~~ prior to the start of initial ground disturbance activities. If burrowing owls are present within 500 feet of the project site or linear facilities, then the CDFG burrowing owl guidelines (1995) shall be implemented;
 2. Monitor burrowing owl pairs within 500 feet of any activities that exceed ambient noise and/or vibration levels;
 3. Establish a 500-foot set back from any active burrow and construct additional noise/visual barriers (e.g., haystacks or plywood fencing) to shield the active burrow from construction activities. Post signs (in both English and Spanish) designating presence of sensitive area;
 4. Actively relocate all owls occupying burrows that will be temporarily or permanently impacted by the project and implement the following CDFG take avoidance measures:
 - a. Occupied burrows shall not be disturbed during the nesting season (February 1 – August 31) unless a qualified biologist can verify through non-invasive methods that egg laying/incubation has not begun or juveniles are foraging independently and able to fly;
 - b. A qualified biologist must relocate owls, confirm that owls have left burrows prior to ground-disturbing activities, and monitor the burrows. Once evacuation is confirmed, the biologist should hand excavate burrows and then fill burrows to prevent reoccupation; and
 - c. Relocation of owls shall be approved by and conducted in consultation with CDFG.
 5. Submit a Burrowing Owl Mitigation and Monitoring Plan to the CPM and CDFG for review and approval prior to relocation of owls (and incorporate it into the project's BRMIMP) as well as a construction termination report with results to CDFG and CPM 30 days after completing owl relocation

and monitoring and at least 30 days prior to the start of commercial operation.

Verification: The project owner shall complete a pre-construction survey for burrowing owls for any areas subject to disturbance from construction no more than 30 days prior to the start of any project-related site disturbance activities, and submit a report to CDFG, USFWS, BLM's Authorized Officer and the CPM at least 30 days prior to the start of any project-related site disturbance activities that describes when surveys were completed, observations, mitigation measures, and the results of the mitigation. If burrowing owls are to be protected on site or relocated, the project owner shall coordinate with and report to CDFG, USFWS, BLM and Energy Commission staff on these proposed activities in a Burrowing Owl Mitigation and Monitoring Plan. Within 30 days after completion of owl relocation and monitoring, and the start of ground disturbance **or** at least 90 days prior to the sale of power, the project owner shall provide to the CDFG and CPM a written construction termination report identifying how measures have been completed.

SPECIAL-STATUS PLANT IMPACT AVOIDANCE AND MINIMIZATION

BIO-18 The project owner shall implement the following measures to avoid and minimize impacts to special-status plant species. Items 2, 3, 5, 6, 7, and 10 are recommended exclusively by Energy Commission staff.

1. On-Site Plant Avoidance/Minimization Areas: To the extent feasible the project owner shall avoid and minimize disturbance to all special-status plant species within the project site. Impact avoidance and minimization efforts shall occur in all feasible locations but shall focus in particular on areas depicted in **Biological Resources Figure 2** that indicate the highest densities of Mojave milkweed, Rusby's desert-mallow, desert pincushion, nine-awned pappus grass, and Parish's club-cholla. The highest priorities for protection shall be small-flowered androstephium, Mojave milkweed, desert pincushion, and Rusby's desert-mallow. The project owner shall implement all feasible impact avoidance and minimization measures within the following areas:
 - a. ISEGS 1 and 3: Reconfigure project features to the extent feasible within the northern portions of ISEGS 1 and 3 to avoid areas that support the highest density and diversity of special-status plant species.
 - b. Construction Logistics Area: Reconfigure the layout and design of the Construction Logistics Area to maximize protection of high density and diversity special-status plant areas.
 - c. Natural Gas Pipeline: Adjust the alignment of the proposed 75-foot wide natural gas pipeline and narrow the construction footprint to avoid special-status plant occurrences north of ISEGS 3.

2. Protection Goals : The project owner shall implement all feasible measures to protect 75 percent of the individuals of small-flowered androstephium, Mojave milkweed, Rusby's desert-mallow, desert pincushion, nine-awned pappus grass, and Parish's club-cholla within the project area (as mapped in Figure 5-3 of the applicant's final botanical survey report [CH2M Hill 2008x]). Each year during construction the measurement of percent protection achieved shall be calculated based on a comparison of numbers of individuals of each of these five species present in this area identified before construction compared to numbers remaining post –construction. These pre- and post-construction plant numbers shall be based on floristic surveys conducted by a qualified botanist.
3. Identify and Establish Special-Status Plant Protection Areas: The project owner shall identify Special-Status Plant Protection Areas within the project footprint as needed to achieve the 75 percent protection goal. To accurately identify the locations of these areas, pre-construction floristic surveys shall be conducted by a qualified botanist at the appropriate time of year for special-status plant identification including both spring and summer blooming periods. The surveys shall encompass all the high plant density areas depicted in **Biological Resources Figure 2** and shall extend 150 feet on both sides of the proposed gas pipeline alignment and 250 feet out from the project fenceline. The locations of the Special-Status Plant Protection Areas shall be clearly depicted on all final maps and project drawings and descriptions.
4. Protection of Adjacent Occurrences: The project owner shall identify special-status plants occurrences within 250 feet of the project fenceline during the pre-construction plant surveys described above. A qualified botanist shall delineate the boundaries of these special status plant occurrences **at least 30 days** prior to the initiation of ground disturbing activities. These flagged special status plant occurrences shall be designated as Environmentally Sensitive Areas on plans and specifications, and shall be protected from accidental impacts during construction (e.g. vehicle traffic, temporary placement of soils or vegetation) and from the indirect impacts of project operation (herbicide spraying, changes in upstream hydrology, etc).
5. Develop and Implement a Special-Status Plant Protection and Monitoring Plan : The project owner shall develop and implement a Special-Status Plant Protection and Monitoring Plan for special-status plants occurring within the Special-Status Plant Protection Areas. The goal of the Special-Status Plant Protection and Monitoring Plan shall be to maintain the special-status plant species within the Special-Status Plant Protection Areas as healthy, reproductive populations that can be sustained in

perpetuity. At a minimum, the Special-Status Plant Protection and Monitoring Plan shall:

- establish baseline conditions and numbers of the plant occurrences within the Special-Status Plant Protection Areas and success standards for protection of special-status plant occurrences within the Plant Protection Areas;
 - provide information about microhabitat preferences and fecundity, essential pollinators, reproductive biology, and propagation and culture requirements for each special-status species;
 - describe measures (e.g., fencing, signage) to avoid direct construction and operation impacts to special-status plants within the Special-Status Plant Protection Areas;
 - describe measures to avoid or minimize indirect construction and operations impacts to special-status plants within the Special-Status Plant Protection Areas (e.g., runoff from mirror-washing, use of soil stabilizers/tackifiers, alterations of hydrology from drainage diversions, erosion/sedimentation from disturbed soils upslope, herbicide drift, the spread of non-native plants, etc).
 - provide a monitoring schedule and plan for assessing the numbers and condition of special-status plants within the Special-Status Plant Protection Areas; and
 - identify specific triggers for remedial action (e.g., numbers of plants dropping below a threshold);
6. Develop Special-Status Plant Remedial Action Plan : The project owner shall develop a detailed Special-Status Plant Remedial Action Plan to be implemented if special-status plants within the Plant Protection Areas fail to meet success standards described in the Special-Status Plant Protection and Monitoring Plan. The Plant Remedial Action Plan shall include specifications for ex-situ/offsite conservation of seed and other propagules, and the seed bank and other symbionts contained in the topsoil where these plants occur. The remedial measures described in the Plant Remedial Action Plan shall not substitute for plant protection or other mitigation measures. The Special-Status Plant Remedial Action Plan shall include, at a minimum:
- guidelines for pre-construction seed collection (and/or other propagules) for each of the five species;
 - specifications for collecting, storing, and preserving the upper layer of soil containing seed and important soil organisms;
 - detailed replacement planting program with biologically meaningful quantitative and qualitative success criteria (see Pavlik 1996), monitoring specifications, and triggers for remedial action; and

- ecological specifications for suitable planting sites.
7. Seed Collection : Implementation of the Special-Status Plant Remedial Action Plan would require a source of local source of seeds/propagules. In addition, seed collection would serve to preserve germplasm in the event that all mitigation fails. The project owner shall develop and implement a Seed Collection Plan to collect and store seed for small-flowered androstephium, Mojave milkweed, Rusby's desert-mallow, desert pincushion, nine-awned pappus grass, and Parish's club-cholla. The source of these seeds shall be from plants proposed for removal within the project footprint. The project owner shall engage the services of a qualified contractor approved by the CPM to undertake seed collection and storage.
 8. Gas Pipeline Revegetation and Monitoring: In the natural gas pipeline construction corridor where disturbed soils will be revegetated, the topsoil excavated shall be segregated, kept intact, and protected, under conditions shown to sustain seed bank viability. At a minimum, the top 2 cm of the soil shall be separately stored and preserved. Topsoil salvage, storing, and replacement shall be replaced in its original vertical orientation following pipeline installation ensuring the integrity of the top 2 cm in particular. The project owner shall prepare a Gas Pipeline Revegetation and Monitoring Plan targeted at re-establishment of Rusby's desert-mallow, desert pincushion, Mojave milkweed, and potentially other special-status plant species. The Gas Pipeline Revegetation and Monitoring Plan shall identify success criteria for re-establishment and shall continue for a period of no less than 10 years until the defined success criteria are achieved. The Gas Pipeline Revegetation and Monitoring Plan shall include measures for seeding or other remedial actions. If no individuals of Rusby's desert-mallow, desert pincushion, or Mojave milkweed, are located during the first year of monitoring, the project owner shall conduct supplemental seeding or other remedial measures in the area disturbed by natural gas pipeline installation.
 9. Surveys on Acquired and Public Lands: The project owner shall conduct floristic surveys for Rusby's desert-mallow and Mojave milkweed on all lands that will be acquired as part of the desert tortoise compensatory mitigation requirements (see Condition of Certification **BIO-17**). Similar surveys shall be conducted for small-flowered androstephium, desert pincushion, nine-awned pappus grass, and Parish's club-cholla for those species for which the 75 percent on-site avoidance goal has not been achieved. The goal of the surveys shall be to identify at least the same number of occurrences on off-site lands as were impacted by the ISEGS project. If this goal is not met by surveys on proposed acquisition lands, additional surveys shall be conducted within suitable habitat on public lands until the same number of occurrences of each species that were impacted are identified. To be counted toward fulfillment of the goal the

occurrences must reflect new data not previously documented in other survey efforts. The survey requirements shall include the following:

- All surveys shall be conducted by a qualified botanist in accordance with BLM, CDFG, and CNPS plant survey guidelines;
- Surveys shall occur the first spring after construction begins and continue each year until the same number of special-status plant occurrences are identified on acquisition lands and/or BLM lands as were impacted, or predicted to be impacted based on final site design, by the ISEGS project construction and operation;
- For each year surveys are conducted yearly survey results shall be provided to the CPM, BLM's Authorized Officer and CDFG, and shall include CNDDDB field survey forms for all special-status plant species encountered during the surveys; and
- All field survey forms shall be submitted to the CNDDDB at the time of submittal to the CPM, BLM and CDFG.
- For each of the species for which surveys were conducted, the project owner's qualified botanist shall submit a completion report documenting fulfillment of the target goals and which describe the number of new, previously undiscovered occurrences identified and mapped. Locations shall be reported with GPS coordinates compatible with inclusion in a GIS database.

10. Security for Implementation of Plans: The project owner shall provide security adequate to fund implementation of the Special-Status Plant Protection and Monitoring Plan, the Special-Status Plant Remedial Action Plan for the life of the project, as well as the Seed Collection Plan, and the Gas Pipeline Revegetation Monitoring Plan.

Verification: No less than 30 days following the publication of the Energy Commission Decision the project owner shall submit final maps and design drawings depicting the location of Special-Status Plant Protection Areas within and adjacent to the project site, and shall identify the species and numbers of plants within each of the Special-Status Plant Protection Areas.

No less than 30 days following the publication of the Energy Commission Decision the project owner shall submit draft versions of the Special-Status Plant Protection and Monitoring Plan, the Special-Status Plant Remedial Action Plan, the Seed Collection Plan, and the Gas Pipeline Revegetation Monitoring Plan for review by the CPM, BLM's Authorized Agent, and CDFG. The project owner shall also provide a cost estimate for implementation of these plans which is subject to approval by the CPM, BLM's authorized agent, and the CDFG. The final plans shall be submitted for approval by the CPM, in consultation with BLM's Authorized Agent, CDFG, and CNPS within 90 days of the publication of the Commission Decision. The final plans shall be incorporated into

the BRMIMP. At this time, the project owner shall also provide security sufficient to fund the implementation of the plans.

Within 30 days of the start of construction, the project owner shall submit a copy of the contract with the CPM-approved seed contractor and the check for seed collection and curation fees to the CPM.

The project owner shall identify special-status plants occurrences within 250 feet of the project fence line during the pre-construction plant surveys described above. A qualified botanist shall delineate the boundaries of these special status plant occurrences at least 30 days prior to the initiation of ground disturbing activities.

On January 31st of each year following construction the project owner's qualified botanist shall submit a report, including CNDDDB field survey forms, describing the results of off-site plant surveys to the BLM's authorized officer, the CPM, CDFG, and CNDDDB. Submittal of survey reports shall continue until the same number of occurrences impacted by the project for small-flowered androstephium, Rusby's desert-mallow and Mojave milkweed are identified on these off-site lands as were impacted by the project. Similar reports shall be submitted for desert pincushion, nine-awned pappus grass, and Parish's club-cholla for each of those ~~three~~ species for which 75 percent avoidance was not achieved. For each of the species for which surveys were conducted, the project owner's qualified botanist shall submit a completion report documenting fulfillment of the target goals and which describe the number of new, previously undiscovered occurrences identified and mapped using GIS techniques for each species. Mapping results shall include GPS coordinates of the plants found.

The Designated Biologist shall maintain written and photographic records of the tasks described above, and summaries of these records shall be submitted along with the Monthly Compliance Reports to the CPM, BLM Authorized Agent, and CDFG. During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report for a period not less than 10 years for the Gas Pipeline Revegetation Plan, and for the life of the project for the Special-Status Plant Protection and Monitoring Plan, and the Special-Status Plant Remedial Action Plan, including funding for the seed storage

HAZARDOUS MATERIALS

HAZ-4 At least thirty (30) days p Prior to commencing construction, a site-specific Construction Site Security Plan for the construction phase shall be prepared and made available to BLM's Authorized Officer and the CPM for review and approval. ~~The Construction Security Plan shall include the following:~~

- ~~1. Perimeter security consisting of fencing enclosing the construction area;~~
- ~~2. Security guards;~~

- ~~3. Site access control consisting of a check-in procedure or tag system for construction personnel and visitors;~~
- ~~4. Written standard procedures for employees, contractors and vendors when encountering suspicious objects or packages on-site or off-site;~~
- ~~5. Protocol for contacting law enforcement, BLM's Authorized Officer and the CPM in the event of suspicious activity or emergency; and~~
- ~~6. Evacuation procedures.~~

Verification: At least thirty (30) days prior to commencing construction, the project owner shall notify BLM's Authorized Officer and the CPM that a site-specific Construction Security Plan is available for review and approval. The Construction Security Plan shall include the following:

1. Perimeter security consisting of fencing enclosing the construction area;
2. Security guards;
3. Site access control consisting of a check-in procedure or tag system for construction personnel and visitors;
4. Written standard procedures for employees, contractors and vendors when encountering suspicious objects or packages on-site or off-site;
5. Protocol for contacting law enforcement, BLM's Authorized Officer and the CPM in the event of suspicious activity or emergency; and
6. Evacuation procedures

NOISE AND VIBRATION

NOISE-1 ~~At least 15 days~~ Prior to the start of ground disturbance, the project owner shall notify the operator of the Primm Valley Golf Course, by mail or other effective means, of the commencement of project construction. At the same time, the project owner shall establish a telephone number for use by the public to report any undesirable noise conditions associated with the construction and operation of the project and include that telephone number in the above notice. If the telephone is not staffed 24 hours per day, the project owner shall include an automatic answering feature, with date and time stamp recording, to answer calls when the phone is unattended. This telephone number shall be posted at the project site during construction in a manner visible to passersby. This telephone number shall be maintained until the project has been operational for at least one year.

Verification: At least 15 days Prior to ground disturbance, the project owner shall transmit to BLM's Authorized Officer and the Compliance Project Manager (CPM) a statement, signed by the project owner's project manager, stating that the above notification has been performed and describing the method of that notification, verifying that the telephone number has been established and posted at the site, and giving that telephone number.

SOIL AND WATER RESOURCES

SEPTIC SYSTEM AND LEACH FIELD REQUIREMENTS

SOIL&WATER-8: Sixty (60) days Prior to the start of construction of the sanitary waste system, the project owner shall ~~comply with~~ submit to the County of San Bernardino for review and comment, and to both the BLM's authorized officer and CPM for review and approval, plans and Appendix B, C and D requirements for the construction and operation of the project's proposed sanitary waste septic system and leach field. These plans shall comply with the requirements set forth in County of San Bernardino codes and Appendices B, C, and D. Project construction shall not proceed until ~~documentation equivalent to the County's wastewater treatment system system permits are issued by the County and approved by~~ both BLM's Authorized Officer and the CPM have approved the plans. The project owner shall remain in compliance with the San Bernardino County code ~~County~~ requirements for the life of the project.

Verification: Sixty (60) days prior to the start of commercial operations, the project owner shall submit to the County of San Bernardino appropriate fees and plans for review and comment for the construction and operation of the project's sanitary waste septic system and leach field. A copy of these plans shall be submitted to both the BLM's authorized officer and CPM for review and approval. The plans shall demonstrate compliance with the sanitary waste disposal facility requirements of County of San Bernardino and Appendices B, C, and D. ~~The project owner will submit all necessary information and the appropriate fee to the County of San Bernardino to ensure that the project has complied with the County's and Appendix B, C, and D sanitary waste disposal facilities requirements. A written assessment prepared by the County of San Bernardino of the project's compliance with these requirements must be provided to the CPM sixty (60) days prior to the start of operation.~~



**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 11/23/09)

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DECLARATION OF SERVICE

I Maria Santoudjian, declare that on February 10, 2010, I served and filed copies of the attached, Staff's Proposed COC Exhibit 313. 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 documents have 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:

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

by personal delivery or by depositing in the United States mail at Sacramento, California 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. 07-AFC-5
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.

Original Signature in Dockets
Maria Santoudjian