

DOCKET

08-AFC-13

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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:

The Application for Certification for the
Calico Solar Project

Docket No. 08-AFC-13

INTERVENOR DEFENDERS OF WILDLIFE

Status Report No. 1

February 22, 2010

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Pursuant to the Committee Schedule, Defenders of Wildlife ("Defenders") hereby submits Status Report No. 1 for the proposed Calico Solar Project. The current schedule for this proceeding is ambitious. As was discussed at the January 27, 2010 Committee conference, information is still missing for several topic areas.

Biological Resources

Defenders echoes the concerns cited in CURE's Status Report No. 5 regarding the public availability of documents in this proceeding. Defenders is thankful that staff and the Applicant have committed to requesting that BLM and USFWS post the draft desert tortoise translocation plan, biological assessment and any other relevant federal documents.

Rare Plants

Considering that the central Mojave Desert has received approximately 200% of normal precipitation this winter season, Defenders requests that an additional systematic survey of the project area for rare plants be performed. Rare plants were not observed in the 2007 survey due to abnormally low precipitation. In 2008, a year in which precipitation was 88% of normal, rare plants were observed and documented. The applicant states in its recent responses from the action items workshop that "years with above average rainfall would be expected to result in increased presence of rare plants from the site and immediate project vicinity."

The rare plant resources on the site cannot be appropriately described and accounted for through surveys conducted during periods of abnormally low rainfall. Since rainfall in the winter season of 2010 was much greater than normal, Defenders believes it is prudent and necessary to conduct another survey this spring season.

Desert Bighorn

The applicant recently reported learning that the desert bighorn population in the Cady Mountains is estimated at least 300 individuals. The population was estimated to be 40 to 50 individuals in 1990 and by 2007 had grown to approximately 300 (Dr. John Wehausen, pers. comm.). The Department of Fish and Game performed another census flight in the fall of 2009 and again detected a significantly high population.

The use of the south facing slope of the Cady Mountains and the washes and bajadas that extend from the mountain and into the proposed project area have not been adequately surveyed for use by desert bighorn. As Dr. Wehausen has observed, females will seek annual plant species and flowering shrubs in lower elevation, south facing slopes, which is believed to be very important in maintaining healthy females during pregnancy and in nursing newborns (Dr. John Wehausen, pers. comm.). Field reports indicate that the recent, relatively warm precipitation has triggered growth of annual plants in the lower elevation, south slopes of the desert ranges. Dr. Wehausen suggested that the only way to assess bighorn use of the area is on the ground and that such field work should begin now and continue through the spring season.

The impressive increase in Bighorn in the Cady Mountains over the past several years elevates the importance of the area to sustaining desert bighorn on a regional scale. The Northern half of the proposed project area has not been adequately studied for use by bighorn Sheep. No systematic surveys for bighorn sign were performed by the applicant's consultants. The AFC and supplemental information provides little insight concerning any bighorn sign surveys that were performed.

Defenders strongly recommends that a systematic desert bighorn survey of the south slope of the Cady Mountains and the numerous washes and bajadas extending into the project area be performed beginning now and extending into the late spring season.

Desert Tortoise

The issue of adequacy and accuracy of previous desert tortoise surveys over the project area has been noted in Defenders' previous comments. The basis for concern here was due to the fact that twice as many desert tortoises were reported from incidental observations as compared to the focused surveys. Considering this issue, and that the environmental conditions this spring season will be conducive to greater above ground desert tortoise activity than during previous survey efforts, Defenders believes it is prudent and necessary for additional desert tortoise survey work to be performed for the purpose of obtaining a more accurate estimate of the population and distribution of individuals and burrows over the proposed project area. Additionally, all desert tortoise observations should be plotted with GPS and designated on a map to accurately convey their location.

Alternatives

The CEC should describe a range of reasonable alternatives to the proposed location of the Calico Solar Project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects. CEQA Guidelines § 15126.6(a). The key question is whether any of the significant effects of the Calico Solar Project would be avoided or substantially lessened by putting the project in another location.

Full Range of Alternatives Needed

Defenders urges CEC staff to consider a full range of alternatives for this project. In particular, staff should identify and analyze several private land alternatives. The Renewable Energy Transmission Initiative ("RETI"), of which the CEC is a member agency, has expressed very strong support for prioritizing private land sites:

RETI stakeholders agree that utilizing disturbed private lands close to existing infrastructure for renewable energy development should be a priority for the State. County governments and state agencies are in the best position to develop mechanisms to consolidate the ownership of extensively parcelized lands that have excellent renewable resource potential. For this reason, the RETI Phase 2A Final Report includes a formal recommendation that the California Energy Commission, in conjunction with other state and federal agencies, counties and the renewable energy industry, develop and

implement a strategy for consolidating ownership of disturbed or degraded private lands for renewable energy development on an expedited basis (RETI Phase 2A Final Report, page 2-33).

The Applicant did not include even one private land alternative in the AFC, and only one alternative – Upper Johnson Valley (AS2) – contains a portion of private land. It is incumbent on CEC staff and the applicant to consider a substantial number of private land alternatives and move them forward for analysis.

Although certainly some obstacles would have to be overcome to site this project on private land, CEQA requires only that an agency consider alternatives that could feasibly attain most of the basic objectives of the project. CEQA Guidelines § 15126.6(a). Therefore, staff should not eliminate a private land alternative from consideration simply because it “costs too much money.” Alternatives analyzed in an EIR (the functional equivalent of the CEC’s Staff Assessment) need not be *actually feasible*, but need only be potentially feasible. CEQA Guidelines § 15125.6(a) (emphasis added). Even if staff ultimately rejects some alternatives that were evaluated in the staff assessment as infeasible, this rejection does not imply these alternatives were improperly considered for discussion (see *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 477, 489). Finally, staff should not eliminate a private land alternative simply because it is not within the jurisdiction of the agency or within the immediate control of the Applicant. *Citizens of Goleta Valley v. Santa Barbara County Board of Supervisors* (1990), 52 Cal. 3d 553.

Site Reconfiguration Alternative Needed

Defenders requests that CEC staff analyze a site reconfiguration alternative. Because the Northern portion of the site contains the highest quality habitat, it is appropriate to explore a site reconfiguration that may include eliminating the Northern portion and acquiring several parcels of private land within the project area to make up the lost acreage.

Defenders intends to submit a formal alternative in the next few days detailing a potential site reconfiguration that would avoid the substantial impacts to wildlife and habitat in the Northern portion of the project area.

DECLARATION OF SERVICE

I, Joshua Basofin, declare that on February 22, 2010, I served and filed copies of the Attached Status Report No. 1. 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/calicosolar]. 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:

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





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APPLICATION FOR CERTIFICATION
For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 2/8/10)

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