

STATE OF CALIFORNIA**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification
for the Ivanpah Solar Project
Power Plant Licensing Case

Docket No. 07-AFC-5

**CLOSING BRIEF OF
INTERVENOR COUNTY OF SAN BERNARDINO**

April 16, 2010

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CLOSING BRIEF OF INTERVENOR COUNTY OF SAN BERNARDINO

Introduction

On April 13, 2010, the San Bernardino County (“County”) Board of Supervisors adopted “San Bernardino County Position on Desert Renewable Energy Projects,” a copy of which is attached hereto, and of which the County requests the Commission take judicial notice¹. This position statement will clarify the County’s general concerns in the Commission’s certification process for the Ivanpah Solar Project Power Plant (“Project”) and similar projects within the County’s boundaries that are in varying stages of the Commission’s review process.

In short, the County expresses its general support for renewable energy projects and the positive economic impact that their development will bring to the local economy. But of countervailing concern are the local impacts that these projects will have, for example, the proposed acquisition and set-aside of significant portions of private lands for Desert Tortoise mitigation.

¹ http://sanbernardino.granicus.com/MediaPlayer.php?view_id=13&clip_id=1627

And despite the jurisdictional limitations on a county's participation where a project is located exclusively on federal land, the Renewable Energy Transmission Initiative recognizes that the input of local governments is critical to a robust policy for developing renewable energy. Regardless of land ownership, it can be said with certainty that every renewable energy project to be sited in California necessarily falls within some county's boundaries, and creates impacts of the type articulated in the County's Opening Brief and further refined in this Reply.

Without waiving any argument that it has asserted in this proceeding thus far, the County addresses two topics in particular.

Mitigation

If the Commission certifies the Project, the County urges the Commission to adopt the Desert Tortoise mitigation proposals set forth by the applicant, namely, its proposed Condition of Certification BIO-17, submitted as Appendix B to its Opening Brief. The County strongly urges the Commission to direct staff to step up its work with the resource agencies to develop a comprehensive in lieu fee program that will mitigate the biological impacts without the onerous and unrealistic requirement of

every renewable energy project acquiring mitigation land in multiples of the project acreage.

The county concurs with the applicant on the mitigation aspect, albeit for a different reason. The applicant is contending that no more than 1:1 mitigation is required under the Endangered Species Act, ostensibly to minimize its costs while meeting its obligations under both state and federal environmental law. The County's viewpoint is more long-term, with additional renewable energy projects in process that may, if approved, be constrained by similar mitigation requirements. Although the desert within the County is vast, private property that can be considered for mitigation is not unlimited. Once set aside as mitigation land, it cannot be used to mitigate for other projects nor can it be developed.

Furthermore, to the extent possible, the Commission should coordinate with the Bureau of Land Management ("BLM") in seeking to further mitigation strategies already identified and discussed at length in the Applicant's Opening Brief (pages 76-79). Certainly, acquisition of mitigation land will be one of the mitigation strategies, but it should not be the sole strategy, and definitely should not be required in multiples of the project acreage. Staff appears to agree that alternative mitigation strategies are viable. "CDFG and Staff agree with BLM that much can be

accomplished in terms of protection of the tortoise through habitat enhancement, including fencing of certain roads and freeways, closure of unpermitted dirt roads, control of ravens (which eat young tortoise), and so forth.” (Staff’s Opening Brief, page 9)

Establishing property acquisition as a policy in this case could establish it as a norm for subsequent projects, thereby rendering thousands upon thousands of acres unavailable to mitigate any other types of development and unavailable for prudent, responsible development in its own right.

Recreation

Staff proposed Condition of Certification REC-1 to conform to Public Resources Code §25529 that would require the applicant to establish an area for public use by the development of a Solar / Ecological Interpretive Center. The Applicant, in its Opening Brief, disputed this condition as one that could be legally imposed. The County disagrees with the applicant and concurs, in principle, with this recommendation and is currently engaged in discussions with the applicant in formulating a joint approach to the creation of a facility along these lines on land under the County’s jurisdiction.

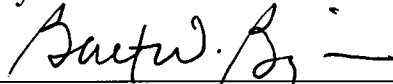
Conclusion

The applicant and the County are involved in an ongoing dialogue to address the concerns raised by the County in its Opening Brief. The parties will keep the Commission advised as to the progress of these continuing discussions.

Dated: April 16, 2010

Respectfully submitted,

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By  _____

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San Bernardino County Position on Desert Renewable Energy Projects

April 2010

San Bernardino County supports renewable energy and looks forward to the positive economic impact the development of these projects will bring to our local economy. The proliferation of utility scale and smaller energy projects in the Mojave Desert portions of our County have caused careful evaluation and consideration of the appropriate mitigation measures that are needed to protect the environment, future development, and the economy of our region. Projects fall into three general categories:

1. Solar thermal projects producing less than *50 Megawatts (MW)*, and all wind energy and solar photovoltaic projects on *private land* are completely within the County's land use jurisdiction.
2. Projects on *public land* (typically BLM) fall under the jurisdiction of the applicable federal land owner. The County's role in these cases is that of a cooperating agency. As such we are able to review and contribute to draft environmental documents before public distribution.
3. Solar thermal energy projects producing *50 MW or greater, whether on private or public land*, fall under the jurisdiction and procedures of the California Energy Commission (CEC) for permitting and environmental review. If on federal land, a joint permitting and environmental review is conducted with the applicable federal agency. The County may provide public comment or intervene, in which case it may participate in the evidentiary hearing proceedings with the ability to pursue legal action if necessary.

Projects in the first category described above can be conditioned to address impacts on County infrastructure and operations/maintenance costs. Projects in categories 2 and 3 will require a different approach to protect the County's interests. The most critical issues to address in these categories include the following:

- **Endangered Species Mitigation**
 - Support the implementation of an in lieu fee program that will provide much needed funding for conservation, habitat restoration, implementing species recovery strategies, and predation control, but not be used to purchase vast tracts of mitigation lands or impose additional restrictions on public or private land.
 - Oppose the acquisition of habitat at a multiplied (e.g. 3:1) mitigation ratio for desert renewable energy projects because the scale of the proposed projects would render vast portions of private land unavailable for future use and could severely limit the ability of future development to adequately mitigate its impacts.
 - Rationale to support these positions includes:
 1. Federal ownership (84%) of land within the County significantly reduces tax revenue needed to serve these public lands.

2. The County general fund already subsidizes fire service in the desert and maintains roads on BLM lands – further development of federal properties exacerbates an existing problem.
3. Current proposed renewable energy projects could require 1 million acres for project sites and another 3 million acres or more for mitigation, effectively using up all available mitigation land for future development.

- **Mechanism to Address Infrastructure Impacts**

- No current mechanism exists to address the impacts these projects will have on public safety facilities and transportation infrastructure in San Bernardino County.
- Large scale development in desert areas already underfunded for public safety facilities because of significant federal ownership, will only exacerbate impacts on the County's limited financial resources.
- The County is open to a variety of approaches to address this issue, including targeted Development Impact Fees and/or direct mitigation in the form of developer constructed facilities, and is requesting that the state and federal energy and resource agencies (Fish and Game, Fish and Wildlife Service, CEC, BLM, etc) implement policies and procedures requiring developers of utility scale renewable energy projects to enter into mitigation agreements, pay appropriate fees, or develop other mechanism to mitigate impacts on local agencies.

- **Mechanism to Address Ongoing Operation/Maintenance Cost Impacts**

- No current mechanism exists to address the impacts these projects will have on the ongoing costs of providing adequate public safety and transportation services, as well as the loss of recreation/tourism revenue.
- The County is open to a variety of approaches to address this issue, including Possessory Interest Tax, Federal Lease Revenue Sharing, Community Facilities District Formation, and others. Preliminarily it appears that the ongoing operation and maintenance costs will be addressed by a Possessory Interest Tax, which should approximate property tax revenue given the expected long term of a federal land lease.

If the County is unsuccessful in negotiating appropriate impact mitigation for these energy projects, its recourse would be to legally challenge the environmental document for projects in category 2, and to legally challenge the CEC decision for projects in category 3.



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APPLICATION FOR CERTIFICATION
FOR THE **IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM**

DOCKET No. 07-AFC-5
PROOF OF SERVICE
(Revised 3/11/10)

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DECLARATION OF SERVICE

I, **Renee Meyer**, declare that on **April 16, 2010**, I served and filed copies of the attached, **Closing Brief of Intervenor, County of San Bernardino dated, April 16, 2010**. 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;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

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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
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Renee Meyer