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Thursday, June 17, 2010

To: Genesis Proof of Service List
From: Tom Budlong
Project: Genesis Solar Energy Project, CEC 09-AFC-8

Enclosed:

- Opening Testimony of Tom Budlong for July 12 Evidentiary Hearing
- Exhibits 700-709

Sincerely,

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Los Angeles, CA 90049-1016

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:	)	
	)	
	)	DOCKET NO. 09-AFC-8
Application For Certification	)	
For The Genesis Solar Energy Project	)	
_____	)	

Opening testimony of Intervenor Tom Budlong
For the Committee's Evidentiary Hearing, July 12, 2010

June 18, 2010

This statement identifies issues with respect to information presented in the Genesis Solar Energy Project Revised Staff Assessment (RSA) released June 11, 2010 that I intend to present at the Evidentiary Hearing.

Declaration of Tom Budlong
RE: Testimony on Genesis Solar Energy Project (No. 09-AFC-8)

I, Tom Budlong, declare as follows:

I prepared the attached testimony. My relevant professional qualifications and experience are set forth in my attached resume. It is my professional opinion that the attached testimony is true and correct. I am personally familiar with the facts and conclusions set forth within the attached testimony. If called as a witness, I could testify competently thereto.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge.

Dated: June 18, 2010 /s/ Tom Budlong
At: Los Angeles, California Tom Budlong

INTRODUCTION

Concern with the 250MW characterization of the project is described in the testimony. The actual output is approximately one quarter of the 250MW. Though probably unintentional, when seen by laymen and the general public the 250MW characterization is deceptive. Even when seen by most non-laymen involved in solar projects, the difference between capacity and actual is not understood or appreciated. One glaring example of damage is the biomass alternative, which incorrectly assumes equivalent outputs for the 250 MW proposed project and a 250 MW biomass project, despite the much higher biomass capacity factor. The geothermal alternative is almost certainly in the same category.

The alternatives section is inadequate. In numerous places is in violation of NEPA and CEQA. Reasons for elimination of many alternatives are often illogical and incomplete.

Despite proposing conversion of 2000 acres of pristine untouched desert to industrial, mostly highly reflective mirrors, the RSA concludes visual impact would be less than significant. It does this by assuming discretionary measures of questionable value that are specified in the Conditions of Certification would happen, and would be effective. The less than significant conclusion should be removed.

These problems with the RSA, and others described in more detail in this document, are sufficient that the RSA should be corrected and reissued as a second edition, with another full 90 day review period. I realize this would put the government guarantees and subsidies in jeopardy. These are not our responsibilities. Our responsibilities are to fairly present the project and alternatives, and to do the best to get the project done right.

Following is my testimony. Following the specific testimony is my exhibit list, my resume and a declaration.

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1) The project is in basic violation of NEPA

Reference Exhibit 701 - NEPA - The National Environmental Policy Act of 1969.

NEPA's Title I, Section 101, details basic and fundamental goals. Following are quotes from this section, and then the full text of the section.

In relating the quotes to the proposed project, it is important to keep in mind that the proposed project will completely use up undeveloped, essentially virgin land. The land will convert from near pristine and virtually untouched to a high-intensity industrial zone. It will destroy essentially all of the property's plant and animal life, environmental benefits, and prehistoric cultural evidence. It will be a complete change in the visual impact, inconsistent with most visually adjacent lands.

Quote	Comment
The Congress recognizing the profound impact … industrial expansion … resource exploitation… recognizing further the critical importance of … maintaining environmental quality…	Congress understands the deep importance of maintaining environmental integrity.
… create and maintain conditions under which man and nature can exist in productive harmony …	The phrase productive harmony is inapplicable for this project. Nature is effectively destroyed, and there can be no harmony with something that does not exist.
…fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.	We are trustees of the environment, responsible for the future. Destroying the environment violates this trust.
… assure…productive and aesthetically and culturally pleasing surroundings	The Imperial site as an industrial site is not aesthetically and culturally pleasing. The site may be productive, but is not both, as required.
…attain the widest range of beneficial uses of the environment without degradation…	The degradation mentioned would be complete.
Preserve…natural aspects, maintain..diversity …	Both natural aspects and diversity would be entirely removed.
… each person has a responsibility to contribute to the preservation and enhancement of the environment.	The effect of the proposed project is exactly opposite of preserving and enhancing.

Here is the full text of NEPA's introduction, the source of the quotes:

TITLE I
CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY
Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

2) Applicant Objectives

One of the applicant's primary objectives, profit at minimal risk, is omitted from the RSA and should be included. This objective is more fundamental than the applicant objectives stated in the RSA. To help understand that it is fundamental, consider that the applicant would not have conceived of and applied for project certification without a reasonable profit potential. It would not come to California for altruistic purposes.

That NextEra requires a profit is not a negative criticism. NextEra is an enterprise which must be profitable to be viable, and so can only engage in ventures with a reasonable risk and reasonable profit potential. That the profit motive 'goes without saying' does not argue for its omission, since it is indeed the primary motivation.

This objective should be first in the list of applicant project objectives, to bring focus and understanding to the underlying motivation of the applicant. The RSA should be understood in this context.

3) BLM Purpose and Need Statements are Incorrect.

RSA page B.2-10 lists authorities.

1) 'Executive order 13212 … which mandates …'

The full Executive Order is included as exhibit 702.

Use of the word 'mandate', and omission of mentions of environmental concerns in the executive order are misrepresentations of the flavor of the Executive Order, in violation of requirements for Environmental Impact Reports. They lead readers astray.

The sense of the text of the EO is a priority, not a mandate. In fact, the word mandate does not appear in the order. Also omitted is that the order is sensitive to the environment, with the clauses '*environmentally sound manner'* and '*while maintaining …environmental protections'*. The full text of the paragraphs with these excerpts is:

Section 1. Policy.

The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

Sec. 2. Actions to Expedite Energy-Related Projects.

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

2) 'Secretarial Order 3285 of March 11, 2009, which establishes the development of renewable energy as a priority for the Department of the Interior.' The order is included as Exhibit 704.

Please note that the order includes the clause '…while protecting and enhancing the Nation's water, wildlife and other natural resources.' Section 4, Policy, is:

Sec. 4 Policy.

Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. Agencies and bureaus within the Department will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife and natural resources.

Contrary to the impression in the RSA, these show that Congress and the Interior Department are concerned with environmental and natural resources as well as energy sources, that they must co-exist, and that one does not trump the other. They do not 'mandate', and they do not 'require', and they are as specific about environmental protection as about encouraging renewable energy. One does not take priority over the other.

The proposed project, having unmitigable significant impacts to several aspects of the environment, is out of compliance with the orders. We must be more clever in designing renewable energy solutions.

4) BLM Purpose and Need is Too Restrictive

The BLM purpose and need (RSA page A-6) states

> *The BLM's purpose and need for the GSEP is to respond to the applicant's application under Title V of the FLPMA (43 USC 1761) for a Right-Of-Way (ROW) Grant to construct, operate and decommission a concentrated solar thermal electric generating facility, and associated infrastructure*

This purpose and need statement does not address the fundamental issue of renewable energy.

Note that NEPA Section 1502.14 states

> *'agencies shall… rigorously explore and objectively evaluate all reasonable alternatives….'*

The purpose and need statement circumvents the NEPA requirement to evaluate reasonable alternatives, since it requires concentrated solar. Nothing in NEPA restricts alternatives to the technology proposed by the applicant, or precludes alternatives from using alternate technologies.

The purpose and need statement also appears to restrict the alternatives to the site the applicant has chosen. But NEPA demands reasonable off-site alternatives be considered. Reference Exhibit 706, which includes Question 2b from NEPA's 40 questions:

> *2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?*
>
> *A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).*

5) Project Objectives

Several of the project objectives are unreasonably narrow.

NEPA explicitly prohibits this limiting of alternatives. It is properly concerned with finding the best solution, and specifically requires the alternatives considered not be limited to what the applicant wants or is capable of doing.

The limitations contained in the project objectives are in direct violation of Question 2a of NEPA's 40 Questions (see Exhibit 706).

> *2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?*
>
> *A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.*

Likewise, CEQA requires a full range of alternatives. Section 15126.6(a):

> *An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project*
>
> *An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.*

The RSA has concluded there are no significant impacts. This may or may not be true. This testimony shows that visual impacts are not mitigated to less than significant, as claimed in the RSA. Other environmental impacts not discussed in this testimony may also be shown not to be less than significant.

If indeed, as claimed in the RSA, the proposed project has no significant effects, then CEQA would not require any alternatives be analyzed. Of course, this is an absurd conclusion, completely violating the spirit of CEQA whose thrust, like NEPA, is to determine the best reasonable and feasible solution. Accordingly, the RSA uses 100 pages to discuss alternatives.

The proposed project meets the three restrictions that NEPA prohibits, arousing suspicion that the restrictions are chosen to favor the proposed project, the very situation NEPA is designed to prohibit.

High Solarity Site

In violation of NEPA Question 1a (Exhibit 706), project objectives stated in the RSA require the project be developed on a site with excellent solar resource. This restriction precludes Geothermal, Biomass and Wind alternatives, since they are independent of solarity, and technologies that could be considered unconventional but do not require high solarity. Although eliminated for other reasons, the high solarity requirement also precludes tide and wave technologies.

This requirement for a high solarity area occurs throughout the RSA:

- Applicant's Project Objectives (RSA B.2.4.1 p. B.2-9)
  To develop a site with an excellent solar resource
- CEQA PROJECT OBJECTIVES / Energy Commission objectives (RSA A.4, p. A-6)
  • To locate the project in an area with high solar insolation (i.e., high intensity of solar energy);
- GSEP specific objectives (RSA A.4, p. A-6)
  • To locate the project in an area with high solar insolation (i.e., high intensity of solar energy);
- Project Objectives Of The Energy Commission (CEQA) (RSA B.2.4.2, p. B.2-10)
  • To locate the facility in areas of high solar insolation.
- PROPOSED PROJECT OBJECTIVES: The specific objectives of the Genesis Solar Energy Project are: (RSA p. 5)
  • To locate in an area with high solar insolation (high solar energy intensity);
- PROJECT OBJECTIVES The Genesis Solar Energy Project objectives are as follows: (RSA p. B.1-30):
  • To develop a site with an excellent solar resource

Trough Technology

Also in violation of NEPA Question 2a, project objectives in the RSA are narrowed to require parabolic trough technology:

Occurrences:

- Applicant's Project Objectives (RSA B.2.4.1 p. B.2-9)
  • To develop a new utility-scale solar energy project using proven concentrated solar trough technology.
- PROJECT OBJECTIVES The Genesis Solar Energy Project objectives are as follows: (RSA p. B.1-30)
  • To develop a new utility-scale solar energy project using proven concentrated solar trough technology
- CEQA PROJECT OBJECTIVES / Energy Commission objectives (RSA A.4, p. A-5)
  • To develop a utility-scale solar energy project utilizing parabolic trough technology;
- PROPOSED PROJECT OBJECTIVES: The specific objectives of the Genesis Solar Energy Project are: (RSA p. 5)
  • To develop a utility-scale solar energy project utilizing parabolic trough technology;

ARRA Funding

Two project objective statements additionally restrict alternatives to projects that qualify for ARRA funding. The applicant has stated that it intends to apply for ARRA funding (RSA page B.2-11). Again, this artificial objective removes potentially viable alternatives, in violation of NEPA and CEQA.

- CEQA PROJECT OBJECTIVES / Energy Commission objectives (RSA A.4, p. A-6)

  • To commence construction in 2010 to qualify for the American Recovery and Reinvestment Act (ARRA) of 2009's Renewable Energy Grant Program.

- Project Objectives Of The Energy Commission (CEQA) (RSA B.2.4.2, p. B.2-10)

  • To complete the review process in a timeframe that would allow the applicant to start construction or meet the economic performance guidelines by December 31, 2010 to potentially qualify for the 2009 ARRA cash grant in lieu of tax credits for certain renewable energy projects.

6) Economic Analysis

The EIS must include economic analyses of the proposed project and alternatives.

Economic analysis to examine and understand economic feasibility of the project is fundamental, and a foundation for analysis of the project and for alternatives analysis. The project will present a huge environmental disturbance to the area. If it becomes economically unfeasible it will eventually be abandoned, leaving an impact that cannot be repaired or returned to undisturbed condition in a reasonable time frame, perhaps essentially forever. The probability of such an environmental impact cannot be ignored in an Environmental Impact Report. Alternatives must be analyzed to the same economic criteria for the same reason. They cannot be considered in a vacuum of comparison to the proposed alternative.

Recognition of Economic Importance by the RSA

The concept that economic analysis is basic is recognized in many places the RSA:

- Project Objectives (RSA p. B.2-10)

  To complete the review process in a timeframe that would allow the applicant to start construction or meet the economic performance guidelines by December 31, 2010 to potentially qualify for the 2009 ARRA cash grant in lieu of tax credits for certain renewable energy projects

- Proposed Project Objectives (p.5): Among the CEQA project objectives is:

  To construct and operate an environmentally friendly, economically sound, and operationally reliable solar power generation facility…

- This is repeated almost verbatim on pages A-5 and A-6, in the CEQA Project Objectives:

  To construct and operate an environmentally and economically sound, and operationally reliable solar power generation facility

- Again, on pages B.1-30 and B.2-9, talking of applicant objectives:

  To construct, operate and maintain an efficient, economic, reliable, safe and environmentally sound solar powered generating facility

- The discussion of the Reduced Acreage alternative on page B.2-15 states:

  A detailed cost-benefit analysis for a reduced-size project would be required in order to determine the economic feasibility of this alternative. As a result, feasibility is uncertain at this time.

- Economics is of concern for the Reduced Acreage Alternative;

  page B.2-85:

  While the Reduced Acreage Alternative would meet most project objectives, it is uncertain whether the Reduced Acreage Alternative is economically feasible.

  page B.2-15:

  A detailed cost-benefit analysis for a reduced-size project would be required in order to determine the economic feasibility of this alternative. As a result, feasibility is uncertain at this time.

- Economics appears to be of concern in at least one instance in the RSA. The economic feasibility of dry cooling is examined starting on page B.2-19.

Other considerations mentioned in regulations and the RSA require consideration of economics.

a) NEPA's Council of Environmental Quality is specific. Question 2a of the CEQ's 40 Most Asked Questions (Exhibit 706) requires economic analysis[1]:

> ***2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency****. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?*
>
> *A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the* ***technical and economic standpoint and using common sense****, rather than simply desirable from the standpoint of the applicant. [Emphasis added]*

NEPA is concerned with ensuring only reasonable alternatives need be considered. The definition of reasonable alternatives is practicality and feasibility from:

- the technical standpoint,
- the economic standpoint,
- and using common sense.

Section 1502.14 continues, requiring as the basis for choice, a presentation that includes the proposal and the alternatives defined as reasonable.

> ***Nepa Sec. 1502.14 Alternatives including the proposed action.***
>
> *This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and* ***providing a clear basis for choice*** *among options by the decision maker and the public. [Emphasis added]*

Elsewhere in NEPA, Section 1501.2(b) requires comparison of environmental effects and values with economic and technical analyses, and that these documents and analyses be made available.

> *Each agency shall:*
>
> *(b) Identify environmental effects and values in adequate detail so they can be compared to* ***economic*** *and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.*

Clearly, NEPA intends economics be part of the decision process, parallel with technology and impacts to the environment.

b) The CEC requires that the project sell competitively priced electricity:

- Page B.2-69, discussing CEQA and NEPA criteria for distributed solar alternatives:

  > *…CEC project objectives to operate 250 MW of renewable power in California capable of selling competitively priced renewable energy.*

- Page B.2-81:

  > *However, gas-fired plants would fail to meet a major project objective: to construct and operate a renewable power generating facility in California capable of selling competitively priced renewable energy consistent with the needs of California utilities*

  (The needs of California utilities are not described.)

Fulfillment of the project objective of competitive price cannot be verified or judged without an economic analysis.

c) The Alternatives Section, Summary of Conclusions, quite properly talks about costs of alternatives:

Page B.2-2 shows cost concern for rooftop solar:

> *…increased deployment of distributed solar photovoltaics faces challenges in manufacturing capacity, cost, and policy implementation.*

It is impossible to consider alternatives and compare them to the proposed project without analyzing costs of each.

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[1] The CEQ 40 Most Asked Questions and the answers are at http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm.
The CEQ authorization memo (Exhibit 705) is at http://ceq.hss.doe.gov/nepa/regs/40/40p2.htm

d) USACE regulations require cost consideration:

Page B.2-8, when discussing USACE alternative requirements :

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Cost must be considered in determining the practicality of an alternative. An analysis is required.

e) Evaluation of alternative sites requires consideration of cost:

Page B.2-21. One of the site selection criteria is:

• *site should be located on property currently available at a reasonable cost.*

g) That the project be economically sound is one of the CEQA Project Objectives. In fact, it is list first among the several objectives, implying its importance. Several discussions emphasize this. See pages 5, A-5 and A-6:

To construct and operate an environmentally and economically sound, and operationally reliable solar power generation facility that will contribute to the State of California's renewable energy goals;

These examples demonstrate that economic and cost analysis is an integral, necessary component of the "basis for choice among options by the decision maker and the public" (The quote is from NEPA, as quoted above.)

That economic considerations are mentioned in numerous places in the documentation is understandable, since the project probably would not exist without economic justification and a cost-to-benefit analysis. An economic analysis is necessary to evaluate the project, and to compare it with alternatives. Without an economic analysis we are forced into the qualitative terms 'cost more', or 'cost less'. Intelligent decisions cannot be made with acceptable confidence when based on unnecessary non-specific terms.

It is tempting to say that the project is necessary, no matter the cost, for the public good of reducing global warming, currently accepted as a necessary goal. But this is not an 'at all cost' project.

Additionally, since the project will likely be subsidized with public money and will likely use public land, transparency demands that the economics of the project be revealed to the public.

An economic analysis should include comprehensive details, including but of course not limited to:

- Cost of construction.
- Cost of financing the construction.
- Cost of land usage – purchase or lease.
- Operation costs when the facility is up and running.
- Cost of washing parabolic dish mirrors, compared to flat mirrors.
- Insurance costs.
- Revenues from electricity sales.
- Taxes
- Government subsidies
- Other costs and revenues.

7) Net Energy Analysis:

The RSA is missing analysis of the net energy produced. It is impossible to judge if the project balances the environmental cost without knowing how well the project satisfies its basic purpose. It is even possible that energy used for construction and operation will exceed the total output over the project life. This balance cannot be estimated without an analysis. Common sense dictates that plans for a project intended to produce energy include analysis of the net energy that will be produced. I have not found in the documentation justification for the stated 40 year life, nor analysis to support the stated production of 1,620,000 KWh/year.

This analysis should compare net usable energy produced against the no-action alternative, which would neither use nor produce energy. It should also compare against the alternatives. It should include (but of course not be limited to):

- Energy delivered to the customer, after it has gone through transmission lines.
- Energy required to upgrade or make new transmission lines.
- Energy expended during construction – machinery fuel etc.
- Personnel commuting energy (gas for commuting vehicles), during construction and production.

- Energy to transport the plant machinery to the site.
- Life cycle analysis: Energy to make the parabolic mirrors, exclusion fence, and all other facilities. This energy should be compared to the no-action alternative, which would use no materials, and so should include the energy required to mine the materials, through the manufacturing process to the finished product.
- Construction will advance construction machinery to its eventual end of life. The energy analysis should include the energy needed to either replace worn out machinery, or a percentage of life used. Again, this should include total cost of replacement, from mine to finished product. (Without this project, these costs would be avoided.)
- Parasitic energy during production.
- Energy required for decommissioning at the end of the useful life of the power plant.

8) The Synergy of Cost, Motivation and Net Energy

Given the very large government economic incentive, it's even possible that the project will satisfy the applicant's basic profit motivation while providing an insignificant net energy. Should this happen, the huge environmental cost would have been spent for naught.

It is imperative the Environmental Impact Statement objectively examine the components of the issue separately, and subsequently examine them together.

9) The 250MW rating is incorrect

The facility will generate approximately 68MW, not 250MW.

Page B.1-3 states that each 125MW plant will produce approximately 300,000 MWh/year, approximately 27% capacity factor. Of course, the combined output of both equally plants would be 600,000 MWh/year.

Indeed, dividing 600,000 MWh/year by the number of hours in a year (24x365) gives 68 MW, and 68/250 is 27%. This is in line with capacity factors for CSP solar generators in general.

The actual output (600,000 MWh/year, or 68 MW) appears in very few places in the RSA. Compare this statement with the 250MW rating used repetitively in the RSA.

This conflict in emphasis is a gross, misleading mischaracterization, and must be corrected. The number invites almost all readers to assume the plant will produce almost four times as much as it actually will produce. The misconception carries to media reports and to general public perception. It misleads the public, and authors of the RSA as well.

The difference between the oft-stated 250MW and actual production is not directly explained in the RSA. Perhaps attempting to justify the discrepancy, many places the RSA modify the 250MW with 'net', 'nominal' and 'capacity'.

- Use of the modifier 'nominal': The dictionary definition of nominal is "Existing in name only; not real or actual" (Houghton Mifflin), and 'without reference to actual conditions" (Merriam's Webster's).
- Use of the modifier 'net' when referring to the 250 MW rating. Of course, a net amount is the actual amount received. A common example is packaged foods and other goods. Use of this word here is incorrect.
- Capacity is a illusory and deceptive tool, requiring skepticism or experience to question it is not what you get. It is not explained.

This is important.

- Readers who are not aware of the discrepancy are misled. An extremely small number of people would think to question the 250 MW number. An even smaller number would be able to locate the infrequently mentioned actual output in the RSA, understand the implication, and do the arithmetic to verify.
- Note that the CEC's main web page for the Genesis project says:

  The project consists of two independent solar electric generating facilities with a nominal net electrical output of 125 megawatts (MW) each, for a total net electrical output of 250 MW.
- The authors of the biomass alternative in the RSA were misled. They treated as equivalent the 250 MW proposed project, whose capacity factor is around 25% and a 250 MW biomass facility, whose capacity factor would be around 80%. The same error was made in the geothermal alternative analysis.

- The RSA analysis of the geothermal alternative appears misled. It apparently makes the mistake of equating this '250 MW' project with a 250 MW geothermal facility, despite the greatly different capacity factors, and hence actual output, of geothermal plants.
- People outside the project assume it generates 250 MW. This is evident in press reports. The result is feeding incorrect information to the public.

Cooler Planet, Nov 12, 2009 (http://solar.coolerplanet.com/News/11120901-california-paves-way-for-genesis-solar-energy-project-in-riverside-county.aspx)

The project, under the auspices of Tucson, Arizona-based, privately held Genesis Solar LLC, will consist of two independent solar electric generating facilities with a combined total output of 250 megawatts, sited on 1,800 acres of BLM- (Bureau of Land Management -)

Genesis Solar Energy Project (CACA 48880) (undated) This is the BLM's announcement of the project. (http://www.blm.gov/ca/st/en/prog/energy/fasttrack/ genesis.html)

The proposed project is a parabolic trough solar thermal power generating facility designed to produce 250 megawatts of power.

Solar Panels and Solar Energy.com (undated) (http://www.solarpanels-solarenergy.com/solar-panels/california%E2%80%99s-genesis-solar-energy-project-looking-up/)

The project will include of two independent photovoltaic electric generating facilities which will have a combined total output of 250 megawatts. Under the auspices of Tucson based private company, Genesis Solar LLC, the project will be situated on 1,800 acres Bureau of Land Management land. (http://www.blm.gov/ca/st/en/prog/energy/fasttrack/genesis.html)

October 26, 2009. NextEra Energy Resources to supply solar power to PG&E (http://www.nexteraenergy.com/news/contents/2009/102609.shtml). This is NextEra's own website. Its statement is unequivocal –NextEra claims it is selling 250 MW to PG&E.

JUNO BEACH, Fla. – NextEra Energy Resources, LLC, already the country's leading generator of wind and solar power, announced today that it has entered into a contract to sell 250-megawatts of solar thermal power from the proposed Genesis Solar Energy Project to Pacific Gas and Electric Company (PG&E).

That this practice is common with most solar facility descriptions is not a reason or excuse to allow it to happen in this documentation. It is wrong and misleading to the point of being fraudulent. One responsibility of the documentation is to fairly describe the proposal, and 250 MW does not do that.

Because this is a common practice, the documents should explain the difference between maximum and average output, explain Capacity Factor, and explain that the output is commonly mis-stated. Because it is easy to miss a single explanation in such a large amount of documentation, or not understand its implication, or be seduced by repetition of the 250 MW number, all documentation connected with the project should be corrected. Perhaps both numbers should be used side-by-side, and when comparing Imperial Solar with other facilities the 250 MW number could be used, with explanation. The purpose is to avoid misleading readers who are innocent of this situation.

Here are example locations in the RSA that refer to 250 MW with no reference to actual output and no use of the conditional 'net', 'capacity, or 'nominal' words.

Page	Quote
C.5-21	The reduced emissions would decrease the cancer risk and chronic and acute hazard indices predicted for the 250 MW project as proposed.
B.1-2	The overall site layout and generalized land uses are characterized as follows: 250-MW facility, including…
B.2-20	BLM's "action alternative" would be to amend the CDCA Plan to include GSEP (250 MW), and …
B.2-5, B.2-70	While it will very likely be possible to achieve 250 MW of distributed solar energy over the coming years…
B.2-5	Therefore, the development of 250 MW of new geothermal generation capacity within the timeframe…
B.2-13	Sufficient disturbed, private lands for a 250 MW solar power plant were not available near the GSEP,…
B2-50	The design of a 250 MW project at the Gabrych Alternative would be similar to that of GSEP at the proposed site.

To put it more bluntly, the RSA is fooling most everybody with the 250MW number. That's unethical.

10) Visual Impact

The proposed project is a 2,000 acre industrial site on and surrounded by untouched, pristine desert. Staff's conclusion that it will have less than significant visual impact is absurd. The proposed conditions of certification cannot promise and do not warrant the conclusion.

How is the conclusion possible? The answer is in certification condition language that is open to subjective interpretation and to evasion. Essentially, the requirements say to the constructors 'Implement your definition of feasible and minimization of visual impact – no more is required.' Many of the conditions are platitudes, with no concrete specifications. The conclusion of less than significant visual impact cannot be based on this level of discretion and imprecision. The reality is that no mitigation can make an industrial island in undisturbed visually intact surroundings visually less than significant.

With the level of latitude in implementation that is in the conditions, justification of project permission based on the prediction that visual impact will be less than significant could well be called insincere. After construction, when the visual impact turns out to be significant, it is inconceivable that any level of authority would stop the project, order it dismantled and the land returned to original condition.

Imprecise requirements in the Conditions of Certification

Condition	Revised Staff Assessment Excerpt	Comment
VIS-1	…treat all non-mirror surfaces … such that their colors minimize visual intrusion…	'minimize' is subjective. It implies the smallest possible, but possible must be viewed in terms of practicality – time and expense. Even given unlimited time and expense, it's doubtful a surface color could mimic light reflection, shading, texture, highlighting and other requirements to realistically mimic the natural world. No evidence is presented that minimizing makes the visual impact less than significant.
	… their [non-mirror surfaces] colors and finishes do not create excessive glare…	'Excessive' is subjective. Certainly project personnel and those who appreciate deserts could have different interpretations of 'excessive'.
	…coloring of security fencing…to blend to the greatest extent feasible with the background soil.	'greatest extent feasible' is completely subjective. The full quote mentions slats, vinyl, non-reflective, … No evidence is presented that these would make the visual impact less than significant.
VIS-2	To the extent feasible…consistent with safety and security …	The conditions are meaningless since: Safety and security can at any time justify violation of the goal. 'to the extent feasible' is subjective. The goal of less than significant visual impact could easily be deemed not feasible.
	a) lamps and reflectors are not visible from beyond the project site.	This could be deemed not feasible, or required for safety and security.
	b) lighting does not cause excessive reflective glare	'excessive' is subjective.
	c) direct lighting does not illuminate the nighttime sky…	'does not illuminate' is subjective.
	c)…except for required FAA aircraft safety lighting	I found nothing in the RSA to describe FAA requirements. Do they define 'excessive' lighting? If FAA requirements result in high night-time light pollution, they would obviate the conclusion of less than significant visual impact.

Condition	Revised Staff Assessment Excerpt	Comment
	d)…illumination of the project and its immediate vicinity is minimized.	Both 'immediate vicinity' and 'minimized' are subjective.
	E. All lighting shall be of minimum necessary brightness consistent with operational safety and security.	'minimum necessary' is subjective. Security personnel and safety personnel can, at any time, cite safety and security to demand lighting that results in significant visual impact.
	F. …To the greatest feasible extent, project lighting shall be used on an 'as needed' basis…	'greatest feasible extent', and 'as needed' are subjective. Management at any time can install lighting that presents significant visual impact under the authority that the lighting is needed, and anything less is not feasible.
VIS-3	…set back the transmission line at least ½ mile from I-10, if possible.	The 'if possible' clause invites interpretation that it is not possible, or not possible on practical terms. No evidence is presented that a ½ mile setback would result in less than significant visual impact.
VIS-4	…chain link fencing … opaque privacy slats of a minimum 8 feet in height…	The fence will be 8' high (RSA page C.6-5), or 10 feet high (RSA page C.10-13). Independent of this discrepancy, both are too low to hide the mirrors, which can be 25'-30' high (RSA pages B.2-59, C.2-96) (30' at B.2-60). VR Fig 5 shows structures approaching 50' high. Structures, especially mirrors, substantially higher than fencing will produce a significant visual impact.
VIS-6	To the extent possible… …reduction of unnecessary disturbance. Retain as much …as possible Minimize the number of structures… Use natural appearing forms… Reduce the amount of disturbed area…	The phrases are subjective. Each can justify design that increases visual impact well above less than significant. Ignored is the bald fact that an industrial site in the midst of de-facto wilderness will be visually intrusive. The most sensitive designer could not avoid this fact.

Glare Impacts

Glare impacts are discussed, with some confusion, starting on page C.12-21. The confusion is from using the term 'focal plane' of the troughs. Focal plane is a common term with lenses. The focus of a parabolic trough would be a line, the line occupied by the heat collection tube. Another confusion is the excerpt "…the bright spots depicted are believed by staff to be spread reflections of the sun." Unexplained is the contradiction of spot and spread.

Independent of this confusion, the discussion explains what could be called fugitive light from the mirrors, using several descriptions. These excerpts appear on page C.12-21 of the RSA:

- during certain times of day the mirror units can produce substantial glare and that such glare can be experienced by the public from locations in the project vicinity as intrusive nuisances and may be a distraction
- … bright spots … may appear to be very bright.
- The bright spots also appear to 'follow' the viewer
- produce a linear reflected solar image which may be visible briefly to nearby observers.
- these reflections may, under the right conditions, be prominently visible from several miles away.
- The existing Chuckwalla Valley within the project viewshed is essentially dark at night. The pristine, unlit night sky is an important part of the camping experience for many visitors to remote areas such as the nearby Wilderness Areas.

It's obvious that the mirrors produce reflections visible well away from the project site, and that night-time light pollution is an issue of concern. The RSA recommends VIS-4 to prevent bright spot reflections, but that this conclusion is based on 'available data', indicating that staff is working with incomplete data. It continues with recommending VIS-2, repeating words that are open to subjective interpretation and/or make recommended measures optional, or even impossible: 'does not cause excessive reflected glare, 'except for required FAA safety

lighting', 'minimize to an as needed basis', 'wherever feasible'. These are the same potential exceptions to effective control that appear in the text of the Conditions of Certification.

KOP Visual Summary

In this summary of KOP visuals, taken from the RSA, note the preponderance of Moderate and High. This is an indication of the difficulty of bringing the visual impact to less than significant, acceptable levels.

	Visual Quality	Viewer Concern	Viewer Exposure	Overall Visual Sensitivity
KOP-1	Moderate	High	Moderate	Moderately high
KOP-2	Moderate	High	Moderate	Moderately high
KOP-3	Moderately high	High	Moderately low	Moderately high
KOP-4a, 4b	Moderately high	High	Various	Moderate
Palen-McCoy Lowlands	High	High	Moderately low	Moderate

Further Discussion

The photos modified to show the project from I-10 locations show no glare (Figs, 8B, 9B, 10B). Since the mirrors will be visible from some part of the freeway to varying degrees during the day, the glaring surfaces are always visible to some drivers.

Typical is the KOP-1 discussion. KOP-1 will have the most visual impact from I-10. The discussion on RSA page C.12-15 recognizes this:

the project would occupy a vast horizontal area, extending across the entire width of the field of view	This recognizes the potential for visual impact.
the level of brightness of the mirror field could be much greater than depicted in the simulation [Figure 8B] substantially increasing the project's level of contrast under certain conditions.	The discussion does not define the 'certain conditions'.
Spatial and scale dominance of the vast mirror fields is potentially great, but again greatly moderated by the very narrow portion of the view affected. Dominance would be accentuated during conditions of bright mirror reflection, which would draw attention to the facility	With no light coming from the mirror field, the narrow vertical field would indeed make the project hard to see. But during operation, the mirrors will reflect, most probably making them very noticeable.
Overall visual change to viewers on I-10 is thus considered moderately low, or moderate during the brightest periods of diffuse glare as indicated in Visual Resources Figure 12	
Visual change could rise to a moderately high level if viewers were exposed to bright point spread reflections of the sun as depicted in Visual Resources Figure 13	Figure 13 show Nevada Solar One with substantial glare.

The discussion (RSA page C.12-16, top) then attempts to minimize the impact by citing VIS-4, and the conditions of certification in general.

With staff-recommended Condition of Certification VIS-4, bright point reflections could be blocked, reducing glare to occasional episodes of moderate visual change from diffuse reflection from the mirror fields as a whole.	The text is not confident that glare would be blocked, using the conditional 'could' instead of 'would be blocked', perhaps in recognition that the fence is much lower than the mirrors. Most of the conditions of certification are worded to be optional, implemented at the discretion of the project, which could decide the exceptions are not feasible, are
With all recommended conditions of certification, overall visual change would thus remain moderate.	

In the context of the setting's moderately high visual sensitivity, this moderate level of visual change would, with recommended conditions of certification, be less-than significant.	incompatible with safety and security, are minimized to the project's satisfaction, are not compatible with FAA regulations, are needed full time, … Despite these flaws, the text manages to conclude the visual impact is 'less than significant'. But since there is no confidence the conditions would be implemented the conclusion of less than significant visual impact is not defensible.

11) Alternatives

Introduction

NEPA's and CEQA's underlying principal is to understand and know before deciding, that inadequate information leads to unsound understanding, leading to unsound decisions when balancing environmental protection with our activities. Thus, the environmental policy contained in NEPA. CEQA necessarily follows NEPA, with the similar principals.

NEPA/CEQA Requirements

NEPA and CEQA demand clear, adequate presentation and discussion of both impacts and alternatives. The text from NEPA (1502.14), for example, is explicit:

> *… it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.*

CEQA 15126.6(a):

> *An EIR … must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.*

The RSA alternative section does this, but only in a few places. Substantial parts are brief, qualitative where they should be quantitative, and do not present alternatives in comparative form. Too often, statements are made with no backup data or evidence, and have the flavor of arbitrary opinions. Reasons for elimination of an alternative often apply to GSEG as well as the alternatives. These shortcomings must be corrected before the RSA can be considered an adequate depiction of the situation, for adequate understanding, and for intelligent decision making.

CEQA Project Objectives

Section A4, page A-6 of the Genesis RSA emphasizes the project must be located in an area with high solar insolation.

> • *To locate the project in an area with high solar insolation (i.e., high intensity of solar energy);*

This objective is stated twice in the section.

It is repeated on page B.2-69:

> *The solar technology would not necessarily meet the objective to locate the facility in areas of high solarity, because the distributed technology could be located throughout the State.*

This objective is illogical, and in violation of NEPA. It disfavors alternative solutions. It does not allow for alternatives, still using the same technology, that could provide the same energy with less impact despite not being in an area with high solar insolation.

It is illogical for the very same reason that NEPA prohibits artificial conditions. It unreasonably restricts alternatives, throwing favor toward the applicant's proposed solution. Indeed, the overriding objective of the national exercise toward renewable energy makes no pretense to favor location – it is interested in renewable energy (with other considerations, such as environmental), and makes no judgment as to insolation or other similar properties such as air temperature, altitude, terrain… With this artificial requirement, alternatives such as geothermal, biomass, even tidal wave, could conceivable be chosen, but only they are in an area with high insolation despite being completely independent of solar radiation.

By way of hypothetical example, presume that tomorrow one of the labs working on PV announces a very low cost technology that converts at 100% efficiency, so long as the radiation on the PV does not exceed 50% of maximum that occurs in high solar areas. To force this technology to a high solarity site would require artificially

shading the PVs, only to meet the artificial requirement. It would preclude the hypothetical PV from a location in a better area with lower radiation. Obviously, this would be ludicrous.

Indeed, the rooftop alternative is rejected because rooftops are not common in high solarity areas. This judgment is independent of the viability of the alternative.

NEPA Requirements

NEPA has been interpreted by the Council of Environmental Quality, which issued answers to '40 Most Asked Questions' (Exhibit X00-07). Question 2a addresses the question of the alternatives that must be included. It seems obvious the CEQ was concerned that wild impractical schemes not be required to be considered, and that reasonable alternatives not primarily desirable to the applicant must be considered.

> ***2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency****. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?*
>
> *A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. [Emphasis added]*

Implied in this answer is that artificial restrictions not be placed on alternatives considered.

Summary of Impacts

The Summary of Impacts for the Gabrych alternative counts the number of impact categories that have impacts similar to, greater than, and less than the proposed project. Thought not stated explicitly, the implication is that comparing the number of greater impact categories to the number of lesser impact categories leads to a conclusion. Not considered by this method are the levels of impacts of the various categories.

I attempted to factor in level of impact for the Gabrych alternative by assigning impact levels derived from the impact discussions in the RSA. They are subjective, and others may wish to assign different levels. The result shows the Gabrych alternative is superior to the GSEG proposal.

Proposed Site

Major objections to the project include the effectively complete and permanent destruction of the biological, cultural, visual and aesthetic character of the site. No matter how you look at it, or how many mitigation measures are applied or devised, the result is that the site is essentially destroyed – it becomes single purpose industrial – a complete transformation out of character with its surroundings. Yet Riverside and Imperial Counties have abundant disturbed land in high solar areas. It's difficult to believe that a solution cannot be devised to put the project on disturbed land already exhausted of the values mentioned above. In the end, it's not necessary to consume the proposed site to provide solar power.

Combined Alternative Analysis

The alternative analyses are restricted to either:

- Putting alternate technologies at sites other than the proposed site (e.g., at the Gabrych alternative).
- Putting alternate technologies at the proposed site.

Only one alternative analysis – geothermal – considers an alternate technology at an alternative site. Examples of other possible off-site/alternative technologies are putting a power tower installation, or using linear Fresnel, on the Gabrych site.

Another way of expressing this analysis deficiency is that it appears there has been no consideration of possible solutions combining other locations and other technologies. It appears highly likely that such an unrestricted alternative philosophy would uncover reasonable alternatives culminating in a better solution.

Rejections of Alternatives

Many alternative's Rationales for Elimination are obviously illogical, bringing to question the objectivity of the analyses. These illogical conclusions are in gross violation of NEPA and CEQA requirements. Typical are:

- Gabrych: With no discussion or analysis of ownership, the alternative is eliminated because there are too many landowners, other than stating, without evidence, the number of landowners. No evidence is presented to qualify the situation or to justify the conclusion.
- Geothermal: Rejected illogically because 'few new projects have been proposed'. The analysis did not establish a connection between the viability of the alternative and the existence new project proposals, probably because there is none. The conclusion is illogical on its surface.

  A second reason for rejection is that geothermal is not in the list of Renewable Energy Portfolio projects that have requested ARRA funds. This implies that projects must use public money to be considered. Again no connection was made in the analysis, likely for the same reason – that there is no connection.

  Note that neither of these rejection reasons are dependent on analysis of the technology, the site, or environmental impacts. Yet, the RSA provided analysis, however brief and inadequate, despite its irrelevance to the rejection reason. This indicates cloudy thinking in the RSA.
- Linear Fresnel is dismissed because it would not eliminate the significant impact of the proposed alternative. This criterion would also remove parabolic mirrors from consideration, since these do not eliminate significant impacts.
- Utility Scale Photovoltaic: Eliminated because California must have access to all types of renewable technologies. Not only does the analysis fail to discuss this reason, it defies imagination to understand the logic.

  Another reason for elimination is that water usage would be the same as the proposed project. The RSA does not provide evidence that an alternative must be rejected if one of the impacts is the same as the proposed project, probably because it's not true.
- Biomass: Rejected because most biomass facilities are 3-10 MW. Again, no evidence was presented that rejection could be based on the size of 'most' biomass project.

These examples invite suspicion that parabolic mirrors are the prejudged as the only solution. The RSA, however is not the proponent's sales brochure, and the purpose of the RSA is not to promote the applicant's proposed solution or pretend it is better. The concept is in clear violation of the answer to Question 2b of NEPA's 40 questions (Exhibit 706), and to general provisions in CEQA. The applicant's proposed solution, in fact, must be better (or at least equal), to be preferred over other alternatives.

At the same time, at least one of the alternative analyses, Gabrych, appears to be well considered and as complete as could be expected as a'first look' at potential alternatives.

To preserve credibility, the inadequate sections should be corrected.

12) Gabrych Alternative

The extensive analysis in the RSA for this alternative is appreciated.

The last paragraph of the Private Land Alternative on page B.2-57 states that Gabrych is a model for private land alternatives in general. If so, this should be stated here.

Analysis in the RSA shows that the Gabrych alternative, and by extension the Farmland Reserve, Sunland and other sites, are superior to the proposed site, and that they should be seriously considered as viable alternatives.

Levels of Impacts

The Gabrych alternative 'Summary of Impacts' lists the impacts that are similar, greater or lesser, without consideration of relative importance of the impact categories or degree of impact difference. It implies the decision be based on the number of categories with greater impact compared to the number of categories with lesser impact. But it does not explicitly make this comparison.

The table below uses a numeric score to measure degree of impact.

- The Summary of Impacts for the Gabrych alternative (page B.2-52) rates impact categories as either similar, greater than, or less than the proposed. Degree of impact difference is not described.

- The table below is a more sensitive measure than comparing the simple sum of categories that have greater or lesser impact.
- For categories with dissimilar impacts, the table estimates the degree of impact from the descriptions in the RSA. Categories with similar impacts as stated in the Summary of Impacts paragraphs are ignored.
- The level of impact is judged on a 1-10 scale. Small difference is value 1. Huge difference is value 10. This variable is subjective.

Note: Page B.2-12 lists the impacts considered of greatest concern. They are:

- Cultural Resources
- Biological Resources
- Soil & Water
- Visual Resources, cumulative impact
- Cumulative impacts – visual, operational, land use (ag, recreational, wilderness, open space)

Impact Category	Comparison	Level (1-10)
The proposed site is preferred for these impact categories.		
Hazardous Materials	Potential impacts slightly greater at Gabrych, but Conditions of Certification result in no significant impacts.	1
Land Use	Gabrych: No BLM land, or CDCA amendment. Gabrych: Impact to ag land. LESA score 73 – adverse impact due to permanent conversion from agricultural. Not mentioned in the Comparison to Proposed Project are the various biological, cultural, visual and other losses from conversion of the proposed site to industrial. Also not mentioned is the cumulative impact recognized on C.6-2.	1
Noise, Vibration	Gabrych alternative … slightly greater impact (proximity to residences)	1
Visual Resources	Gabrych has more viewers, so greater visual impact	2
Transmission Line Safety & Nuisance	Proximity at Gabrych of transmission lines to 15 residences.	1
	Total	**6**

Impact Category	Comparison	Level (1-10)
The Gabrych alternative is preferred for these categories.		
Air Quality	The RSA describes GHG emissions at the Gabrytch site, but not at the proposed site, so does not compare these. I presume they are the same. It's presumed the work force will live primarily in Blythe. The Gabrych site is closer to Blythe than the proposed site (12 vs. 20 miles). GHG due to commuting would be reduced at the Gabrych site. The summary of impacts section omitted commuting distance. I therefore changed this impact from similar to Gabrych preferred, by a small amount – level 1.	1
Recreation, Wilderness	RSA Gabrych alternative (B.2-44) states impacts to recreation would be slightly less at the Gabrych alternative. Not mentioned are impacts to Wilderness. Since the proposed project and the Palen-McCoy Wilderness share a common boundary, the visual, noise, solitude and other impacts to wilderness would be substantial. These considerations are omitted from the Comparison to Proposed Project section. The RSA incorrectly states the Chuckwalla Valley Dune Thicket ACEC is closed to recreation. The June 15, 2001 Federal Register Notice (Exhibit 700) closes the area to vehicles. It does not mention other forms of recreation. This ACEC also has a common boundary with the proposed project. Impacts to the ACEC were not considered. Because of the omission of the impact to Wilderness and the ACEC, the level assigned is much higher that if only the 'slightly less' characterization were used alone.	5

Impact Category	Comparison	Level (1-10)
The Gabrych alternative is preferred for these categories.		
Soil & Water	Terrain: both level. No difference. Water quality: With BMPs applied, no difference. Water conservation: Gabrych is preferred since dry cooling uses less water than current agriculture, returning water to the Colorado River system. This analysis assumes comparison with the staff recommended dry cooling at the proposed site. The Gabrych site would have no impact to Chuckwalla or Palen-McCoy Wind Transport Corridors.	3
Worker Safety, Fire Protection	Similar impacts, except emergency response time is shorter at the Gabrych site.	1
Biological Resources	From the alternative analysis, page B.2-32: *… development of a solar project at the Gabrych Alternative site would impact fewer biological resources compared to the GSEP footprint because development of the alternative site would occur primarily on agricultural land, whereas development of the Proposed Project site would occur primarily on land supporting native vegetation communities.* *… Colorado River supported riparian and undisturbed land, a small percentage of the area, should be avoided.* *… If riparian and native habitats were avoided, development of a solar project on the Gabrych Alternative site would have fewer impacts to biological resources than development of a solar project on the Proposed Project site.*	4
Cultural Resources	From the alternatives analysis, page B.2-33) *… **Proposed project**: Geoarchaeological studies of the Proposed Project indicate that the entire area is highly sensitive for buried cultural resources.* *…**Gabrych**: 1905 acres of the 2138 acre area have been extensively agriculturally disturbed, destroying any surface component cultural resources.* *… undiscovered subsurface sites are comparable* *…impacts to potential, undiscovered subsurface archaeological sites at both the Gabrych Alternative and Proposed Project is comparable* *…Gabrych Alternative would likely impact fewer surface cultural resources*	5
	Total	**19**

The RSA considered impacts for these categories to be similar.	
Air Quality	The summary of impacts did not consider commuting distance. Air Quality was moved to the Gabrych preferred section.
Public Health & Safety	
Socioeconomics	
Traffic, Transportation	
Waste Management	
Facility Design	
Geology, Paleontology, Minerals	
Plant Efficiency	
Plant Reliability	
Transmission System Engineering	

This analysis shows the Gabrych site is preferred over the Plaster City site by a ratio of 19:6 = 3.1.

The advantages of the Gabrych alternative are sufficient that a more thorough analysis should be done involving, at a minimum:

- Cost analysis of site preparation and other factors compared to the proposed site.
- An estimate of the resource savings (time and money) by satisfying the environmental community, which has been urging solar facilities to locate on previous disturbed land, not open space. Choosing Gabrych would probably convert opponents to enthusiastic supporters.
- Savings by eliminating the requirement of a CDCA plan amendment.
- Possible financial return from the water rights that come with the property.

Other Properties

Acreage, fallow or productive, is continually available in the farming areas. A moderate amount of property has been fallowed from excessive salinity. The attraction, of course, is that it is previously disturbed and already in a highly impacted area – similar to the attractiveness of the Gabrych. It's highly probably that a contiguous tract of previously disturbed land of acceptable size could be put together. There is no evidence in the RSA that a search for such property was done.

13) Private Land Alternative

The three paragraphs describing this alternative are confusing, to say the least. They are a jumble of disconnected facts and non-sequiturs, only sometimes coming to direct or implied conclusions. Following is an attempt to paraphrase:

Farmland Reserve and Sunworld.	Rejected by NextEra, which prefers wet cooling. The water would come from the Colorado River Basin, and might be denied
	CEC staff, however, considers dry cooling feasible and did not reject these. The fully analyzed Gabrych alternative is considered a surrogate, and so they were not analyzed separately.
	They cannot be considered since they are potential alternatives to the Blythe project.
Land north of Desert Center	Cannot be considered since it is an alternative to the Palen project. The Palen project calls this the North of Desert Center alternative.
Gabrych alternative	Analysed. The analysis is a surrogate for Farmland, Sunworld, and presumably North of Desert Center.

I could not find references to the Farmland Reserve and Sunworld properties in the Blythe DEIS. Computer search on the Blythe DEIS pdf file for both Farmland Reserve and Sunworld was unsuccessful. If indeed these are not Blythe alternatives, they should be considered as reasonable alternatives along with Gabrych.

14) Geothermal Energy

Page B.2-72

The Geothermal alternative analysis leads to the conclusion that geothermal is potentially a viable alternative, since it would have fewer environmental impacts. Analysis in more detail is warranted.

The stated rationale for elimination is not supported by the analysis. The discussion has irrelevant statements and statements unsupported by evidence. The analysis apparently has a fundamental flaw that would make geothermal much more attractive, if true.

Geothermal should be seriously considered as a realistic alternative.

Fundamental RSA Analysis Flaw

There is potentially a fundamental flaw in the geothermal analysis. If the flaw exists, it would make geothermal even more attractive.

Geothermal plants have capacity factors far greater than concentrated solar since they can run 24/7. For equal energy output, an equivalent geothermal with a 90% capacity factor would need a capacity rating of a little more than one quarter of a CSP's capacityrating, since CSPs have capacity factors close to 25%. I could find no recognition of this in the analysis of the geothermal alternative. The narrative strongly implies comparison to a geothermal plant with 250 MW capacity. All references to geothermal size use '250 MW'.

Invalid Rationale for Elimination

The following uses a paraphrase of the Rationale for Elimination on page B.2-75

Despite being commercially available, using less ground, having fewer impacts, and encouragement from the Renewable Portfolio Standard and ARRA funding, the alternative is rejected:

Rejection reason	Comment
Few new projects have been proposed	The reason is ludicrous. It implies that if not many new projects of a technology are proposed, the technology can't be considered. It does not allow old projects to serve as precedent. I have not found in the RSA a requirement that a few new proposals for a technology must exist for the technology to be considered.

Rejection reason	Comment
No geothermal projects are on the Renewable Energy Action Team list of projects that request ARRA funds.	A reference to provide authority for this statement is needed. I searched both the RSA and google attempting to verify this requirement, with no success. I am skeptical that omission from a REAT list of projects requesting ARRA funds would eliminate consideration of the geothermal alternative to the proposed project. Such a requirement would preclude technologies that REAT has not happened to think of. It would indicate that projects not asking for public funding are not to be considered, that private funding is unacceptable.

Logical Inconsistencies

- Page B.2-73, in Geothermal Alternative Scenario:

  There is no single 250 MW geothermal project that would be viable as an alternative to the GSEP.

  The relevance of this statement is not explained. It implies that since there is no such project, a project of that size cannot be considered. In fact, the English is flawed – it combines the absolute (is no) with conditional (would). The sentence is nonsensical.

- Page B.2-73, in the Geothermal Alternative Scenario paragraph

  Two hundred and fifty MW of geothermal energy could require the use of many thousands of acres of land.

  The 'could require' is not supported by evidence. No evidence is given. 'Many thousands of acres' applies equally to the proposed project. The statement comes to no conclusion. Simple replacement of 'could' with 'might not' would reverse the implication but not the validity. The statement is unsupported, meaningless and farcical.

Re-analysis Required

Because of these flaws the above analysis should be discarded and replaced with a rational analysis.

15) Linear Fresnel Technology

See page B.2-62, RSA.

NEPA 1502.14(a) requires that the analysis "Rigorously explore and objectively evaluate all reasonable alternatives…".

CEQA 15126.6 (d) states:

> *Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.*

With a little less than a page of analysis, the RSA cannot be rigorous or include sufficient information to allow meaningful evaluation.

The analysis consists only of a general description of the technology. It then rejects the alternative since it would not eliminate significant impacts, despite requiring half the acreage (the analysis hints, but is not specific). The statement implies an alternative must eliminate, not merely reduce, significant impact to be considered. By this criteria, the proposed project would be rejected since it does not eliminate impacts, it only purports to reduce them to less than significant. Of course, the implication is absurd.

The brief description of linear Fresnel does not discuss impacts relative to the proposed project. It does not compare the alternative to the proposed project, in comparative or any other form as required by NEPA and CEQA. Conclusions concerning relative merits of this alternative are therefore not possible.

The only mention of comparative impact is in the Rationale for Elimination, which states that linear Fresnel would use less land. It then dismisses linear Fresnel using the impact elimination argument discussed above.

The option cannot be eliminated with such sparse data and analysis. Indeed, it may very well be a viable alternative. The analysis in the RSA should be discarded and replaced with a rational analysis.

16) Utility Scale Solar Photovoltaic

See pages B.2-63.

As with other alternative analyses, this violates the NEPA requirement to: "Rigorously explore and objectively evaluate all reasonable alternatives…", and the CEQA requirement for enough information for meaningful evaluation, analysis and comparison. The analysis is not rigorous, and is not compared to the proposed alternative

in comparative or any other form. The advantages of PV are intriguing. Impacts mentioned are of such wide range and speculative nature that no conclusion can be drawn. The comparisons that do exist are scattered and incomplete.

The Summary of Impact paragraph mentions development impacts only, not production impacts. It does mention glare and water requirements, but qualitatively only, and does not mention other impacts.

Most puzzling is the Rationale for Elimination. It states it is a viable technology, but then eliminates with this:

> *is not retained for analysis because, as stated above, in order for California to meet the renewable portfolio standards, it must have access to all types of renewable technologies.*

That California must have access to all types of renewable technologies is not a reason to eliminate this alternative. How would the proposed project be configured to satisfy this? Must the project use all types of technologies? All alternatives would be eliminated by this criteria, even the proposed project. The rationale is nonsense.

The last sentence in the Rationale for Elimination:

> *While a utility solar PV alternative would reduce impact from water used during cooling, the Dry Cooling Alternative, retained for consideration for this project would also eliminate this impact. Therefore, this alternative technology was eliminated from further consideration in this RSA.*

The blatantly stated elimination reason here is that water impacts are the same (despite the text equating 'reduced' with 'eliminate'). No other impacts are cited. This implies a general rule: If one impact is the same, eliminate the alternative. Nonsense.

The Rationale for Elimination also categorically states '*…the extent of land required would be similar.*' The Executive Summary says the proposed project will disturb 1800 acres. The PV discussion (page B.2-64 says: '*250 MW solar power plant would require between 750 and 2,500 acres.*' Somehow the 1800 acres of the proposed project is has become similar to a range of 750-2500 acres. Worse, this statement is followed by '*Therefore solar PV would not eliminate the impacts of GSEP associated with ground disturbance*', implying that to be retained, an alternative's impact must **eliminate** GSEP's impact. Again, nonsense.

The analysis is lacking sufficient data or rigor to be considered valid. It is incomplete, not objective, and is in violation of, and not in the spirit of, NEPA and CEQA. It must be done right. It looks like the author was reaching for a reason – any combination of words – that could end by concluding to eliminate the alternative.

PV might indeed be a viable alternative. It deserves a quality analysis as required by NEPA and CEQA. The analysis in the RSA should be discarded and replaced with a rational analysis.

17) Distributed Solar Technology

See pages B.2-66

The Distributed Solar PV Systems section has a description of installations. The discussion does not give data that lead to comparison with GSEP in direct violation of NEPA and CEQA requirements. No conclusions are stated – the analysis comes to no point and has no value for comparison with the proposed project.

No 'Rationale for Elimination' section is included, although the last paragraph on page B.2-70 appears to serve this purpose:

> *The conclusion of this section is that, while it will very likely be possible to achieve 250 MW of distributed solar energy over the coming years, the very limited numbers of existing facilities make it difficult to conclude with confidence that it will happen within the timeframe required for the GSEP project. As a result, this technology is eliminated from detailed analysis in this RSA.*

Analysis of this spectacularly illogical conclusion:

Rationale for Elimination	Comment
… very limited number of installations…	No information about installation numbers has been given. PV installations are now common. More than 1800 Home / Rooftop installers are listed in California[2], and ads for home PV installation regularly run on the radio, in the LA Times and on freeway billboards. The implication that there is a small number of installations is both misleading and false.

[2] Database of Solar Installers, Contractors, and Retailers in California: http://www.gosolarcalifornia.ca.gov/database/search-new.php

Rationale for Elimination	Comment
… difficult to conclude with confidence that it will happen in the time frame…	This is a speculative statement. No information is given with respect to current and predicted rates of rooftop installation, installation response to financial incentives, cost projections. Certainly with the huge interest in solar, at least some data must exist. The statement is unsupportable, and enters the category of speculation.

The analysis in the RSA should be discarded and replaced with a rational analysis in the spirit of the NEPA and CEQA requirements.

18) Wind Energy

The discussion in the alternative section on page B.2-70 is woefully inadequate.

Wind is a viable technology, used in a large number of places throughout the world, and so certainly is a possibility in this situation. Yet the RSA analysis covers less than two pages, most of which is general to wind, not specific to this project. About a quarter of the space is allocated to a list of negative impacts, unsupported by analysis. There is no corresponding list of positive impacts. There is no comparison to GSEP.

Wind resources at the GSEP site are stated to be not viable. No supporting data is provided. The statement is speculative. It would be interesting to know if the site has been analyzed with met towers.

The San Gorgonio Pass description is interesting. It comes to no conclusion, and only weakly implies there is no room for another player. Other than curiosity, the paragraph is of no help without data, analysis of the data, and conclusions.

The discussion concludes with Rationale for Elimination (page B.2-72:

> *While wind electricity generation is a viable and important renewable technology in California, it would not reduce the large-scale ground disturbance and visual impacts associated with the GSEP. Therefore wind generation was eliminated from further consideration.*

The reasoning implies that independent of other impacts, reduction of ground disturbance and visual impact are a requirement for consideration of an alternative.

The analysis in the RSA should be discarded and replaced with a rational analysis.

19) Biomass

The biomass analysis has the same conceptual flaw as the geothermal analysis. Presuming biomass has a high capacity factor since it can run 24/7, the analysis ignores the capacity factor difference. The difference is probably on the order of 3:1 (75% for biomass to 25% for solar). Page B.2-76 states:

> *Most biomass facilities produce only small amounts of electricity (in the range of 3 to 10 MW) and so could not meet the project objectives related to the California Renewable Portfolio Standard. In addition, between 25 and 80 facilities would be needed to achieve 250 MW of generation, creating substantial adverse impacts.*

The 250 MW capacity of the proposed project with 25% capacity factor would provide 67 MW actual output.

Twenty-three 3 MW biomass facilities at 75% capacity factor would be equivalent, not 80. Similarly, seven 10MW biomass facilities at 75% capacity factor would be equivalent, not 25. The number of biomass facilities needed is overstated by a factor of three. It appears this is an artifact of misrepresenting the project as generating 250 MW, as explained in the 'The 250 MW Rating is Incorrect' section.

The biomass analysis qualitatively lists positives and negatives. It does not quantify them, or compare them to the proposed alternative.

Advantages	Disadvantages
Locational flexibility increases siting options	Must be sited near a biomass source.
Small amounts of land are required.	Delivery truck noise.
	Grinding equipment and other noises.
	Emissions are unavoidable

Rationale for Elimination

> *Most biomass facilities produce only small amounts of electricity (in the range of 3 to 10 MW) and so could not meet project objectives.*

The reasoning does not support the rejection. The size of this biomass facility would be independent of the size of 'most biomass facilities'. That most biomass facilities are in the 3-10 MW range cannot be used to dismiss biomass in this instance. This facility could be larger than most, or multiple facilities could be used.

The statement requires that the distribution of facility sizes is skewed. If most are 3-10, and average is 21 (page B.2-75), then quite large biomass generators must exist to get the average so much larger than 'most'. Note that three average size 21 MW plants would be close to generating as much as the GSEG 250 MW plant running at 25% capacity factor, or 67 MW. Perhaps a single large size plant would generate as much as the GSEG.

The remainder of the elimination reason concerns air emissions only. No data are given to quantify the emissions.

No analysis of the balance of the 20 impacts considered is given. There is no comparison of impacts with the GSEG in comparative form as required by NEPA, or in any other form. Data supporting elimination is absent.

The analysis in the RSA should be discarded and replaced with a rational analysis.

20) Significant Impacts – CEC Override

CEQA 15093 states:

> *CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."*

To paraphrase:

> *If benefits outweigh unavoidable adverse environmental effects, the environmental effects are acceptable.*

The RSA identifies two significant environmental effects – cumulative visual nd cumulative land use. In addition, this testimony identifies that the visual impact of the project, when considered alone, is significant because of the inadequacy of the conditions of certification. These conditions of certification purport to reduce significant visual impact to less than significant. Refer to the Visual Impact section of this testimony.

RSA page B.2-13

> *Anticipated cumulative operational visual impacts of region-wide projects in the southern California desert are considered cumulatively considerable and potentially significant*

RSA page B.2-13, Under B.2.4.4, Impacts of the Proposed Project

> *…The cumulative conversion of these lands would preclude numerous existing land uses including recreation, wilderness, rangeland, and open space, and therefore, result in a significant and unavoidable cumulative land use impact.*

Because of the grossly inadequate alternatives analysis, it is unknown if an alternative would avoid these and other significant environmental effects. Refer to the Alternatives section of this testimony. The CEC cannot, therefore, find that the project's adverse effects are unavoidable and cannot issue an override as allowed in CEQA 15093.

21) Exhibits

Exhibit 700, Dune Thicket Closure Fed Reg Notice.txt
Exhibit 701, NEPA - The National Environmental Policy Act of 1969.doc
Exhibit 702, Executive Order 13212.doc
Exhibit 703, Energy Policy Act of 2005.pdf
Exhibit 703-01, EPAct 2005, Front page.xps
Exhibit 703-02, EPAct 2005, Sense of Congress page.xps
Exhibit 704, Secretarial Order 3285.pdf
Exhibit 705, CEQ Authorization Memo.doc
Exhibit 706, CEQ 40 Questions, Questions 1-10.doc
Exhibit 707, CEQA 15126.6, Alternatives.pdf
Exhibit 708, 250MW Press Reports.pdf
Exhibit 709, Revised Staff Assessment.doc

22) Tom Budlong

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Los Angeles, CA 90049
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310-963-1731 (cell phone)
TomBudlong@RoadRunner.com

Graduated from MIT in 1959. BS in Mechanical Engineering. Specialty was internal combustion engines.

Currently retired.

Experience Summary

Marquardt Corporation:
Development of pneumatic based guided missile control systems.

Whittaker Gyro Corporation
Design and development of gyroscopes and gyro based stable platforms for guided missiles.
Investigation of solar flare activity by analyses of ballistic missile mounted solar sensors.

Spacelabs Corporation
Design and development of breathing oxygen systems for lunar excursion astronaut backpacks.
Development of biological monitoring systems for astronauts.

Computer Design Corporation / Compucorp
Specification, design and implementation of functions and user interface of early hand-held scientific and business calculators.
Specification, design and implementation of word processing software for proprietary personal computers. Word processors installed world-wide and at the Library of Congress, the White House, military installations.

Three D Graphics Corporation
Implementation of PC based technical and business graphing software.

END

[Federal Register: June 15, 2001 (Volume 66, Number 116)]
[Notices]
[Page 32639-32640]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr15jn01-84]

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
[CA-610-01-1610-DL]

Proposed Order for Temporary Closure of Selected Routes of Travel or Areas in Imperial County, Riverside County, and San Bernardino County, California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Selected routes of travel or areas in two locations in the California Desert Conservation Area (CDCA) will be temporarily closed to vehicle use pursuant to 43 CFR 8364.1. The proposed closure is to provide interim protection for the desert tortoise, desert tortoise habitat, and other resource values from motorized vehicle use authorized under the CDCA Plan. By taking these interim actions, BLM contributes to the conservation of the endangered and threatened species in accordance with section 7(a) (1) of the Endangered Species Act (ESA). BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternatives which might be required as a result of the consultation on the CDCA plan in accordance with 7(d) of the ESA. These closures will remain in effect until records of decision are signed for amendments to the CDCA Plan for the Northern and Eastern Colorado Desert and the West Mojave Desert.

The vehicle route closures are as follows: 1. In the Edwards Bowl area vehicle use is restricted to specified routes. 2. In two areas of desert tortoise critical habitat in the Northern and Eastern Colorado Desert (NECO) planning area vehicle use is restricted to specified routes.

Exceptions to the vehicle closures include Bureau of Land Management (BLM) operation and maintenance vehicles, law enforcement and fire vehicles, and other emergency vehicles.

The Orders for closure will be posted in the appropriate BLM Field Office and at places near and/or within the area to which the closure or restriction applies (see Field Offices at end of this Notice).

DATE: No sooner than July 16, 2001, Federal Register Orders of final closure will be published for each of the two areas.

ADDRESSES: Written comments may be sent to the appropriate Field Office, Attn: Route Closure, at the addresses listed below.

SUPPLEMENTARY INFORMATION: On March 16, 2000, the Center for Biological Diversity, and others (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management (BLM) alleging that the BLM was in violation of Section 7 of the Endangered Species Act (ESA) by failing to enter into formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under the CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species.

Although BLM has received biological opinions on selected activities, consultation on the overall CDCA Plan is necessary to address the cumulative effects of all the activities authorized by the CDCA Plan. Consultation on the overall Plan is complex and the completion date is uncertain. Absent consultation on the entire Plan, the impacts of individual activities, when

[[Page 32640]]

added together with the impacts of other activities in the desert are not known. The BLM entered into negotiations with plaintiffs regarding interim actions to be taken to provide protection for endangered and threatened species pending completion of the consultation on the CDCA Plan. Agreement on these interim actions avoided litigation of

plaintiffs' request for injunctive relief and the threat of an injunction prohibiting all activities authorized under the Plan. These interim agreements have allowed BLM to continue to authorize appropriate levels of activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise and other listed species in the short term. By taking interim actions as allowed under 43 CFR Part 8364.1, BLM contributes to the conservation of endangered and threatened species in accordance with 7(a)(1) of the ESA. BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation on the CDCA plan in accordance with 7(d) of the ESA. In January 2001, the parties signed the Stipulation and Proposed Order Concerning All Further Injunctive Relief and included the closures (paragraphs 40 and 43) described in this Notice.

All existing routes in the subject areas are being or will be evaluated and proposed for designation as Open, Closed, or Limited through the land use planning process as amendments to the California Desert Conservation Area Plan. These designations will be based on criteria identified in 43 CFR 8342.1. Management of routes proposed for closure will minimize the potential for any adverse effects pending designation.

The BLM Field Offices listed below have prepared environmental assessments (EA) which are available for a 15 day public review prior to publication of the final Federal Register Order. The beginning of the 15 day review for each EA may be different but all generally coincide with the publishing of this Notice. Interested parties should contact the Field Offices for the EAs and review dates.

In general, the EAs indicate the following reasons for each closure:

Edwards Bowl: By reducing the size of the available route network and better controlling OHV use in the area, the potential for direct impacts to desert tortoise, Mojave ground squirrel, burrowing owl, and other species will be diminished. The proposed closure will help to prevent burrow collapse and species mortality caused by motorized vehicles. In addition the closure will have an overall positive impact on habitat by reducing soil loss and erosion and increasing vegetation regrowth and plant community establishment.

NECO Routes: The proposed closure will have a positive impact on many special status and other species. The proposed closure will reduce potential for significant adverse impacts to wildlife in critical seasons, such as when young are being reared. As desert tortoise commonly travel in washes and use the banks of washes for burrowing, restricting motorized vehicle use to specific routes and prohibiting use of certain washes within desert tortoise habitat management units 1 and 2 of the NECO plan will reduce tortoise mortality and crushing of burrows. The proposal will also provide added protection for other

species including bighorn sheep, burro deer, several species of bats, prairie falcon, golden eagle Couch's spadefoot toad, and other species occurring in the area of the proposed closure.

The closures are described as follows:

1. Edwards Bowl (Barstow Field Office): The proposed route closures are north of the El Mirage Recreation Area and the town of Adelanto. The area covered by the closure will include all of the public lands within Sections 6, 7, 8, 16, 20 in T.8N., R.7W., San Bernardino Principle Meridian.

2. NECO Routes Areas (Palm Springs, Needles, El Centro Field Offices): The geographic center of Unit 1 is located about 35 miles southwest of Needles, California. It is generally bounded on the north by Interstate Highway 40; on the northeast by the Camino to U.S. Highway 95 powerline road; on the east by U.S. Highway 95, except that a portion of the Chemehuevi Valley east of Highway 95, and west and northwest of the Whipple Mountains Wilderness is included in the unit; on the southeast by the Colorado River Aqueduct; on the south by the northern end of the Turtle Mountains; on the southwest by the eastern flank of the Old Woman Mountains; and on the northwest by the western boundary of the Clipper Mountains Wilderness. The geographic center of Unit 2 is located about 50 miles east-southeast of Indio, California. It is generally bounded on the north by the southern boundary of Joshua Tree National Park and Interstate Highway 10; on the east by the southeast boundary of the Chuckwalla Mountains Wilderness and the lower northeastern boundary of the Chocolate Mountains Aerial Gunnery Range, though detached segments of the unit further to the east are comprised of the Little Chuckwalla Mountains Wilderness, a portion of the Palo Verde Mountains Wilderness, and the Chuckwalla Valley Dune Thicket Area of Critical Environmental Concern; and on the south and southwest by a line running southeast to northwest through the middle of the Chocolate Mountains Aerial Gunnery Range and extending to the boundary of Joshua Tree National Park.

FOR FURTHER INFORMATION CONTACT:

Edwards Bowl:

Barstow Field Office Manager, 2601 Barstow Road, Barstow, CA 92311, Tel: 760-252-6000.

NECO Routes:

El Centro Field Office Manager, 1661 So. 4th Street, El Centro, CA 92243, Tel: 760-337-4000.
Palm Springs-South Coast Field Office Manager, 690 W. Garnet Ave., P.O. Box 1260, North Palm Springs, CA 92258, Tel: 760-251-4800.
Needles Field Office Manager, 101 W. Spikes Rd., Needles, CA 92363, Tel: 760-326-7000.

Dated: June 8, 2001.
James Wesley Abbott,
Associate State Director.
[FR Doc. 01-15242 Filed 6-14-01; 8:45 am]
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The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

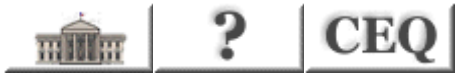
42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.



Executive Order 13212: 66 FR 28357 (22 May 2001)
Executive Order 13212--Actions To Expedite Energy-Related Projects

May 18, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take additional steps to expedite the increased supply and availability of energy to our Nation, it is hereby ordered as follows:

Section 1. Policy.

The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

Sec. 2. Actions to Expedite Energy-Related Projects.

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

Sec. 3. Interagency Task Force.

There is established an interagency task force (Task Force) to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy. The Task Force also shall monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected. The Task Force shall be composed of representatives from the Departments of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Justice, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, Veterans Affairs, the Environmental Protection Agency, Central Intelligence Agency, General Services Administration, Office of Management and Budget, Council of Economic Advisers, Domestic Policy Council, National Economic Council, and such other representatives as may be determined by the Chairman of the Council on Environmental Quality. The Task Force shall be chaired by the Chairman of the Council on Environmental Quality and housed at the Department of Energy for administrative purposes.

Sec. 4. Judicial Review.

Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

George W. Bush

The White House,
May 18, 2001.

ENERGY POLICY ACT OF 2005

(e) REPORT.—Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Resources, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives, a report describing the results of the grant programs authorized by this section. The report shall include the following:

(1) An identification of the size, type, and use of biomass by persons that receive grants under this section.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

SEC. 211. SENSE OF CONGRESS REGARDING GENERATION CAPACITY OF ELECTRICITY FROM RENEWABLE ENERGY RESOURCES ON PUBLIC LANDS.

It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity.

Subtitle B—Geothermal Energy

John Rishel Geothermal Steam Act Amendments of 2005.
30 USC 1001 note.

SEC. 221. SHORT TITLE.

This subtitle may be cited as the "John Rishel Geothermal Steam Act Amendments of 2005".

SEC. 222. COMPETITIVE LEASE SALE REQUIREMENTS.

Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended to read as follows:

"SEC. 4. LEASING PROCEDURES.

"(a) NOMINATIONS.—The Secretary shall accept nominations of land to be leased at any time from qualified companies and individuals under this Act.

"(b) COMPETITIVE LEASE SALE REQUIRED.—

"(1) IN GENERAL.—Except as otherwise specifically provided by this Act, all land to be leased that is not subject to leasing under subsection (c) shall be leased as provided in this subsection to the highest responsible qualified bidder, as determined by the Secretary.

"(2) COMPETITIVE LEASE SALES.—The Secretary shall hold a competitive lease sale at least once every 2 years for land in a State that has nominations pending under subsection (a) if the land is otherwise available for leasing.

"(3) LANDS SUBJECT TO MINING CLAIMS.—Lands that are subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency may be available for noncompetitive leasing under this section to the mining claim holder.

"(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any

THE SECRETARY OF THE INTERIOR

WASHINGTON

ORDER NO. 3285

Subject: Renewable Energy Development by the Department of the Interior

Sec. 1 **Purpose**. This Order establishes the development of renewable energy as a priority for the Department of the Interior and establishes a Departmental Task Force on Energy and Climate Change. This Order also amends and clarifies Departmental roles and responsibilities to accomplish this goal.

Sec. 2 **Background**. The Nation faces significant challenges to meeting its current and future energy needs. Meeting these challenges will require strategic planning and a thoughtful, balanced approach to domestic resource development that calls upon the coordinated development of renewable resources, as well as the development of traditional energy resources. Many of our public lands possess substantial renewable resources that will help meet our Nation's future energy needs while also providing significant benefits to our environment and the economy. Increased production of renewable energy will create jobs, provide cleaner, more sustainable alternatives to traditional energy resources, and enhance the energy security of the United States by adding to the domestic energy supply. As the steward of more than one-fifth of our Nation's lands, and neighbor to other land managers, the Department of the Interior has a significant role in coordinating and ensuring environmentally responsible renewable energy production and development of associated infrastructure needed to deliver renewable energy to the consumer.

Sec. 3 **Authority**. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and pursuant to the provisions of Section 211 of the Energy Policy Act of 2005 (P.L. 109-58).

Sec. 4 **Policy**. Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. Agencies and bureaus within the Department will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources.

Sec. 5 **Energy and Climate Change Task Force**. A Task Force on Energy and Climate Change is hereby established in the Department. The Deputy Secretary and the Counselor to the Secretary shall serve as Co-Chairs. The Task Force on Energy and Climate Change shall:

a. develop a strategy that is designed to increase the development and transmission of renewable energy from appropriate areas on public lands and the Outer Continental Shelf, including the following:

(1) quantifying potential contributions of solar, wind, geothermal, incremental or small hydroelectric power on existing structures, and biomass energy;

(2) identifying and prioritizing the specific locations in the United States best suited for large-scale production of solar, wind, geothermal, incremental or small hydroelectric power on existing structures, and biomass energy (e.g., renewable energy zones);

(3) identifying, in cooperation with other agencies of the United States and appropriate state agencies, the electric transmission infrastructure and transmission corridors needed to deliver these renewable resources to major population centers;

(4) prioritizing the permitting and appropriate environmental review of transmission rights-of-way applications that are necessary to deliver renewable energy generation to consumers;

(5) establishing clear roles and processes for each bureau/office;

(6) tracking bureau/office progress and working to identify and resolve obstacles to renewable energy permitting, siting, development, and production;

(7) identifying additional policies and/or revisions to existing policies or practices that are needed, including possible revisions to the Geothermal, Wind, and West-Wide Corridors Programmatic Environmental Impact Statements and their respective Records of Decisions; and

(8) working with individual states, tribes, local governments, and other interested stakeholders, including renewable generators and transmission and distribution utilities, to identify appropriate areas for generation and necessary transmission;

b. develop best management practices for renewable energy and transmission projects on the public lands to ensure the most environmentally responsible development and delivery of renewable energy;

c. establish clear policy direction for authorizing the development of solar energy on public lands; and

d. recommend such other actions as may be necessary to fulfill the goals of this Order.

Sec. 6 **Responsibilities**.

a. Program Assistant Secretaries. Program Assistant Secretaries overseeing bureaus responsible for, or that provide assistance with, the planning, siting, or permitting of renewable energy generation and transmission facilities on the public lands and on the Outer Continental Shelf, are responsible for:

(1) establishing and participating in management structures that facilitate cooperation, reporting, and accountability across agencies, including the Task Force on Energy and Climate Change;

(2) establishing joint, single-point-of contact offices that consolidate expertise to ensure a coordinated, efficient, and expeditious permitting process while ensuring appropriate siting and compliance with the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws; and

(3) working collaboratively with other departments, state, and local authorities to coordinate and harmonize non-Federal permitting processes.

b. The Assistant Secretary - Policy, Management and Budget is a member of the Task Force and shall:

(1) ensure that investments associated with Interior managed facilities meet Federal standards for energy efficiency and greening applications; and

(2) coordinate with the Energy and Climate Change Task Force, as appropriate.

c. Bureau Heads. Each bureau head is responsible for designating a representative to the Task Force on Energy and Climate Change.

Sec. 7 **Implementation**. The Deputy Secretary is responsible for ensuring implementation of this Order. This responsibility may be delegated as appropriate.

Sec. 8 **Effective Date**. This Order is effective immediately and will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever comes first. The termination of this Order will not nullify implementation of the requirements and responsibilities effected herein.

Ken Salazar

Secretary of the Interior

Date: 3/11/2009

MEMORANDUM FOR FEDERAL NEPA LIAISONS, FEDERAL, STATE, AND LOCAL OFFICIALS AND OTHER PERSONS INVOLVED IN THE NEPA PROCESS

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.

These meetings also provided NEPA liaisons and other participants with an opportunity to ask questions about NEPA and the practical application of the NEPA regulations. A number of these questions were answered by CEQ representatives at the regional meetings. In response to the many requests from the agencies and other participants, CEQ has compiled forty of the most important or most frequently asked questions and their answers and reduced them to writing. The answers were prepared by the General Counsel of CEQ in consultation with the Office of Federal Activities of EPA. These answers, of course, do not impose any additional requirements beyond those of the NEPA regulations. This document does not represent new guidance under the NEPA regulations, but rather makes generally available to concerned agencies and private individuals the answers which CEQ has already given at the 1980 regional meetings. The answers also reflect the advice which the Council has given over the past two years to aid agency staff and consultants in their day-to-day application of NEPA and the regulations.

CEQ has also received numerous inquiries regarding the scoping process. CEQ hopes to issue written guidance on scoping later this year on the basis of its special study of scoping, which is nearing completion.

NICHOLAS C. YOST
General Counsel

NEPA's Forty Most Asked Questions
Questions 1-10

1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

1b. **How many alternatives** have to be discussed when there is an infinite number of possible alternatives?

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

3. No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section 1500.1(a).

4a. Agency's Preferred Alternative. What is the "agency's preferred alternative"?

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

4b. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

4c. Who recommends or determines the "preferred alternative?"

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

5a. Proposed Action v. Preferred Alternative. Is the "proposed action" the same thing as the "preferred alternative"?

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is [46 FR 18028] internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

5b. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

6a. Environmentally Preferable Alternative. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. Who recommends or determines what is environmentally preferable?

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. Difference Between Sections of EIS on Alternatives and Environmental Consequences. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. Early Application of NEPA. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connecton with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues [46 FR 18029] and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. Applicant Who Needs Other Permits. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

 These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

10a. Limitations on Action During 30-Day Review Period for Final EIS. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. Section 1506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

10b. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases;

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 5020.5, 21002, 21003, 21083.05, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; ~~and~~ *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011; *San Franciscans Upholding the Downtown Plan v. City & Co. of San Francisco* (2002) 102 Cal.App.4th 656; *Ass'n of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383; *Environmental Council of Sacramento v. City of Sacramento* (2006) 147 Cal.App.4th 1018.

15126.6 CONSIDERATION AND DISCUSSION OF ALTERNATIVES TO THE PROPOSED PROJECT.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis

should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21003, and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th

1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15127. LIMITATIONS ON DISCUSSION OF ENVIRONMENTAL IMPACT

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100.1, Public Resources Code.

15128. EFFECTS NOT FOUND TO BE SIGNIFICANT

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

15129. ORGANIZATIONS AND PERSONS CONSULTED

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104 and 21153, Public Resources Code.

15130. DISCUSSION OF CUMULATIVE IMPACTS

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065 ~~(c)~~(a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the

California Paves Way for Genesis Solar Energy Project in Riverside County

Thursday, November 12, 2009 at 10:45:07 AM - by Jeanne Roberts

It's only the first step in a long and arduous process, but the Californian Energy Commission's has okayed the application for certification for the Genesis Solar Energy Project based on facility data.

The project, under the auspices of Tucson, Arizona-based, privately held Genesis Solar LLC, will consist of two independent solar electric generating facilities with a combined total output of 250 megawatts, sited on 1,800 acres of BLM- (Bureau of Land Management -) managed land.

Genesis Solar is a wholly owned subsidiary of Juno Beach, Florida-based NextEra Energy Resources LLC, itself a consortium of FPL Group, Inc. (including the FPL's capital investment arm) and Florida Power & Light, who jointly provide energy services and project management.

The Genesis Project, once it has met California Energy Commission approval, must also seek federal approval before the construction process can begin. The original AFC (application for certification) was submitted on Aug. 31.

The concentrating solar thermal project comprises two groups of parabolic mirrors which concentrate solar energy and use it to create steam to power generators. The project will use wet cooling techniques, but only from non-potable water wells located on the project site 25 miles from Blythe adjacent to Interstate 10, and the residual water from the cooling tower will be fed into lined, on-site evaporation ponds.

This is reportedly an undeveloped area of the Sonoran Desert, with the McCoy Mountains to the East, the Palen Mountain/McCoy Wilderness area to the north, and Ford Dry Lake to the south, on the other side of I-10. The proposed site sits within 40 miles of Joshua Tree National Park, and has been used for grazing and off-road vehicle sports but has since been closed.

Reports say the Genesis Project will use 536 million gallons of water per year, and with southern California utility Pacific Gas & Electric (PG&E) committed to buying the entire output it seems like a profitable venture from both a solar electricity production and revenue model. The water issue may, however, impact final approvals.
Solar thermal trough developers use wet cooling because dry- (or air-) cooling reduces electricity output by up to five percent, and with budgets structured to wring every penny out of capital outlays, five percent is significant loss. Dry-cooling technology is also more expensive, adding to up-front costs that are not always recaptured via electricity sales.

Energy Commission Facility Certification Process

The California Energy Commission is the lead agency (for licensing thermal power plants 50 megawatts and larger) under the California Environmental Quality Act (CEQA) and has a certified regulatory program under CEQA. Under its certified program, the Energy Commission is exempt from having to prepare an environmental impact report. Its certified program, however, does require environmental analysis of the project, including an analysis of alternatives and mitigation measures to minimize any significant adverse effect the project may have on the environment.

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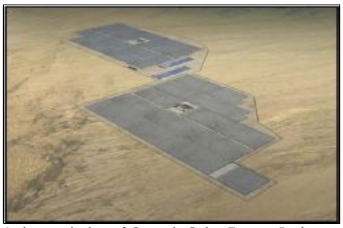
Genesis Solar Energy Project (CACA 48880)

Fast Facts

- The Genesis Solar Energy Project (GSEP), proposed by NextEra Energy Resources, would be located north of I-10, near Ford Dry Lake, 25 miles west of Blythe, in Riverside County.
- The proposed project is a parabolic trough solar thermal power generating facility designed to produce 250 megawatts of power.
- The project's total footprint is 4,640 acres, with project operations occurring on 1,800-acres of BLM-managed public land.
- The GSEP will consist of two independent concentrated solar electric generating facilities.
- The proposed project will deliver power via a generator that will tie-in to the Blythe Energy 500-kilovolt line; with interconnect to the Colorado River Substation.
- The project is expected to take 39 months to complete and will average 646 workers including laborers, craftsmen, supervisory support, and management personnel.
- The Genesis Solar Energy Project is expected to employ 40-50 full-time employees once the project is fully operational.

Genesis CACA-48880
Status of Federal Process
State of California Process
Executive Summary and Maps
Environmental Document
Policy, Guidance, and Documents
Fast Track Projects



Artist rendering of Genesis Solar Energy Project

For information about this project contact:

Bureau of Land Management
Palm Springs South Coast Field Office
1201 Bird Center Drive
Palm Springs, California 92262
Phone: (760) 833-7100
Fax: (760) 833-7199
Office Hours: 8:00 a.m. - 4:30 p.m., M-F
Contact us by Email

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California,Äôs Genesis Solar Energy Project Looking Up

Written on November 13, 2009 by Ivan Cooper in Solar Panels

It,Äôs just the first step in a long and difficult process; however the Californian Energy Commission has approved the certification application, based on facility data, for the Genesis **Solar Energy** Project.

The project will include of two independent photovoltaic electric generating facilities which will have a combined total output of 250 megawatts. Under the auspices of Tucson based private company, Genesis Solar LLC, the project will be situated on 1,800 acres Bureau of Land Management land.

Genesis Solar is a wholly owned subsidiary NextEra Energy Resources LLC of Juno Beach, Florida, which is itself a consortium of Florida Power & Light and FPL Group, Inc. These two companies already provide energy services and project management on a joint basis.

News Room

October 26, 2009

NextEra Energy Resources to supply solar power to PG&E

JUNO BEACH, Fla. – NextEra Energy Resources, LLC, already the country's leading generator of wind and sola announced today that it has entered into a contract to sell 250-megawatts of solar thermal power from the p Solar Energy Project to Pacific Gas and Electric Company (PG&E).

The proposed Genesis Solar Energy Project will be comprised of two 125-megawatt units. Once both units are the project is expected to produce approximately 560 gigawatt-hours of renewable electricity each year. This annual usage of more than 80,000 homes.

"This agreement is an important step forward in the development of solar power in California," said Mitch Dav and CEO of NextEra Energy Resources. "With increasing concerns about greenhouse gases, solar electricity c meaningful impact in reducing carbon dioxide emissions. In addition to clean energy, this project will create j positive economic impacts for Riverside County."

"Solar energy is a reliable and environmentally-friendly way to help meet California's peak energy demands," senior vice president for energy procurement at PG&E. "Through our agreement with NextEra Energy, we will increase the amount of clean, renewable energy we provide to our customers in the years to come."

This is NextEra Energy Resources first contract to sell solar power to PG&E, and it is subject to approval by th Utilities Commission. In August, NextEra Energy Resources filed an Application for Certification with the Calif Commission (CEC) to construct, own and operate this 250-megawatt solar plant in the Sonoran Desert. In ad Energy Resources has filed for a right-of-way grant with the Bureau of Land Management (BLM) for this proje

For the Genesis Project, NextEra Energy Resources plans to utilize proven and scalable parabolic trough solar technology that has been used commercially for more than two decades. NextEra Energy Resources has near experience operating similar technology at its SEGS solar facilities in the Mojave Desert.

The proposed Genesis Solar Energy Project will be located on an approximately 1,800-acre site between Dese Blythe, on land managed by the BLM in Riverside County, California. The more than 500,000 parabolic mirror assembled in rows to receive and concentrate the solar energy to produce steam for powering a steam turbir Genesis is one of about a dozen solar projects identified by BLM for fast track consideration to receive permit 2010.

Assuming timely regulatory approvals, NextEra Energy Resources plans to start construction on the project la operations expected to begin approximately 30 months later. Once complete, this project will reduce the emi approximately 500,000 tons per year, when compared to a high-efficiency natural gas plant. The U.S. Enviro Agency estimates this is the equivalent of removing about 83,000 passenger vehicles from the road each yea

The recently filed Application for Certification with the CEC is the latest example of NextEra Energy Resources leadership and commitment to renewable energy generation. This is the second Application for Certification t filed with the CEC. In March 2008, NextEra Energy Resources filed an Application for Certification with the CE megawatt Beacon Solar Project to be located in eastern Kern County. The company is waiting for a final dete CEC on its pending application.
In addition to being the largest operator of solar power in the United States with 310 megawatts, NextEra En through its subsidiaries, is also the largest owner and operator of wind power in the country with more than currently in operation. NextEra Energy subsidiaries also currently own and operate nearly 700 megawatts of

NextEra Energy Resources
NextEra Energy Resources is a clean energy leader and one of the largest competitive energy suppliers in North subsidiary of Juno Beach, Fla.-based FPL Group (NYSE: FPL), NextEra Energy Resources is the largest genera America of renewable energy from the wind and sun. It operates clean, emissions-free nuclear power generation Hampshire, Iowa and Wisconsin as part of the FPL Group nuclear fleet, which is the third largest in the U.S. FPL revenues of more than $16 billion, approximately 39,000 megawatts of generating capacity, and more than 15,0 states and Canada. For more information, visit these Web sites: **www.NextEraEnergyResources.com**, **www.F**

Cautionary Statements And Risk Factors That May Affect Future Results

This press release contains forward-looking statements within the meaning of the Private Securities Litigation
1995. Forward-looking statements typically express or involve discussion as to expectations, beliefs, plans, o
assumptions or future events or performance and often can be identified by the use of words such as "will," "
"anticipate," "estimate," and similar terms.

Although FPL Group, Inc. (FPL Group) believes that its expectations are reasonable, because forward-looking
subject to certain risks and uncertainties, it can give no assurance that the forward-looking statements conta
release will prove to be correct, including FPL Group's expectations with respect to the Genesis Solar Energy
Important factors could cause FPL Group's actual results to differ materially from those projected in the forwa
statements in this press release. Factors that could have a significant impact on FPL Group's operations and
and could cause FPL Group's actual results or outcomes, both generally and specifically with respect to the G
Energy Project, to differ materially from those discussed in the forward-looking statements include, among o

- Inability to complete construction of, or capital improvements to, the Genesis Solar Energy Project or other
generation facilities
- Inability to obtain the required regulatory approvals and permits for the construction and operation of the G
Energy Project, including obtaining CEC Certification and Bureau of Land Management permits
- Inability to obtain the supplies necessary for the construction, operation, and maintenance of the Genesis S
Project or other FPL Group power generation facilities
- Changes in laws, regulations, governmental policies and regulatory actions regarding the energy industry a
matters
- Inability of FPL Group to access capital markets or maintain its credit rating
- Inability to hire and retain skilled labor for the construction and operation of the Genesis Solar Energy Proje
changes or disruptions related to FPL Group's workforce
- Inability to sell the energy generated by the Genesis Solar Energy Project
- Transmission constraints or other factors limiting the Genesis Solar Energy Project's or FPL Group's ability t
- General economic conditions
- Hazards customary to the operation and maintenance of power generation facilities, including unanticipated
- Unusual or adverse weather conditions, including natural disasters
- Volatility in the price of energy
- Failure of FPL Group customers to perform under contracts
- Increased competition in the power industry
- Changes in the wholesale power markets
- Costs and other effects of legal and administrative proceedings
- Terrorism or other catastrophic events

These foregoing factors should be considered in connection with information regarding risks and uncertainties
FPL Group's future results included in FPL Group's filings with the Securities and Exchange Commission at **ww**

FPL Group undertakes no obligation to update or review any forward-looking statement to reflect events or ci
including unanticipated events, after the date on which such statement is made. New factors emerge from ti
is not possible for management to predict all of such factors, nor can it assess the impact of each such factor
or the extent to which any factor, or combination of facts, may cause actual results to differ materially from t
any forward-looking statement.

Exhibit 709, Genesis Solar Energy Project.

Exhibit 709 is the Revised Staff Assessment released by CEC Staff June 11, 2010.

It is available at:

http://www.energy.ca.gov/sitingcases/genesis_solar/documents/index.html#commission

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 *GENESIS SOLAR ENERGY PROJECT*

Docket No. 09-AFC-8

PROOF OF SERVICE
(Revised 6/7/10)

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	09-AFC-8
	)	
Genesis Solar Energy Project	)	**DECLARATION OF SERVICE**
_____	)	

I, Tom Budlong, declare that on June 18, 2010 I served and filed copies of the attached ***Opening Testimony, Evidentiary Hearing***, accompanied by a copy of the most recent *Proof of Service* list (most recent version is located on the proceeding's web page) with the Docket Unit OR with the presiding committee member of the proceeding. The document has been sent to the Commission AND the applicant, as well as the other parties in this proceeding (as shown on the *Proof of Service* list), in the following manner:

(*Check all that Apply*)

FOR SERVICE TO THE APPLICANT AND 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 **Pacific Palisades, 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

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. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

-or-

CALIFORNIA ENERGY COMMISSION
Presiding Member _____
1516 Ninth Street
Sacramento, CA 95814-5512
Re: Docket No.09-AFC-8

docket@energy.state.ca.us

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

/s/ Tom Budlong. Mailed copy has original signature. — June 18, 2010
Name — Date