

**DOCKET**

**09-AFC-8**

DATE JUN 25 2010

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**STATE OF CALIFORNIA**

**Energy Resources Conservation and Development Commission**

In the Matter of:

APPLICATION FOR  
CERTIFICATION FOR THE  
GENESIS SOLAR ENERGY  
PROJECT

DOCKET NO. 09-AFC-8

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

June 25, 2010

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Pursuant to the April 1, 2010 Revised Notice of Prehearing Conference and Evidentiary Hearing and the May 28, 2010, Revised Committee Scheduling Order, Intervenor Center for Biological Diversity (the “Center”) provides this Prehearing Conference Statement.

As the Committee is aware, key issues continue to evolve and change as staff and the applicant provide new information regarding the proposed project, survey results, etc. Revisions are still ongoing. The Center does not object to the applicant continuing to assess the environmental impacts of the project or to staff revising the Staff Assessment and providing additional information. However, such a process does make it difficult for the remaining parties to evaluate the issues and topic areas as the facts continue to evolve and the Staff’s assessment of those topics is revised and supplemented. As a result, the Center reserves the right to respond to any new information submitted by the Applicant or the Staff on all topics including, but not limited to, survey information and analysis of impacts to biological resources, water resources, site configuration, siting of any secondary access road, the alternatives analysis, license conditions and/or mitigation/avoidance measures.

Although some of the dates have already elapsed, the Center respectfully requests that the Committee rule on the Center’s “Request for Continuance of Pre-hearing Schedule” filed on June 15, 2010. As the Center stated in that Request, and still holds true today, both additional and new information submitted by Staff and the Applicant after the incomplete RSA was issued

on June 12, shows that the currently scheduled hearings will not be able to include all disputed issues and therefore there will need to be additional evidentiary hearings scheduled in this matter.

Unfortunately, due to conflicts with previously scheduled events, the Center's experts are unable to provide Rebuttal Testimony at this time. The Center reserves the right to provide additional prehearing testimony and documentary evidence along with written rebuttal up to and including and evidentiary hearings on this matter. Given the extremely short schedule and the additional information being submitted by the Staff and the Applicant after the Opening Testimony was filed, the Center also requests that the Committee allow testimony at the hearings to encompass issues that arguably could have been raised on rebuttal.

**a) The topic areas that are complete and ready to proceed to evidentiary hearing:**

The Center is prepared to proceed to hearing on the following topics: Project Description, Purpose and Need, Air Quality, Biological Resources, Land Use, Cumulative Impacts, Alternatives Analysis, Soil and Water Resources. However, the Center does not view these topics as complete and ready for final hearing given the lack of adequate identification and analysis of the impacts of the proposed project provided in the Revised Staff Assessment and Draft Environmental Impact Statement ("RSA/DEIS"). The Center is particularly concerned with the inaccuracies and inadequacies in the description of the environmental setting and project description (including but not limited to the potential second access road), inadequacies in the identification and analysis of impacts to biological resources, inaccuracies and inadequacies in the water resources analysis, inaccuracies and inadequacies in the alternatives analysis, and lack of identification of specific, enforceable mitigation measures.

**b) The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore:**

The Center believes that there remain fundamental unresolved issues in many areas including Project Description, Purpose and Need, Air Quality, Biological Resources, Alternatives Analysis, Soil and Water Resources. As noted above, the Center does not view these topics as

complete and ready for final hearing given the lack of adequate identification and analysis of the impacts of the proposed project provided in the RSA/DEIS and new information rolling out from the Staff and the Applicant. The Center is particularly concerned with inadequacies in the identification and analysis of impacts to biological resources, inadequacies in the identification and analysis of impacts to water resources, lack of identification of specific, enforceable mitigation measures and plans, and the lack of robust alternatives analysis. Given these moving targets, it is impossible to evaluate at this time whether the project will fully comply with relevant federal and state laws.

While the Center is well aware that the Commission proceeds under a certified regulatory program that is intended to be the CEQA equivalent and which provides some flexibility to the Commission (*see* § 21080.5; CEQA Guidelines § 15251(j).), that program does not allow the Commission to shift the Commission's duty to provide for adequate CEQA review, including identification and analysis of environmental impacts and alternatives, onto other parties or members of the public. It is the Commission's duty to comply with CEQA's substantive and procedural mandates. Cal. Pub. Res. Code §§ 21000, 21002; *Sierra Club v. Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Association v. Cal. Dept. of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 667-68.

**c) The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic:**

Again, the Center stresses that the RSA/DEIS is incomplete and appears to have been prepared in a rush rather than to be the result of adequate analysis and research regarding impacts to the environment and other topics. Moreover, many critical issues have not been fully identified and analyzed in the RSA/DEIS. For example, the impacts of and efficacy of many of the proposed mitigation measures has not been fully explored and mitigation plans have largely been unlawfully deferred for later development without sufficient, specific, and enforceable performance standards. *See Gray v. County of Madera*, (2008) 167 Cal. App.4th 1099, 1119-20.

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

The nature of the dispute in each topic area are discussed below:

**Project Description:** The project description is too narrow and does not adequately take into account the need for environmental review of the impacts of the proposed Colorado Substation and/or expansion (also variously called Colorado River Substation) that is necessary for this proposed project.

**CEQA Project Objectives:** CEQA Project Objectives statements in the RSA/DEIS are too narrowly construed and fail to adequately take into account the need for proper siting of industrial-scale solar facilities.

The Center will reserve comments on the BLM Purpose and Need and DOE Purpose and Need for the Federal NEPA and Plan amendment Process.

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

The impacts to species and habitats, habitat fragmentation, loss of connectivity for terrestrial wildlife, impacts to water resources, and introduction of predators and invasive weed species associated with the proposed Genesis project in the proposed location are contrary to an

effective climate change adaptation strategy. Siting the proposed Genesis project in the proposed location in the Chuckwalla Valley may confound our climate change adaptation strategy with a poorly executed climate change mitigation strategy. The Center believes that the best solution to this problem would be to build and operate the proposed Genesis project (to implement the mitigation strategy) in an alternative site away from intact wild lands (to implement the climate change adaptation strategy). The way to maintain healthy, vibrant ecosystems is not to fragment them and reduce their biodiversity. The RSA/DEIS improperly appears to assume, to the contrary, that the proposed Genesis plant must be built at this location and as a result the CEQA Project Objectives undermine a fair and full review of alternatives that would avoid significant impacts of the proposed project.

**Air Quality:** The RSA/DEIS fails to adequately address several air quality issues including but not limited to PM 10. Of particular concern is that plans to minimize air quality impacts from construction, operations, and decommissioning are all deferred to later development with no clear standards. Moreover, the RSA/DEIS discussion of greenhouse gas emissions from the project operations fails to take into account that workers traveling long distances to the site, the lifecycle GHG emissions (including manufacture and transportation of the project components), and should have also included the net loss of greenhouse gas sequestration from onsite soils and plants. The Center reserves the right to raise these issues as well during the evidentiary hearings.

**Biological Resources:** As detailed in the Testimony of Ileene Anderson regarding Impacts to Sensitive Plants and Wildlife, the identification and analysis of impacts to all biological resources is inadequate and little to no attempt is made to avoid impacts to these resources or minimize the impacts as required under CEQA (as well as NEPA). Moreover, there is insufficient identification and analysis of impacts to show that the proffered mitigation measures will provide adequate mitigation. Overall, the mitigation measures that are discussed are far too vague and uncertain (unlawfully) leaving development of critical mitigation plans to a later time. Of particular concern are impacts to wildlife and habitats including the desert tortoise, the Mojave fringe toed lizard, sand dune habitats, golden eagles, special status plants and Waters of

the State and the important ecological and hydrological functions they provide. (It is our understanding that, to date, the U.S. Army Corps of Engineers has not yet completed its jurisdictional determination.) Notably, the Applicant filed additional survey information regarding Golden Eagles on June 24, 2010 well after opening testimony was due and leaving insufficient time for the Center and other parties to evaluate this new information before rebuttal testimony was due. Introduction and spread of fire from the proposed project site into the adjacent habitat have not been addressed to date.

**Cultural Resources and Native American Values:** The Staff RSA regarding cultural issues was not provided until the day before opening testimony was due (on June 17, 2010) leaving the parties no time to review this information. The Center understands that there are significant remaining issues regarding access to adequate data regarding cultural resources and other questions.

**Land Use:** Under the federal land use plan this area is inappropriate for the proposed *exclusive* industrial use of public lands to the exclusion of all other uses. In addition the placement of the proposed project bordering a wilderness area and several miles away from existing access roads rather than along existing disturbed areas is completely inappropriate because it does not minimize the impacts and may increase unauthorized ORV use on neighboring lands (including wilderness areas). The RSA/DEIS fails to adequately address these questions from either a factual or legal perspective. The critical issue of land use planning on public lands is not adequately addressed in the RSA/DEIS.

**Soil and Water Resources:**

**Water Resources:** As detailed in the Testimony of Tom Myers sponsored by the Center, RSA/DEIS fails to adequately address the hydrology of the groundwater basins that are proposed to be pumped by the applicant and the likely impacts to other area waters including surface waters. The estimate for groundwater recharge is not sufficiently supported in the RSA/DEIS or elsewhere and fails to take into account many other relevant factors.

The RSA/DEIS simply assumes there will be no impacts to springs utilized by wildlife in the surrounding mountains and wilderness areas, there is inadequate and inaccurate information regarding the bases of this conclusion provided.

The Center is also concerned that the discussion in the RSA/DEIS is incomplete regarding any potential water rights that could be created from use of groundwater by the proposed project on these public lands. While the Center recognizes that this issue may involve somewhat complex legal issues, at minimum, a Conditions of Certification is needed to address this question and to ensure that any water rights that could *arguably* be created will be conveyed back to the overlying land owner and run with the land. The Conditions should provide a mechanism to insure that in no case will the applicant convey any water rights *arguably* created by groundwater pumping on these public lands for the proposed project to any third party for use off-site or on-site nor will the applicant use the groundwater associated with the project off-site for any purpose.

**Soils:** The RSA/DEIS identifies impacts to surface soils, dunes and sand transport from the proposed project but fails to adequately address avoidance and minimization of these impacts. The RSA/DEIS also fails to provide adequate discussion of mitigation for these impacts—again deferring the specific plans to a later date. The Center is particularly concerned that impacts to dune ecosystems, the sand transport systems that support them, Mojave fringe-toed lizard and rare sand habitats. These should be avoided to the greatest extent possible, then minimized, and fully mitigated to protect this imperiled species.

**Cumulative Impacts and Growth Inducing Impacts:** The cumulative impacts analysis is inadequate and incomplete.

**Alternatives Analysis:** The RSA/DEIS fails to adequately address feasible alternatives that would avoid significant impacts of the project particularly the significant impacts to biological resources and water resources. The Testimony of Bill Powers sponsored by the Center provides detailed information regarding the feasibility of distributed PV alternative which would provide renewable energy near the load centers and existing transmission and could come on line

relatively quickly. Moreover, this alternative would provide the CEC and other agencies the time to fully and adequately evaluate this and other large-scale industrial solar projects in the desert and ensure that they are properly sited with adequate consideration of avoidance, minimization and mitigation of significant impact to the environment.

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

The Center intends to present or rely on expert witnesses on the following topics. The Center requests that if necessary expert witnesses be allowed to testify by telephone. While in-person testimony is preferred, given the expedited schedule not all of the Center's experts will be available on all of the hearing dates. The Center respectfully requests that the Committee provide a scheduled time for each witness's testimony (with a "window" of 4 hours or less) and that the Center's witnesses not be asked to testify after 7 p.m. in the evening. All experts listed below have already submitted testimony and qualifications. The Center reserves the right to submit additional testimony by way of rebuttal or initial testimony on late-filed information before the evidentiary hearings. Below the Center provides a summary of the topic areas and time estimates for the witnesses already identified.

- **Tom Myers: Water Resources:** Mr. Myers direct testimony is estimated to take no more than 30 minutes. Mr. Myers will be available to testify by phone (and possibly in person) on July 12 and 13, 2010.
- **Bill Powers: Alternatives:** Mr. Powers' direct testimony is estimated to take no more than 30 minutes. Mr. Powers is available to testify by phone after 4 pm on July 13, 2010. He is scheduled to be one of the speakers at a feed-in tariff workshop in San Francisco on July 12-13, 2010 (Feed in Tariffs: A Time for Real Action on Renewable Energy, "co-hosted by World Future Council, Pacific Environment, Boell Foundation and others for the purpose of discussing the deployment of renewable energy in the United States, with a focus on California and the West Coast," see

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694). He may also be able to make himself available to testify at other times during those two days with prior notice of a specific time.

- **Ileene Anderson: Impacts to Sensitive Plants and Wildlife:** Ms. Anderson's direct testimony is estimated to take no more than 30 minutes. Ms. Anderson will be available on July 12 and 13, 2010, to testify in person, however, she will *not* be available to testify on July 14, 2010 due to a previously scheduled DRECP Stakeholder meeting in Riverside County.

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

The Center requests the opportunity to cross-examine Staff and Applicant witnesses on all topic areas in dispute and to cross-examine witnesses presented by other Intervenors. The Center anticipates that cross-examination will require no more than 30 minutes per witness and in most cases far less.

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

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

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

**Project Description:** CEC Staff, BLM Staff, Applicant witnesses regarding the basis for the Project Description in RSA/DEIS.

**Purpose and Need/CEQA Objectives:** CEC Staff, BLM Staff, DOE Staff, regarding the basis for the Purpose and Need and CEQA Objectives statements in RSA/DEIS. Applicant's witnesses regarding the Applicant's Objectives as stated in the RSA/DEIS

**Environmental Setting:** CEC Staff, BLM Staff, Applicant witnesses regarding the basis for Staff's description of the Environmental Setting.

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

**Cumulative Impacts:** CEC Staff and BLM Staff, regarding the basis for the Cumulative Impacts analysis in RSA/DEIS.

**Land Use:** CEC Staff, BLM Staff, DOE Staff, regarding the Land Use component of the RSA/DEIS.

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

The Center reserves the right to provide additional exhibits and declarations as by way of rebuttal, and if necessary at hearing. A complete list of exhibits submitted to date is as follows:

**EXHIBIT LIST**

**Intervenor Center for Biological Diversity's Exhibits: Exhibit 800-899**

Doc. No.      Author and title

**Exhibit 800:** Anderson, T.W., 1995. Summary of the Southwest Alluvial Basins, Regional Aquifer-System Analysis, South-Central Arizona and Parts of Adjacent States. U.S. Geological Survey Professional Paper 1406-A. Docketed on June 18, 2010.

**Exhibit 801:** Avon, L., and T. J. Durbin, 1994. Evaluation of the Maxey-Eakin method for estimating recharge to ground-water basins in Nevada. Water Resources Bulletin 30(1):99-109. Docketed on June 18, 2010.

**Exhibit 802:** Constantz, J., K.S. Adams, and D.A. Stonestrom, 2007. Ground-Water Recharge in the Arid and Semiarid Southwestern United States – Chapter C. U.S. Geological Survey Professional Paper

1703C. Docketed on June 18, 2010.

- Exhibit 803:** Leake, S.A., Greer W., Watt, D., and Weghorst, P., 2008, Use of superposition models to simulate possible depletion of Colorado River water by ground-water withdrawal: U.S. Geological Survey Scientific Investigations Report 2008-5189, 25 p. Docketed on June 18, 2010.
- Exhibit 804:** Barrows, C.W. 1997. Habitat relationships of the Coachella Valley fringe-toed lizard (*Uma inornata*). Southwestern Naturalist 42(2): 218-223. Docketed on June 18, 2010.
- Exhibit 805:** Barrows, C.W., M.F. Allen and J.T. Rotenberry. 2006. Boundary processes between desert sand dune community and encroaching suburban landscape. Biological Conservation 131: 486-494. Docketed on June 18, 2010.
- Exhibit 806:** Brooks, M.L. 2000. Competition Between Alien Annual Grasses and Native Annual Plants in the Mojave Desert. American Midland Naturalist 144: 92-108. Docketed on June 18, 2010.
- Exhibit 807:** Brooks, M. L. and J. V. Draper. 2006. Fire effects on seed banks and vegetation in the Eastern Mojave Desert: implications for post-fire management, extended abstract, U.S. Geological Survey, Western Ecological Research Center, Henderson, Nevada, 3 p. Docketed on June 18, 2010.
- Exhibit 808:** Brooks, M.L. and R.A. Minnich. 2007. Fire in the Southeastern Deserts Bioregion. Chp 16 in: Sugihara, N.G., J.W. van Wagtenonk, J. Fites-Kaufman, K.E. Shaffer, and A.E. Thode (eds.). Fire in California Ecosystems. University of California Press, Berkeley. Docketed on June 18, 2010.
- Exhibit 809:** Brown, D.E. and R.A. Minnich. 1986. Fire and Changes in Creosote Bush Scrub of the Western Sonoran Desert, CA. American Midland Naturalist 116(2): 411-422. Docketed on June 18, 2010.
- Exhibit 810:** Dunn, R.R. 2005. Modern Insect Extinctions, the Neglected Majority. Conservation Biology 19 (4): 1030-1036. Docketed on June 18, 2010.
- Exhibit 811:** Dutcher, K. E. 2009. The effects of wildfire on reptile populations in the Mojave National Preserve, California. Final Report to the National Park Service, California State University, Long Beach. Pgs 28. Docketed on June 18, 2010.

- Exhibit 812:** Erickson, W.P., G. D Johnson, and D.P. Young, Jr. 2005. A Summary and Comparison of Bird Mortality from Anthropogenic Causes with an Emphasis on Collisions. USDA Forest Service Gen. Tech. Rep. PSW GTR-191. pgs. 1029-1042. Docketed on June 18, 2010.
- Exhibit 813:** Esque, T.C., K. E. Nussear, K. K. Drake, K. H. Berry, P.A. Medica, and J.S. Heaton 2009. Amendment to Desert Tortoise Translocation Plan for Fort Irwin's Land Expansion Program at the U. S. Army National Training Center (NTC) & Fort Irwin. Prepared for U.S. Army National Training Center, Directorate of Public Works. May 1, 2009. Pgs 24. Docketed on June 18, 2010.
- Exhibit 814:** Gowan, T. and K.H. Berry 2010. Health, Behavior and Survival of 158 Tortoises Translocated from Ft. Irwin: Year 2. Desert Tortoise Council Symposium Abstracts 2010. Docketed on June 18, 2010.
- Exhibit 815:** Institute for Bird Populations (IBP) 2008. Breeding Burrowing Owl Survey Newsletter, Spring 2008. pgs.4. Docketed on June 18, 2010.
- Exhibit 816:** Kelly, A.E. and M. L. Goulden. 2008. Rapid shifts in plant distribution with recent climate change. Proceedings of the National Academy of Sciences 105(33): 11823-1126. Docketed on June 18, 2010.
- Exhibit 817:** Klem, D. 1990. Collisions Between Birds and Windows: Mortality and Prevention. Journal of Field Ornithology 61(1): 120-128. Docketed on June 18, 2010.
- Exhibit 818:** Leppig, G. and J.W. White. 2006 Conservation of peripheral plant populations in California. Madrono 53(3): 264-274. Docketed on June 18, 2010.
- Exhibit 819:** Lovich, J. E. and D. Bainbridge 1999. Anthropogenic Degradation of the Southern California Desert Ecosystem and Prospects for Natural Recovery and Restoration. Environmental Management 24(3): 309-326. Docketed on June 18, 2010.
- Exhibit 820:** McCrary, M.D. 1986. Avian Mortality at a Solar Energy Power Plant. Journal of Field Ornithology 57(2): 135-141. Docketed on June 18, 2010.
- Exhibit 821:** Chadbourne & Park LLP 2010. Germany Cuts Solar Subsidy. Project Finance NewsWire. April 20, 2010. Pgs. 5 Docketed on June 18, 2010.
- Exhibit 822:** World Watch Institute 2010. Record Growth of Photovoltaic Capacity and Momentum Builds for Concentrating Solar Power. In Vital Signs: Global Trends That Shape Our Future. 6-7-2010. Pgs. 1. Docketed on June 18, 2010.

- Exhibit 823:** California Public Utilities Commission. 2008. Pre-Workshop Comments of GreenVolts, Cleantech America, and Community Environmental Council on the 2008 Market Price Referent. Files March 6, 2008. Docketed on June 18, 2010.
- Exhibit 824:** SNL Financial 2010a. So Cal Ed taps Trina Solar to supply 45 MW of PV modules. 6/9/2010. Pgs. 1. Docketed on June 18, 2010.
- Exhibit 825:** SNL Financial 2010b. So Cal Ed orders 200 MW of solar panels, plans solicitation of 250 MW more. 3/11/2010. Pgs. 1. Docketed on June 18, 2010.
- Exhibit 826:** Sheehan, T. 2010. Valley solar plant would be among the world's largest. In the Fresno Bee. March 15, 2010. Pgs. 2. Docketed on June 18, 2010.
- Exhibit 827:** U.S. Department of Energy. 2010. Draft Solar Vision Study. Chapter 4. May 28, 2010. Pgs. 28. Docketed on June 18, 2010.
- Exhibit 828:** San Diego Regional Renewable Energy Study Group. 2005. Chapter 2: Solar Photovoltaic Electric. In Potential for Renewable Energy in the San Diego Region. August 2005. Pgs. 23. Docketed on June 18, 2010.
- Exhibit 829:** Testimony of Tom Myers, Re: Impacts to Water Resources from the Proposed Genesis Solar Energy Project, Declaration, Resume. Docketed on June 18, 2010. (Errata Docketed June 22, 2010)
- Exhibit 830:** Testimony of Ileene Anderson Re: Impacts to Sensitive Plants and Wildlife from the Proposed Genesis Solar Energy Project, Declaration, and Resume. Docketed on June 18, 2010.
- Exhibit 831:** Testimony of Bill Powers, P.E., Regarding Alternatives, Declaration, Resume. Docketed on June 18, 2010.

**Declarations submitted to date the Center intends to offer into evidence:**

1. Declaration of Tom Myers dated June 16, 2010 for Testimony Re: Impacts to Water Resources from the Proposed Genesis Solar Energy Project and Resume
2. Declaration of Ileene Anderson date June 18, 2010 for Testimony of Ileene Anderson Re: Impacts to Sensitive Plants and Wildlife from the Proposed Genesis Solar Energy Project and Resume
3. Declaration of Bill Powers, P.E., dated June 18, 2010 for Testimony Regarding Alternatives and Resume

g) N/A

**h) Proposals for briefing deadlines, vacation schedules, and other scheduling matters:**

Given the extent of the factual issues remaining at this time and that the Center anticipates will be part of the evidentiary hearings and the likely need for additional evidentiary hearings after July 12 and 13, 2010, the Center requests that briefing be consolidated and that opening briefs following the final evidentiary hearings should be due no earlier than 3 weeks after transcripts are provided to all parties from all evidentiary hearings following the close of all evidentiary hearings. The Center respectfully reserves the right to modify this request. In addition, Reply Briefs should be due no earlier than 2 weeks after the opening briefs are filed.

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

There is no FSA in this matter at this time. Center has reviewed the Proposed Conditions of Certification in the RSA for enforceability, comprehension, and consistency. However, given that new information is still being submitted by the Applicant and Staff the Center is not at this time prepared to provide proposed modifications to any of the Proposed Conditions of Certification.

The Center is concerned that Conditions for all biological resources are inadequate because the identification and analysis of impacts is incomplete and inadequate. Similarly, although the Center supports the Staff in requiring dry-cooling as part of the project, because the foundational identification and analysis of impacts to water resources is inaccurate and inadequate, the Center is not at this time prepared to offer proposed modifications to any of the Proposed Conditions of Certification.

The failure to adequately identify and analyze impacts and then engage with the alternatives analysis is fatal to this proposal. The alternatives analysis should have provided additional information on ways to avoid and minimize impacts as a first step. The failure to

adequately engage those initial steps has resulted in a proposed project that unlawfully includes significant but avoidable impacts. Given this circumstance, the Center asserts that approving the project as proposed is unlawful. If the Commission nonetheless intends to approve the project as proposed it must at minimum ensure full mitigation of all impacts under the CESA, ESA, and other laws. While the staff has provided some good proposed conditions in the RSA/DEIS because most of the mitigation measures are not fully developed and do not have enforceable standards they fail to provide the required specificity needed.

Overall, many of the proposed conditions appear to be unlawfully vague and do not meet the CEQA requirements that mitigation measures be specific, feasible, and enforceable. In addition, the environmental impacts that may be caused by the proposed mitigation measures are not addressed. The Center reserves the right to provide proposed modifications for each of the conditions and additional proposed conditions after a complete final SA is provided and/or after each additional proposed revision of any condition is presented.

Dated: June 25, 2010

Respectfully submitted,



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**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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**INTERESTED AGENCIES**

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#### DECLARATION OF SERVICE

I, Lisa Belady declare that on June 25, I served and filed copies of the attached CBD Prehearing Conf. Statement. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/genesis\\_solar\]](http://www.energy.ca.gov/sitingcases/genesis_solar).

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

**(Check all that Apply)**

#### FOR SERVICE TO ALL OTHER PARTIES:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

**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**

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1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

