



July 29, 2010

California Energy Commission  
Attn: Paul Kramer, Hearing Officer  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: **Calico Solar Project, Docket No. 08-AFC- 13**

Dear Mr. Kramer,

Please find enclosed for filing the original and one extra copy of Sierra Club's Prehearing Conference Statement and Exhibits. Please return a file-endorsed copy in the self-addressed, stamped envelope provided. If you have any questions or need additional information, please contact me at (415) 977-5595 or [jeff.speir@sierraclub.org](mailto:jeff.speir@sierraclub.org). Thank you for your attention to this matter.

Sincerely,

Jeff Speir  
Program Assistant  
Sierra Club Environmental Law Program  
85 Second Street, 2nd Floor  
San Francisco, CA 94105

**STATE OF CALIFORNIA**

**Energy Resources Conservation and  
Development Commission**

In the Matter of:

Docket No. 08-AFC-13

The Application for Certification for the  
Calico Solar Project

**PREHEARING CONFERENCE STATEMENT OF THE  
SIERRA CLUB**

July 29, 2010

Gloria D. Smith  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5532 Voice  
(415) 977-5739 Facsimile  
gloria.smith@sierraclub.org

Travis Ritchie  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5727 Voice  
(415) 977-5739 Facsimile  
travis.ritchie@sierraclub.org

**STATE OF CALIFORNIA**

**Energy Resources Conservation and  
Development Commission**

In the Matter of:

Docket No. 08-AFC-13

The Application for Certification for the  
Calico Solar Project

**PREHEARING CONFERENCE STATEMENT OF THE  
SIERRA CLUB**

In response to the July 13, 2010 Notice of Prehearing Conference and Evidentiary Hearings, this statement identifies issues intervenor Sierra Club intends to raise at the public evidentiary hearings for the Application for Certification (“Application”) for the Calico Solar Project (“Project”) scheduled to be held in Barstow, California beginning August 4, 2010 and continuing through August 6, 2010.

Sierra Club objects to the California Energy Commission’s (“Commission”) approval of the Project as proposed by the applicant and analyzed in the Supplemental Staff Assessment (“SSA”). Although Sierra Club generally supports the Commission’s efforts to increase the supply of renewable energy in California, this is a particularly bad project in an exceptionally problematic location. Construction of the Project would result in the permanent destruction of several thousand acres of undisturbed desert habitat. Moreover, the proposed Project site is a unique and critically important area for several threatened and sensitive species, and it serves as a vital corridor for various wildlife populations in the Caddy, Bristol and Ord Mountains. The destructive and irreversible

impacts that the Project will have on the desert environment go far beyond the immediate site location and will threaten the long-term genetic diversity and viability of wildlife in the region. The SSA failed to investigate and disclose the full extent of these impacts as required by the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”).

To the detriment of public participation, this Project continues to evolve and change at a rapid pace as staff and the applicant revise, add and delete Project conditions. In order to meet federal funding deadlines for the American Recovery and Reinvestment Act (“ARRA”), staff has rushed its review and analysis of the Application and relied on incomplete and inadequate information. The expedited schedule, and staff’s understandable inability to keep pace with that schedule, further inhibits Sierra Club’s and the public’s ability to meaningfully engage in this process. For example, staff did not release the full SSA until July 21, 2010, nearly two weeks after the originally scheduled release date of July 8, 2010. Despite these setbacks, the Commission did not revise the deadlines for public testimony or evidentiary hearings. The constantly shifting makeup of the overall development proposal, the compressed scheduling deadlines and the inability of parties, including staff, to meet those schedules makes it difficult for the parties to evaluate and comment on the Project. The only thing about the schedule that appears to be certain is the public’s increasingly diminished and compromised ability to meaningfully participate in the proceeding as other agencies, staff and the Commission itself rush to approve the Project by the end of this year.

**I. Topic Areas That Are Complete and Ready to Proceed to Evidentiary Hearing**

Sierra Club believes that the overly-rushed and expedited nature of this proceeding resulted in several topic areas that are incomplete. Sierra Club will focus its discussion at the evidentiary hearings on the topic of biological resources and mitigation.

**II. Topic Areas That Are Not Complete and Not Yet Ready to Proceed to Evidentiary Hearing**

There remain fundamental unresolved issues in the area of biological resources, specifically with regard to required mitigation for the desert tortoise and rare and sensitive plant species. The record is incomplete because staff and the applicant failed to conduct several critical studies and surveys that are necessary to fully understand the impacts that the Project will have. Instead, the SSA repeatedly refers to pre-construction surveys that the applicant will purportedly complete after Project approval and after the public's opportunity to participate. Given the incomplete status of the SSA and its conclusions, it is impossible to evaluate whether the Project will fully comply with federal and state requirements. As such, Sierra Club recommends postponing evidentiary hearings until staff and the applicant complete all surveys and analyses necessary for a full evaluation of the Project's impacts on biological resources, which both CEQA and NEPA require.

### **III. Topic Areas that Remain Disputed and Require Adjudication**

#### **A. Biological Resources**

The SSA failed to investigate and disclose the Project's potentially significant impacts on biological resources. Instead, staff's assessment acknowledged several areas where the SSA lacked sufficient information or quantitative data to fully understand or analyze the Project's impacts. For example, the SSA noted that "little is known" regarding the migratory movement of bighorn sheep near the Project site (SSA, C.2-93), yet staff inexplicably concluded that the operation of 30,000 SunCatchers, which will produce a substantial amount of noise and other disturbances during construction and operation, will not pose serious restrictions to movement. There was simply no basis in the SSA for this conclusion. Staff similarly admitted that, "[t]he extent of these impacts [to white-margined beardtongue and other special-status plants] cannot be fully evaluated due to limitations of available field survey data." (SSA, C.2-60). Staff therefore cannot make reliable conclusions regarding the Project's impacts to white-margined beardtongue, which is an exceptionally rare plant, because it does not have sufficient information upon which to base those conclusions.

Staff deferred review and analysis of several issues by including "preconstruction surveys" as a means of mitigation. *See, e.g.*, BIO-12 (botany survey); BIO-14 (gila monster); BIO-19 (migratory bird); BIO-20 (golden eagle); BIO-21 (burrowing owl); BIO-24 (American badger and kit fox); BIO-25 (bats). The SSA's recommendation to defer review and mitigation of these impacts to a later time does not meet the requirements of CEQA and NEPA. This Commission cannot fully evaluate the impact that the Project will have on biological resources unless and until the applicant or staff

provides it with a complete record of information. Sierra Club therefore disputes staff's conclusions that environmental impacts to biological resources will be less than significant because the SSA does not contain adequate information to make such a determination. Relying on preconstruction surveys and "kicking the can down the road" for proposed mitigation measures is irresponsible and in violation of CEQA and NEPA.

### **1) Habitat Fragmentation**

Sierra Club disputes staff's conclusions regarding the Project's impacts on habitat fragmentation. The proposed Project site at the base of the Cady Mountains obstructs an essential connectivity area between the Bristol and Ord Mountains. The applicant's adjustment to the northern border of the site does not mitigate the Project's impacts on north-south movement corridors, and the SSA failed to fully address this significant impact. Likewise, the SSA failed to analyze the Project's impacts on east-west movement corridors. As it stands, all evidence indicates that the Project would present unmitigable impacts on habitat connectivity and wildlife migratory corridors.

### **2) Desert Tortoise**

Sierra Club disputes staff's conclusion that impacts to the state and federally threatened desert tortoise would be less than significant. The central minimization strategy relied on risky and controversial translocation. Yet to date, the applicant has not provided a translocation plan for review, nor has staff identified adequate translocation sites or procedures. The SSA failed to disclose sufficient information regarding the mortality involved with tortoise translocation or the overall success of translocation as a minimization scheme. Finally, the SSA failed to analyze impacts on regional Mohave tortoise populations resulting from the obstruction of potential north-south movement

corridors for desert tortoise between the base of the Cady Mountains and the designated critical tortoise habitat located to the southwest of the Project in the Ord-Rodman Mountains.

### **3) White-Margined Beardtongue**

Sierra Club disputes staff's conclusion that the proposed Project would avoid direct impacts to white-margined beardtongue, which is a CNPS 1B special status species. The SSA failed to provide sufficient information or quantitative data to fully evaluate or mitigate the impacts that the Project would have on white-margined beardtongue and other sensitive plant species. Sierra Club also disputes staff's conclusion that the proposed condition of certification BIO-12 would mitigate the impacts to white-margined beardtongue. The SSA failed to explain how the proposed mitigation measure to isolate existing white-margined beardtongue within the Project site would prevent direct impacts to those individuals, nor did it address whether the Project as a whole would negatively impact the regional viability of the species. There is no evidence whatsoever showing that this population could survive, much less thrive, in the wholly altered landscape below and among the SunCatchers.

### **4) Nelson's Bighorn Sheep**

Sierra Club disputes staff's conclusion that the proposed conditions of certification would reduce impacts to Nelson's bighorn sheep, a federal sensitive species, to less-than-significant levels. The SSA omitted information on the regional movement of bighorn sheep along the base of the Caddy Mountains and therefore cannot make an informed conclusion regarding the Project's potential impacts to the population. The SSA also did not investigate and disclose the Project's obstruction of potential north-

south movement corridors for bighorn sheep across the desert flats between the Ord and Caddy Mountains. The SSA provided insufficient information to assess the impact that the Project would have on the overall genetic diversity of bighorn sheep populations in the region.

Sierra Club similarly disputes the effectiveness of the SSA's proposed mitigation measure BIO-23, which would require the cessation of construction activities if a bighorn sheep approaches to within 500 feet of construction activity. The SSA failed to explain how staff determined that 500 feet is a sufficient buffer to prevent impacts to bighorn sheep movement along the base of the Caddy Mountains when such movement is admittedly poorly understood. The proposed condition of certification also failed to address or mitigate the impacts that the operation of 30,000 Sterling Engines will have on bighorn sheep once the Project is operational.

## **5) Golden Eagle**

Sierra Club disputes staff's conclusion that the proposed conditions of certification would reduce potential impacts to golden eagles to less-than-significant levels. As a preliminary matter, the applicant did not conduct a complete survey and inventory of the golden eagle as required by the Interim Golden Eagle Technical Guidance issued by U.S. Fish and Wildlife Service ("USFWS"). The SSA therefore did not and cannot analyze the full impacts that the Project would have on the golden eagle because there was insufficient information on the existing population that the Project would affect. Furthermore, the SSA indicated that the potential impacts to golden eagles colliding with SunCatchers while foraging remains unclear. Despite this acknowledged risk of harm, the SSA did not propose any adequate mitigation to address this potential

impact. Finally, it is unclear from the information contained in the SSA whether the project would require a take permit from USFWS and/or violate California Department of Fish and Game's prohibition on directly taking a golden eagle, which is a fully protected species under California law.

#### **IV. Witnesses, Topic Areas, Testimony and Exhibits**

##### **A. Witnesses**

Sierra Club does not currently intend to submit written testimony or sponsor the testimony of any witnesses. Sierra Club may introduce exhibits in order to facilitate cross-examination during evidentiary hearings.

##### **B. Topic Areas for Cross-Examination**

Sierra Club intends to cross-exam the witnesses of staff, the applicant and other parties on the topic of biological resources as discussed above in Section III.A. Sierra Club anticipates no more than 30 minutes of cross-examination for each witness. Sierra Club reserves the right to revise its cross-examination estimates pending receipt of the other parties' witness lists, prehearing conference statements, and other supporting materials.

##### **C. List of Exhibits**

Sierra Club introduces the following exhibits on the record and for use during evidentiary hearings. Copies of the exhibits listed below are attached hereto as Attachment A.

- 1000 Photo of Nelson's Bighorn Sheep
- 1001 Photo of Nelson's Bighorn Sheep
- 1002 Photo of Golden Eagle
- 1003 Photo of Golden Eagle
- 1004 Photo of Desert Tortoise

- 1005 Photo of Desert Tortoise
- 1006 Photo of White-margined beardtongue
- 1007 Photo of White-margined beardtongue
- 1008 Photo of Mojave fringe-toed lizard
- 1009 Photo of Mojave fringe-toed lizard
- 1010 Calico Project Site Map

## **V. Proposals for Briefing Deadlines and Scheduling Matters**

As noted above, Sierra Club recommends postponing evidentiary hearings on this matter until such time as staff and the applicant complete all necessary population surveys and incorporate the relevant information into the analysis. Sierra Club is nevertheless prepared to go forward with evidentiary hearings scheduled in Barstow, California beginning August 4, 2010 through August 6, 2010. Sierra Club is also prepared to attend the August 18, 2010 evidentiary hearing to receive the Final Environmental Impact Statement (“FEIS”), Biological Opinion, and any additional evidence into the record.

Given the volume of resource issues in this case and the fact that the Commission intends to receive additional evidence at hearings on August 18, 2010, Sierra Club requests that the Commission postpone the deadline for filing opening briefs following the evidentiary hearings to three weeks after the close of the Barstow evidentiary hearings, which date is August 27, 2010 as currently scheduled.

## **VI. Proposed Modifications to the Proposed Conditions of Certification**

As noted above, staff and the applicant continue to revise key aspects of the Project, and staff submitted the final SSA nearly two weeks late. In addition, several proposed conditions of certification rely on incomplete preconstruction surveys, and

mitigation measures rely on information that does not currently exist. Sierra Club is therefore unable to fully assess the conditions of certification related to biological resources as of the date of this filing. Sierra Club reserves the right to address proposed modifications to the conditions and additional proposed conditions during evidentiary hearings and briefing.

## **VII. Informal Hearing Procedures**

Sierra Club does not object to the Commission's use of informal hearing procedures. Sierra Club respectfully requests, however, that the Commission provide a date and time certain for witnesses to address biological resources.

## **VIII. Location of August 18, 2010 Evidentiary Hearing**

Sierra Club plans to attend the evidentiary hearing scheduled for August 18, 2010 and respectfully requests that such hearing be held in Sacramento, California.

Dated: July 29, 2010

Respectfully submitted,

*Original signed by:*

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Gloria D. Smith, Senior Attorney  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5532 Voice  
(415) 977-5739 Facsimile  
gloria.smith@sierraclub.org

## Attachment A

## Exhibit List

<b>Exhibit</b>	<b>Brief Description</b>	<b>Offered</b>	<b>Admitted</b>	<b>CEC Use Only</b>
1000	Photo of Nelson's Bighorn Sheep			
1001	Photo of Nelson's Bighorn Sheep			
1002	Photo of Golden Eagle			
1003	Photo of Golden Eagle			
1004	Photo of Desert Tortoise			
1005	Photo of Desert Tortoise			
1006	Photo of White-margined beardtongue			
1007	Photo of White-margined beardtongue			
1008	Photo of Mojave fringe-toed lizard			
1009	Photo of Mojave fringe-toed lizard			
1010	Calico Project Site Map			



Nelson's Bighorn Sheep, *Ovis canadensis nelsoni*  
2009, Courtesy Magnus Kjaergaard

Sierra Club Exhibit #1000



Nelson's Bighorn Sheep, *Ovis canadensis nelsoni*  
2009, Courtesy Magnus Kjaergaard

Sierra Club Exhibit #1001



Golden Eagle, *Aquila chrysaetos*  
©2006 Larry Allan, Courtesy Sierra Club Library

Sierra Club Exhibit #1002



Golden Eagle, *Aquila chrysaetos*  
2007 Courtesy U.S. Fish and Wildlife Service

Sierra Club Exhibit #1003



Desert Tortoise, *Gopherus agassizii*  
2008 Courtesy Tigerhawkvok

Sierra Club Exhibit #1004



Desert Tortoise, *Gopherus agassizii*  
2005, Courtesy Wilson44691

Sierra Club Exhibit #1005



White-margined beardtongue, *Penstemon albomarginatus*  
©2005, Lara Hartley Photography

Sierra Club Exhibit #1006



White-margined beardtongue, *Penstemon albomarginatus*  
©2005, Lara Hartley Photography

Sierra Club Exhibit #1007



Mojave fringe-toed lizard, *Uma scoparia*  
© Gary Nafis

Sierra Club Exhibit #1008



Mojave fringe-toed lizard, *Uma scoparia*  
© Gary Nafis

Sierra Club Exhibit #1009



Calico Project Site

Sierra Club Exhibit #1010



**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 CALICO SOLAR (Formerly SES Solar One)***

**Docket No. 08-AFC-13**

**PROOF OF SERVICE  
(Revised 7/12/10)**

**APPLICANT**

Felicia Bellows  
Vice President of Development &  
Project Manager  
Tessera Solar  
4800 North Scottsdale Road,  
#5500  
Scottsdale, AZ 85251  
[felicia.bellows@tesserasolar.com](mailto:felicia.bellows@tesserasolar.com)

**CONSULTANT**

Angela Leiba  
AFC Project Manager  
URS Corporation  
1615 Murray Canyon Rd., #1000  
San Diego, CA 92108  
[angela\\_leiba@URSCorp.com](mailto:angela_leiba@URSCorp.com)

**APPLICANT'S COUNSEL**

Allan J. Thompson  
Attorney at Law  
21 C Orinda Way #314  
Orinda, CA 94563  
[allanori@comcast.net](mailto:allanori@comcast.net)

Ella Foley Gannon, Partner  
Bingham McCutchen, LLP  
Three Embarcadero Center  
San Francisco, CA 94111  
[ella.gannon@bingham.com](mailto:ella.gannon@bingham.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)  
Jim Stobaugh  
BLM – Nevada State Office  
P.O. Box 12000  
Reno, NV 89520  
[jim\\_stobaugh@blm.gov](mailto:jim_stobaugh@blm.gov)

Rich Rotte, Project Manager  
Bureau of Land Management  
Barstow Field Office  
2601 Barstow Road  
Barstow, CA 92311  
[richard\\_rotte@blm.gov](mailto:richard_rotte@blm.gov)

Becky Jones  
California Department of  
Fish & Game  
36431 41st Street East  
Palmdale, CA 93552  
[dfgpalm@adelphia.net](mailto:dfgpalm@adelphia.net)

**INTERVENORS**

County of San Bernardino  
Ruth E. Stringer, County Counsel  
Bart W. Brizzee, Deputy County Counsel  
385 N. Arrowhead Avenue, 4<sup>th</sup> Floor  
San Bernardino, CA 92415-0140  
[bbrizzee@cc.sbcounty.gov](mailto:bbrizzee@cc.sbcounty.gov)

California Unions for Reliable Energy  
(CURE)  
c/o: Loulena A. Miles, Marc D. Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Ste. 1000  
South San Francisco, CA 94080  
[lmiles@adamsbroadwell.com](mailto:lmiles@adamsbroadwell.com)

Defenders of Wildlife  
Joshua Basofin  
1303 J Street, Suite 270  
Sacramento, California 95814  
[e-mail\\_service\\_preferred@jbasofin@defenders.org](mailto:e-mail_service_preferred@jbasofin@defenders.org)

Society for the Conservation of  
Bighorn Sheep  
Bob Burke & Gary Thomas  
P.O. Box 1407  
Yermo, CA 92398  
[cameracoordinator@sheepsociety.com](mailto:cameracoordinator@sheepsociety.com)

Basin and Range Watch  
Laura Cunningham & Kevin Emmerich  
P.O. Box 70  
Beatty, NV 89003  
[atomicoadranch@netzero.net](mailto:atomicoadranch@netzero.net)

Patrick C. Jackson  
600 N. Darwood Avenue  
San Dimas, CA 91773  
[e-mail\\_service\\_preferred@ochsjack@earthlink.net](mailto:e-mail_service_preferred@ochsjack@earthlink.net)

Gloria D. Smith, Senior Attorney  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
[gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org)

\*Newberry Community Service District  
Wayne W. Weierbach  
P.O. Box 206  
Newberry Springs, CA 92365  
[newberryCSD@gmail.com](mailto:newberryCSD@gmail.com)

**ENERGY COMMISSION**

ANTHONY EGGERT  
Commissioner and Presiding Member  
[aeggert@energy.state.ca.us](mailto:aeggert@energy.state.ca.us)

JEFFREY D. BYRON  
Commissioner and Associate Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

Lorraine White, Adviser to  
Commissioner Eggert  
[e-mail\\_service\\_preferred@lwhite@energy.state.ca.us](mailto:e-mail_service_preferred@lwhite@energy.state.ca.us)

Kristy Chew, Adviser to  
Commissioner Byron  
[e-mail\\_service\\_preferred@kchew@energy.state.ca.us](mailto:e-mail_service_preferred@kchew@energy.state.ca.us)

Caryn Holmes  
Staff Counsel  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)

Steve Adams  
Co-Staff Counsel  
[sadams@energy.state.ca.us](mailto:sadams@energy.state.ca.us)

Christopher Meyer  
Project Manager  
[cmeyer@energy.state.ca.us](mailto:cmeyer@energy.state.ca.us)

Jennifer Jennings  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

## **DECLARATION OF SERVICE**

I, Jeff Speir, declare that on July 29, 2010, I mailed hard copies of the attached Prehearing Conference Statement and Exhibits, dated July 29, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:  
**[[www.energy.ca.gov/sitingcases/solarone](http://www.energy.ca.gov/sitingcases/solarone)].**

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:**

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

       by personal delivery;

  x   by delivering on this date, for mailing in the United State 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:**

  x   sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

**OR**

       depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 08-AFC-13  
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 this proceeding.

*Original signed by:* \_\_\_\_\_  
Jeff Speir