ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
lmiles@adamsbroadwell.com

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
JASON W. HOLDER
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

October 28, 2010

BY E-MAIL AND HAND-DELIVERY

Christopher Meyer
Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814
cmeyer@energy.state.ca.us

Re: Calico Solar Project (08-AFC-13)
Comments of Scott Cashen on the Applicant's Desert Tortoise Translocation Plan

Dear Mr. Meyer:

California Unions for Reliable Energy ("CURE") retained independent biologist, Scott Cashen, to review the Applicant's Desert Tortoise Translocation Plan submitted to the Commission on October 22, 2010. Attached to this letter is Mr. Cashen's comments on this plan. Due to the lateness of the Applicant's filing of the plan, we were not able to provide the Commission with these comments at an earlier time. We request the Commission review these comments and hold an evidentiary hearing to discuss the new significant unanalyzed and unmitigated impacts that would result from implementation of this plan.

Sincerely,

/s/

Loulena A. Miles

LAM:cnh
cc: Docket (08-AFC-13)
Proof of Service List

2309-121d

October 28, 2010

Subject: Biological Opinion and Final Desert Tortoise Translocation Plan for Tessera Solar's Calico Solar Power Generating Facility

I am an environmental biologist with 18 years of professional experience in wildlife ecology, forestry, and natural resource management. For the past 10 years I have served as an environmental consultant focusing on biological resource investigations. I have additional professional experience as a wildlife researcher, consulting forester, and instructor of wildlife management for the Pennsylvania State University. My educational background includes a B.S. in Resource Management from the University of California at Berkeley, and a M.S. in Wildlife and Fisheries Science from the Pennsylvania State University.

On October 14, 2010, Tessera Solar (hereafter referred to as the "Applicant") released the "Final Plan, Corrected Version" of the Desert Tortoise Translocation Plan prepared for the Calico Solar Project (hereafter referred to as the "Project"). The next day, the U.S. Fish and Wildlife Service (USFWS) released its biological opinion for the Project. The biological opinion specifically addresses Project effects on the federally threatened desert tortoise. Both documents contain new information about analyzed new significant environmental impacts that has not been addressed in environmental review documents prepared by the California Energy Commission (CEC), or in the evidentiary hearings conducted for the Project. The comments contained herein address new (or modified) information provided in the USFWS's biological opinion and the Applicant's Final Desert Tortoise Translocation Plan. My comments are based on my knowledge and experience, my review of environmental documents pertaining to the Project, information presented in scientific literature, consultation with some of the foremost desert tortoise experts, and the testimony provided during the Project's evidentiary hearings.

Energy Commission Staff Did Not Analyze the Newly Proposed Fate of Desert Tortoises in Phase 1a of the Project Area

The biological opinion (BO) permits the Applicant to conduct "special clearance surveys" for desert tortoises in Phase 1a of the Project area.[1] These "special clearance surveys" would be conducted outside of the normal activity periods exhibited by desert tortoises, and outside of the windows of opportunity for clearing tortoises from a project site as defined in the USFWS's translocation guidance for desert tortoises.[2]

The Applicant's Final Translocation Plan indicates the Applicant plans to survey for, and translocate, tortoises during times of year other than during the established activity periods. The Applicant's proposal to conduct tortoise surveys and translocation activities during times of year when tortoises are generally not active (and more easily identifiable) represents a change in the translocation plan schedule (i.e., from the Draft Translocation

[1] [BO] Biological Opinion, p. 12.
[2] [BO] Biological Opinion, p. 12.

Plan). The ability to locate, translocate, and otherwise mitigate impacts to desert tortoises during the time of year when they are generally inactive is an action that has not been analyzed by the Applicant or Energy Commission Staff ("Staff"). Furthermore, it conflicts with the guidance recently released by the USFWS (August 2010), which states "translocations should occur in spring (April 1 through May 31), but fall (September 1 through October 15) may be considered."[3] The Presiding Member's Proposed Decision (PMPD) on the Project requires the Applicant to develop and *implement* a translocation plan that conforms to the standards and guidelines described in the aforementioned USFWS guidance.[4] It further indicates the final Translocation Plan "shall be based on the draft Desert Tortoise Translocation Plan prepared by the applicant and shall include all revisions *deemed necessary* by USFWS, CDFG, BLM'S Wildlife Biologist, and staff."[5] The proposal to conduct surveys and translocation activities for desert tortoises after October 15th represents a substantial deviation from the draft Translocation Plan. No parties have provided evidence to suggest surveys and translocation activities for desert tortoises after October 15th provide any benefit, other than facilitating the Applicant in meeting its desired construction schedule. Instead, scientific evidence indicates surveys and translocation activities outside of the tortoise activity period would conflict with the PMPD's stated goal of a plan that safely excludes desert tortoises from within the fenced project area and enables them to be translocated to suitable habitat capable of supporting them, while minimizing stress and potential for disease transmission.[6]

According to the BO, a pen will be constructed around any desert tortoise found in a burrow within the Phase 1a Project area.[7] According to the Applicant's Final Translocation Plan, however, the fate of individual tortoises will depend on the date of detection. Specifically, the Applicant has indicated any tortoise detected within a burrow before October 31st will be removed from its burrow and placed in a quarantine pen.[8] If the tortoise is detected after October 31st, it will be left in its burrow and a fenced quarantine pen will be constructed around the burrow.[9] Neither scenario was analyzed by Staff, presented for public review, or available for expert testimony during the evidentiary hearings conducted for the Project.

For tortoises left in their burrows, the Applicant proposes a pen design that encompasses the entire burrow, with approximately three square feet of open area extending from the outer edge of the burrow apron.[10] According to the Applicant, all tortoises will be monitored and cared for during the winter based on the Animal Husbandry Plan prepared for the Project.[11] To date, the Applicant has not provided an Animal Husbandry Plan. As

[3] USFWS. 2010 Aug. Translocation of Desert Tortoises (Mojave Population) From Project Sites: Plan Development Guidance.
[4] [PMPD] Presiding Member's Proposed Decision, p. 120.
[5] *Id.* [emphasis added].
[6] *Id.*
[7] *Id.*
[8] Final Desert Tortoise Translocation Plan, p. 2-20.
[9] *Id.*
[10] Final Desert Tortoise Translocation Plan, p. 2-20.
[11] *Id.*

a result, I am unable to comment on its ability to minimize adverse effects to tortoises affected by the Project. The Applicant's Final Translocation Plan provides scant information in this regard, other than stating that if one of the penned tortoises comes out during the winter, it will be moved into the adjacent quarantine pen outside the Phase 1a boundary and held until spring.[12] If the tortoise does not come out of the burrow during the winter, it will be held until spring, when it will be disease-tested and translocated.[13] Based on the best available scientific evidence, it is my professional opinion that the newly proposed strategy for desert tortoises in the Phase 1a Project area represents an additional significant, but feasibly avoidable, impact to desert tortoises.

EFFECTS OF PENNING TORTOISES WITHIN THEIR WINTER BURROWS

To the best of my knowledge, there have not been any studies that have documented the effects of construction adjacent to hibernating tortoises (and no studies or scientific justification was provided in the BO). However, there is sufficient scientific data to draw inferences. These inferences suggest Project construction activities are likely to have an adverse effect on desert tortoises that have been penned within their winter burrows (and allowed only three square feet of space outside the burrow).

Potential for Burrow Collapse

Desert tortoise burrows are susceptible to collapse. Project construction in the immediate vicinity of occupied burrows is likely to increase the probability that burrows will collapse and tortoises will become buried. Phase 1a of the Project includes installation of 60 SunCatcher pedestals, which will be vibrated into the ground, and which will be located in an area with desert tortoise burrows.[14] It is reasonable to assume that the intense vibration required to secure each of the 60 SunCatcher pedestals into the ground is likely to result in burrow collapse.

In addition to the 60 SunCatcher pedestals, the Phase 1a Project area includes the construction of roads, the Main Services Complex, and the substation. These activities will cause massive destabilization of existing soils, and entail heavy machinery that further vibrates the soil. Both activities will make tortoise burrows more susceptible to collapse, which is likely to result in tortoise mortality.

Neither the Applicant nor the USFWS has identified reasonably prudent measures for identifying burrows that have collapsed, or remedial actions in the event of a collapse. Winter burrows used by desert tortoises can be quite extensive (e.g., deep and with numerous chambers). This confounds the issues identified above, because an interior chamber may collapse, but go undetected by the routine monitoring proposed in the Applicant's Final Translocation Plan and in the BO.

Potential for Predation

[12] *Id.*
[13] *Id.*
[14] Final Desert Tortoise Translocation Plan, Figure 2.

There is mounting scientific evidence that some predators (including ravens and coyotes) of the desert tortoise are attracted to human activities, including tortoise pens.[15] Staff identified the potential for human activities associated with the Project to attract and subsidize unnaturally high numbers of tortoise predators.[16] As a result, the pens around hibernating tortoises are likely to attract predators and subject hibernating tortoises to increased predation pressure.

Effects of Construction Noise

Construction noise near occupied tortoise burrows may have several adverse effects on tortoises that are penned on the Project site. The Desert Tortoise Recovery Plan (USFWS 1994) provides the following discussion on the effects of noise on desert tortoises:

> "Loud noises (and associated vibrations) may damage the hearing apparatus of tortoises. Little research has been performed on tortoise ears, but it is clear that tortoises are able to hear, and the relatively complex vocal repertoires demonstrated by tortoises suggests that their hearing acuity is similarly complex. Brattstrom and Bondello (1983) experimentally demonstrated that off-highway vehicle noise can reduce the hearing thresholds of Mojave Fringe-toed Lizards (*Uma scoparia*). Relatively short, single bursts (500 sec) of loud sounds (95 dBA at 5 meters) caused hearing damage to seven test lizards (Brattstrom and Bondello, 1983). Comparable results were obtained when desert iguanas (*Dipsosaurus dorsalis*) were exposed to one to ten hours of motorcycle noise (Bondello, 1976). It is likely that repeated or continuous exposure to damaging noises will cause a greater reduction in auditory response of these lizards. It is not unreasonable to expect loud noises to similarly impact the auditory performance of desert tortoises."

Additionally, research studies on other burrowing herptiles have demonstrated that vehicle noise may trigger early emergence from underground refuge sites. Researchers studying the Couch's spadefoot toad theorized that toads emerged from their underground refuge sites at abnormal times because they mistook vehicle sounds for the summer rains on which they depend. Given tortoises also are dependent on rain (for forage and drinking), and research conclusions that internal factors affect hibernation period, it is reasonable to assume that construction noise may affect the hibernation patterns of tortoises penned within the Project site.[17] Tortoises that are artificially lured out of hibernation may be subject to energetic demands, inhospitable weather, construction dust and noise, and other factors that reduce fitness.

---

[15] Bruno AL, M Hagan, KA Nagy, LS Hillard, RW Murphy. 2008. Desert Tortoise Hatchery Program at Edwards AFB; An Overview and Update on Program Success [Abstract]. Thirty-third Annual Meeting and Symposium; 2008 Feb 22-25, Las Vegas. The Desert Tortoise Council. Available from: http://www.deserttortoise.org/symposia.html.

[16] SSA, p. C.2-81.

[17] Nussear et al. 2007. Desert Tortoise Hibernation: Temperatures, Timing, and Environment. Copeia (2): 378-386.

ABILITY TO DETECT TORTOISES OUTSIDE OF THE ACTIVITY WINDOW

Desert tortoises are very difficult to detect. As a result, the USFWS survey protocol prescribes surveys during the times of year when tortoises are most active. The "Frequently Asked Questions" section of the USFWS's 2010 survey protocol provides the following discussion on the importance of conducting surveys during the activity period when the action area is large or the proposed action has the potential to affect more than 2 or 3 desert tortoises:

> "[i]n these cases, USFWS needs more information than just presence/absence to conduct our analyses and determine the extent of the effects on the desert tortoise; we also need a robust estimate of the number of tortoises within the project area, particularly for large projects that involve translocating tortoises >5 km or <5 km. The most expedient way to estimate abundance for tortoises is to conduct surveys when tortoises are most active, when the estimates of the number of tortoises below ground and of the number of tortoises missed during the survey are applicable. As mentioned above, these calculations have been developed from analyses of years of survey data. Abundance estimates will also be useful to the project proponent and lead agencies because it would allow them to conduct their own analyses and assess potential costs of proceeding with the proposed action in this location. *The ESA's implementing regulations 50CFR 402 require federal agencies to use the best scientific information* which can be obtained during the consultation process, and USFWS to specify the amount or extent of incidental take. Therefore, we have developed this estimate of abundance to comply with these regulations."[18]

The proposal to locate tortoises in the Phase 1a during the non-active season conflicts with the best scientific information on the timing for locating tortoises, and the USFWS's own guidance, which states "[s]urveys outside these [activity] periods may be approved by the local USFWS office when *only* presence/absence needs to be determined."[19]

Identifying whether winter burrows are occupied may be quite difficult due to their depth and configuration. Because Staff expected clearance surveys to occur when tortoises were active (i.e., during the spring or fall), Staff did not analyze the effectiveness of determining occupation of winter burrows, nor the heightened mortality likely to occur if surveys were conducted during the time of year when tortoises are extremely difficult to detect. When tortoises enter their winter burrows for hibernation, they may backfill the

[18] US Fish and Wildlife Service. 2010. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). Available at: http://www.fws.gov/ventura/speciesinfo/protocols_guideline.

[19] *Id.* [emphasis added]. To minimize mortality, clearing tortoises off a project site requires a census (i.e., the identification of every tortoise present); the presence/absence surveys discussed in the survey protocol refer to a simple conclusion on occupation/non-occupation (i.e., the abundance of animals is irrelevant).

burrow entrance with soil to provide extra thermal protection. This makes it more likely that surveyors will miss occupied burrows, especially in areas with blow sand (such as the Project site).[20] As a result, it is my professional opinion that the Applicant's proposal is likely to result in unnecessary mortality to tortoises in occupied burrows perceived to be vacant.

The Applicant Does Not Have a Feasible Translocation Plan For Minimizing Impacts to Desert Tortoises

In my previous testimony I discussed several issues associated with the Applicant's Draft Desert Tortoise Translocation Plan, including the many flaws that needed to be resolved before tortoises were cleared from the Project site. Many of these issues were similarly addressed in testimony by Staff, resource agency personnel, other intervenors, and in the testimony provided by Dr. Kristin Berry. The Applicant's Final Desert Tortoise Translocation Plan has addressed very few of these concerns. As a result, I continue to hold the professional opinion that the Applicant's translocation plan threatens the long-term viability of translocated tortoises, and tortoises within the proposed translocation sites.

THE APPLICANT HAS YET TO SURVEY OR IDENTIFY SUFFICIENT LONG-DISTANCE TRANSLOCATION SITES

The Final Desert Tortoise Translocation Plan identifies 3,152 acres of land within the Ord-Rodman DWMA for tortoises requiring long-distance (> 500 m) translocation.[21] Land within the DWMA has been subdivided into two distinct parcels: one that is 2,216 acres and one that is 954 acres. To decrease the potential for disease transmission, the BO prohibits the Applicant from translocating tortoises within six kilometers of any resident tortoise that is diseased or seropositive.[22] The BO further specifies that the disease rate in the Ord-Rodman DWMA translocation area (or areas) must be less than 5 percent (at a 95 percent confidence level) to be considered a valid recipient area for translocated tortoises. The USFWS estimates 105 tortoises in the DWMA will need to be tested for disease to derive the desired estimate of disease.[23]

The proposed long-distance translocation sites do not adequately minimize impacts to resident and translocated tortoises for the following reasons:

1. Given the size and configuration of the two proposed translocation areas, it would take only one diseased tortoise in each area to completely invalidate them as suitable receptor sites. Specifically, even if a diseased tortoise is detected on the edge of one of the translocation sites, all other area within the translocation site would be within the 6-km buffer excluded from translocation.[24] As a result, the

[20] Personal communication with Dr. Kristin Berry of the USGS, 27 Oct 2010.
[21] Final Desert Tortoise Translocation Plan, Figure 3.
[22] BO, p. 13.
[23] *Id.* and BO p. 56.
[24] Final Desert Tortoise Translocation Plan, Figure 3.

BO prescribes the unnecessary handling and blood extraction from multiple tortoises (i.e., testing of 105 tortoises), which research has indicated is likely to result in heightened mortality.[25]

2. Survey data collected by the Applicant and Dr. Kristin Berry suggest diseased tortoises already exist in the Ord-Rodman DWMA.[26] The Applicant has not identified substitute translocation sites in the event that the translocation areas do not meet the disease and density thresholds established in the Final Translocation Plan and by the BO. As a result, the PMPD enables the Applicant to begin construction and translocation activities even though there is a high likelihood that suitable translocation sites have not, and possibly cannot, be identified.
3. Disease testing will generate binomial data (i.e., disease or healthy). Analysis of binomial data to generate the 95 percent confidence level prescribed by the BO requires the assumption that samples are independent. However, research on the prevalence of disease in tortoise populations indicates that disease is not randomly distributed within a population (i.e., samples would not be independent), but that disease occurs in "pockets." Therefore, there is no basis to conclude that the Applicant will be able to adequately estimate the prevalence of disease in the proposed translocation areas.
4. The translocation sites do not meet Staff's requirement that they conform to the standards and guidelines issued in the USFWS's Translocation Guidance.[27] These include recipient sites that are (a) at least equal in size to the Project site; and (b) that are at least 15 km away from major unfenced roads or highways.
5. The BO indicates that the USFWS expects some of the translocated tortoises to disperse up to approximately 12.6 km from the point of release during the first year following translocation, and that some of these tortoises may experience higher mortality.[28] Tortoises moving the distances estimated in the BO will exceed the 6-km buffer distance intended for disease protection. In an attempt to return to their home ranges, tortoises will be subject to mortality along I-40 and Old Route 66, neither of which contains tortoise exclusion fencing. The USFWS and Staff failed to address these impacts in their analyses.

STAFF FAILED TO ANALYZE IMPACTS ASSOCIATED WITH THE NEWLY PROPOSED SHORT-DISTANCE TRANSLOCATION AREAS

The BO and Final Desert Tortoise Translocation Plan present new information that indicates tortoises will be translocated to the "northern linkage area" and possibly the Pisgah ACEC. Staff did not analyze the impacts associated with these actions in any of the Staff Assessments. Specifically, Staff's analysis related to the Applicant's

[25] Averill-Murray RC. 2002. Effects on survival of desert tortoises (*Gopherus agassizii*) urinating during handling. Chelonian Conservation and Biology 4:430-435.
[26] *See* data sheets "RDT 231" and "RDT 236" provided in response to Sierra Club Data Requests, 2010 Aug 10. Also, Personal communication with Dr. Kristin Berry of the USGS, 27 Oct 2010.
[27] PMPD, p. 120.
[28] BO, p. 45.

Translocation Plan concluded: "[t]he Pisgah ACEC and the proposed linkage area north of the project site are considered at or near their carry capacity; thus all other tortoises detected on the project site would require long distance translocation."[29] As a result, there are numerous, potentially significant, and unanalyzed impacts associated with translocating tortoises to the northern linkage area and Pisgah ACEC that have yet to be analyzed.

First, both areas have been identified as being at or near their carrying capacity. The BO makes numerous references to density being a factor in the success of translocation efforts (including the rate of disease transmission, incidence of aggressive interactions among individuals, and increase in predation).[30] Nonetheless, it enables the Applicant to translocate tortoises into areas that may be unable to support them, and/or where tortoises are likely to be subject to heightened mortality as a result of density-dependent factors. This proposal conflicts with the USFWS's own translocation guidance (which establishes density thresholds for translocation sites), and has not been justified with scientifically defensible information.

Second, USFWS translocation guidance establishes the need for translocation sites to be managed for conservation so that potential threats from future impacts are precluded in perpetuity. The Record of Decision that was issued by the BLM for the Project provides no protection for the northern linkage area, and proposed renewable energy projects completely surround the Pisgah ACEC translocation area.[31] Thus, the Applicant proposes to translocate tortoises into areas that have no assured value in the long-term conservation or recovery of the desert tortoise.

THE FINAL TRANSLOCATION PLAN FAILS TO ESTABLISH SUCCESS CRITERIA

The Applicant's Final Desert Tortoise Translocation Plan suggests the Applicant will be taking "various measurements" to determine the success of the proposed translocation effort.[32] However, upon further review, the subsequent section of the plan lacks any substance, or scientific information on how the proposed measurements will be collected. As a result, the Translocation Plan continues to lack success criteria or explicit triggers for implementation of adaptive management. I have addressed the Applicant's various "success criteria" below.

<u>Survivorship</u>

According to the Final Translocation Plan: "[i]f mortality rates for DETO are statistically significant differences [*sic*] detected among any of the three populations (translocatees, residents, or controls), remedial action will be coordinated with the agencies."

[29] Second Errata to the SSA, p. 11.
[30] BO, p. 42.
[31] Final Desert Tortoise Translocation Plan, Figure 4.
[32] *Id*, p. 2-31.

Before this can be considered a success criterion, the Applicant must first identify the significance level (i.e., P-value) for triggering remedial action, the frequency of statistical testing (e.g., every year), and the timeframe for remedial actions. Furthermore, unless the Applicant includes cause of mortality as a covariate in analysis, any attempts at remedial action are likely to be misdirected and unsuccessful.

Growth Rate

The Final Translocation Plan has established the success criteria of: "[i]f growth rates of individual DETO in translocated populations exceed a 20 percent reduction as compared to individuals in control populations after accounting for age, gender, and variation among sites in the amount of annual rainfall and forage availability, the individual will be considered potentially affected by the translocation. Such individuals will be reported to the agencies in the monthly/annual reports and appropriate remedial actions will be developed."

Before this can be considered a reliable success criterion, the Applicant must first define how it will account for age, gender, and the variation in rainfall and forage availability among sites. Furthermore, the Applicant has not described how it will measure site variables (i.e., rainfall and forage). Finally, growth rate of tortoises is more heavily influenced by forage *quality* than availability, and thus measurements of forage *availability* may provide little utility.

Movement

The Applicant's discussion of this variable does not include any measurable performance standard or success criteria.

Overall Health

The Applicant's discussion of this variable does not include any measurable performance standard or success criteria.

Nutrition

The Applicant's discussion of this variable does not include any measurable performance standard or success criteria, and the Translocation Plan lacks the methods for measuring nutritional intake (or food resources as an index).

Predation

The Applicant's discussion of this variable does not include any measurable performance standard or success criteria.

The PMPD Does Not Insure the Project's Impacts on Desert Tortoise Populations Would be Fully Mitigated

In earlier testimony I provided evidence to substantiate my conclusion that Project mitigation would not fully mitigate impacts to the desert tortoise. In summary, I criticized Staff's conclusion that acquisition of off-site compensation lands, and subsequent habitat enhancement activities, would be sufficient to fully mitigate Project impacts. In particular, Staff's conclusion is faulty because it relies on the premise that habitat enhancement actions would increase the carrying capacity of the acquired lands for desert tortoise, and subsequently increase tortoise population numbers by enhancing survivorship and reproduction.[33]

Since I prepared that testimony, I have been afforded the ability to review the Project BO. The BO provides two noteworthy statements that substantiate my conclusion. These are:

1. "Implementation of some habitat enhancement actions has the potential to result in *adverse effects* to the desert tortoise. Because we do not have specific information regarding future habitat enhancement and rehabilitation projects, we cannot perform a detailed analysis of these actions."[34]

2. "However, the lack of specificity with regard to which actions will be implemented [at compensation lands], *the uncertainty of success of the actions*, and the time lag between implementation of the conservation actions and a substantive effect on recovery of the desert tortoise *prohibit us from concluding that the compensation measures would completely offset the adverse effects of the solar facility*. Because the long-term or permanent loss of approximately 4,613 acres of desert tortoise habitat, the project will likely result in a net decrease in desert tortoise habitat."[35]

As a result, the Commission does not have the basis to conclude that the Project would be fully mitigated by Staff's proposed mitigation.

[33] Staff's Second Errata to the Supplemental Staff Assessment, p. 19.
[34] BO, p. 56. [emphasis added].
[35] BO, p. 58. [emphasis added].

Calico Solar – 08-AFC-13
DECLARATION OF SERVICE

I, Carol; Horton, declare that on October 28, 2010, I served and filed copies of the attached CURE AND MR. WILLIAM PEREZ COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION, dated October 28, 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/calicosolar/CalicoSolar_POS.pdf. The document has been sent to both the other parties in this proceeding as shown on the Proof of Service list and to the Commission's Docket Unit electronically to all email addresses on the Proof of Service list; and by depositing in the U.S. mail at South San Francisco, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred."

AND

By sending an original paper copy and one electronic copy, hand delivered and emailed respectively to:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS 4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, CA, on October 28, 2010

/s/
Carol N. Horton

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08AFC13
1516 Ninth Street, MS-4
Sacramento, CA 95814
docket@energy.state.ca.us

Felicia Bellows
Vice President, Development
Tessera Solar
4800 North Scottsdale Road
Suite 5500
Scottsdale, AZ 85251
Felicia.bellows@tesserasolar.com

Angela Leiba
AFC Project Manager
URS Corporation
1615 Murray Canyon Rd., #1000
San Diego, CA 92108
angela_leiba@URSCorp.com

Allan J. Thompson
Attorney at Law
21 C Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

Ella Foley Gannon, Partner
Bingham McCutchen, LLP
Three Embarcadero Center
San Francisco, CA 94111
ella.gannon@bingham.com

California ISO
e-recipient@caiso.com

Jim Stobaugh
BLM – Nevada State Office
P.O. Box 12000
Reno, NV 89520
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

Becky Jones
California Department of
Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

County of San Bernardino
Ruth E. Stringer,
County Counsel
Bart W. Brizzee,
Deputy County Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-
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

Defenders of Wildlife
Joshua Basofin
1303 J Street, Suite 270
Sacramento, California 95814
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

Basin and Range Watch
Laura Cunningham &
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
atomictoadranch@netzero.net

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, CA 91773
e-mail service preferred
ochsjack@earthlink.net

Gloria D. Smith, Senior Attorney
Travis Ritchie
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
*e-mail service preferred
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org

Newberry Community
Service District
Wayne W. Weierbach
P.O. Box 206
Newberry Springs, CA 92365
newberryCSD@gmail.com

Cynthia Lea Burch
Steven A. Lamb
Anne Alexander
Katten Muchin Rosenman LLP
2029 Century Park East,
Ste. 2700
Los Angeles, CA 90067-3012
Cynthia.burch@kattenlaw.com

ANTHONY EGGERT
Commissioner and Presiding Member
aeggert@energy.state.ca.us

JEFFREY D. BYRON
Commissioner and Associate Member
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Lorraine White, Adviser to
Commissioner Eggert
e-mail service preferred
lwhite@energy.state.ca.us

Kristy Chew, Adviser to
Commissioner Byron
e-mail service preferred
kchew@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Steve Adams
Co-Staff Counsel
sadams@energy.state.ca.us

Christopher Meyer
Project Manager
cmeyer@energy.state.ca.us

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us