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By Email to mmonasmi@energy.state.ca.us

January 3rd, 2010

California Energy Commission
Attention: Mike Monasmith
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Comments on the Siting Committee's Informational Proceeding On Issues that Are Critical to the Licensing of Future Power Plants ("Lessons Learned")

Dear Mr. Monasmith:

Thank you for the opportunity to comment on the Committee's Informational Proceeding On Issues that Are Critical to the Licensing of Future Power Plants ("Lessons Learned"). These comments are submitted on behalf of Defenders of Wildlife ("Defenders") and our more than 1 million members and supporters in the U.S., 200,000 of whom reside in California.

Defenders is dedicated to protecting all wild animals and plants in their natural communities. To that end, Defenders employs science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to prevent the extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

Defenders strongly supports the CEC's Siting Committee and its mandate under the Warren-Alquist Act to license solar thermal and geothermal power plants 50 megawatts or larger pursuant to the Warren-Alquist Act. As California seeks to fulfill the emission reduction goals found in the Global Warming Solutions Act of 2006, AB 32, the Siting Committee plays an integral role in the development of renewable energy in California. However, we urge that in seeking to meet our renewable energy portfolio standard in California, the Siting Committee only certify projects which are designed in the most sustainable manner possible. This is essential to ensure that project approval moves forward expeditiously and in a manner that does not sacrifice our fragile desert landscape and wildlife in the rush to meet our renewable energy goals.

Bearing these considerations in mind, Defenders offers the following suggestions for ways to more fairly and efficiently conduct site certification proceedings.

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1. **The Siting Committee Should Require Applicants to Conduct Initial Surveys Before an AFC is Deemed Complete.**

It is necessary to understand the resources on a site *before* project proponents file an Application for Certification ("AFC") and, if the site is on BLM land, a Right of Way ("ROW") Application. Often contractors are not conduction transect surveys until after applications have been filed with the agencies, Power Purchase Agreements ("PPA") have been negotiated, and capital investments have been secured.

Proposed sites for renewable energy development should be fully vetted when project proponents or agencies identify them. Often biological resource information is not available for a particular site, especially if the site is located on BLM land. Sometimes the California Natural Diversity Database ("CNDDB") has information for a site, although it is usually minimal and sourced from unofficial reports. Therefore, the primary method for collecting "prima facia" biological resource information for a site is through initial protocol level surveys. The Siting Committee must require initial surveys to determine whether a site is appropriate for development. Certain sites contain extremely abundant and varied biological resources, such as large concentrations of desert tortoise and other threatened or special status species. Those sites are not suitable for renewable energy siting. For example, had project proponents undertaken initial surveys for the Calico and Ivanpah sites, the results may have precluded development. It is in the best interest of the applicant, the intervenors and the Siting Committee to require initial surveys before the AFC and ROW applications are filed.

2. **The Siting Committee Should Require Applicants to Assess Movement Corridors on Proposed Project Sites.**

Obstruction of movement corridors is a significant environmental impact. Movement corridors exist throughout the Mojave Desert for species such as desert tortoise, desert bighorn sheep, Mojave fringe-toed lizard, Mojave ground squirrel and many others. Obstructing such corridors prevents individuals from expanding their home ranges, finding food, and mating. Such obstructions may also reduce genetic flow. For listed species such as desert tortoises, movement corridors may be essential to continued survival.

Unfortunately, the CEC rarely requires applicants to study the impacts of a proposed project on movement corridors. The BLM did require a study to evaluate the potential effects of the proposed Palen project on movement and habitat connectivity of large mammals, small mammals and reptiles, including the Desert Tortoise. For the Palen project study, the Bureau of Land Management requested that each of 24 crossings associated with I-10 from approximately Desert Center to Wiley Well, a distance of approximately 32 miles. That study proved quite informative during the siting proceedings. A report of the survey findings was prepared and delivered to BLM on April 13, 2010. The study was submitted to the California Energy Commission in May of 2010.

Part of the Siting Committee's role is to ensure consistency across all siting cases. This is important in order to meet the standards set out under CEQA and the Warren-Alquist Act. Consistency in the siting proceedings also maintains high standards of environmental review and ensures regulatory certainty for applicants. However, the CEC did not require movement corridor studies in every siting case. Indeed, we know of no other siting case other than Palen where such a study was requested.

Certainly these studies are warranted in many cases. For example, The Calico project site has a greater diversity and abundance of desert tortoises and desert bighorn sheep compared to the Palen site. Both sites are located near interstate highways containing bridges and culverts for drainage and vehicular access, and both are located in regions of the desert that contain large expanses of natural landscape that support wildlife populations and their natural movements. The proposed Calico project occurs in the center of a constricted habitat area that provides the only habitat linkage between the Bristol/Cady Mountains with those south of I-40 that include the Rodman, Newberry and Ord Mountains. Given that a wildlife movement and habitat connectivity study was performed for the Palen project, a similar, if not more robust study, should have been conducted as part of the analysis of the Calico project. The potential severity of impacts to species from corridor obstruction and the need for consistency in the CEC's siting procedures dictate that a movement corridor study be completed for *every* siting case. Consistency in addressing biological resources issues associated with large-scale solar projects in the California Desert will facilitate better decisions through appropriate inventory, impact analysis, and the development of impact avoidance and minimization measures.

3. The Siting Committee Should Require Multiple Alternative Sites on Private Degraded Land and Place the Burden on Applicants to Determine Feasibility.

Considering the overriding policy impetus toward siting renewable facilities on private degraded land, the permitting agencies have an obligation to fully consider a reasonable range of private land alternatives. The Renewable Energy Transmission Initiative ("RETI") recently issued the following statement:

> RETI stakeholders agree that utilizing disturbed private lands close to existing infrastructure for renewable energy development should be a priority for the state. County governments and state agencies are in the best position to develop mechanisms to consolidate the ownership of extensively-parcelized lands that have excellent renewable resource potential. For this reason, the RETI Phase 2A Final Report includes a formal recommendation that the California Energy Commission, in conjunction with other state and federal agencies, counties and the renewable energy industry, develop and implement a strategy for consolidating ownership of disturbed or degraded private lands for renewable energy development on an expedited basis (RETI Phase 2A Final Report, page 2-33).

RETI's prioritization of private lands for renewables siting affirms the need for CEC to analyze a reasonable number of private lands alternatives. In addition, CEC staff should not narrowly define basic project objectives so as to preclude many off-site alternatives.

CEQA requires that alternatives be feasible. CEC staff often defers to applicants in siting cases to determine feasibility. However, a simple statement that a particular alternative is not economically feasible should not suffice. Applicants must prove up such statements. If an applicant believes a private land alternative is not economically feasible compared to a proposed site on public land because the private land site involves too many landowners, then such statements must be substantiated with cost figures and comparisons to the proposed project.

4. In-Lieu Fee Mitigation Programs Are Problematic.

In-lieu mitigation plans, which are often incorporated in CEC staff assessments, fail to satisfy the requirements of CEQA. Formulation of mitigation measures may not be deferred until some future time. 14 CCR§ 15126.4(a)(1)(B). In California, the payment of fees must be tied to a functioning mitigation program to be adequate. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359. In order to serve as an adequate substitute for traditional mitigation measures, an in-lieu fee program must be evaluated under the CEQA, including the requirement to circulate the plan for public comment. *California Native Plant Society v. County of El Dorado* (2009), 170 Cal. App. 4th 1026. CEC staff in siting cases have not adequately ensured that in-lieu mitigation fee programs will (1) be evaluated under CEQA when specific mitigation measures are identified and (2) will manifest into actual on-the-ground improvement to habitat for desert tortoise and other impacted species. The staff assessments for the various cases do not contain adequate information to satisfy the public's interest in ensuring that the required fees translate into recovery benefits to wildlife.

To be legally defensible, in-lieu fee mitigation programs must connect the funds paid by applicants to the actual mitigation measures being implemented on the ground. Merely throwing money at a significant impact will not necessarily mitigate that impact. In *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692, an applicant agreed to pay funds to a water district's ground water recharge program. The petitioners pointed to evidence showing uncertainty as to the availability of water for purchase. The court found that the failure to evaluate whether the agreement was feasible and the availability of water for purchase was a fatal flaw in the mitigation plan, and it violated CEQA's mitigation requirement. *Id.* at 728. CEC staff in siting cases have failed to show that funding from the in-lieu fee programs will eventually make its way into implementation. In-lieu fee mitigation programs are often inadequate and violate CEQA's requirements that specific impacts be mitigated with specific mitigation measures. 14 CCR § 15126.4(a)(1)(B).

5. The Siting Committee Should Ensure Project Changes are Communicated to Federal Agencies.

In many siting cases applicants or the committee make changes to the project design in the final moments. The committees should work closely with federal partners so that such changes are communicated in a timely manner. If such communication does not occur, federal agencies may focus on outdated versions of projects in Environmental Impact Statements. In the Calico case, for example, the staff and applicant put forward a version of the project late in the proceeding that was significantly scaled down. However, the Final EIS did not reflect the scaled down version and thereby created some confusion. Working closely with federal partners on projects proposed for federal land is essential to the siting process.

6. Parties Wishing to Intervene Should Petition Early in the Proceedings.

Wherever possible, the Siting Committee should encourage parties to intervene as soon as possible in cases. Siting cases involve a great number of issues and large amounts of data. Siting cases are elongated when parties intervene towards the end of a proceeding. Indeed, often those interveners that came in at the beginning have difficulty submitting testimony, cross-examining witnesses, and generally having their issues heard by the committees. For the sake of efficiency, parties should intervene early and in no case before the pre-hearing conference.

7. The Siting Committee Should Strongly Consider Electronic Filing to Reduce Paper Waste.

The need to provide paper service to all parties through the U.S. Mail creates an undue burden on parties, particularly non-profit groups with limited staff and resources. Moreover, the CEC should eradicate paper waste to set a good example. The amount of paper generated in siting proceedings can be quite significant. Therefore, the Siting Committee should transition to an all electronic filing system as soon as possible.

Thank you for giving us the opportunity to convey our thoughts about the lessons learned during the first wave of siting proceedings for large-scale renewable facilities. Defenders believes that this process will improve over time if adequate environmental assessment is done for each project.

Sincerely,

Joshua Basofin
California Representative
Defenders of Wildlife