



## Basin and Range Watch

California Energy Commission
<b>DOCKETED</b>
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March 15, 2013

To Whom It May Concern,

Basin and Range Watch would like to submit this written public comment for the review of the Hidden Hills Solar Energy Project. We would like to get this comment included for the evidentiary hearings. We would like to have it docketed in the CEC Hidden Hills web site. We attended three days of the Evidentiary Hearing for the Hidden Hills Solar Project in Shoshone, California. We had to leave around 5 p.m. on Thursday, March 14th during the discussions on solar flux and bird mortality, but were able to call in and listen to the cultural resources review on Friday, March 15th.

We did hear staff state on March 15<sup>th</sup>, 2013 that this Hidden Hills Project “will kill golden eagles”. The project will not only kill golden eagles, but also injure or kill a whole list of avian fauna that cannot be fully predicted. The bird mortality would occur by the mechanism of solar flux and collision with the heliostats as a result of the polarized glare effect. Staff states that the zone of solar flux mortality of ten KW per square meter would have a 2,000 foot radius around the two receiver towers. According to the CEC, 5 kw/m<sup>2</sup> is the threshold at witch feather

proteins begin to denature. We have not heard of any adequate mitigation that could actually prevent these mortalities from happening. The conclusion that we walked away with that day was that approval of this project will result in a net loss of individual birds and even reduce the numbers of bird breeding populations for species like the golden eagle. It would appear that the only option staff would have is to “over-ride” impacts and as a result, we will have to live with compromised biological diversity in the region just to cater to BrightSource Energy.

At this point, “Take” is clearly defined under the Bald and Golden Eagle Protection Act (BGEPA). If an eagle dies in the flux or as a result of heliostat collision, BrightSource will be in violation of the BGEPA if they are not required to obtain a Take permit from the Fish and Wildlife Service before the project is approved and allowed to operate at the current risk factors being discussed. Any eagle kills by the Hidden Hills Project would be a Take.

The Bald and Golden Eagle Protection Act *“provides for the protection of the bald eagle and the golden eagle (as amended in 1962) by prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a); 50 CFR 22). “Take” includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The 1972 amendments increased civil penalties for violating provisions of the Act to a maximum fine of \$5,000 or one year imprisonment with \$10,000 or not more than two years in prison for a second conviction. Felony convictions carry a maximum fine of \$250,000 or two years of imprisonment. The fine doubles for an organization. Rewards are provided for information leading to arrest and conviction for violation of the Act.”*

Due to the amount of unknown information regarding the scale of this project and avian mortality, we believe that the proceedings need to be slowed down until the applicant can resolve the issues of a Take permit under the Bald and Golden Eagle Protection Act.

While we realize that it is not the responsibility of the CEC to enforce the Bald and Golden Eagle Protection Act, it appears that it could be a violation of Federal law to allow this project to proceed without resolving the issues of Take for golden eagles. The CEC should make a decision that is consistent with the Federal laws.

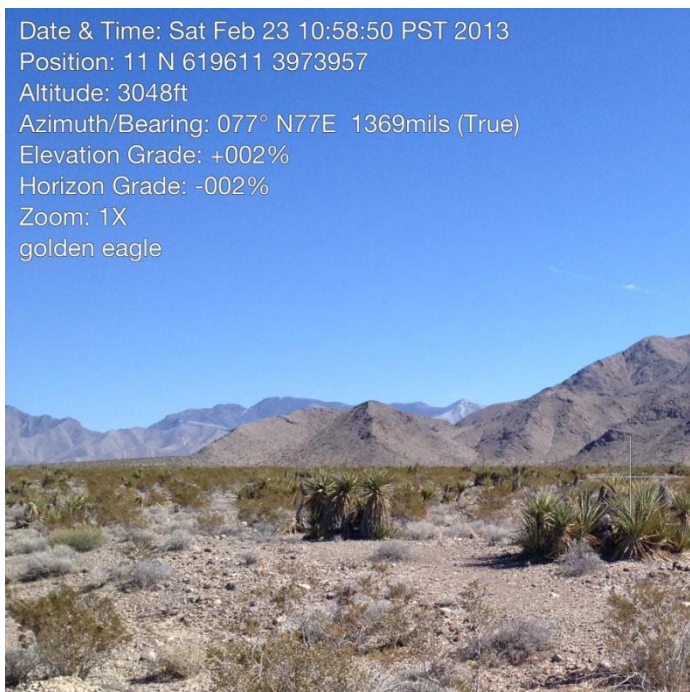
We would like to request that the California Energy Commission suspend the proceedings of the Hidden Hills Solar Project until these avian issues can be resolved. One start would be to wait until the applicant agrees to apply for a Take permit under the Bald and Golden Eagle Protection Act.

We would be very disappointed if the CEC just approved the project without resolving the flux and mirror collision issues. All we seem to be hearing from the applicant and the agencies is that they will monitor the impacts. That is not complete. You can monitor high bird mortality all you want, but monitoring and preventing are two very different things. To simply only “over-ride” avian mortality is inadequate. If the flux issue cannot be resolved, then this is not an appropriate location for the solar electric generating system.

For the record, we are providing the photo and GPS of a very recent adult golden eagle sighting which is located about 3 to 4 miles from the project site. The sighting occurred at about 11 a.m. on February 23<sup>rd</sup>, 2013.



^Golden Eagle (*Aquila chrysaetos*) Pahrump Valley, 3 to 4 miles from the Hidden Hills Solar Project Site



^GPS and ground habitat of eagle sighting, view looking in direction of eagle travel towards northeast.

We find it very disturbing that the California Energy Commission could approve a project that could make a golden eagle sighting a rare occurrence in Pahrump and California Valley. You simply can and should not make big sacrifices like this for BrightSource Energy.

We would also like to request that the approval process for Hidden Hills be delayed until more data can be gathered on the other BrightSource project that has been under construction for the past 2 and a half years, the Ivanpah Project. As interveners on the Ivanpah Project, we did bring the flux issue to the attention of the California Energy Commission, but the full extent of how serious it is seemed to be difficult to initially communicate to the CEC. The project is scheduled to start up their Ivanpah One phase sometime this year. A two to three year study on flux mortality should be initiated and no more power towers should be approved until we can obtain some solid data on injury and mortality numbers for flux and mirror collision.

The rush of renewable energy is now killing golden eagles, primarily due to wind energy projects. So far there are unresolved legal issues with two of these wind energy projects. One is called the North Sky River Project in California, the other is a recent kill at the Spring Valley Wind Project located in northern Nevada. Both of these projects had streamlined permitting processes and neither was required to prepare enough mitigation measures for potential eagle kills. Both intentionally avoided getting Take permits under the Bald and Golden Eagle Protection Act. North Sky is already under litigation and the Spring Valley kill just occurred in February, 2013.

We believe that the hearing is moving too fast. As we write this comment, we are listening to the cultural resources portion of the hearing. There seems to be absolutely no way to mitigate the impacts this project will have on cultural resources. We keep hearing about interpretive kiosks, but that type of mitigation will only come off as insulting to the people who have to live with this project.

Members of Basin and Range Watch have been in contact with the Cultural Conservancy in San Francisco regarding their work with Tribal Nations on conserving the Salt Song Trail, part of which passes through the project area. The Salt Song Trail is a nationally and globally important legacy and should be given great consideration in this case.

The bottom line is that ALL of the issues remain unresolved. We saw no resolution to outstanding issues for cultural, biological, visual, hydrologic and socio-economic resources. In the past, we have served as interveners on 4 different CEC reviews. The only project that did not see an approval was the Ridgecrest Solar Power Project, but that is still being considered and it was delayed by the applicant for the project going bankrupt. In the other 3 cases, the CEC issued "over-rides" on all of the conflicts they could not find resolution to. Both the Calico and Imperial Projects got the rubber stamp after reviews. In the case of the Imperial Project (we did not intervene in that one), impacts to cultural, biological, visual, socio-economic, air quality and others could not be mitigated and all received the over-ride. Simply over-riding laws sets a bad precedent for how we preserve our natural and cultural treasures in California.

Thank you,

Kevin Emmerich  
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