



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California Desert District

22835 Calle San Juan De Los Lagos

Moreno Valley CA 92553-9046

www.ca.blm.gov

APR 15 2011



In Reply Refer to:
3031 (P)
CACA 048668, 049502, 049503 and 049504
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CERTIFIED MAIL NO. 7009 1410 0001 8421 1261
RETURN RECEIPT REQUESTED

Jack Jenkins-Stark	:	CACA 048668
Solar Partners I, II and VIII, LLC	:	CACA 049502
1999 Harrison Street, Suite 2150	:	CACA 049503
Oakland, CA 94612	:	CACA 049504

DECISION

Immediate Temporary Suspension of Activities Issued

On October 7, 2010, BLM approved four right of way grants for the Ivanpah Solar Electric Generating System project. Grant CACA 49502, issued to Solar Partners I, II, and VIII, authorizes the use and occupancy of approximately 246 acres of public land for the Construction Logistics Area and common shared facilities necessary to construct, operate, maintain, and decommission the Ivanpah Solar Electric Generating System project. Grant CACA 49504, issued to Solar Partners II, LLC, authorizes the use and occupancy of 914 acres of public land as the Ivanpah 1 Site for the construction, operation, maintenance, and decommissioning of a 120 MW thermal concentrated solar power tower electric generation project and its ancillary facilities. Grant CACA 48668, issued to Solar Partners I, LLC, authorized the use and occupancy of 1,076.51 acres of public land as the Ivanpah 2 Site for the construction, operation, maintenance, and decommissioning of a 125 MW thermal concentrated solar power tower electric generation project and its ancillary facilities. Grant CACA 49503, issued to Solar Partners VIII, LLC, authorized the use and occupancy of 1,234.93 acres of public land as the Ivanpah 3 Site for the construction, operation, maintenance, and decommissioning of a 125 MW thermal concentrated solar power tower electric generation project and its ancillary facilities. These grants require the holder of the grant to comply with the October 1, 2010 Biological Opinion; failure to comply with the Biological Opinion is grounds for suspension or termination of the grant.

On March 2, 2011, BLM issued two Notices to Proceed (“NTP”) authorizing perimeter security and tortoise fencing for Ivanpah 2 and Ivanpah 3. The perimeter security and tortoise fencing authorized by the March 2, 2011 NTP for Ivanpah 2 is complete with the exception of one nest buffer area on the western boundary. The perimeter security and tortoise fencing authorized by the March 2, 2011 NTP for Ivanpah 3 is complete only on the eastern and southern sides. The western boundary of Ivanpah 3 has perimeter security fencing in place but no perimeter tortoise fencing has been installed. The northern boundary of Ivanpah 3 has fence posts in place but no fencing material (security or tortoise) has been installed.

On October 19, 2010, BLM issued a Change of Verification 002 for CACA-49502, the Construction Logistics Area. This change approved your use of existing BLM Road 241 on a temporary basis during paving operations of Colosseum Road. BLM Road 241 is not fenced and has not been cleared of desert tortoise.

Based upon monthly monitoring information regarding desert tortoise, submitted by the holders of these grants, it is the BLM's Decision to immediately and temporarily suspend all further surface disturbance or construction of fences under the NTPs issued on March 2, 2011 for Ivanpah 2 and Ivanpah 3. Solar Partners I and VIII are directed to cease all construction activities on Ivanpah 2, and Ivanpah 3 with the exception of filling open trenches on the fence line and filling open fence post holes that might create a hazard for desert tortoises. This decision is issued under the authority of 43 CFR 2807.16(a).

This immediate and temporary suspension Decision requiring you to cease fence construction are based on the current status of the Biological Opinion and the incidental take limits established for the project. As communicated to you, it is the position of the BLM that activity on the Ivanpah project site has reached, and in some categories, just exceeded the incidental take limit for further construction activities within Ivanpah 2, and Ivanpah 3, with certain exception. BLM has determined that work within the access road and power block areas of Ivanpah 2 may continue. Construction within the Ivanpah 2 access road area and power block area may continue since those areas were previously fenced and all desert tortoises have been removed. All other construction work associated with Ivanpah 2 and Ivanpah 3 is suspended.

In addition, this Decision suspends our approval of Change of Verification 002 for CACA-49502. BLM Road 241 is located outside of tortoise cleared areas and is not fenced. Since incidental take limits within the project boundary have been met, further use of BLM Road 241 is hereby suspended.

The following biological monitoring activities shall continue under this Decision:

1. **Survey Ivanpah Units 2 and 3** -- follow FWS Desert Tortoise 2010 protocol to determine number of tortoises within the project foot print of the two units. During these surveys, no animals shall be handled. This work shall be expedited.
2. **Survey Area Surrounding Project Footprint** -- follow FWS Desert Tortoise 2010 protocol to determine number of tortoises within the resident population area which is defined as starting at the project boundary and extending out from this boundary for 2 km. This work shall be expedited.
3. **Disease Testing** -- this activity incorporates capturing animals, attaching a radio transmitter, and collecting blood and nasal lavages from it. The BO authorizes up to 162 individuals > 180 mm for this activity. Based on data from your April 8, 2011 monthly compliance report, BLM (in discussion with the FWS) has determined that an additional 59 adult tortoises (animals > 180 mm) can be handled (including transmitting) within

the resident population area (as described above) for purposes of disease testing. Once this take threshold has been reached, no more tortoise shall be handled or transmittered.

Ecological monitoring of these areas is necessary to ensure tortoise health and welfare. If a juvenile or subadult/adult desert tortoise is encountered along the fence line (inside or outside the fenced boundary of the CLA, Ivanpah 1, and Ivanpah 2, and along the fenced portions of Ivanpah 3), is exhibiting behavior of distress (pacing, etc), and is in imminent danger or peril of injury:

* If the subadult/adult tortoise is already transmittered, the animal can be moved out of harms way.

* If the subadult/adult is not transmittered, call the BLM point of contact (POC), Amy Fesnock. Ms. Fesnock will in turn call the FWS POC for instructions of what to do about the distressed tortoise, and will provide appropriate instructions to the Authorized Biologist (AB).

* If a juvenile desert tortoise is encountered, call the BLM point of contact (POC), Amy Fesnock. Ms. Fesnock will in turn call the FWS POC for instructions and will then provide appropriate instructions to the Authorized Biologist (AB).

All observations and handling resulting from the above discussion, shall be recorded and reported monthly consistent with the requirements of the Plan of Development for the Ivanpah Solar Electric Generating System, Volume 2, Draft Desert Tortoise Translocation/Relocation Plan, Section 2.7. Section 2.7 states that "All observations will be reported to the AB who will record the following information for the monthly compliance report: (1) species name; (2) location (global positioning system coordinates, narrative and maps) and dates of observations; (3) general condition and health, including injuries and state of healing; (4) diagnostic markings, including identification numbers or markers; and (5) locations moved from and to. All Service (2008) Guidelines for monitoring and reporting (Appendix A) will be followed.

This Decision does not affect activities associated with ongoing construction within the Construction Logistics Area, within the Ivanpah 1 footprint, or as stated above within the access road and power block for Ivanpah 2 (except for distressed tortoise or those in danger of injury as noted above). The ongoing construction activities are located inside fenced areas and have been cleared for tortoise. Take incidental to these activities has been documented in accordance with the Incidental Take Statement of the Biological Opinion. In addition, the BLM has reinitiated consultation on the project as a whole. Due to the amount and location of ground disturbance that has already occurred, BLM has determined that tortoise habitat within these areas has been committed to the project. Based upon an internal assessment, BLM has determined that additional work within these fenced areas would not result in irretrievable or irreversible commitments of resources pursuant to section 7(d) of the Endangered Species Act which would preclude the formulation or implementation of any reasonable and prudent alternative the FWS might determine necessary to avoid jeopardy under a revised Biological Opinion.

This Decision shall remain in effect until permission to resume activities is issued by the BLM. After issuance of a revised Biological Opinion and Incidental Take Statement, the holders of these grants must make a written request to BLM for permission to resume activities, which BLM may authorize, pursuant to 43 CFR 2807.16(c), and (d).

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 (See enclosed Appeal Information Sheet). If an appeal is taken, your notice of appeal must be filed with the Field Manager, Bureau of Land Management, Needles Field Office, 1303 Highway 95 South, Needles, CA 92363 or hand delivered to the above, within 30 days from the date of this decision. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition pursuant to regulations at 43 CFR 2801.10 or 43 CFR 2881.10 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa A. Raml". The signature is fluid and cursive, written in a professional style.

Teresa A. Raml
District Manager – California Desert

Enclosure
Appeal Information Sheet

cc:
Eric Knight, California Energy Commission
John Werfal, Bureau Veritas