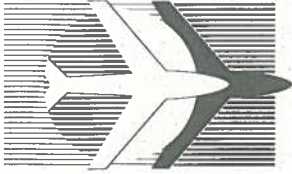


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June 18, 2010

Monisha Gangopadhyay / Tom Hurschman
CPUC / BLM
c/o Ecology and Environment, Inc.
130 Battery Street, Suite 400
San Francisco, CA 94111

RE: CCDOA Comments on SCE Eldorado Ivanpah Transmission Project

Dear Ms. Gangopadhyay and Mr. Hurschman:

The Clark County Department of Aviation (CCDOA) submits these comments on the Draft Environmental Impact Report / Environmental Impact Statement (DEIS) for Southern California Edison's (SCE) Eldorado-Ivanpah Transmission Line Project (EITP).

As you know, CCDOA is planning to construct and operate a new commercial service airport in the Ivanpah Valley (the Southern Nevada Supplemental Airport or SNSA). While CCDOA neither supports nor opposes the EITP, CCDOA is committed to ensuring that any new infrastructure in southern Clark County is compatible with the siting, construction, and operation of the proposed SNSA. To that end, CCDOA has the following comments on the EITP DEIS.

A. AVIATION SAFETY

Because of the proximity of the EITP to a planned commercial service airport, SCE has legal obligations under Federal Aviation Regulations at 14 C.F.R. Part 77 (Part 77). Specifically, Part 77 requires that any party planning to construct an object or structure near a proposed public-use airport is required to notify the Federal Aviation Administration (FAA) before construction begins. FAA then examines whether the structure or structures would result in an obstruction of the navigable airspace or would interfere with air navigation facilities and equipment.

Given the proximity of the EITP to the planned SNSA and the potential for aviation safety concerns, CCDOA has the following comments on the Draft EIS:



Clark County Board of Commissioners

Rory Reid, Chair • Susan Brager, Vice Chair

Larry Brown • Tom Collins • Chris Giunchigliani • Steve Sisolak • Lawrence Weekly

1. First and foremost, while the EITP DEIS recognizes the existence of Part 77, it wholly misstates the law in paragraph three of page 3.7-19 and in the last paragraph of page 3.9-15. To be clear:
 - No part of Part 77 was amended in 1993. Indeed, the last time that Section 77.13 was amended was 1972.
 - Federal courts have clearly held that Part 77 (including the notice provisions in Part 77.13) applies to **planned** airports on file with FAA – **whether or not construction has yet begun**. See, e.g., *Clark County v. FAA*, 522 F.3d 437 (D.C. Cir 2008) (vacating FAA’s Part 77 determinations for wind farms on the grounds that they may impact the proposed Ivanpah Airport); *Greater Orlando Aviation Authority v. FAA*, 939 F.2d 954 (11th Cir. 1991) (holding that Part 77 regulations must be interpreted to require FAA to consider the effect on planned airports of which FAA has actual notice); 49 U.S.C. § 44718 (b)(3) (requiring FAA to implement regulations that ensure FAA reviews potential hazards to “planned public-use airports”).
2. The language used in the EITP DEIS regarding the Part 77 process is also misleading in several regards. For example, the Draft incorrectly states that SCE has an obligation to simply “consult” with FAA regarding “whether or not” a hazard/no hazard determination would be required. See, e.g., (DEIS at p. 2-12 lines 11-12; p. 3.7-28; p. 3.7-30; p. 5-66; p. 5-77; p. 6-5). The law is clear that if any of SCE’s proposed structures are over 200 feet tall and/or within 20,000 feet of the planned SNSA, SCE is **obligated to file FAA Form 7460s** (Notices of Proposed Construction or Alteration) for the relevant structures. In turn, FAA **will** issue a Hazard/No Hazard Determination.

Similarly, BLM improperly concludes that it is “not possible” to conclude whether the EITP would impact the future SNSA until the airport project is approved. (See, e.g., p. ES-35 at IMPACT HAZ-4 & p. 5-66; see also p. 5-77). This is also an incorrect statement of the law. The Part 77 process applies to a proposed airport **as soon as there are plans on file with FAA**. Clark County already has filed an airport layout plan for the SNSA with FAA. Therefore, the Part 77 process and FAA’s determinations are in no way dependent on the SNSA project receiving final environmental approvals. By way of background, FAA’s hazard analysis is based entirely on the runway coordinates of the airport layout plan on file. Therefore, the project applicant can, at any point now, file FAA Form 7460s. In turn, FAA can issue determinations of hazard/no hazard before the environmental review of the SNSA is complete. In fact, FAA has already

issued determinations for proposed structures near the planned Ivanpah Airport. *Compare, Clark County v. FAA*, 522 F.3d 437 (D.C. Cir 2008) (reviewing FAA's determinations of potential hazards to the planned Ivanpah Airport of a proposed wind farm).

In addition, BLM cannot conclude, as it does in the Draft EIS, that “[o]nce this [FAA] determination is made, land use impacts on the Ivanpah Airport Environs Overlay [District] would be reduced.” See p. 6-5 at lines 37-38. BLM has no way of knowing what FAA's determinations will be. For example, FAA may conclude that certain structures would be hazards; alternatively it may conclude that the structures are not hazards but only if lighted in a particular manner. That lighting may or may not have implications for land use impacts. The act of issuing determinations therefore cannot be dispositive. BLM must wait to see the content of the determinations before it can conclude what implications FAA's actions will have for land use impacts.

CCDOA recommends that the EIS includes language clarifying the precise Part 77 requirements, for example: “*The SNSA is currently under environmental review; however, in compliance with Part 77 regulations, any structure taller than 200 feet in height or within 20,000 feet of an existing or proposed runway must be evaluated by FAA to determine whether it would pose a hazard to air navigation (Compare, Section 3.7, ‘Hazards, Health and Safety’).*” In addition, the EIS should address, not avoid, the potential for aviation hazards. Because there is no need to wait for the SNSA to be constructed or approved, BLM should ensure that the project applicant files its Form 7460s and receives determinations from FAA. Only then can BLM know the degree to which the towers may be hazards or may require lighting, and the degree to which FAA requirements will impact different alternatives. For example, if FAA issues a determination of hazard for one or more alternatives, BLM may need to revisit some of its analysis in the EIS.

3. DOA recommends that APM LU-1 be revised as follows to specifically identify the Part 77 requirements: “*The applicant will file FAA Form 7460, Notice of Proposed Construction or Alteration, and provide BLM with a copy of the resulting FAA determination, before constructing any structures over 200 feet or within 20,000 feet of an existing or proposed runway.*” (See, e.g., DEIS at pp. 2-106 and 3.7-25).
4. FAA has identified recommended distances between power lines and navigational equipment. To that end, the EIS should recognize this issue and should require the project applicant to coordinate with FAA to confirm that the new transmission line would not interfere with existing and proposed navigational facilities.

B. LIGHTING

1. In discussing substation lighting control (*e.g.*, APM AES-8), the EIS should note that sections of the EITP near the SNSA may need to be lighted in response to FAA's determinations of hazard/no hazard required under 14 CFR Part 77. The EIS should also include a description of how any lighting required by FAA will be coordinated and implemented in the construction plan. (*See e.g.*, pp. ES-10; ES-25 Table ES-4; 2-63).
2. BLM's impact analysis does not include any potential lighting requirements required by FAA. Absent this information, BLM cannot conclude affirmatively that the proposed project would result in a less than significant impact. *See, e.g.*, IMPACT AES-3 on p. 3.2-56; VISUAL RESOURCES discussion in Table 4-1 at p. 4-9.

C. LAND USE

1. The 6,000-acre SNSA Site and the 17,000-acre Airport Environs Overlay District should be displayed and identified in the legend on relevant figures. *See, e.g.*, Figure 1-1; Figure 1-2; and Figure 3.4-4 (depicting the SNSA site, but not the Overlay District). *See also* Figure 3.9-2 (legend includes the SNSA Site but the Site is not depicted on the figure).
2. The SNSA Site is owned by Clark County, not by Clark County Department of Aviation. *See, e.g.*, Figure 3.4-4.
3. The table of Designated Areas Adjacent to the Project should include the Airport Environs Overlay District. *See* Table 3.9-5 at p. 3.9-6.
4. Please specify that the conditions of the Ivanpah Valley Airport Public Lands Act of 2000 have been met and BLM patented the land to Clark County. *See* p. 3.9-15 at lines 23-27. *Compare*, BLM Patent 27-2004-0104.
5. There are several misstatements in the paragraph at the top of page 3.14.2. Please note the following clarifications:
 - (Lines 5-7). The Airport Site *is* within the Overlay District, but it was established solely by the 2000 Ivanpah Valley Airport Public Lands Act of 2000. The Overlay District was established solely by the 2002 Clark County Conservation of Public Land and Natural Resources Act.

- (Lines 7-9). The establishment of the Airport Site is *not* contingent on completion of the EIS (not EIR). As noted above, the Site has already been patented to Clark County. Furthermore, the designation of the Overlay District is also not contingent on completion of the EIS. The boundaries of the Overlay District were identified in the 2002 Act. It is only the potential future transfer of the Overlay District to Clark County that is contingent upon completion of the EIS process.
 - (Lines 8-9). The SNSA EIS is required to fully comply with NEPA. It is not limited to “ensuring compatible land use within airport accident hazard and noise exposure areas by providing for a range of appropriate uses and by prohibiting development or inappropriate or incompatible uses.” However, if Clark County acquires title to the Overlay District, it will be required to manage those lands in accordance with section 47504 of Title 49 of the U.S. Code.
6. BLM should consistently refer to the Airport Environs Overlay District, not to an undefined “sphere of influence.” *See, e.g.*, Table 5-2 at p. 5-6. Also, in Table 5-2, the relevant foreseeable project is the SNSA itself, not the Overlay District. The project is properly defined as including the 6,000-acre SNSA Site, the additional 17,000-acre Overlay District (for a total of 23,000 acres), as well as additional “off-site” lands for necessary transportation, flood control, and utility infrastructure.
 7. The southern boundary of the SNSA site is not correctly defined in Figures 5-1 through 5-4. For example, the site boundary, as depicted, improperly includes the NV Energy Higgins Power Generating Station.

D. ISEGS REFERENCES

1. The current Draft EIS discusses the pending Ivanpah Solar Electric Generation System (ISEGS) project and recites conclusions from the ISEGS Draft EIS. CCDOA wishes to state, for the record, that it disagrees with some of the conclusions made in the ISEGS Draft EIS. Specifically, CCDOA filed comments on the ISEGS Draft EIS noting that height is not the only potential threat to aviation from renewable energy projects. Glare and thermal effects from solar projects can also create hazards. While this is not an issue for the EITP project, it is a legitimate issue for the ISEGS project. Therefore, CCDOA disagrees with the conclusions made in the ISEGS Draft EIS that no aviation impacts are anticipated for the ISEGS. *See, e.g.*, p. 3.7-38.

2. Similarly, CCDOA strongly disagrees with the proposed mitigation measures in the ISEGS Draft EIS. Specifically, the ISEGS Draft EIS mitigation measures related to glare will ensure only that pilots will not suffer retinal injury; they will not ensure that glare will not impair pilots' vision, or that glare will not increase risks to aviation safety. *See* p. 3.11-6.
3. For these reasons, CCDOA also strongly disagrees with the conclusion in the ISEGS Draft EIS that glare and/or thermal effects to aviators would be "less than significant with mitigation measures." *See* p. 3.14-14.

E. GENERAL COMMENTS

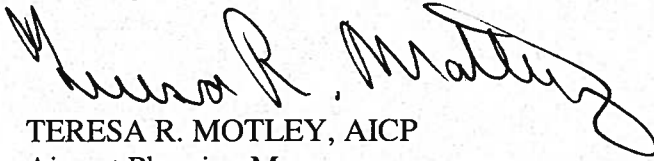
1. While BLM correctly cites the Clark County Comprehensive Plan (2006) when discussing land use measures, it should also reference the South County Land Use Plan Update (August 2008), which is both more recent and more specific with regard to land uses in the South County. (*See* http://www.accessclarkcounty.com/depts/comprehensive_planning/landuse/Pages/southcounty.aspx.)
2. The Department of Air Quality and Environmental Management is a Clark County agency, not a Nevada agency. *See, e.g.*, p. 3.8-1 at line 31.
3. On several maps in the Draft EIS, Primm is identified as a "city" and Jean as a "small town." Legally, both are unincorporated towns within Clark County. (*See, e.g.*, Tables 3.10-4 & -5; pages 3.10-8 & -9).
4. CCDOA recommends amending the language in paragraphs 3 and 6 of page 3.14-9; the second and last paragraphs on page 3.14-10; and MM TRANS-2 on p. 3.14-12 to include a reference to necessary coordination with CCDOA (in addition to FAA) regarding the proposed Helicopter Flight Plan. This will be consistent with the language at the first paragraph of p. 2-92.
5. The discussion of reasonably foreseeable projects in Section 5.3.6.3 (at p. 5-62) should include the SNSA. This will be consistent with the earlier mention of the Airport Project as a foreseeable project in Table 5-2. Of note, while the SNSA project has been delayed due to the economic downturn and the EIS is no longer anticipated to be complete in 2012 (*compare* pp. 3.7-6 line 17, 3.9-15, 3.9-17 line 6, 5-66 & 6-5), this delay does not affect BLM's obligation to include the SNSA as a reasonably foreseeable project.

6. The terms “North Dry Lakes” and “South Dry Lakes” may be confusing, as there are only three dry lakes proximal to the EITP alignment: two dry lakes in the Ivanpah Valley (the Ivanpah Dry Lake in California and the Roach Dry Lake in Nevada) and the Eldorado Dry Lake in the Eldorado Valley.

* * *

Please feel free to contact Mark Silverstein on my staff at (702) 261-5709 or marksi@mccarran.com with any questions or inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa R. Motley". The signature is written in a cursive style with a large, sweeping flourish at the end.

TERESA R. MOTLEY, AICP
Airport Planning Manager

cc: Randall Walker
Rosemary Vassiliadis
Mark Silverstein
Philip Rhinehart