

AP Enterprise: Enviros, rivals strike odd peace

Associated Press (NOAKI SCHWARTZ)

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Long before studies showed one of the world's largest solar projects could harm or kill more than 1,100 tortoises in the Mojave Desert, the threatened creature's longtime champion already had signed off on the project.

Months earlier, the Center for Biological Diversity had agreed not to sue or challenge Oakland-based BrightSource Energy Co.'s project - expected to cost \$2 billion - in exchange for additional protections and a swath of desert tortoise habitat elsewhere. Any finer points of the deal remain a mystery because the agreement is confidential.

The unusual deal is one of several that environmental groups have cut in recent years, offering silence or support for a project in exchange land or money towards conservation efforts. While such settlements aren't new, experts say they are larger and more controversial as environmental groups have become powerful enough to stall or derail projects and are more willing to settle.

Some conservationists have blasted the October agreement but attorneys for the center and BrightSource stand by it, saying that once new tortoise habitat is purchased, the location of that land, but no other details, will be made public.

"I'd rather us get beat up a bit for having a 'secret agreement' that actually leads to additional tortoise habitat than one less likely to lead to those protections," said Brendan Cummings, an attorney for the nonprofit who helped craft the deal.

Workers in the desert scrub of the Ivanpah Valley, which has long been habitat for threatened tortoises, will install thousands of mirrors that will focus sunlight into three towers to produce steam and generate electricity. At peak capacity the \$2 billion solar project, which is expected to be completed by 2013, will generate enough electricity for 140,000 homes.

The desert tortoise is the state reptile, a slow-moving herbivore found in California, Nevada, Arizona and Utah. The creatures do not reproduce very quickly with females breeding at 15 to 20 years old and often only if there is enough food. Since the 1950s, desert tortoise populations have reportedly decreased by 90 percent and in 1990 were listed as federally threatened.

BrightSource has hired as many as 100 biologists to find and relocate tortoises found on the solar project's 3,500-acre construction site in San Bernardino County. The company has also been X-raying female tortoises to see if they're carrying eggs. Those eggs

have been placed in nurseries to hatch and the young tortoises have been kept in pens to increase their survival rate.

"It's all about providing additional mitigations above what is required by law," said Arthur Haubenstock, BrightSource's vice president of regulatory affairs and assistant general counsel. "We entered into this agreement because it was something we wanted to do."

Even so, in April, the Bureau of Land Management ordered construction halted on most of the project after biologists found more tortoises than originally estimated. U.S. Fish and Wildlife had earlier estimated that only 32 adult tortoises lived on the 5.6-square-mile site.

A more thorough study in June estimated not only adults, but also juveniles, hatchlings and eggs. That brought the number to as many as 1,136 creatures that could be harmed or killed by construction, loss of habitat or relocation. Despite the larger estimate the agency determined that the Mojave desert population estimated at more than 40,000 could withstand the potential loss. Construction resumed.

The decision did little to quell sharp criticism toward one of the desert's leading advocates for tortoise protections, which had once threatened to sue BrightSource before it abruptly settled. Cummings said the center thought the tortoise population was larger than originally estimated and does not regret the deal in light of the revised number.

Michael Connor, a scientist who has worked on tortoise issues for 25 years, summed up his feelings in one word: disgusted. Connor said the deal has created a certain level of distrust between the center and other conservation groups working on desert issues.

"If you want to make a difference the reality is you have to make trade-offs but the question is where do you draw the line?" said Connor of Western Watersheds Project, which sued to stop the project because of inadequate environmental review. "With the Ivanpah project, not working to save the habitat and the tortoises crosses that line."

Many, including Richard Frank, who heads the California Law & Policy Center at the University of California, Davis law school, say a key pitfall was making the deal confidential.

"It may be a great settlement. It may be a lousy settlement," he said. "The point is you don't know exactly what were the terms of the settlement and what did the center get out of it to cause it to walk away from its litigation posture."

Last year a similarly confidential deal contributed to the demise of an oil exploration project in Santa Barbara after several longtime anti-oil groups entered into a private settlement to support an offshore drilling project they'd long opposed.

In 2008 the Environmental Defense Center and Get Oil Out! entered into a confidential deal with Plains Oil & Exploration, which promised money, land and said it would eventually shut down its operations countywide. In exchange, the nonprofits agreed not to sue and said they would lobby local, state and federal agencies to let the company tap into a potentially massive reserve in the Santa Barbara Channel.

In addition to the private nature of the agreement, critics raised concerns about enforceability and worried the project could end California's decades-long moratorium on offshore drilling.

The deal was a stunning turn for the anti-drilling groups which had formed after a massive oil spill off Santa Barbara coated miles of California coast and washed ashore the corpses of dolphins and seals in 1969. During those days GOO!'s founder urged the public to cut down on driving, burn gas credit cards and boycott stations associated with offshore drilling.

"I can't think of any other specific situation where that kind of - not just acquiescence but selling of support - has taken place," said Richard Charter, energy consultant to Defenders of Wildlife.

By contrast, a deal widely embraced was a 2008 public agreement between some of the country's leading conservation group and Tejon Ranch Co., which had been trying for years to develop three projects. The ranch, which sits atop the Tehachapi Mountains 60 miles north of Los Angeles, is home to elk, wild turkeys, coyotes, bears and eagles, as well as critical habitat for condors.

Groups including the Natural Resources Defense Council and Audubon California spent two years negotiating the deal in which environmentalists agreed to no longer oppose plans for a subdivision of 23,000 homes, office space, hotels and condominiums in exchange for 240,000 acres of preserved land. The Center for Biological Diversity filed suit after raising concerns that part of the project could harm endangered condors, but the deal was otherwise well-received.

There are a few theories as to why environmental groups seem more willing to enter into such deals with longtime opponents.

"I do believe a number of environmental groups have gotten more savvy and politically sophisticated and have become less ideological and are interested in getting the best deal they can," Frank said. "A number of these groups have come to the conclusion, correctly I think, they they'll get a better deal at the negotiating table than in the courtroom."

Joel Reynolds, a senior attorney with the defense council said he believes there's also more openness on the part of companies these days to negotiate and a recognition that environmental groups can do a lot of damage to a company's interests.

Indeed, Robert A. Stine, president and CEO of Tejon Ranch said he began thinking about negotiating in earnest after hitting a milestone in his life and reflecting on the time he had left.

"Several years ago, maybe when I turned 60, it became very clear to me," he said. "Did I want to spend the rest of my career in litigation over our proposed development or use our land as currency so we could find a way to create a positive opportunity?"



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