

**THE WILDERNESS SOCIETY
NATURAL RESOURCES DEFENSE COUNCIL**

June 16, 2010

CAPSSolarBlythe@blm.gov

Re: Draft Environmental Impact Statement and California
Desert Conservation Area Plan Amendment for the
Proposed Blythe Solar Power Plant

DOCKET	
09-AFC-6	
DATE	<u>JUN 16 2010</u>
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Ms. Allison Shaffer:

This letter constitutes the comments on the above-captioned proposed solar project and draft environmental impact statement (DEIS) of the Natural Resources Defense Council (NRDC) and The Wilderness Society (TWS), national environmental membership organizations with long histories of advocacy on behalf of the lands and resources administered by the Bureau of Land Management (BLM). More recently these organizations have been intensively involved in the Bureau's work to develop a comprehensive solar program as well as its efforts to "fast track" the permitting of individual utility-scale solar projects in California so that they may be eligible for grant funding under the American Recovery and Reinvestment Act of 2009 (ARRA).

Introduction. Our organizations recognize the need to develop the nation's renewable energy resources and to do so rapidly in order to respond effectively to the challenge of climate change. Unique natural resources here in California are already being affected by climate change, including, for example, the pikas of Yosemite National Park and the Joshua trees in Joshua Tree National Park. We also recognize that renewables development can help create jobs in communities that are eager for them, because of the nation's economic crisis. For these and other related reasons, our organizations are working with regulators and project proponents to move renewables projects forward. That said, renewable development is not appropriate everywhere on the public lands and must be balanced against the equally urgent need to protect unique and sensitive resources of the California Desert Conservation Area (CDCA). California is lucky indeed that we have sufficient renewable resources, including solar resources, to do their development in an environmentally and fiscally sensitive way.¹

As we and our colleagues at sister organizations have repeatedly stated, the best way to develop the solar resources of the CDCA is through comprehensive, pro-active planning by both the federal government and the state to identify the most appropriate areas for such development -- *i.e.*, solar development zones -- and to guide development to those zones. *See, e.g.*, letter dated June 29, 2009 to Interior Secretary Salazar and California's Governor Schwarzenegger and signed by 11 organizations, including our own, attached as Exhibit 1.

We support the BLM's adoption of zone designation for its forthcoming solar programmatic EIS because of the benefits inherent in this approach, including but not limited to clustering development of large-scale projects in appropriate places, rather than permitting them to be

¹ California's Renewable Energy Transition Initiative found, for example, that the state potentially could access 500 GW of renewable energy, an order of magnitude greater than the state's peak demand and far beyond the ability of our electric grid could handle.

located across the landscape in numerous locations. We also applaud the agency's – and the Interior Department's – commitment to work closely with the State of California in the development of the Desert Renewable Energy Conservation Plan which, as you may already know, will designate not only renewable energy development zones, but also zones for conservation as well as include a comprehensive mitigation strategy. The integration and completion of both of these efforts offers the promise of a balanced plan that will facilitate development of renewable resources in the Desert while protecting desert resources.

Despite our fundamental belief in the critical importance of agency-guided development of renewables, rather than developer-initiated development, we have, as indicated, been investing a great deal of time and effort into the fast track projects. We have done so in response to the emphasis the Department, the BLM and the developers place on meeting ARRA deadlines as well as the potential role these projects could play in meeting the renewable generation and economic goals of the state and federal governments. We have also done so because we wanted to make the projects, and especially the utility-scale solar projects, as environmentally sensitive as they can be and because we wanted to ensure, to the extent possible, that their accompanying environmental documents are as sound as they can be. It is now apparent to us that not even the best of the environmental documents being produced for the fast track projects and/or the best projects should be models or precedents for the future.

The fast track project sites were chosen without the benefit of siting criteria developed either by desert activists, environmental organizations, scientists and others, *see* Renewable Siting Criteria for California Desert Conservation Area, attached to June 29, 2009 letter referred to above, or by the Bureau. The Bureau in fact has yet to develop any siting guidance that would help field staff, developers and others identify appropriate sites – i.e., those with relatively low resource values and fewer resource conflicts. Moreover, the projects themselves were designated by Interior and the BLM as fast track projects without consideration of potential environmental issues. And, equally important, the timetable established for review of these projects did not take into account their scale, the agency's lack of experience with the technologies involved, and the agency's lack of expertise permitting these kinds of projects.

Regardless of the outcome of the environmental review process for this or any other fast track project, we urge the BLM and the Interior Department to acknowledge publicly the deficiencies of the current process and to commit publicly to improving it. More specifically, we urge both entities to affirm that neither the current process, nor any of the project sites, nor any of the environmental documents, establish any legal or procedural precedents for future decision-making, siting or environmental review. We make this urgent recommendation notwithstanding the fact that this particular project appears to be proposed for a site with acceptable areas and the accompanying DEIS represents a slight improvement in several respects over other such documents.

The Blythe Solar Power Plant Project. The proposed project site has some characteristics that are conducive to solar development including a location near to existing infrastructure. The proposed site is 2 miles north of Interstate 10, which is also a designated utility corridor with existing and planned transmission lines. See Blythe Solar Power Plant Project CEC-BLM SA/DEIS at ES-2 and B.2-13. It is also 8 miles from the city of Blythe and there are approximately 1,622 acres of agricultural land, 147 acres of developed land (the Blythe airport) and 16 acres of disturbed land within one mile in the study area to the east and southeast of the proposed project site. *Id.* C.2-13. Another characteristic conducive to solar development is the transmission capacity that exists approximately five miles southwest of the Blythe project site. It appears that a gen-tie line would

be built to connect to the Southern California Edison transmission system south of Interstate 10. Id. B.1-12.

Equally important, the lands in the eastern portion of this ROW application appear to be of comparatively lower natural resource values than some of the other ROW applications currently being considered for ARRA funding. The entire site includes no critical habitat for any listed species, and implicates no Area of Critical Environmental Concern (ACEC) designated by the BLM or other special agency designation. Also, although the site does provide habitat for desert tortoise, few desert tortoise, a federally endangered species, were found on the site, id. C.2-28, unlike other ARRA project sites such as Tessera's Calico project and Solar Millennium's Ridgecrest project which support sizable populations of this endangered species. See Calico Solar Power Project CEC-BLM SA/DEIS at C.2-3 and Ridgecrest Solar Power Project CEC-BLM SA/DEIS 5.3-1). While the above characteristics render some portions of the site more appropriate than some other locations for solar development, we do still have concerns about project impacts and the DEIS document.

Our principal concerns with the impacts of the Blythe Solar project at this time relate to three biological resources: desert washes and dependent desert dry wash habitat located on the western half of the ROW; Peninsular bighorn sheep which are federally endangered; and water resources and the habitat values associated with these resources in a desert environment.

Biological Resources: The western portion of the proposed project site clearly contains the greatest diversity and density of biological resources. The western half of the site contains numerous braided washes of varying size and complexity, most of which support vegetation dependent on intermittent water flow from precipitation events. The Desert Woodland Wash vegetation ("a sensitive vegetation community by the California Natural Diversity Data Base (CNDDB), BLM, and is also designated as state waters by CDFG," see Blythe SA/DEIS at C.2-17), comprised largely of Palo Verde, Smoke Tree and Desert Ironwood, is very prominent in many of the washes. Id. C.2-17. Another important vegetation community associated with these braided washes is the Brittlebush – Galleta Grass complex, which is "relatively uncommon" in the California deserts. Id. In addition, the greatest abundance and diversity of plant and animal species, including those with special status, are also concentrated in the western portion of the proposed project site. Staff considers impacts to the 551 acres of state jurisdictional waters, including 175.4 acres of desert dry wash woodland, and indirect impacts to as many as 133 acres to be significant. Id. C.2-54 and C.2-55. In addition, filling and diverting the water from these washes could "significantly alter the hydrology and wash-dependent vegetation of any features that may occur downstream." Id. C.2-54. Ephemeral wash-dependent vegetation serves as the primary sheltering, feeding, nesting and movement habitat for nearly all wildlife species, both resident and migratory. Impacts to these washes in the western portion of the proposed project site should be avoided or minimized in order to protect the important ecological and habitat values they provide.

A second area of concern is potential impacts of the proposed project to federally endangered bighorn sheep. The McCoy Mountains to the west of the proposed project site are believed to be unoccupied by bighorn sheep. Id. C.2-36. However, the McCoy Mountains have been identified as an important area for bighorn sheep recovery and sheep occur in mountain ranges adjacent to the McCoy Mountains. The Revised Staff Assessment provides new information that confirms bighorn sheep occurrence in the ranges near the McCoy Mountains and states that bighorn sheep do have the ability to recolonize the McCoy Mountains in the future. See Blythe Solar Power Plant Revised Staff Assessment C.2-38. The BLM needs to incorporate this information into its review of this proposed project and assess all project impacts – direct, indirect and cumulative – to this species. In particular, an analysis of impacts to future habitat connectivity should be performed so

that the proposed project and future projects do not prevent bighorn sheep recovery efforts and recolonization of the McCoy Mountains and other suitable habitat. In addition, bighorn sheep are difficult to detect in ranges like the McCoy Mountains where there may be a very low number of individuals. Id. C.2-37. Bighorn sheep surveys throughout the McCoy Mountains and especially in the vicinity of McCoy Spring in the summer and fall seasons should be conducted before any conclusions are made with regard to the current status of this species in the range and in relationship to the proposed project.

The third area of concern related to biological resources is impacts to water resources with regard to the project's on-site water use -- an important factor to analyze in the review of all solar projects proposed for desert environments. The DEIS indicates that groundwater from the Palo Verde Mesa Groundwater Basin (PVMGB) will be used to maintain and run the Blythe solar project. Id. ES-4 and C.9-2. Although the DEIS considers impacts to the PVMGB to be insignificant, it concludes that the project would place the basin into an overdraft condition and could have significant impacts to the Colorado River by inducing flow from the Colorado River into the Palo Verde Mesa. Id. C.9-2. Given this, we support the condition in Soil&Water-3 of offsetting the project's impacts to the lower Colorado River water. Id.

Cultural Resources: Analysis of the proposed project's impacts to cultural resources is still ongoing. Id. ES-16. The agencies are currently undertaking a negotiated stakeholder Programmatic Agreement (PA) that they expect to complete midsummer. This document will address mitigation for project impacts to cultural resources. In addition, cultural resources data compilation for the reconfigured alternative is ongoing and the analysis of impacts to cultural resources will be included in the Supplemental Staff Assessment that the CEC has already committed to prepare. Id. ES-16. Pending additional information and analysis on cultural resources, we reiterate our recommendation from our scoping comments that the BLM develop strategies to minimize and mitigate impacts on the area's outstanding cultural resources and engage in consultation with local Native American tribes.

DEIS Elements: Our concerns with the draft environmental review document itself relate to three key elements: the purpose and need statement, the alternatives considered, and the cumulative impact analysis, all of which were problems with the Bureau's first solar DEIS, the Ivanpah DEIS, and are showing incremental improvement with subsequent DEIS documents including the Blythe Solar Power Plant DEIS. We are also concerned about how the BLM will ensure that the new proposal(s) and new information that have come to light or will come to light after publication of the DEIS will be fully analyzed and made available to the public. To maximize the legal defensibility of the Blythe environmental review process, the BLM should seriously consider issuing a supplemental DEIS.

The purpose and need statement for this project is slightly broader than the one in the Ivanpah draft, but it remains too narrow. Ivanpah's original purpose and need was explicitly limited to a stark dichotomy: "approve" or "deny" the company's application for a solar project and, as the result, the first draft document addressed only the "no action" option and the "proposed project." A supplemental draft with a revised purpose and need and additional alternatives was issued in an attempt to remedy this egregious approach to "the heart" of the process established by the National Environmental Policy Act (NEPA).

The Blythe EIS draft states that the BLM's purpose and need is "to respond to" the company's ROW application. Id. A-11. The BLM should avoid both this mindset as well as too narrow a statement of purpose and need in order to help ensure that its EISs are legally defensible

documents. In place of the statement that was used here, our organizations urge the adoption of the following to achieve these goals:

The purpose of the proposed action is to “facilitate environmentally responsible commercial development of solar energy projects”² consistent with the statutory authorities and policies applicable to the Bureau of Land Management, including those providing for contributions towards achieving the renewable energy and economic stimulus and renewable energy development objectives under the Energy Policy Act of 2005 (EPAAct), the American Recovery and Re-Investment Act, and Presidential and Secretarial orders.

The need for this action is to implement Federal policies, orders and laws that mandate or encourage the development of renewable energy sources, including the Energy Policy Act of 2005, which requires the Department of the Interior to seek to approve at least 10,000 MW of non-hydropower renewable energy on public lands by 2015, and the Federal policy goal of producing 10% of the nation's electricity from renewable resources by 2010 and 25% by 2025; to enable effective implementation of the economic incentives for qualifying projects intended by the American Recovery and Reinvestment Act; and to support the State of California's renewable energy and climate change objectives, consistent with BLM's mandates and responsibilities.

This kind of purpose and need statement would clearly satisfy applicable legal requirements, see, e.g., National Parks Conservation Assn v. BLM, 586 F.3rd 735 (9th Cir. 2009), and thus help ensure that environmentally acceptable projects – which this project may end up being –will not only be permitted but will also be built without unnecessary delays.

Alternatives: The DEIS for the Blythe Solar project shows some minor improvement over the Ivanpah DEIS in its treatment of alternatives – in addition to the proposed project, two build alternatives are presented for NEPA analysis and three no project approval alternatives.³ See Blythe DEIS at B.2-13.

We recommended in previous comments on this proposed project that the BLM avoid impacts to the western portions of the site where the desert dry wash woodland communities are located. The BLM has included two alternatives that reduce impacts to this portion of the project site: the reduced acreage alternative eliminates the power block in the southwest corner of the proposed project and reduces the project to 750 MW, id. B.2-3; and the reconfigured alternative moves the power block in the southwest corner approximately 0.8 miles south of its proposed location to avoid impacts to an unnamed major wash, id. B.2-13. It appears that the 750 MW smaller project alternative would substantially reduce the impacts to desert washes and desert dry wash woodland communities of the construction and operation of the proposed project, id. C.2-4, and the reconfigured project would reduce impacts to desert washes but increase impacts to desert dry wash woodland communities, id. C.2-4.

However, we are concerned that a true “range” of alternatives has not been considered and that the alternatives evaluated in the DEIS do not go far enough in avoiding impacts to the

² This quotation is from Secretary Salazar himself.

³ One CEQA-only alternative is analyzed. See Blythe DEIS at B.2-17.

significantly higher biological resources on the western portions of the project site including significant and abundant desert wash woodland habitats comprised of various species including Palo Verde, Smoke Tree and Ironwood, and appreciable amounts of native perennial shrubs and grasses. The greatest abundance and diversity of plant and animal species occurs in the western portion of the proposed project site as well.

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” Nw. Env'tl. Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). For this project and EIS, the consideration of more environmentally protective alternatives is also consistent with the Federal Land Policy and Management Act’s (FLPMA) requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” Col. Env'tl. Coal. v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999), citing Simmons v. U.S. Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the environmental impact statement (EIS) from becoming “a foreordained formality.” City of New York v. Dep’t of Transp., 715 F.2d 732, 743 (2nd Cir. 1983). See also Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002).

In order to ensure that the agencies are establishing a real range as well as to providing readers a fuller understanding of the tradeoffs inherent in the other “action” alternatives, we request that a 500 MW alternative on the more environmentally suitable public lands in the eastern portion of the proposed project area be considered.

In addition, we recommend that strong consideration be given to an alternative proposed by Defenders of Wildlife (comment letter on Staff Assessment/Draft EIS dated May 13, 2010) that would combine the disturbed private lands comprising Section 1 of the Blythe Mesa alternative and the public lands in the eastern portion of the proposed project site. Section 1 of the Blythe Mesa alternative and the eastern portion of the proposed project share a common boundary: “Section 1 is located on private land, immediately east of the proposed site, approximately 1 mile from the Blythe Airport.” See Blythe DEIS at B.2-21. Section 1 is 2,780 acres in size and comprised of approximately 56 parcels with 10 landowners. Id. B.2-21. No residences are located within Section 1, and it has appropriate insolation and minimal slope, and has been previously graded for agriculture. Access to the site is via 1-10 at the W Hobson Way exit. There are no structures on this land, which is immediately north of the Blythe Energy Project Substation. Section 1 is sufficiently large for two 250 MW projects. Id. B.2-21. The eastern portion of the proposed project located on public land is sufficient in acreage to support the production of 500 MW (two 250 MW blocks). Combined, these lands appear to be sufficient in acreage to support a 1,000 MW project, the same size as proposed by the applicant.

The BLM's approach to the analysis of alternatives for the proposed project has unnecessarily limited the range of alternatives. The BLM states that it considers alternatives proposed to be located on lands outside of its jurisdiction to be "unreasonable." Id. B.2-1. In defining what is a "reasonable" range of alternatives, NEPA requires consideration of alternatives "that are practical or feasible" and not just "whether the proponent or applicant likes or is itself capable of carrying out a particular alternative"; in fact, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Questions 2A and 2B*, available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>; 40 C.F.R. §§ 1502.14, 1506.2(d). The California Energy Commission (CEC) considers alternatives that include private lands provided site control can be obtained in a reasonable timeframe and with some certainty. In the case of the Blythe Mesa private land alternative, the CEC found this alternative to be potentially feasible given the small number of private land owners. See Blythe Revised SA at B.2-1.

Cumulative Impacts: In order to properly site renewable energy projects, it is essential that a cumulative impacts analysis be conducted to fully evaluate the implications of this type of development on public lands. There are multiple solar and transmission projects proposed in the vicinity of the Blythe Solar power plant that will contribute to overall cumulative impacts to sensitive resources in this area. A list of existing and future foreseeable projects along the 1-10 corridor in Eastern Riverside County is included in the DEIS. See Blythe DEIS at B.3-8 to B.3-13.

In addition to the proposed solar and transmission projects, the DEIS identifies residential development projects, a 500-mile race track, the Eagle Mountain Pumped Storage Project, and several other projects that will also contribute to cumulative impacts. Id. B.3-9 to B.3-13. While these projects are not being permitted by the Bureau, all reasonable efforts must be made to obtain information regarding their potential impacts and construction timing so that a full picture of cumulative impacts can be presented in the final EIS.

The DEIS utilizes qualitative information about these existing and foreseeable projects to develop estimates and model impacts to key topics such as air quality and biological resources. More quantitative information is highly desirable, to supplement this qualitative material. In addition, the cumulative impact analysis should evaluate at-risk species and their habitats in the region to identify the condition and trend for these species and whether additional impacts from current and foreseeable future projects would conform to BLM policy on special status species management (Manual 6840) and wildlife habitat management (Manual 6500).

New Information: Lastly, we are concerned, as indicated above, about the new information, including information on the proposed project's impacts to cultural resources in the reconfigured alternative, id. C.3-1, and the complete survey results including data from special status plant and golden eagle surveys conducted this year, id. C.2-4 that has been developed since the DEIS was printed. In addition, the California Energy Commission has released a new document, the Blythe Revised Staff Assessment, with relevant information to this project and information that was not available in the Blythe DEIS. If BLM issues a supplemental DEIS, new information in the Blythe Revised Staff Assessment should be incorporated into that document.

BLM should make every effort to ensure that all this new information is made available to the public (and other agencies) along with assessments and analyses of the information as well as that the public is given an opportunity to comment thereon. Public input on agency proposals is one of the hallmarks of NEPA review and it is to prevent the undermining of that critical aspect that

limits have been imposed on agency efforts to “load up” final EISs with excessive amounts of new information.

Conclusion. In conclusion, some areas within the site proposed for this project appear to have fewer resource conflicts than some of the other sites currently being reviewed for fast-track projects, but nonetheless the impacts to the resources identified in these comments and to other desert resources must be fully analyzed, avoided, and mitigated through the BLM process. As we have previously noted, renewable development is not appropriate everywhere on the public lands and must be balanced against the equally urgent need to protect unique and sensitive resources of the CDCA. California is lucky indeed that we have sufficient renewable resources, including solar resources, to do their development in an environmentally responsible manner.

Thank you in advance for considering our comments. If you have any questions about them, please do not hesitate to contact us.

Sincerely,

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