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BY EMAIL, FAX AND US MAIL

RE: Sierra Club comments on the proposed Palen Solar Power Project Staff Assessment and Draft Environmental Impact Statement

On behalf of the Sierra Club, we are writing to provide you with comments on the Staff Assessment and Draft Environmental Impact Statement (SA/DEIS) for the Palen Solar Power Project (08-AFC-13). The United States Department of the Interior, Bureau of Land Management's (BLM) SA/DEIS is a joint document prepared with the California Energy Commission ("Commission") in order to meet the requirements of the National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA").



The Sierra Club is the oldest conservation organization in the United States, with over 600,000 members nationwide, and 151,000 members in California alone. Sierra Club is steadfastly committed to preserving the legacy of California's wildlands for future generations, while simultaneously recognizing that climate change has the potential to make radical changes in our habitats and landscapes. Sierra Club is working aggressively to reduce carbon emissions by supporting large scale renewable projects and by quickly ramping up energy efficiency and rooftop solar.

In order to help meet California's and the nation's renewable energy goals, the Sierra Club supports appropriately sited large-scale renewable development, i.e, projects that avoid or greatly minimize environmental impacts to wildlife and plants and the ecosystems they depend upon. For example, there are hundreds of thousands of acres of privately held agricultural lands in California that have marginal productivity or no longer support farming. These lands, with relatively high solarity and poor habitat values, present many opportunities to help meet our goals for large scale solar. The Sierra Club encourages companies and agencies to prioritize these types of lands going forward.

## I. Introduction

The applicant Solar Millenium proposes to develop an electric-generating facility with a nominal capacity of 500 megawatts (MW) using a concentrated solar "trough" generating system. The Palen project is proposed to be located in the eastern portion of Riverside County, California, north of Interstate 10 near Desert Center. The site is approximately 80 miles east of Palm Springs and 34 miles west of Blythe. Except for one 40 acre private parcel which has been incorporated, the proposed project is comprised entirely of BLM managed lands. Construction and operation of the project would directly disturb 3,899 acres (6 square miles) and indirectly disturb an undetermined number of acres off-site.

The project also includes an electrical transmission line, wells, propane supply tanks, a bioremediation site, and a site access road. The project would consume approximately 1500 acre feet of water during construction and 300 acre feet of local groundwater per year thereafter for operations, washing mirrors, etc. Propane stored in two 18,000 tanks would be used to heat project operating fluid at night and bring it up to operating temperature in the morning in an auxiliary boiler. The project would be connected to the proposed new SCE Red Bluff Substation via 10 miles of a new gen-tie line, and its power would be transmitted to load centers via either the existing Devers to Palo Verde line or the new Devers to Palo Verde 2 line, which the Sierra Club supports. The project would have a several acre bioremediation site to deal with small amounts of leaking hazardous fluids; larger amounts would have to be removed and treated offsite. The actual electrical capacity factor would be a small fraction of the nameplate 500 MW. The project will

be “dry cooled” but will have some wet cooling of components during summer. There is no proposal at this site to “store” thermal energy for use after sundown.

The Palen project is proposed in a portion of the Colorado Desert of California that is an intact, functioning ecosystem.<sup>1</sup> The immediate project area, however, is already subject to edge effects because of adjacent existing rural development on one side and Interstate 10 on another. But the Project site is also located in the main Aeolian sand transport corridor, supplying sand dunes that are onsite and down-wind from the project. If built as proposed, the project would not only destroy onsite sand dunes but would also sever this critical sand transport system, causing severe impacts to the downwind dune ecosystem. It also has potential to sever an important tortoise corridor connection between the Chuckwalla Desert Wildlife Management Area (DWMA) and the Palen Valley and Wilderness. These and other significant impacts of the project remain to be adequately addressed.

## II BLM & the Commission’s Responsibilities under NEPA & CEQA

The National Environmental Policy Act (“NEPA”) is our “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1. Congress enacted NEPA “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a “detailed statement” that discusses the environmental impacts of, and reasonable alternatives to, all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental impact statement (“EIS”). See 40 C.F.R. Part 1502.

The EIS must “provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. This discussion must include an analysis of “direct effects,” which are “caused by the action and occur at the same time and place,” as well as “indirect effects which . . . are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8. An EIS must also consider the cumulative impacts of the proposed federal agency action together with past, present and reasonably foreseeable future actions, including all federal and non-federal activities. 40 C.F.R. § 1508.7. Furthermore, an EIS must

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<sup>1</sup> Sierra Club scoping comments on Palen Solar Power Project, December 2009

“rigorously explore and objectively evaluate all reasonable alternatives” to the proposed project. 40 C.F.R. § 1502.14(a).

The regulations implementing NEPA identify several factors that, when present, indicate that the environmental effects of a proposed action are significant. These include the presence of highly uncertain impacts, impacts to species listed as threatened under the Endangered Species Act, and cumulatively significant impacts. 40 C.F.R. §§ 1508.27(b)(5), (b)(7), (b)(9). This project contains federally listed sensitive species, California special status species, flood hazards, and will have a cumulatively significant impact on the desert environment.

The California Energy Commission, as the lead agency under CEQA, is responsible for preparing a document to inform the public and decision makers as to the project’s environmental impacts. Pub. Res. Code § 25519(c), 21080.5. CEQA is designed to fulfill two important goals in the protection of the environment. EIR’s (or their functional equivalent) must inform the public and decision makers about all potential, significant environmental effects of a project. Pub. Res. Code § 21100(b)(1). It is necessary to highlight the potential environmental effects “with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.” 14 Cal. Code Reg. § 15151. An agency must diligently examine these effects and “must use its best efforts to find out and disclose all that it reasonably can.” Id. § 15144.

This SA/DEIS is legally and technically flawed under both NEPA and CEQA. As drafted, it is inadequate as an informational document because essential information was omitted, or is not available to the public or key agencies. The SA/DEIS also fails under substantive provisions of California law requiring the full mitigation of impacts to threatened species. This project will have serious negative impacts to at least two sensitive desert species: threatened Desert Tortoise and Mojave Fringe-Toed Lizard. As such the SA/DEIS should have contained all feasible mitigation measures and reasonable alternatives available. Accordingly, the BLM and the Commission must conclude that the Calico Project will cause significant and irreparable environmental harm and reject the Project. Alternatively, we request that BLM and the Commission fully and completely address the following deficiencies and concerns surrounding the SA/DEIS.

### **III. The SA/DEIS is Inadequate Because it Lacks Critical Data For Issues that Will Impact the Environment and Defers Information Gathering and Analysis**

A major flaw with the SA/DEIS is the omission of relevant critical data in several important respects. Boiled down, the SA/DEIS omitted disclosure of the full-range of potentially significant impacts associated with the Project. Although the

SA/DEIS acknowledged these data gaps, it provided no legal reason under NEPA or CEQA as to why these gaps were permitted.

This is inadequate under both NEPA & CEQA. Under NEPA's implementing regulations: "If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement." 40 C.F.R. § 1502.22. The agency did not claim that this information was cost prohibitive to obtain, and the information that is omitted from the SA/DEIS is certainly "essential to a reasoned choice." 40 C.F.R. § 1502.22(a).

NEPA's implementing regulations make it clear that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. 1501.1 (emphasis added). CEQA contains similar requirements; public participation is at the heart of CEQA, therefore the public must be able to review and comment on technically accurate and complete EIR's. CEQA requires agencies to inform the public and responsible officials of the environmental consequences of their decisions before they are made, thereby protecting the environment and informed self-government. (Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs. (2001) 91 Cal.App.4th 1344, 1354.)

The following are a sample of the acknowledged areas where there is missing data in the SA/DEIS.

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- Biological Resources Mitigation and Monitoring Plan, Revegetation Plan, Decommissioning Plan, Drainage Erosion and Sedimentation Control Plan, Groundwater Level Monitoring and Reporting Plan, Programmatic Agreement for Cultural Resources, and other essential Project elements have not been developed due to critical data that is lacking.
- Waste Discharge Requirements have not been developed. SA/DEIS C.9-97
- Spring and fall surveys for special status plant species within the disturbance areas are planned but not yet performed or available. SA/DEIS C.2-3
- Information related to translocation of the tortoise, specifically location of the proposed site for relocating tortoise and verification of disease testing requirements is missing or located in an appendix not accessible by the public, and as such that program can not be assessed. SA/DEIS C.2-161-2

These and other omissions and data gaps violate both NEPA and CEQA. The role of a SA/DEIS under NEPA is to provide the public with enough information to adequately assess the environmental dangers of a particular project. Indeed, if reasonably complete information is not included, “neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Robertson v. Methow Valley Citizens Council*, U.S. 332, 352 (1989). Under CEQA, courts have made clear that environmental assessments must provide sufficient information to allow both decision-makers and the public to understand the consequences of the project. *Napa Citizens for Honest Gov’t v. Napa County Board of Supervisors*, (2001) Cal.App.4th 342, 356. The information presented in an EIS must be of high quality. 40 C.F.R. § 1500.1(b). “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* “Agencies shall insure the professional integrity, including scientific integrity, of the decisions and analysis in environmental impact statements.” 40 C.F.R. § 1502.24. “They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.” *Id.* The amount of missing, incomplete, or incorrect data requires the BLM and the Commission to deny the Applicant’s proposal, or at the very least, complete gathering all of the necessary information for public review and comment.

#### **IV. The Analysis of Impacts to Sensitive Animals, Plants, and Other Biological Resources is Inadequate Under NEPA and CEQA**

##### **a. The SA/DEIS Inadequately Analyzed Impacts to Sensitive Reptiles**

###### **1. Desert Tortoise**

The Mojave population of the desert tortoise (*Gopherus agassizii*) was listed as a federally threatened species in 1990. 55 FR 12,178. In California, state laws have been in place since 1939 to protect the desert tortoise. The species was listed as threatened under the California Endangered Species Act in 1989 and is considered a “Species at Risk” under California’s Wildlife Action Plan. According to the final federal listing, construction projects and energy development have significantly contributed to the destruction of native habitat. *Id.* Under NEPA, the BLM’s SA/DEIS was required to fully disclose all project-related adverse environmental effects which cannot be avoided. 42 U.S.C.S. § 4332(2)(C). The SA/DEIS did not adequately address the Project’s impacts on desert tortoise.

The Project site lies within a broad alluvial plain which drains the Palen Mountains to the north. SA/DEIS C.2-1. It contains 210 acres of designated critical habitat for desert tortoise, which will be mitigated at a ratio of 5:1, and 3,899 acres of suitable habitat proposed to be mitigated at a ratio of 1:1; this mitigation,

however does not account for indirect impacts to tortoise of predation, road kill, harassment, etc. SA/DEIS c.2-62

The desert tortoise in and around the Project site are part of the Eastern Colorado Recovery Unit, which is primarily found in desert washes and creosote bush dominated valleys. SA/DEIS C.2-14. Desert tortoise recovery plans emphasize that activities occurring outside the boundaries of existing tortoise conservation areas can negatively affect tortoise populations. See U.S. Fish and Wildlife Service, Draft revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*) at 33 (2008). Both the 1994 and draft 2008 Recovery Plans recommend that land managers focus recovery efforts toward tortoise conservation areas; however, the Plans also emphasize that land managers should try to limit the loss of habitat outside conservation areas as much as possible. Id. The SA/DEIS acknowledges that the proposed project will “result in the direct and permanent loss of all occupied tortoise habitat onsite. SA/DEIS C.2-67.

Protocol surveys for desert tortoise were performed in 2009, and relatively low numbers of tortoise were found on the project site. SA/DEIS C.2-35. However, as proposed the Project is located in the Tortoise Connectivity DWMA identified in the Northern and Eastern Colorado Desert Management (NECO) Plan, and will block the north-south movement corridor of the desert tortoise from the Chuckwalla DWMA to the Palen Valley and Palen-McCoy Wilderness. SA/DEIS C.2-4. Little information is provided discussing the effects this permanent limitation will have on the overall health of the species or on their genetic diversity. This is a significant burden for the desert tortoise, and as such, the habitat fragmentation of the project should be considered too high to approve. The Reduced Project Alternative may resolve this issue for desert tortoise, but fails to adequately do so for Mojave fringe-toed lizard, see below.

Additionally for desert tortoise, the SA/DEIS fails to adequately identify the dangers that disease poses to trans-located tortoises. Relocating tortoise without disease testing could imperil the health of both the animals to be moved and the resident populations into which tortoises will be released. Based on the reports of Berry, et al. (2008), Mack, et al. (2008) and Mack and Berry (2009) that disease is not uniformly distributed across geographical areas, it is reasonable to assume that there will be pockets of diseased animals and pockets of healthy animals within the 5 kilometer range of the project site. Not fully testing animals that are to be “relocated” could result in the introduction of diseases into otherwise healthy populations. Also, as noted by the CDFG, “moving tortoises up to 5 km distance without disease testing presents risks to other populations.” SA/DEIS C.2-57. Not testing the host populations within the 5 kilometer range could result in the introduction of healthy tortoises from the project site into a population that is diseased. Therefore, any translocation should follow the Desert Tortoise Council Guidelines for Handling Desert Tortoise During Construction. Additionally, any tortoises that are moved more than 1000’ should be fully tested for disease and the host population should be tested to the same extent as well.

## 2. Mojave Fringe-toed Lizard

The Mojave fringe-toed lizard (MFTL) is a BLM sensitive species that is found in sandy, hot, sparsely vegetated habitats. SA/DEIS C.2-28. It is restricted to habitats with fine, loose sand. Id. Because it is restricted to these sandy locations, and because of increasing development pressures, its habitat has become highly fragmented. Id. The habitat fragmentation has in turn left the species vulnerable to local extirpations. It is important to protect the fragile sandy ecosystem upon which the Mojave fringe-toed lizard is dependent. Id.

The SA/DEIS acknowledges that of the 3,899 acre project footprint, nearly half the acreage is suitable habitat for the Mojave fringe-toed lizard. SA/DEIS C.2-36, and that direct, indirect and cumulative impacts of the Project to this sensitive species will be significant and unmitigable. SA/DEIS C.2-1 and 4. However, although the SA/DEIS recognizes the fact that this population of MFTL is at the southernmost extreme of the species' range, it only identifies impacts to the local population and the species in general (SA/DEIS C.2-4) but fails to fully consider the importance of this population to genetic diversity and climate adaptation of the species.<sup>2</sup> With the hotter and drier conditions expected with climate change,<sup>3</sup> the southernmost, lower elevation populations of MFTL are likely better adapted to extremes of heat and aridity than those in the higher, cooler areas of the Mojave desert.<sup>4</sup> Thus it is essential to conserve the populations at the southern extreme of the species for genetic diversity, species fitness<sup>5</sup> and ability of the species to adapt to climate change stressors.

In analyzing the Reduced Project Alternative, the SA/DEIS asserts that this alternative would avoid significant unmitigated impacts to MFTL. SA/DEIS C.2-2 and 5. However, this alternative still intrudes on an identified active shallow sand dune area ("Zone III") which is identified MFTL habitat SA/DEIS Biological Resources Figure A and MFTL Observations Figure 5.3-9 from scoping package. The SA/DEIS has an affirmative obligation to avoid impacting this zone, not only because of onsite loss of habitat but also because of offsite impacts to sand flow and resultant species-level impacts to MFTL. The project should be realigned and reconfigured closer to the Interstate, and also there are BLM lands to the west of the Project that could be utilized to configure an acceptable Alternative.

Additionally, the SA/DEIS has analyzed the potential for the various configurations of the Project and their fences to serve as perches for birds of prey,

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<sup>2</sup> Issue identified by Alan Muth at CEC/BLM Palm Springs workshop for Palen project.

<sup>3</sup> California Resources Agency *California Climate Change Adaptation Strategy Discussion Draft* 2009 p 4, Figures 5&6

<sup>4</sup> Personal communication, Cameron Barrows to Joan Taylor

<sup>5</sup> Booy et al, *Genetic Diversity and the Survival of Populations*, 2000



increasing the impact to desert tortoise, but it has failed to do so for MFTL (and other vulnerable species) outside the Project foot print.

The SA/DEIS must be revised and pertinent information and analysis on the above, including a feasible alternative to avoid impacts to MFTL and sand transport must be provided to the public.

**b. The SA/DEIS does not Adequately Address the Impacts to Sensitive Mammals**

**2. Desert Kit Fox and American Badger**

The desert kit fox and American Badger are found on the project site. SA/DEIS C.2-5. Although the Applicant has not performed focused surveys for these species for the kit fox, there is suitable habitat on site, and several individuals as well as many burrows and scat were observed throughout the site. Id. The SA/DEIS provides no information as to the number of kit foxes that will be affected. The SA/DEIS does acknowledge that kit fox and American badger are protected species. Id. Nevertheless, the SA/DEIS provides almost no information as to how the species will be avoided. The only suggestion is that a preconstruction survey should be done, and dens should be flagged, and further that habitat acquired for desert tortoise would suffice as mitigation for these mammals SA/DEIS C.2-64. However, the SA/DEIS offers no assurance that habitat suitable for desert tortoise will have the carrying capacity or the primary constituent elements required for desert kit fox and American badger. Once again, this is insufficient under NEPA & CEQA as it provides virtually no scientific information for the public or agencies to use in determining the adequacy of proposed mitigation.

**c. The Cumulative Impacts Analysis is Deficient**

A discussion of the cumulative environmental effects of a proposed action is an essential part of the environmental review process, otherwise the agency cannot evaluate the combined environmental effect of related actions. Cumulative impact is defined in NEPA's implementing regulations as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . . Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7

Under NEPA, an EIS must provide a sufficiently detailed catalogue of past, present, and reasonably foreseeable future projects, and provide an adequate analysis of how these projects, in conjunction with the proposed action, are thought to have impacted or are expected to impact the environment. See *Muckleshoot Indian Tribe v. United States Forest Serv.*, (9th Cir.1999) 177 F.3d 800, 810 (per

curiam) (quoting 40 C.F.R. § 1508.7). In addition to an adequate cataloging of past projects, NEPA also requires a discussion of consequences of those projects. However, the SA/DEIS fails to properly assess and address the severe cumulative biological and other impacts of the project.

Considered in the context of other proposed large energy projects in the region, the cumulative impacts of the Project are significant in nearly every issue category. On a human time scale, these cumulative impacts will be pervasive, causing landscape-level biological, cultural, visual and other impacts that will be permanent or last hundreds of years after the expected lifetime of the Project. The SA/DEIS fails to provide adequate analysis, identification, and mitigation or avoidance of Project cumulative impacts.

Inter alia, the SA/DEIS fails to provide an adequate analysis of how these related projects, in conjunction with the proposed action, are thought to have impacted or are expected to impact the environment. The acreages and intent of the identified related projects are given, but actual cumulative impacts of these projects on the affected environment are not analyzed in adequate specificity. In particular, the cumulative biological context is deficient. The SA/DEIS fails to analyze the threshold questions about the cumulative context: What is the existing condition for the species at risk? What is the expected future condition for the species and biological processes at risk from the cumulative impacts of this and other existing and reasonably foreseeable actions? And what relative contribution to these impacts is the proposed project expected to make?

Clearly, the SA/DEIS has not assembled enough information and performed the requisite analysis (and the responsible agencies do not have adequate planning guidance) to determine: 1) the level of cumulative impacts to habitats, species and ecosystems, especially in the context of likely climate-change-necessitated habitat and species migration, or: 2) the limits of acceptable change; or 3) how to avoid significant cumulative impacts that would foreclose future opportunities to sustain desert ecosystems and species. This is a violation not only of NEPA and CEQA, but of State and Federal mandates requiring sustainable resource protection, such as FLPMA and the 2009 California Climate Change Adaptation Strategy (herein incorporated by reference). The latter stated, "In the face of a changing climate it is imperative that Departments work to maintain healthy, connected, genetically diverse populations" to "aids [sic] the movement of species within reserve areas as they adjust to changing conditions associated with climate change." 2009 California Climate Change Adaptation Strategy, 56. This guidance document also directed California Department of Fish and Game to ensure that CEQA review addressed climate change issues in this context.<sup>6</sup>

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<sup>6</sup> CEQA Review/Department Guidance – The Department of Fish and Game will initiate the development of internal guidance for staff to help address climate adaptation and to ensure climate change impacts are appropriately addressed in CEQA documents. Id. 61.

At c.2-4 the SA/DEIS acknowledges that even with mitigation, certain cumulative Project impacts remain significant. To offset cumulative biological impacts to the I-10 region, the SA/DEIS proposes new plan designations to designate two new linkage areas and one solar exclusion area. SA/DEIS Appendix B 1-3. In context with the vast land conversion contemplated with renewable energy development, the concept of setting aside landscape-level conservation areas to mitigate for severe cumulative impacts of the project is laudable, and in fact it is mandated by NEPA and CEQA. However, there are some serious deficiencies in the proposed mitigation. Plan amendments can be changed; they are not permanent. The proposed mitigation of only Plan amendments does not provide the necessary permanent, unchangeable mitigation for severe cumulative impacts that will persist at least for hundreds of years beyond the life of the cumulative projects. The mitigation also does not specify management prescriptions, and it allows undefined activities, "Casual use of the area would remain unaffected." (Biological Resources, Appendix B-3)

As a thorough cumulative impact analysis is required for public and the agencies to make an informed decision regarding the consequences of a proposed action, the SA/DEIS must be revised to thoroughly examine the above-referenced deficiencies.

- V. The Alternatives Analysis is Inadequate Because BLM Unlawfully Rejected Feasible Alternatives
- a. BLM's Statement(s) of Purpose and Need Reflects the Applicant's Needs, and Is Too Narrowly Drawn.

The Alternatives Analysis "is the heart of the environmental impact statement."<sup>7</sup> CEQ regulations require that an alternatives analysis presents the environmental impacts of the proposal and the alternatives in comparative form, sharply defining issues and providing a clear basis for choice among options by the decision-maker and the public. 43 CFR § 1502.14. In the SA/DEIS Alternatives Analysis, BLM did not consider the Private Land and other private offsite alternatives under NEPA on the basis that these alternatives would not accomplish the purpose and need of the proposed action.<sup>8</sup>

The decision not to examine these alternatives was incorrect because BLM's statement of purpose and need for the SA/DEIS is too narrowly drawn. Courts have held that although an agency has discretion to define the purpose and need of a project, it cannot use "unreasonably narrow" terms to define a project's objective.

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<sup>7</sup> 40 C.F.R. § 1502.14.

<sup>8</sup> "since the proposed actions under review in this document are whether to approve or deny, or approve with modification an application for the Calico Solar project to be sited on public land, analysis of a private land alternative would not be consistent with the stated purpose and need of the proposal." SA/DEIS B.2-18.

The Department of Interior (“DOI”) regulation, 40 C.F.R. § 1502.13 merely requires that an EIS briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. DOI’s NEPA handbook explains that the “purpose and need statement for an externally generated action must describe the BLM purpose and need, not an applicant’s or external proponent’s purpose and need.” Department of Interior, Bureau of Land Management, National Environmental Policy Act Handbook 35 (citing 40 C.F.R. § 1502.13) (emphasis added).

Here, however, in contravention of NEPA guidelines, the BLM only looked to the Applicant’s purpose and need. The SA/DEIS stated that the purpose and need is “to respond to Palen Solar I, LLC’s application under Title V of FLPMA, 43 U.S.C. § 1761, for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, BLM ROW regulations, and other Federal applicable laws.” SA/DEIS ES-6. Based on this narrow statement of purpose and need, BLM has declined to examine any private land off-site alternatives (as well as dismissing alternative technologies, distributed generation, energy efficiency and demand response). In so doing, BLM impermissibly rejected reasonable alternatives that resolved most if not all significant biological impacts of the project <sup>9</sup>on the basis of inconsistency with the applicant’s purpose and need. Moreover, BLM did so in spite of numerous scoping comments requesting consideration of a private/disturbed land alternative.<sup>10</sup>

As the Energy Policy Act, and related Secretarial and Executive Orders direct BLM to “encourage the development of environmentally responsible renewable energy” while complying with existing environmental laws, – the project purpose and need statement need not be so narrowly drawn as to preclude the consideration of alternative locations and technologies. To do so reflects the needs of the project applicant, not the needs of BLM, in violation of NEPA. In fact, an agency’s refusal to consider an alternative that would require some action beyond that of its congressional authorization is counter to NEPA’s intent to provide options for agencies. See 40 C.F.R. 1502.14. BLM’s decision to narrow its purpose and need to preclude the analysis of alternative sites, and to avoid analysis of offsite alternatives because they are outside of its jurisdiction, renders the SA/DEIS deficient.

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<sup>9</sup> The North of Desert Center alternative would have less severe cultural, visual and biological impacts, SA/DEIS B.2-82, and would reduce Project impacts to less than significant.” B.2-49

<sup>10</sup> SA/DEIS ES-9ff.

## VI Conclusion

For these reasons, the SA/DEIS violates NEPA, CEQA and potentially FLPMA. Accordingly, it should be revised and re-released. Also, the CDCA and NECO Plans should be revised to give desert-wide guidance, prior to approval of the substantial public land conversion currently proposed by renewable energy projects. In terms of specific local impacts, we would like to reiterate that we support development of a reduced or reconfigured Project that would avoid impacts to Mojave fringe-toed lizard and ensure NECO-mandated tortoise connectivity.

Thank you for the opportunity to comment on this important project.

Very truly yours,

A handwritten signature in black ink that reads "Joan Taylor". The signature is written in a cursive, flowing style.

Joan Taylor, Chair  
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