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DOCKET	
09-AFC-8	
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Subject: *Comments of Californians for Renewable Energy, Inc. (CARE) on the March 26, 2010 Staff Assessment/Draft Environmental Impact Statement (SA/DEIS)¹ which purportedly is a joint document being published by the U.S. Bureau of Land Management (BLM) and the California Energy Commission (CEC).*

Introduction

The March 26, 2010 SA/DEIS should be re-circulated for public comments since the project has changed substantially since the SA/DEIS was released for comment² and significant baseline information is missing from the analysis necessary precluding the public to meaningfully comment on the projects environmental review.

In the January 5, 2010 Order³ of DV 2009-1-PR⁴ thru DV 2009-8-PR before the United States Department of the Interior Office of Hearings and Appeals, *In re Black Mesa Complex Permit Revision*, Permit No. AZ-000ID, the ALJ found after the project description was changed without an opportunity for public comments stating that “I have decided to grant *Nutumya's* NEPA Motion because it demonstrates that OSM violated NEPA by not preparing a supplemental draft environmental impact statement (EIS) when Peabody changed the proposed action. As a result the Final EIS did not consider a reasonable range of alternatives, described the wrong affected environment baseline, and did not achieve the informed decision-making and meaningful public comment required by NEPA. Because the Final EIS does not satisfy NEPA, the decision must be vacated

¹ See Staff Assessment and Draft Environmental Impact Statement - Posted March 26, 2010. (PDF file, 1539 pages, 24.4 megabytes) <http://www.energy.ca.gov/2010publications/CEC-700-2010-006/CEC-700-2010-006.PDF>

² See Cultural Resources Section to the Revised Staff Assessment. Posted June 22, 2010. (PDF file, 236 page, 836 kb) http://www.energy.ca.gov/sitingcases/genesis_solar/documents/2010-06-22_Cultural_Resources_Section_RSA_TN-57261.pdf

Also see Revised Staff Assessment Supplement - Posted July 2, 2010. (PDF file, 402 pages, 2.2 megabytes) <http://www.energy.ca.gov/2010publications/CEC-700-2010-006/CEC-700-2010-006-REV-SUP.PDF>

³ See http://www.wrcc.osmre.gov/Current_Initiatives/Black_Mesa_EIS/BMEIS/AdministrativeLawJudgeDecision.pdf at page 6.

⁴ CARE was the first appellant with case number DV 2009-1-PR.

and remanded to OSM for further action. Vacating the OSM decision necessarily renders the other motions moot or unnecessary to decide.”

According to the SA/DEIS “It is in the interest of the BLM and the Energy Commission to share in the preparation of a joint environmental analysis of the proposed project to avoid duplication of staff efforts, to share staff expertise and information, to promote intergovernmental coordination at the local, state, and federal levels, and to facilitate public review by providing a joint document and a more efficient environmental review process. Additionally, both the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA) have provisions to promote the efficient preparation of joint documents in order to save resources and benefit the public...*This SA/DEIS contains U.S. Bureau of Land Management and Energy Commission staff (hereafter jointly referred to as staff) independent evaluation of the Genesis Solar LLC (applicant) Genesis Solar Energy Project (GSEP) application, which was filed with the BLM and CEC. The application filed with BLM is the BLM Application for a Right of Way Grant on BLM-administered land (CACA 048880), and the application filed with the Energy Commission is the Application for Certification (09-AFC-8). The SA/DEIS examines engineering, environmental, public health, and safety aspects of the GSEP, based on the information provided by the applicant and other sources available at the time the SA/DEIS was prepared. The SA/DEIS will also include for BLM a Draft Land Use Plan Amendment (Draft PA) to the BLM’s California Desert Conservation Area Plan (1980) (as Amended)...The applicant has also applied for the American Recovery and Reinvestment Act (ARRA) Renewable Energy Grant Program. Two goals of the ARRA Renewable Energy Grant Program are to enhance America’s energy independence and create near-term employment opportunities for Americans. To be eligible for these ARRA funds, the applicant must begin construction on the GSEP by the end of 2010....This SA/DEIS serves as staffs’ analysis of the engineering, environmental, public health and safety aspects of the proposed project, based on the information provided by the applicant and other sources available at the time the SA/DEIS was prepared. The SA/DEIS contains all analyses normally contained in an Environmental Impact Report (EIR) as required by the California Environmental Quality Act (CEQA), as well as all analyses required as part of an EIS prepared under the*

National Environmental Policy Act (NEPA). The SA/DEIS will be available for a 90-day public comment period beginning on April 9, 2010. The Notice of Availability (NOA) (published by the U.S. Environmental Protection Agency in the Federal Register) initiates the 90-day public review and comment period.” [Emphasis added] Since the SA/DEIS was made available for a 90-day public comment period beginning on April 9, 2010⁵ comments are due no later than June 8, 2010. Therefore these comments are timely filed.

Dr. Hunter of the BLM laid out why the SA/DEIS is inadequate for public comments purposes in the hearing transcript for the June 9, 2010 Consolidated [CEC and BLM] Hearing⁶ on Issues Concerning US Bureau of Land Management Cultural Resources Data.

4 DR. HUNTER: We don't give out draft reports.

5 MS. MILES: Right.

6 DR. HUNTER: The very word "draft" tells you

7 that we do not consider them to be adequate.

8 MS. MILES: Right. And then we've also found

9 that to be true with biological data, draft biological

10 reports that have gone to BLM, now that the applicants

11 are not providing them to the Energy Commission,

12 they're providing them only to BLM. And then when BLM

13 goes through them and decides that they are finalized,

14 then they are being released to the Energy Commission

15 and intervenors.

16 DR. HUNTER: Well, I know from my personal

17 experience as a professional archeologist, I would not

18 publish a draft report because the draft report is what

19 we use to go back and get all of the proper information

20 that we need.

21 It would be tantamount to publishing a

22 incorrect document. And we are professional

23 archaeologists, we are -- we spend our lives protecting

24 cultural resources. This is what we do, not just as a

25 living, but who we are. We care about the resources.

1 We are doing everything that we feel that we are

2 legally required to do to protect this data.

Why would the BLM then think it appropriate to accept public comment on a “incorrect document”?

The SA/DEIS is premature

⁵ See <http://www.energy.ca.gov/2010publications/CEC-700-2010-006/CEC-700-2010-006.PDF>

⁶ See http://www.energy.ca.gov/2010-CRD-1/documents/2010-06-09_Transcript.pdf at pp. 75 to 76.

CARE doesn't agree that the project is ready for public comment yet and believes that the rushed schedule is due only to the applicant's commercial interests in receiving ARRA funding from the United States, which is a financial interest that shouldn't be allowed to prejudice or prejudge this project's environmental review based on the currently incomplete record for the project's review.

CARE believes the record in this case is incomplete in all areas since final mitigation measures to be adopted are unknown due to a lack of baseline information and the failure of BLM to provide all the necessary information required to determine what mitigation is acceptable to the BLM specifically regarding the alternatives examined and the impacts of the project on cultural resources.

Specific areas that are not ready for public comments due to outstanding baseline information are the project description, socioeconomic impacts, project alternatives, biological resources, cultural resources, water and soils.

Outstanding baseline information disputed

1. The project description (what is the final project that the public should be commenting on?)
2. Socioeconomic impacts (how many farmer worker jobs will be eliminated by the project if the applicant buys Colorado River water entitlements for the project?)
3. Project alternatives (did the applicant consider a reasonable range of alternatives including a no-action alternative and a High DG alternative consistent with BLM requirements under NEPA?)
4. Biological resources (what new mitigation measures has the applicant proposed in light of new information on additional biological impacts that remain unmitigated to a level of insignificance?)
5. Cultural resources (what is the baseline information on cultural resources impacts for this project and what mitigation measures (if any) are proposed?)
6. Water and soils (is there any water available for this project that the applicant holds entitlements for or is this so-called water supply based on speculation? What impacts does the proposed use by the applicant of Colorado River water have on Mexico's entitlements to the same water and the impacts of the project on compliance with international treaty and other agreements between the United States and Mexico?)

Procedural requests

CARE asks that BLM to incorporate by reference the Exhibits CARE has already provided and Docket under 09-AFC-8 and 10-CRD-1⁷ with the CEC. See Exhibits listing. CARE also desires to have an opportunity to provide a supplemental exhibit in the form of a DVD copy of a video⁸ of the cultural resources sites taken from an airplane fly over of the project site taken on June 29, 2010 with an additional Declaration from the film maker Robert Lundahl.

The film maker and Alfredo Figueroa are preparing a detailed report on cultural resource sites including still photos and GPS location information to go along with aerial video to be provided to the BLM Archaeologist in Palm Springs. CARE requests the BLM protect this information from being disclosed to unauthorized individuals who could harm or destroy these cultural resources.

Conclusion

For the reasons stated above CARE requests the SA/DEIS be re-circulated for public comments since the project has changed substantially since the SA/DEIS was released for comment and the BLM has yet to complete its analysis of the project necessary for meaningful public comment to take place.

Respectfully submitted,



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⁷ See <http://www.energy.ca.gov/2010-CRD-1/documents/index.html>

⁸ Sent by: robert@studio-rla.com File to pick up: La_Cuna_640.mov File will remain active for: 13 days from 7/8/2010 Link to file: <http://rcpt.yousendit.com/905189873/a7e69dc2c58ce3323b00ac5bd909358e>



Mr. Lynne Brown Vice-President
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July 8th, 2010

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 8th day of July 2010, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy,
Inc. (CARE)

09-AFC-8 POS attached



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

**PROOF OF SERVICE
(Revised 6/7/10)**

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DECLARATION OF SERVICE

I, _____ declare that on _____, I served and filed copies of the attached _____ . The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/genesis_solar].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.
