



**California Office**

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**By Email and US Mail**

July 7, 2009

Mr. Christopher Meyer  
Project Manager  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814

Mr. Jim Stobaugh  
Bureau of Land Management  
P.O. Box 12000  
Reno, NV 89520

**DOCKET**  
**08-AFC-13**

DATE	Jul 07 2009
RECD.	Jul 20 2009

Re: Scoping Comments on the Stirling Energy Systems Solar One Project, 74 Fed. Reg. 27176 (June 8, 2009)

Dear Mr. Meyer and Mr. Stobaugh:

The following comments are submitted by Defenders of Wildlife (“Defenders”) pursuant to the public review provisions set forth in the National Environmental Policy Act (“NEPA”), California Environmental Quality Act (“CEQA”) and associated regulations. 40 C.F.R. 6.203. CEQA Guidelines, § 15002. These comments fulfill the standing requirements set forth in CEQA. *See* Cal. Pub. Res. Code § 21177(b). Federal and State agencies are required to involve the public, to the extent practicable, in preparing environmental assessments. 40 C.F.R. 1501.4(b). CEQA Guidelines, § 15201. The Bureau of Land Management (“BLM”) and California Energy Commission (“CEC”), as lead agencies for the proposed SES Solar One Project (“Project”), are charged with fully considering public scoping comments for the Project, which may have significant environmental impacts if implemented as described in the Application for Certification (“AFC”) and the Issues Identification Report (“IIR”).

Defenders is a national, not-for-profit conservation organization with more than 440,000 members, including approximately 75,000 members and supporters who reside in California. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities. Defenders has advocated for heightened protection of desert habitats along with resident species, including the Desert tortoise and Mojave fringe-toed lizard.

Defenders’ 75,000 members residing in California regularly use the wildlife refuges, recreation areas and private lands within the relevant “zone of interest” - the Northern Sacramento Valley - for wildlife viewing. These members will be adversely affected and aggrieved by the proposed project actions because populations of certain wildlife species, namely Desert tortoise, will be reduced. *City of Los Angeles v. National Highway Traffic Safety Admin.*, 912 F.2d 478, 483 (D.C. Cir. 1990).

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Defenders thanks the CEC and BLM for the opportunity to participate in the scoping meeting and field trip and for making the environmental review and permitting processes fully open to public review comment. We hope that our comments on issues and alternatives are helpful in the preparation of draft environmental documents for the proposed project.

We strongly support California's greenhouse gas emission reduction and renewable energy utilization goals, and we will continue to work with state and federal agencies and renewable energy companies in the identification of socially and environmentally responsible solutions to increasing renewable energy production and transmission. Defenders believes renewable energy can and must occur without sacrificing our remaining wildlife heritage and values.

Defenders submits the following information regarding issues we have identified and alternatives for consideration by the CEC and BLM. In summary, the DWB will likely have significant environmental impacts on the Desert tortoise (*Gopherus agassizii*), a listed threatened species under the federal Endangered Species Act ("ESA") and California Endangered Species Act ("CESA"), the Mojave Fringe-toed lizard, the California Horned lark, Nelson's Bighorn sheep, and several species of native plants.

### **General Setting and Land Condition**

The proposed project involves 8,200 acres of federal land administered by the BLM, and is located between Interstate 40 and the Cady Mountains approximately 37 miles east of Barstow, California. General vegetation is Creosote Bush Scrub. The area naturally drains to the south and southwest through naturally occurring washes of varying size and length of the season. Contrary to statements in the AFC, the site is not in a degraded condition due to mining, livestock grazing and off-road vehicle use. Livestock grazing in the past was associated with the Cady Mountains Allotment, which has been retired by the BLM as part of a regional mitigation strategy to offset the impacts to the Desert tortoise as a result of the expansion of the National Training Center at Fort Irwin. We are unaware of any substantial mining impacts in the area, and off-road vehicle use is limited to designated roads and trails by the BLM land use decision. The site exhibits only a minor amount of use on such roads and trails by off-road vehicles. In fact, the AFC contains a summary the condition of the area, with approximately 87 acres disturbed and 7812 acres undisturbed. Thus, disturbed land within the proposed project area amounts to 1.1 percent.

### **Project Scope and Effect on Wildlife Movements**

The proposed project is unprecedented in size, entailing the exclusive use of nearly 13 square miles of public land for a period of approximately 30 years. Project construction would result in extensive alteration of the land surface with access roads, vegetation removal and drainage control structures. Deployment of approximately 32,000 dish engines each having a standing height of approximately 40 feet and installation of a perimeter fence would complete the project. The project would span from Interstate 40 north to the southern slopes of the Cady Mountains and from the high voltage transmission line west for several miles.

Wildlife movements through intact natural habitat in the project area may be seriously impacted. Defenders recommends strongly that the CEC and BLM fully study and disclose the magnitude of this development on species within and adjacent to the project area, and any possible mitigation measures that would be effective other than relocation of the proposed project or project denial. The species of greatest concern to Defenders with respect to the wildlife movement issue are the threatened Desert tortoise and the Desert bighorn sheep.

### **BLM Sensitive Species Policy**

Defenders has a significant interest in the effective implementation of BLM special status species policy (manual 6840) with regard to the proposed project. The objective of the 6840 policy is to “reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing those species under the ESA.”

According to the AFC, a number of BLM sensitive species are present within, adjacent to, or otherwise associated with the Solar One project area, including the Mojave Fringe-toed Lizard, Bendire’s Thrasher, Burrowing Owl and Golden Eagle. To effectively implement sensitive species policy, Defenders recommend that the EIS contain a complete catalogue and discussion of sensitive species populations and habitats present within the project area, as well as sensitive species populations and habitats that may be cumulatively affected by the Solar One project, other solar and wind energy projects in the area for which BLM has accepted right-of-way applications and intends to proceed with the permitting process in an expedited manner, and existing projects in the area such as highways, railways, powerlines and communication sites.

The EIS must include a robust analysis of impacts on sensitive species’ populations using measurable criteria and objectives. In order to effectively implement sensitive species policy, BLM must employ information on the distribution, abundance, population condition and habitat needs for sensitive species’ populations that may be impacted by the project. Defenders strongly recommend that the BLM clearly define population and/or habitat objectives for sensitive species within applicable regions of the CDCA and explain how those objectives relate to the project area. Clearly defined and measurable objectives can be used as effective decision criteria, providing the public with a means of evaluating alternatives and project implementation on sensitive species. In addition, it is critically important for the BLM to clearly articulate and implement a monitoring plan for sensitive species in order to evaluate the implementation of the project using sensitive species objectives.

### **Wildlife Species of Concern**

**Desert Tortoise:** Prior to recent decisions amending the California Desert Conservation Area Plan, the BLM had designated public land in the proposed project area and vicinity as Category 2 habitat for the Desert Tortoise. Although the Category 2 designation is no longer used by the agency, the management goal at the time it was in effect was to maintain stable, viable populations. The habitat in the project area is not within designated Critical Habitat or designated Area of Critical Environmental Concern for the Desert tortoise despite the fact that Desert tortoises occur in the project area in appreciable numbers. The population estimate is based on information provided by the project applicant and contained in the AFC.

The entire project area is described as suitable habitat for the Desert Tortoise. During sampling surveys for this species performed by the consulting biologists for the project, 57 live Tortoises and 30 actively used burrows were observed and documented. Because the 57 animals and 30 burrows observed were from a sampling effort, the total number of Tortoises expected to occur in the affected area range from 70 to 127. Defenders consider this range a relatively high number, leading us to conclude that the biological significance of this species in the project area is high, and that the habitat value is underrated.

Defenders request that the CEC and BLM fully study and disclose the nature and significance of the Desert tortoise population in the project area in future environmental documents prepared for the proposed project. At a minimum, the following should be addressed:

1. Age and sex of all animals observed during field studies.
2. Visual indications of upper respiratory and shell diseases present in the animals observed.
3. Site-specific description of where burrows were located.
4. Adequacy of the sampling strategy used to assess the occurrence and relative abundance of this species in the area.
5. Adequacy of the sampling strategy for detecting hatchling and juvenile members of the population.

We strongly recommend the CEC and BLM determine if the proposed project is in an area that functions as a biological corridor for the Desert tortoise, effectively allowing for biological linkage with other populations within and outside of the Western Mojave Recovery Unit. The latter include the Eastern Mojave and Northern Colorado Recovery Units, all of which were designated by the U.S. Fish and Wildlife Service (“USFWS”) in the 1994 Desert tortoise Recovery Plan. Defenders urge that the analysis of biological linkages for the tortoise in this area consider that we may be dealing with subpopulations that are part of a larger metapopulation.

**Desert Bighorn Sheep:** Bighorn occur on a permanent basis in the Cady Mountains immediately north of the project site. Bighorn here are likely a subpopulation exhibiting biological connectivity with other subpopulations in the Rodman, Newberry, and Ord Mountains. We urge the CEC and BLM to determine if the Cady Mountains Bighorn herd utilizes the proposed project area for foraging during the late winter and early spring seasons. Bighorn biologists such as Steve Torres of the California Department of Fish and Game, and John Wehausen of the University of California’s White Mountain Research Station should take the lead in making such assessments and determinations because of their recent and ongoing research into movement corridors for this species and their development of metapopulation plans for large portions of the California Desert.

**Birds of Prey:** Birds of prey, or raptors, nest in the nearby Cady Mountains. The BLM identified the Cady Mountains as a raptor nesting and foraging area in the 1980 California Desert Conservation Area Plan (Map No. 4, Sensitive, Rare, Threatened, and Endangered Wildlife Species). We recommend that raptor use of the project area for foraging be fully addressed in the environmental review process.

## **Alternatives to the Proposed Project**

Both NEPA and CEQA require the project applicant and the permitting agencies to develop project alternatives. Defenders strongly encourages consideration of alternatives that include different sites or a reduction in project size. For example, one project reduction alternative could be to leave an undeveloped wildlife movement corridor of approximately one to two miles in width (north to south,) along the entire interface with the Cady Mountains. At least one alternative project site should be included that would involve the use of existing degraded lands. Such an area exists to the west of the proposed site in the Daggett/Yermo/Newberry Springs area. This area has existing transmission capability and was used the the Department of Energy for the Solar One demonstration project and an adjacent solar thermal project operated by a public utility company. There are many abandoned agricultural fields and brownfields in this area.

## **BLM and the CEC should thoroughly analyze cumulative impacts**

The lead agency must prepare an Environmental Impact Statement (“EIS”) for proposed actions for which it is reasonable to anticipate cumulatively significant impacts. 40 C.F.R. 1508.25(c). Cumulative effects result from incremental impacts of a proposed action when coupled with other past, present and foreseeable future actions. Cumulative effects can result from individually minor but collectively significant actions over a period of time. 40 C.F.R. 1508.7. The CEC as lead CEQA agency must analyze cumulative impacts. The requirement for a cumulative impact analysis under CEQA must be interpreted so as to afford the fullest possible protection of the environment within the reasonable scope of the statutory and regulatory language. *See Citizens to Preserve the Ojai vs. Board of Supervisors*, 176 Cal.App.3d 421 (1985).

The NEPA and CEQA mandated environmental review of the Project should examine and disclose environmental effects of projects and human activities in the affected area as well as those additional projects and activities that are reasonably certain to occur. Thus, the impacts of Interstate 40, the railroad, electrical transmission facilities, communication sites and vehicle access should be considered, along with the potential impacts associated with other renewable energy project rights-of-way applications for wind and solar power that are within the general area.

The various projects in the area may have cumulative and aggregate effects on special status and listed species, such as Desert tortoise. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts, should be discussed in the same impact statement. 40 CFR 1508.25(a)(2). Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. 40 CFR 1508.25(a)(3).

**BLM must consult with the U.S. Fish and Wildlife Service on potential adverse affects to Desert tortoise**

The Endangered Species Act (“ESA”) requires that federal agencies consult on each separate Federal action which may jeopardize the continued existence of any endangered species or threatened species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. 402.14(a). BLM should initiate consultation with USFWS for the Desert tortoise. Such consultation should include a baseline status, using the current survey results finding 70 to 127 Desert tortoises on site as a starting point, but undertaking further comprehensive surveys on the site. In addition, USFWS should study the effects of project implementation on the tortoise, including any proposals for translocation of tortoise to off-site areas.

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Defenders requests all NEPA notices for the above-referenced project. The requested notices should be mailed to Defenders’ office at the California address listed above.

Defenders appreciates BLM’s commitment to maintaining the viability of sensitive species while facilitating the development of renewable energy facilities. We look forward to assisting BLM in conducting a comprehensive environmental analysis of the proposed SES Solar One Project site.

Sincerely,

Joshua Basofin  
California Representative

Jeff Aardahl  
California Representative