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CALifornians for Renewable Energy, Inc. (CARE) respectfully files this complaint and protests to the Ivanpah Solar Electric Generating System (ISEGS) Final Environmental Impacts Statement (FEIS) and associated proposed amendment to BLM's California Desert Conservation Area (CDCA) Plan.

I wish to file a complaint and protest against the California-based concentrating solar power (CSP) developer BrightSource Energy, the California Energy Commission (CEC), the United States Department of Interior Bureau of Land Management (BLM) and the United State Department of Energy (US DOE) for violating my human rights to fast track the development of large industrial solar thermal electric projects that will literally pave over hundreds of square kilometers of undeveloped wilderness whose entire landscape (including this project's site) is considered sacred to the Mojave, Paiute, and Chemehuevi peoples.<sup>1</sup>

### **Introduction**

A vast wilderness lands held in trust by the Federal government for native peoples through the Bureau of Land Management (BLM) are threatened with industrial development where literally hundreds of square miles of wilderness areas will be paved over for solar farms were these same officials can not guarantee the solar farms will even work. Fast-track projects are those where the companies involved have demonstrated to the BLM that they have made sufficient progress to formally start the environmental review and public participation process. These projects are advanced enough in the permitting process that they could potentially be cleared for approval by December 2010, thus making them eligible for economic stimulus funding under the American Recovery and Reinvestment Act of 2009.

### **Comments on Final EIS and proposed amendment to BLM's California Desert Conservation Area (CDCA) Plan**

#### **Final EIS is pre-committing to a certain plan prior to conducting an independent environmental review**

The Final EIS is pre-committing to a certain plan prior to conducting an independent environmental review [SA/EIS] which violates the public participation requirements under the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA). The project requires an EIS because it involves land that is currently owned by the Federal Government.

"The Cities of Vernon and Compton <sup>□</sup> and others filed petitions for writ of mandate to challenge the certification of an environmental impact report as to a portion of the redevelopment plan of the City of Long Beach for the Long Beach Naval Station. The Superior Court ordered the writ issued on the ground that certification of the final environmental impact report (FEIR) was a "post hoc rationalization" of a prior approval of the project...."<sup>2</sup>

<sup>1</sup> The video with the background info on our struggle for justice is at: <http://www.vimeo.com/13985034>

<sup>2</sup> See <http://ceres.ca.gov/ceqa/cases/1998/vernon.html>

"Failure to follow the NEPA process of evaluation of actions, public involvement, and decision maker consideration of full information, before actions are taken, is what is called a procedural lapse in implementation of the NEPA process. Some portion of the NEPA process has been left out or a short cut taken.

Timing - Premature selection and commitment to proposed action resulting in a "pre-decision" or preparing the NEPA document after the applicant has begun implementation of the project thus negating the intent of the law. Sometimes called post facto documentation or informally, NEPA backfill. The lapse directly relates to the need to treat NEPA compliance as a process rather than a document and includes consideration of the environment and public input before decisions at a local level are finalized or before action is taken. This lapse emphasizes the need for applicants, state, and federal officials involved to be educated on the process."<sup>3</sup>

#### **Inadequate No-action Alternative**

The Final EIS alternatives analysis is inadequate because it fails to properly provide for a no action alternative. Pursuant to NEPA (40 CFR 1505.1(e)), a reasonable range of alternatives must be examined in the Draft EIR/EIS, and were selected based on the following criteria: (1) the alternative's potential to meet the Proposed Action's purpose and need; (2) the feasibility of the alternative; and (3) the alternative's ability to avoid or lessen adverse effects of SCE's Proposed Project. As required under NEPA Section 1502.14(d), a No Action Alternative must also be considered." The BLM's No-action alternative is improper because it relies on approval of the (EITP) Eldorado-Ivanpah Transmission Project another ARRA Fast Track project.<sup>4</sup> This is an example of improper baseline information because this assumes there are generation facilities to be interconnected and there is no evidence to this effect.

When federal agencies decide on project proposals, "[n]o action . . . would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward."<sup>5</sup> The Ninth Circuit has held that "consideration of the alternatives requirement . . . guarantee[s] that agency decision-makers have before them and take into proper account all possible approaches to a particular project (*including total abandonment of the project*)."<sup>6</sup> An example of similar evasion appears in *Center for Biological Diversity*, where the BLM approved a land exchange giving Asarco fee ownership of land it intended to mine.<sup>7</sup> BLM based approval on the assumption that mining would occur in the same way with or without the land exchange, because Asarco

<sup>3</sup> See [http://www.fema.gov/library/file?type=publishedFile&file=nepa\\_desk\\_reference.pdf&fileid=78c5f760-0026-11dd-baa4-001185636a87](http://www.fema.gov/library/file?type=publishedFile&file=nepa_desk_reference.pdf&fileid=78c5f760-0026-11dd-baa4-001185636a87)

<sup>4</sup> See [http://www.blm.gov/ca/st/en/prog/energy/fasttrack/Eldorado\\_Ivanpah.html](http://www.blm.gov/ca/st/en/prog/energy/fasttrack/Eldorado_Ivanpah.html)

<sup>5</sup> *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, 46 Fed. Reg. 18026, 18027 (March 23, 1981).

<sup>6</sup> *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 785 (9th Cir. 2006) (emphasis in original).

<sup>7</sup> *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, 581 F.3d at 1065.

already held mining claims on the selected lands.<sup>8</sup> But BLM's evaluation of its no-action alternative was improper.<sup>9</sup> The Ninth Circuit reasoned that BLM improperly assumed that the no action alternative would result in the same outcome as the other action alternatives would.<sup>10</sup> In reality, however, without the land exchange, BLM would have had to require Asarco to comply with mining law, including submitting mining-operation plans for approval to use the land under certain circumstances.<sup>11</sup> By contrast, Asarco's fee land-ownership under the preferred alternative would have removed those regulatory requirements. Thus, in describing its no-action alternative, BLM failed to give an accurate portrayal of the status quo for a meaningful comparison of alternatives.<sup>12</sup> Just as the defendant in *Center for Biological Diversity* developed an unlawful no-action alternative by improperly characterizing the regulatory context under the status quo, the FEIS no-project alternative inaccurately portrayed the proposed project developer's entitlements in the regulatory context. Some examples of evidence of this unlawful pre-commitment from the No-action alternative section of the FEIS are as follows:

*In the absence of the ISEGS project, however, other power plants, both renewable and nonrenewable, would have to be constructed to serve the demand for electricity. If the No Action alternative were chosen, other solar renewable power plants may be built, and the impacts to the environment would likely be similar to those of the proposed project because solar renewable technologies require large amounts of land and similar slope and solarity requirements as the proposed ISEGS project. The No Action alternative may also lead to siting of other non-solar renewable technologies to help achieve the California Renewable Portfolio Standard.*

*Additionally, if the No Action alternative were chosen, it is likely that additional gas-fired power plants would be built or that existing gas-fired plants could operate longer. If the project were not built, California would not benefit from the reduction in greenhouse gases that this facility would provide. PG&E would not receive the 300-MW contribution to its renewable state-mandated energy portfolio and SCE would not receive the 100-MW renewable energy contribution.*

*California's Renewable Portfolio Standard has been implemented to reduce greenhouse gas emissions from gas- or coal-fired power plants. While the ISEGS project as proposed would have substantial impacts as a result of the extent of its disturbance, the facility is proposed to be located in an area of the desert that is not protected for specific wildlife species or for its wilderness values. In addition, substantial other development is proposed in the Ivanpah Valley. In the absence of the ISEGS project, other*

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<sup>8</sup> *Id.* at 1074-75.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1065.

<sup>12</sup> *Id.* at 1074-75.

renewable or gas-fired power plants would likely be constructed to serve the electricity demand that could be met with the ISEGS project. Given these factors and the importance of solar technology as a tool in reducing greenhouse gases, the No Action alternative is not superior to the proposed ISEGS project. [Emphasis added] [FEIR at 3-46.]

Clearly the failure to include the High DG alternative is an unlawful attempt to minimize the impacts of the project by not considering a reasonable range of alternatives as demonstrated by the AFC's improper assumption that under its No-Project alternative *presumably natural gas-fired generation* will be required to supply generation capacity if the project is not approved.

Clearly such finding would be erroneous since whenever an agency approves a major action that may affect the environment, it must comply with NEPA. NEPA "establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences," including, in many cases, preparation of an EIS.<sup>13</sup> In addition to analyzing the proposed agency action, an EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives' to [the proposed] action. The analysis of alternatives to the proposed action is 'the heart of the environmental impact statement.'"<sup>14</sup>

#### **PD and FEIR fail to include the High DG alternative**

The FEIS improperly excludes the High DG alternative. The FEIS states at 3-83, "However, achieving 400 MW of distributed solar PV or solar thermal would depend on additional policy support, manufacturing capacity, and lower cost than currently exists to provide the renewable energy required to meet the California Renewable Portfolio Standard requirements so additional technologies, like utility-scale solar thermal generation, are also necessary."

515 MW of PV solar DG<sup>15</sup> has been denied access to sell its capacity in to the markets. Additionally, the CPUC and CAISO have erected barriers to entry by small DG PV solar in to the ancillary services markets for avoided costs of natural gas, and emissions, including but not limited to; criteria pollutants credits; other greenhouse gas emission credits<sup>16</sup>; and renewable energy credits ("REC"s) based on specific environmental

<sup>13</sup> *Center for Biological Diversity v. U.S. Dept. of Interior*, 581 F.3d 1063, 1071 (9th Cir. 2009) (internal citations omitted).

<sup>14</sup> *Id.*; 40 C.F.R. § 1502.14 (2009).

<sup>15</sup> See California Public Utilities Commission's California Solar Initiative team Annual Program Assessment to the Legislature June 30, 2009. <http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/103173.PDF> Highlights of the report include: California has over half a gigawatt of solar connected to the electric grid at customer sites. With recent rapid growth, California now has over 515 megawatts (MW) of cumulative installed solar photovoltaic (PV) capacity at nearly 50,000 sites,<sup>1</sup> including 226 MW installed under the CSI Program.<sup>2</sup> The non-CSI Program solar PV capacity was installed primarily under prior solar programs, including the Self-Generation Incentive Program (SGIP) and the Emerging Renewables Program (ERP).

<sup>16</sup> Although the Commission's authority includes recovery of certain costs associated with environmental compliance through wholesale rates, the Commission does not directly regulate air emissions. The Commission is taking action consistent with climate change concerns, including removing regulatory barriers to increased development of renewable energy and enabling more effective demand response. In

attributes of specific types and technologies of renewable energy resource. Purportedly the California Solar Initiative "[CSI] Program focuses exclusively on onsite, grid-connected solar that is used by electric customers that want to offset some portion of their own load by installing self-generation. The CSI Program does not fund wholesale solar power plants, designed to serve the electric grid or help utilities meet Renewable Portfolio Standard ('RPS') obligations"<sup>17</sup> and this policy has created undue prejudice or disadvantage to any sale of electric energy for resale in interstate commerce of small Distributed Generation ("DG") PV solar located near to the load centers.<sup>18</sup>

By excluding the High DG alternative the FEIS perpetrates disparate impacts i.e., in the form of socioeconomic discrimination on low-income communities of color in the load centers where fossil fuel power plants are currently located that emit emissions that are harmful and endanger the public. This represents a distinct "community value" that supports locating solar PV generation near load centers where transmission upgrades may not be needed. Building transmission projects to connect ISEGS that will require nearly the same amount of fossil fuel combustion turbines for backup power during periods of peak demand is the antithesis of this "community value" that has not been examined in the FEIS.

NEPA requires full consideration of "appropriate" alternatives. [42 USC § 4332(2)(E)] Included with the appropriate alternatives must be the "no action" alternative [40 CFR § 1502.14(d)] The evidentiary record demonstrates the FEIS's "preferred alternative" as discussed in this FEIS the Mitigated Ivanpah 3 Alternative is not superior to the High DG option identified in the California Public Utilities Commission's 33% Renewables Portfolio Standard Implementation Analysis Preliminary Results (June 2009). It concludes at page 59 "[a] high DG strategy could facilitate achieving a 33% RPS in 2020 as well as mitigate some of the need for transmission and transform the market for solar PV technologies." The report goes on to provide Table 14 a Comparison of 33% RPS Cases Across RPS Policy Objectives demonstrating that the High DG scenario is the best "fit" to achieving RPS compliance with the highest rating of the scenarios analyzed.

On June 12, 2009 the California Public Utilities Commission (CPUC) Energy Division released its *33% Renewables Portfolio Standard Implementation Analysis Preliminary Results*.<sup>19</sup>

California lawmakers are currently developing legislation to increase the current 20% by 2010 Renewables Portfolio Standard (RPS) to 33% by 2020. The California Public Utilities Commission (CPUC) and California Energy Commission (Energy Commission) have endorsed this change and it

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addition, Commission staff studies federal, state, and regional greenhouse gas initiatives to consider the implications of such initiatives for the Commission and the wholesale energy markets it regulates.

<sup>17</sup> Annual Program Assessment to the Legislature June 30, 2009 at page 5.

<sup>18</sup> The California utilities contract for a variety of renewable resources including industrial wind, and industrial solar as part of the RPS Program, but exclude counting over 515 megawatts (MW) of cumulative installed solar photovoltaic (PV) towards RPS compliance. Updates on the progress of the RPS program can be found at <http://www.cpuc.ca.gov/PUC/energy/Renewables/>

<sup>19</sup> You can access this report at <http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/102354.PDF>.

is a key greenhouse gas (GHG) reduction strategy in the California Air Resources Board's (ARB) Assembly Bill (AB) 32 Scoping Plan. As the principal agency responsible for implementing the current RPS program, the CPUC has learned many lessons that can help guide the design of a higher mandate. In addition, several recent analyses have cast light on various aspects of renewable energy development and integration. Drawing on these resources and new analyses, staff at the CPUC developed this report in order to provide new, in depth analysis on the cost, risk, and timing of meeting a 33% RPS. This report does not recommend a preferred strategy on how to reach a 33% RPS, but rather provides an analytical framework for policymakers to weigh the tradeoffs inherent in any future 33% RPS program for California. [Executive Summary]

In regards to the High DG scenario the report concludes at page 59 "[a] high DG strategy could facilitate achieving a 33% RPS in 2020 as well as mitigate some of the need for transmission and transform the market for solar PV technologies." The report goes on to provide Table 14 a *Comparison of 33% RPS Cases Across RPS Policy Objectives* and Table 14 demonstrates that the High DG scenario is the best "fit" to achieving RPS compliance with the highest rating of the scenarios analyzed. [The Report's footnote 41 text notes] "[t]his study only preformed an implementation analysis on the 33% RPS Reference Case. Thus, evaluation of other cases for all criteria (except for cost and GHG reductions) is based on a qualitative analysis drawing from over seven years of experience in implementing the RPS program."

**Table 14. Comparison of 33% RPS Cases Across RPS Policy Objectives<sup>41</sup>**

Policy Objective	33% RPS Reference Case	High Wind Case	High Out-of-State Delivered Case	High-DG Case
Cost	●	●	●	○
Timing	○	●	●	●
GHG Emission Reductions	●	●	●	●
Resource Diversity	●	●	●	●
Local Environmental Quality Air Quality	●	●	○	●
Local Environmental Quality Land Use	○	●	●	●
Economic Development	●	●	○	●
Long-Term Transformation	●	○	○	●
Technology Development Risk	○	●	●	○

**Legend:**

- Case performs well
- Case performs poorly
- Case is neutral

To comply with its obligations under NEPA, an agency must analyze an adequate range of reasonable alternatives. The PD and FEIR failed to engage in a sufficient alternatives analysis in three ways. First, it did not re-evaluate the range of feasible alternatives in light of the project purpose. Second, the range of alternatives considered by the Commission was unreasonable because it failed to consider the High DG alternative. Third, the analysis of the No Action Alternative was flawed. Therefore, the proposed No-Project alternative is inconsistent with the requirements of NEPA, and the agency must redo the study and allow public comment on a reasonable range of alternatives.

The FEIS fails to identify the High DG alternative as preferred to the project so therefore the NEPA analysis must provide for a feasible No action and/or CEQA No-Project alternative which when combined with the High DG alternative should be environmentally superior to the proposed project. Essentially as proposed the applicant argues the proposed project is environmentally superior to doing nothing. Such a finding violates the NEPA and CEQA requirements to analyze the No action / No-Project alternative and are nonsensical since the AFC failed to properly consider the "appropriate" alternatives" including the High DG alternative. Therefore final environmental analysis should consider the "appropriate" alternatives" including the High DG alternative and the No-Action alternative.

#### **Loss of irreplaceable ecological resources**

The BLM's Renewable Energy Fast Track Projects website<sup>20</sup> lists 9 solar thermal projects in various stages of application or permitting along the Colorado River with another 15 or more projects slated for Arizona. Impacts on desert ecosystems, habitat and bio-resources are incalculable. As the Gold Rush of 1848 left a toxic legacy of mining tailings whose impact is measurable over 150 years later, Large Thermal Solar Developments will create impacts that will similarly be long term and disastrous.

- a. Grading of desert surfaces
- b. Use of scarce water for cooling and cleaning panels
- c. Interruption of animal migration patterns
- d. Reflectivity and potential atmospheric effects
- e. Impacts to watersheds
- f. Impacts to plant material and natural indigenous pharmacological resources
- h. Net effects on CO<sub>2</sub> sinkage and release

These impacts have not been studied to the degree to inspire confidence. Under the ARRA Fast Tracking process, Environmental Impact Statements have been quickly prepared. Answers are supplied by the Applicant in many cases before the questions can be asked. What are the effects of construction stripping the desert of its surface over major areas of virtually undisturbed wilderness?

Under the National Environmental Policy Act the relationship between the tribes and the United States can be described as government-to-government. The status of tribes has been described as that of "domestic dependent nations," and, as such, their sovereignty

<sup>20</sup> See <http://www.blm.gov/ca/st/en/prog/energy/fasttrack.html>



pre-dates the founding of the United States. Therefore the destruction of lands used by and sacred to tribes are subject to the tribes' rights of first refusal to protect their use of those lands and prohibit the development of those land held in trust for the tribes by the United States.

While researching the Section 106 consultation process I found the process handbook from the Advisory Council on Historic Preservation (ACHP).<sup>21</sup>

It seems to indicate the FEIS and amended CDCA Plan adopted by BLM with CEC and the project Applicant purportedly in government to government consultations pursuant to Section 106 by the BLM with Indian tribes is unlawful since they rely on authorizing the Applicant to conduct specific identification efforts for this undertaking by allowing the Applicant to retain an archaeological consultant to complete all of the investigations necessary to identify and evaluate cultural resources located within the Area of Potential Effect (APE) for both direct and indirect effects.

**Can applicants for federal permits or contractors hired by the agency initiate and carry out tribal consultation?**

No, federal agencies cannot unilaterally delegate their responsibilities to conduct government-to-government consultation with Indian tribes to non-federal entities. It is important to remember that Indian tribes are sovereign nations and that their relationship with the federal agency exists on a government-to-government basis. For that reason, some Indian tribes may be unwilling to consult with non-federal entities associated with a particular undertaking. Such non-federal entities include applicants<sup>□</sup> for federal permits or assistance (which would include any contractors hired by the applicant), as well as contractors who are not government employees but are hired to perform historic preservation duties for a federal agency. In such cases, the wishes of the tribe for government-to-government consultation must be respected, and the agency must carry out tribal consultation for the undertaking. [Page 16 to 17]

**Complaint and Protest**

The proposed action evaluated within this Environmental Impact Statement (EIS) is the construction and operation of the Ivanpah Solar Electric Generating System (ISEGS) project, a proposed solar-thermal electricity generation facility located on public lands managed by the Bureau of Land Management (BLM) in San Bernardino County, California. The EIS represents the environmental review document developed by the BLM that relied on the Applicant's consultants and their biased analysis to evaluate potential impacts associated with the proposed action. The EIS also functions as the environmental evaluation of a proposed amendment to BLM's California Desert Conservation Area (CDCA) Plan, which would identify the ISEGS site within the Plan.

Solar Partners I, LLC; Solar Partners II, LLC; Solar Partners IV, LLC; and Solar Partners VIII, LLC, which are subsidiaries of BrightSource Energy, Inc. (applicant or BrightSource Energy), a company based in Israel filed an Application for Certification (AFC) (07-AFC-5) for the proposed ISEGS. The proposed ISEGS project and related

<sup>21</sup> See <http://www.achp.gov/regs-tribes2008.pdf>

facilities are under the Energy Commission's jurisdiction and require certification by the California Energy Commission to operate the facility. As the proposed project would be located on public land, BrightSource Energy has also filed an application to BLM for a land use Right-of-Way pursuant to the Federal Land Policy and Management Act (FLPMA). Under FLPMA Title V (Rights-of-Way), the Secretary of Interior is authorized to grant rights-of-way for the purpose of allowing systems for generation, transmission, and distribution of electric energy. BrightSource Energy has also applied to the U.S. Department of Energy (DOE) for a loan guarantee pursuant to Title XVII of the Energy Policy Act. The project would be developed in three phases, known as Ivanpah 1, 2, and 3. The application for a loan guarantee for Ivanpah 1 was made in November 2008, and the application for Ivanpah 2 and 3 was made in February 2009.

BrightSource Energy has also applied to the U.S. Treasury Department for Payments for Specified Energy Property in Lieu of Tax Credits under §1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). This program offers a grant (in lieu of investment tax credit) to receive funding for 30% of the total capital cost at such time as a project achieves commercial operation (currently applies to projects that begin construction by December 31, 2010 and begin commercial operation before January 1, 2017).

This EIS examines the environmental and public health and safety aspects of the proposed project, based on the information provided by the applicant, that received through public comment, and that received from other sources available at the time the EIS was prepared. The EIS contains analyses required as part of an EIS prepared under the NEPA.

California lawmakers are currently developing legislation to increase the current 20% by 2010 Renewables Portfolio Standard (RPS) to 33% by 2020. The California Public Utilities Commission (CPUC) and California Energy Commission (Energy Commission) have endorsed this change and it is a key greenhouse gas (GHG) reduction strategy in the California Air Resources Board's (ARB) Assembly Bill (AB) 32 Scoping Plan.

While the goal of greenhouse gas reduction is worthy, these large scale plants pose other dilemmas, from the water use required by the "Ivanpah" plant, to potential displacement of endangered species, and possible destruction or diminishment of Native sacred sites.

In a desert, which some claim as part of the Colorado River Basin drainage, the project would use a wet cooling tower for power plant cooling. Water for cooling tower makeup, process water makeup, and other industrial uses such as mirror washing would be supplied from on-site groundwater wells. Project cooling water blowdown will be piped to lined, on-site evaporation ponds. Electrical power would be produced using steam turbines fed from solar steam generators. The solar steam generators receive heated transfer fluid from solar thermal equipment comprised of arrays of parabolic mirrors that collect energy from the sun. The applicant has no entitlement to Colorado River water but our neighbor Mexico is entitled to one point five million acre feet annually and the United States has failed to deliver on its allocation under a Treaty with Mexico.

The land is home to various endangered species of plants and wildlife, and to the Desert Tortoise. But human beings have also lived at the foot of these peaks for a very long time. The Palen Mountains are sacred to the Native Americans and in Nahuatl they are called "Hue-Hue-Talpallan" which means Hue (Ancient), Hue (Ancient), Talpallan (Reddish Earth) altogether this means "The Ancient, Ancient Reddish Earth"

The area is also home to Native petroglyphs, ancient trails, springs and a way of life and cosmological orientation that derives its symbolism and power from the very mountains which ring the valley to be paved over by the plant. The tribal community whose heritage is at stake is the Chemehuevi, or NuVuu. The NuVuu are Ute Aztecan, and this is where it gets interesting. The area is known as La Cuna de Atzlan, or the Cradle of Atzlan. Local indigenous leaders proclaim the landscape itself to be the source of the imagery of the Aztec calendar.

Atzlan is referred to in the "Book of the Hopi" as the creation site of the people. Mexican historian and Professor Emeritus of the Autonomous University of Baja California, Dr. Celso Aguirre Bernal, has stated that in their wanderings, the Aztecs left other remnants of their civilization, founding such modern tribes as the Hopi and the Colorado River Indian Communities. These and many other Southwestern tribes refer to the Aztecs as the Hohokam, or "Those who are gone."

Fast-track projects are those where the companies involved have demonstrated to the BLM that they have made sufficient progress to formally start the environmental review and public participation process. Many of these companies are non-US-owned, such as Solar Millennium, a subsidiary of a German company. BrightSource is a company based in Israel and more than two thirds of its employees are employed there.

On August 4, 2010 the California Energy Commission's siting committee gave its approval of BrightSource's 392-MW Ivanpah power plant in the Mojave Desert.<sup>22</sup> The project has undergone a number of changes in the last year due to siting and environmental concerns. The backing of the CEC's siting committee makes it very likely that the regulatory agency will allow the project to go ahead. The CEC is expected to make its final decision in the next month.

The second big development for the company came in August when the Bureau of Land Management issued its final environmental impact review on the Ivanpah plant.<sup>23</sup> The BLM said that the project – which was scaled down by 48 MW this February due to possible impacts on wildlife – was the best proposed option so far. The BLM has also put it on the "fast track" list of projects, which should speed up the permitting and development process.

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<sup>22</sup> <http://www.energy.ca.gov/sitingcases/ivanpah/notices/2010-08->

[24 Cmte conference+Evidentiray hearing.html](#)

<sup>23</sup> [http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/needles/lands\\_solar.Par.19048.File.dat/1-CDCA-Ivanpah-Final-EIS.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/needles/lands_solar.Par.19048.File.dat/1-CDCA-Ivanpah-Final-EIS.pdf)

These two announcements come after February 22, 2010 when BrightSource Energy, Inc., developer of utility-scale solar thermal power plants, announced the U.S. Department of Energy has conditionally committed to provide \$1.37 billion in loan guarantees to support the financing of BrightSource's Ivanpah Solar Electric Generating System. BrightSource proposes to develop three solar thermal power plants and shared facilities in close proximity to the Ivanpah Dry Lake, in San Bernardino County, California on federal land managed by the Bureau of Land Management (BLM). The proposed project would be constructed in three phases: two 100-megawatt (MW) phases (known as Ivanpah 1 and Ivanpah 2) and a 200-MW phase (Ivanpah 3).

These actions by the CEC, BLM, and US DOE all violated the civil rights of US workers based on their national origin and Native Americans in particular since the project is to be located on what is a sacred wilderness area to the local indigenous tribes, the Mojave, Paiute, and Chemehuevi.

My complaint alleges these actions by the CEC, BLM, and US DOE violate Title VI of the Civil Rights Act of 1964 that no person in the United States shall be excluded from participation in or otherwise discriminated against on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance.

I attended the U.C. Berkeley's Cleantech Institute in June 2010. BrightSource made a presentation (attached) that I believe supports my Complaint against the project discriminating against me personally as an unemployed Sr. Manufacturing Engineer since my national origin is in the United States. Slide 4 of the attached shows that BrightSource currently employees 55 FTEs in the US and 135 FTEs in Israel. Slide 16 shows that BrightSource based in Israel is the major supplier of the mirrors, sun trackers, software and integration hardware for the project except for the steam turbines whose manufacturer is Siemens a German manufacturer. I wish to object to Slide 17 specifically since it demonstrates more than 75% of the debt to finance Ivanpah project is backstopped by taxpayer stimulus funds... with a 30% tax grant up front.. but, the Civil Rights Act of 1964 prohibits the use of federal funds by entities that would clearly discriminate against American workers since less than 30% of the jobs involved for the Ivanpah project go to US workers. I note that a presenter at the Cleantech Institute event working for ARPA-E said that no more than 10% of their funds could be spent outside the United States.

In behalf of the Mojave, Paiute, and Chemehuevi peoples I complain that the project adversely impacts Native American cultural resources and sacred sites and that the federal government has a duty to conduct government to government consultations with Native American tribes impacted by the project and the BLM has failed to do so which violated Title VI of the Civil Rights Act of 1964. I also complain that the project would not provide any jobs to Native Americans.

### **Conclusions**

The Gold Rush of 1848 resulted in the economic, cultural and physical destruction of Native peoples, families and communities. The introduction of Large Thermal Solar,

under the auspices and processes of the fast tracked ARRA Recovery Act Stimulus Program will kill the tribes as a political force and as economic competition in the State of California if allowed to go forward. We have to act quickly to challenge this new exploitation of the peoples in the territories of indigenous cultural groups. It is up to us to make this happen.

Respectfully submitted,

*Michael E. Boyd*

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