



California Office

1303 J Street, Suite 170 | Sacramento, CA 95814 | tel 916.313.5800 | fax 916.313.5812
www.defenders.org

January 28, 2010

Bureau of Land Management
California Desert District
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553-9046
(Attn: Greg Thomsen)

(Sent by electronic mail to: catulewind@blm.gov)

Re: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Tule Wind Project and the Proposed East County Substation Project, San Diego County. Federal Register: December 29, 2009 (Volume 74, Number 248), Pages 68860-68861.

Dear Mr. Thomsen:

On behalf of Defenders of Wildlife (Defenders) and our more than 1,000,000 members and supporters in the U.S., 200,000 of which reside in California, I am writing to provide issue scoping comments on the Bureau of Land Management's (BLM) intent to prepare an Environmental Impact Statement for the proposed Tule Wind Project (EIS) located in McCain Valley in eastern San Diego County, CA.

Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

We strongly support renewable energy production and utilization in California, but we do not consider the construction of utility-scale projects, and especially the very large projects currently proposed on public lands in and adjacent to the California Desert to be the primary way to meet our long term renewable energy goals. Some utility-scale wind energy projects exist on BLM administered lands in the California Desert, as well as on adjacent private lands. Such large projects should be sited on degraded or disturbed land, to the maximum extent possible, before projects are considered on public lands having significant biological resources and values. We expect that the analysis of alternatives in the NEPA process will fully address opportunities for locating proposed projects on both federal and privately owned lands that are in a disturbed condition consistent with the purpose and need for each project.

Our scoping comments are based on the project description contained in the Federal Register notice. For background information purposes, we include a summary of the project description, as follows:

National Headquarters

1130 17th Street, N.W.
Washington, D.C. 20036-4604
tel 202.682.9400 | fax 202.682.1331

Project Description: Pacific Wind Development submitted a right-of-way (ROW) application to construct, operate, and maintain an energy generation facility approximately 60 miles east of San Diego, north of Interstate 8. The project would generate 200 megawatts of wind energy. The project, known as the Tule Wind Project, would include the construction of new roads, turbines, a transmission line, and other facilities. The proposed project would be constructed on approximately 15,500 acres, comprised of lands administered by the BLM as well as private lands under county jurisdiction, state lands, and lands within the Ewiiapaayp Indian Reservation. The public land portion of the proposed project involves 12,125 acres in McCain Valley administered by the El Centro Field Office of the BLM.

SDG&E has applied to BLM for a 1.5-mile, 100-foot wide ROW to accommodate a 138-kilovolt transmission line in support of the wind project. The ROW is part of the application SDG&E has filed with the California Public Utilities Commission (CPUC) for the much larger East County (ECO) Substation Project.

Environmental issues that should be addressed in the environmental review process are:

1. Project Alternatives: The range of alternatives analysis is the “heart of the environmental impacts statement.” 40 C.F.R. § 1502.14. The National Environmental Policy Act (NEPA) requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions.” *See* 40 C.F.R. §§ 1052.14(a) and 1508(c).

Recommendation: The DEIS must include alternative project sites or locations, including those that may not fall under the jurisdiction of the BLM; project extent and electrical power generation that differ from the applicant’s proposal; and the potential for different technology that may lead to lesser potential impacts on sensitive environmental resources.

The issue of the applicant signing power purchase agreements with public utility companies for a certain amount of electrical power prior to decisions on the proposed project by the various agencies with permitting authority should be addressed. This practice appears to result in inflexibility on the part of the applicant with regard to what constitutes a reasonable range of alternatives, and may unjustly influence the permitting agencies into thinking that the only alternatives are the proposed project or no project.

2. Land Use Planning and Management: Federal land in McCain Valley under jurisdiction of the BLM has been the subject of land use planning and conservation management for several decades. Notable among these are the following:

- McCain Valley National Cooperative Land and Wildlife Management Area: Among the first actions taken to conserve lands and wildlife resources in McCain Valley was establishment of the McCain Valley National Cooperative Land and Wildlife Management Area in 1961 by Secretary of the Interior Stuart Udall. It was established by Public Land Order 2460. According to the USDI, Office of the Secretary, in an information notice dated 8/16/1961¹, the McCain Valley Cooperative Land and Wildlife

¹ Department of the Interior, Office of the Secretary. Information Service notice dated August 16, 1961: Interior Establishes Six Federal-State Land and Wildlife Areas.

Management Area was established for the purpose of "...development of wildlife, recreational, and other natural resources for benefit of the entire Nation." Furthermore, the announcement states "...the Department has withdrawn the lands in the cooperative management areas from all applications under the nonmineral public land laws. The lands are closed to disposition under the homestead, desert land and scrip selection laws, but are open to mining, mineral leasing, grazing, and other compatible uses."

- Eastern San Diego County Management Framework Plan: The 1981 Eastern San Diego County Management Framework Plan (MFP)² established multiple land use and resource management policy for approximately 99,000 acres of public land. McCain Valley is within this planning area. This multiple land use plan highlighted the wildlife and natural resources values of the McCain Valley area, including the popularity of recreational hunting for upland game and Mule Deer. This plan called attention to the high wildlife values associated with naturally occurring Oak Woodlands in McCain Valley because they provide essential nesting and foraging area for numerous bird species, including raptors.

The MFP identified certain nonfederal land parcels for acquisition to facilitate management of critical resource values. BLM has acquired non-federal parcels of land in the McCain Valley Wildlife Habitat Management Area through purchase using funding from the Land and Water Conservation Fund (LWCF), and the MFP indicated BLM intended to continue to purchase remaining private lands within McCain Valley using the LWCF or mitigation funds. These land acquisitions were described as desirable because they resulted in the protection of wildlife and archaeological resources, and facilitated public recreation

- McCain Valley Wildlife Habitat Management Plan: BLM, in cooperation with the California Department of Fish and Game, prepared the first McCain Valley Wildlife Habitat Management Plan³ in 1978 and an updated version in 1984⁴. The purpose of these habitat management plans is to establish policies to protect and enhance wildlife habitat and numerous species of plants and animals occurring on public lands in McCain Valley. Wildlife species and their habitats addressed in the plan included upland game birds, raptors, Mule Deer, and Peninsular Bighorn Sheep. Several species of rare plant species were noted and habitat protection goals were established.
- Eastern San Diego County Resource Management Plan: The Eastern San Diego County Resource Management Plan⁵ basic land use management plan was finalized in 2008 and establishes the most recent public land management policy for the McCain Valley and

² Bureau of Land Management. 1981. Eastern San Diego County Planning Unit, Management Framework Plan. California Desert District, Riverside, CA. 50 pp.

³ Bureau of Land Management. 1978. McCain Valley Wildlife Habitat Management Plan. Riverside District, Riverside, CA. 19 pp.

⁴ Bureau of Land Management. 1984. McCain Valley Wildlife Habitat Management Plan. California Desert District, El Centro Resource Area. (A Sikes Act Plan prepared jointly with the California Department of Fish and Game, Region 5. 26 pp. plus appendices.

⁵ Bureau of Land Management. 2008. Eastern San Diego County Resource Management Plan and Record of Decision. El Centro Field Office, California Desert District, El Centro, CA. 143 pp. plus appendices.

other public lands in eastern San Diego County. With regard to McCain Valley, this plan established the following management policies for vegetation and wildlife resources:

A. Vegetation

1. Promote oak woodland communities with oak recruitment that contain trees of various size and age classes, with an understory of native perennial grass and forb species.
2. Ensure that oak woodland communities are stable or expanding with no net loss and minimal habitat fragmentation.
3. Avoid adverse impacts to special status species, priority species, and plants protected by the California Native Plant Protection Act and associated habitats by developing, modifying, redesigning, mitigating, or abandoning specific projects.
4. Surface-disturbing activities will be designed to avoid impacts to riparian areas, desert fan palm oases, oak woodlands, and desert wash to the greatest extent possible. Where avoidance is not possible, these areas will be restored to their previously undisturbed or native condition. Restoration will follow approved protocol and include watering and maintenance until establishment.
5. Prohibit removal of native standing trees, alive or dead, with the exception of fire management, health and human safety, or disease control.
6. Surface-disturbing activities will be designed to avoid impacts to riparian areas, desert fan palm oases, oak woodlands, and desert wash to the greatest extent possible. Where avoidance is not possible, these areas will be restored to their previously undisturbed or native condition. Restoration will follow approved protocol and include watering and maintenance until establishment.
7. Riparian areas will be avoidance areas for all commercial and non-commercial surface disturbance activities. Avoidance area is defined as an area only available for discretionary land use authorizations when there are no other reasonable alternatives for the authorization.

B. Wildlife

1. Restore native species habitat distribution and occurrence (especially for priority species), conserve biological diversity, maintain genetic integrity and exchange, and improve availability of suitable habitats and habitat linkages. Initiate restoration activities in priority habitats—such as invasive weed removal or native seeding—to move toward desired habitat conditions, and provide functional landscapes to sustain the fish and wildlife species populations. Wildlife habitat improvement projects for the Planning Area will be implemented in coordination with the California

Department of Fish and Game (CDFG), pursuant to Section 103(f) of the California Desert Protection Act of 1994, and/or USFWS, as necessary.

2. Pursue land acquisition options (i.e., purchase, exchange, donation, and easement) to consolidate important wildlife habitats.
3. Provide natural or man-made nesting or perching structures in suitable areas to enhance foraging and breeding habitat for raptors as the need arises.
4. Require all new structures to be raptor-safe in accordance with the Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 (the Avian Power Line Interaction Committee 2006) or the current version of this document.
5. Apply the BLM wind energy program policies and BMPs from Appendix A in the Wind Energy Development Program ROD (DOI BLM 2005f).
6. Prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable, through the application of mitigation measures for authorized activities.
7. Management actions will be guided by recommendations of comprehensive migratory bird planning efforts such as those completed by California Partners in Flight, including *The Oak Woodland Bird Conservation Plan* (California Partners in Flight [CalPIF] 2002), *The Riparian Bird Conservation Plan* (Riparian Habitat Joint Venture 2005), *The Coastal Scrub and Chaparral Plan* (CalPIF 2004), and other plans as available.
8. Monitor new energy development including power lines and wind turbines or other structures to better understand risks to non-game migratory birds.
9. Require a non-game migratory bird inventory for new utility or energy projects.
10. Require a bat inventory for new wind energy projects.
11. Implement species or habitat-specific goals, objectives, prescriptions, and actions, as applicable, addressed in the approved recovery plans for federally listed species.
12. Require that any surface disturbance activities avoid or minimize impacts and mitigate for residual impacts to all special status species habitat. Mitigation will be in the form of habitat restoration or acquisition.
13. Critical habitat lands are exclusion areas for all types of Land Use Authorizations including renewable energy (geothermal development is regulated by the land use decisions for leasable mineral resources).

14. Incorporate the additional conservation measures that are recommended in the BO prepared by the USFWS for the RMP (Appendix B).
15. For Peninsular Bighorn Sheep, minimize effects resulting from human-caused disturbances.
16. Maintain migratory corridors and stopover habitat of sufficient quality and quantity to facilitate use by Swainson's hawks.
17. ACECs are exclusion areas for renewable energy (i.e., wind and geothermal development).

C. Utility Corridors

1. All new utility ROWs, consisting of the following types, will be located only within the designated corridor: 1) new electrical transmission towers and cables of 161 kV or above.

Recommendation: The EIS must carefully analyze the effects of the proposed project on the McCain Valley and its rich biological resources, including the effects on those resources that are addressed from a land use policy perspective in the various land use plans and wildlife activity plans identified above. The effects of the proposed project on each goal and objective for biological resources in these plans need to be analyzed. BLM must clearly demonstrate to what degree, if any, this proposed project is consistent with established management policies, goals and objectives for wildlife resources.

Recommendation: Analysis of the effects of the proposed project on the management directive for the McCain Valley contained in Public Land Order 2460 is critical. This order states that public lands are to be managed by the BLM "...for the development, conservation, utilization, and maintenance of their natural resources, including their recreational and wildlife resources." Although the order allows for multiple land uses requiring a right of way, the decision whether or not to grant a right of way for specific projects is discretionary by BLM and must be based on an analysis of consistency of the impacts of the proposed project with the goals of the order.

Recommendation: The EIS must disclose the location of all lands BLM and other cooperating agencies have acquired within the McCain Valley for the purposes of enhancing biological resources and recreational uses of wildlife. Acquisitions by donation, purchase or exchange need to be identified. If lands have been acquired for wildlife conservation and recreational purposes, then BLM must evaluate the effects on these acquired lands and their wildlife resources in light of the recent BLM policy decision in California that lands acquired for conservation purposes should be identified as avoidance/exclusion areas for multiple land use activities that would result in surface disturbance.⁶

⁶ Bureau of Land Management. 2009. Interim Policy on Management of Donated Lands and Lands Acquired with Land and Water Conservation Funds (LWCF). Instruction Memorandum No. CA-2009-20. May 27, 2009. Sacramento, California. 2pp.

3. Biological Resources

BLM Policy Manual: Special Status Species Management (6840): Analysis of the impacts of the project on Special Status Species, and the subsequent development of avoidance, minimization and mitigation measures for such impacts, must conform with policy contained in the 6840 Manual as follows: “On BLM-administered lands, the BLM shall manage Bureau sensitive species and their habitats to minimize or eliminate threats affecting the status of the species or to improve the condition of the species habitat...”⁷

Recommendation: For each special status species of plant and animal that would be affected by the proposed project, the EIS must demonstrate whether or not the proposed projects, and all the alternatives, are consistent with the 6840 manual.

Raptor Management: The EIS should describe the occurrence of nesting and foraging raptors in and adjacent to McCain Valley based on literature surveys and adequate field work on site. The Eastern San Diego County MFP identifies key raptor nesting areas in McCain Valley and also states that scattered Oak Woodlands provide important nesting habitat. Raptor migration through and adjacent to McCain Valley needs to be analyzed.

Recommendation: The long term effects of large scale wind turbine developments on the raptor resource in McCain Valley must be a part of the analysis in the EIS. The cumulative impacts of other existing wind turbine developments and powerlines should be part of the analysis.

BLM should clearly articulate in the EIS the policy for raptor management on public lands, the protection provisions of the Migratory Bird Treaty Act, and any other applicable laws, regulations or policies pertaining to raptors. Impact mitigation measures should be based on credible and applicable scientific studies that have demonstrated measures that can be used to avoid or substantially reduce adverse impacts to raptors and other bird species.

4. Interagency Coordination: Two wildlife habitat management plans prepared by BLM for the McCain Valley Wildlife Habitat Management Area in 1978 and 1984 were cooperative management plans prepared in concert with the California Department of Fish and Game. The plans were formally approved by the Department of Fish and Game Regional Manager and the BLM District Manager.

Recommendation: The EIS should include information provided by the California Department of Fish and Game on the compatibility of the proposed wind turbine project in McCain Valley based on their role as cooperator in management of wildlife resources. There is little, if any, documentation of any involvement by the Department of Fish and Game in development of the Eastern San Diego County Resource Management Plan and specifically issues associated the renewable energy development in McCain Valley.

⁷ Bureau of Land Management. 2008. Manual 6840: Special Status Species Management. Washington, D.C. 24 pp.

Thank you for considering our comments. If you have any questions, please contact me at (916) 313-5800 x110 or via email at jaardahl@defenders.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Aardahl". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeff Aardahl
California Representative