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RIVERSIDE COUNTY FIRE DEPARTMENT
IN COOPERATION WITH
THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

John R. Hawkins ~ Fire Chief
210 West San Jacinto Avenue ~ Perris, CA 92570
(951) 940-6900 ~ www.rvcfire.org

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September 4, 2010

Bureau of Land Management
Palm Springs South Coast Field Office
Allison Shaffer, Project Manager
201 Bird Center Drive
Palm Springs, CA 92262

RE: Plan Amendment/Final EIS for the Blythe Solar Power Project

Dear Ms. Schaffer,

Thank you for providing the Riverside County Fire Department the opportunity to review the Plan Amendment/Final EIS for the Blythe Solar Power Project in Blythe, California.

With respect to the referenced project, the Riverside County Fire Department has the following comments:

The proposed project will have a cumulative adverse impact on the Fire Department's ability to provide an acceptable level of service. These impacts include an increased number of emergency and public service calls due to the increased presence of structures, traffic, hazardous materials and service vehicles.

The proposed Blythe Solar Power Project will create a "**cumulative**" increase in requests for service and will add to the Fire Department's ability to provide an acceptable level of service. These services include increased emergency and public service calls.

Due to the remote location and climate conditions, a response by the fire department would require multiple units to respond. In the event of a fire, medical emergency, hazardous material or technical rescue incident, the fire department will be required to cover or *back fill* stations left uncovered in order to meet service demands and support the region. If an incident were to occur, fire units would be dispatched from Blythe, Indio and the lower Coachella Valley as part of the regional integrated fire protection response system.

The onsite conditions create a high risk potential for a technical rescue, and a hazardous materials incident which would require specialized equipment and trained staff to respond. Extended response times from specialized equipment can be anticipated to the project area.

The California Fire Code outlines fire protection standards for the safety, health, and welfare of the public. These standards will be enforced by the Fire Chief.

If I can be of further assistance, please feel free to contact me at (951) 940-6349 or e-mail at jason.neumann@fire.ca.gov

Sincerely,

Jason Neuman

Jason Neuman, Captain
Strategic Planning Bureau
Riverside County Fire Department

Atlanta
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September 10, 2010

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VIA OVERNIGHT MAIL AND EMAIL

Ms. Allison Shaffer
Project Manager
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92264
(760) 833-7100
CAPSSolarBlythe@blm.gov

Re: PA/FEIS Comments, Blythe Solar Power Project, CACA - 048811

Dear Ms. Shaffer:

On behalf of Solar Millennium, LLC and its subsidiary Palo Verde Solar I, LLC (collectively, "Solar Millennium"), we would like to provide the following comments on the Plan Amendment/Final Environmental Impact Statement (PA/FEIS) for the Blythe Solar Power Project, CACA - 048811. BLM published the PA/FEIS on August 20, 2010, and provided a 30-day public comment period that closes on September 20, 2010. These comments therefore are timely-filed.

We appreciate the enormous amount of effort that has gone into preparing the PA/FEIS. We know that BLM, its consultants, coordinating agencies, and the U.S. Department of the Interior must allocate limited resources to many applications for utility-scale renewable energy projects on lands under BLM's jurisdiction, as well as to other priorities.

We believe the BSPP is an important step in moving our nation away from its detrimental reliance on traditional fossil fuel-based energy. If it is approved, the BSPP will help meet national and state renewable energy mandates and goals by generating roughly 1,000 MW of clean, renewable energy. This generation will displace greenhouse gases that traditional energy plants otherwise would generate and will help fight global climate change. The BSPP also will be located near existing energy infrastructure, including transmission, and near existing development. We are hopeful that BLM approves the BSPP and the associated Amendment to the California Desert Conservation Area Plan in a Record of Decision.

Ms. Allison Shaffer
September 10, 2010
Page 2

Our comments on the PA/FEIS fall into three categories:

- (1) General comments that apply to the entire PA/FEIS;
- (2) Comments concerning the BLM-specific mitigation measures/conditions that the PA/FEIS proposes; and
- (3) Comments on specific statements or issues that the PA/FEIS makes or identifies.

We have provided comments on the Programmatic Agreement (PA/FEIS Appendix D, pages D-39 to D-81) separately through the National Historic Preservation Act Section 106 consultation process.

I. General comments

First, the PA/FEIS repeatedly refers to the conditions of compliance (COCs) that the California Energy Commission (CEC) has imposed in its parallel certification process for the BSPP. The PA/FEIS refers to the COCs contained in the August 11, 2010 Presiding Members' Proposed Decision (PMPD), but those COCs may change in the final license or as a result of amendments to the license. To ensure that Solar Millennium is required to comply with the most current COCs, we ask that BLM refer to the COCs in the license, as amended.

Second, we have reviewed the PA/FEIS to identify inaccuracies in the project description. While we are hopeful that any ROD will refer to the BSPP Plan of Development (POD) for the controlling project description, our comments in Section III (specifically, in the table referenced in Section III and included as Attachment 1) identify these inaccuracies.

Third, Solar Millennium and its consultant, AECOM, conducted many biological surveys of the BSPP site. A list and description of those surveys is included as Attachment 4.

Finally, the PA/FEIS asserts that the Palo Verde Mesa Groundwater Basin, which underlies the BSPP site and from which the BSPP will draw groundwater, is hydrologically connected to the mainstream of the Colorado River through the Palo Verde Valley Groundwater Basin, and that groundwater pumping for the project could induce additional groundwater flow from the River. See PA/FEIS at ES-12, 3.20-2 to -15, 4.19-1, 4.19-21 to -24, 5-46 to 5-48, 5-54 to 5-55, Appendix C-8. As a result, the PA/FEIS asserts in some places that Solar Millennium must obtain an entitlement to Colorado River water under the Bureau of Reclamation's proposed—but now withdrawn—accounting surface method. See PA/FEIS at 5-46, Appendix C-8.¹ Both assertions are erroneous, as

¹ In other places, the PA/FEIS more appropriately recognizes that the BSPP's water impacts may require an entitlement or be mitigated with use reduction or recharge measures. See PA/FEIS at 4.19-24 (stating that Colorado River entitlement or water mitigation measures will offset any

Ms. Allison Shaffer
September 10, 2010
Page 3

shown by information submitted to and generated by the CEC for which the FEIS does not, but should, account. Solar Millennium may submit additional comments on this issue before the close of the public comment period.

II. Comments on proposed mitigation measures

The PA/FEIS proposes various mitigation measures above and beyond those that the CEC has imposed. We have two general comments concerning these additional measures.

First, we understand that BLM is still determining exactly how it will participate in compliance activities. Please let us know when BLM exercises the relevant Memorandum of Understanding with the CEC.

Second, most of the CEC's COCs do not require Solar Millennium to submit compliance-related documentation to the CEC and to BLM. In the PA/FEIS, BLM appears to have re-inserted dual submission requirements for many conditions. If BLM decides to issue a ROD approving the BSPP, Solar Millennium requests that the agencies work together to avoid duplicative submissions where possible to avoid unduly burdensome compliance reporting.

Our specific questions and comments concerning the additional mitigation measures proposed in the PA/FEIS are below.

A. Mitigation measures contained in PA/FEIS Chapter 4 (Environmental Consequences)

BLM-CUL-1 through -CUL-9 (PA/FEIS at 4.4-7 to -9): Based on the statement (PA/FEIS at 4.4-7) that "BLM would require [CUL-1 through CUL-9] be implemented to the extent they are consistent with BLM's Programmatic Agreement," it is our understanding that the Programmatic Agreement (once executed) will supersede these nine conditions. If this understanding is correct, we ask that any ROD indicate this.

In addition, the BLM conditions appear to re-state/summarize certain CEC COCs. Solar Millennium believes it would make more sense to just refer to the Programmatic Agreement and CEC conditions in any ROD and not refer to the BLM-specific conditions. If this change is not implemented, any ROD and/or the Programmatic

adverse impact); PA/FEIS at 5-48 (stating that Solar Millennium must obtain a Colorado River entitlement "or the replacement or commensurate reduction in use of groundwater, or recharge to groundwater at another point in the basin) (emphasis added); id. (stating that "Mitigation Measure SOIL&WATER-2 would mitigate potential reductions in flow to the Colorado River by requiring acquisition of entitlements or offsets to Lower Colorado River water."); PA/FEIS at 5-54 (discussing ability of mitigation measures to offset potential impacts to Colorado River; "[t]herefore, the proposed action would not interfere with any water right or MWD's ability to divert water from the Colorado River.").

Ms. Allison Shaffer
September 10, 2010
Page 4

Agreement should clarify that Solar Millennium is not obligated to pay duplicate fees on duplicate conditions. Compare BLM-CUL-1 with CEC CUL-1 and CUL-2).

BLM-PHS-1 (PA/FEIS at 4.11-27): Solar Millennium currently plans to address potential UXO hazards prior to construction by searching a variety of historical records, investigating LiDAR (radar topography), and reviewing data to identify focused areas where UXO may be present. Solar Millennium will conduct onsite digital geophysical mapping in these targeted areas. This plan has been developed in consultation with AECOM specialists in Washington DC familiar with UXO hazards and with the Patton activities in Blythe area. Solar Millennium seeks BLM's confirmation that this plan is consistent with BLM-PHS-1.

BLM-PHS-2 (PA/FEIS at 4.11-29): With respect to the two locations within the proposed right-of-way (ROW) in the northwest area, Solar Millennium and AECOM's records indicate these AMLs are trenching locations (trenches dug with a bulldozer for soil sampling to investigate shallow mining potential) rather than openings to mines. There is no evidence that these depressions are connected to shafts, portals, or tunnels. Furthermore, these locations are within the disturbance area but outside the solar field. In light of these facts, neither Solar Millennium nor its consultant, AECOM, believes that these features pose any safety hazard. In addition, these locations were not identified as historic resources given that they were created some time between 1957 and 1983. Avoidance and/or mitigation should not be required.

The third AML area (southeast of the BSPP site) is outside the proposed ROW and on private land, as indicated in the PA/FEIS. Solar Millennium's construction and operations should not impact this area. In other words, Solar Millennium already is avoiding this location. Under these circumstances, Solar Millennium should not be required to coordinate with the landowner and/or mitigate offsite.

If any ROD contains these conditions as written, Solar Millennium would like to confirm that it needs to identify, flag, and avoid these AMLs only if Solar Millennium, in its professional judgment and in consultation with BLM, determines that activity in or around these areas "pose[s] a physical safety hazard."

BLM-REC-2 (PA/FEIS at 4.12-5): The recreation areas referred to in this measure (Midland, Mule Mountains and La Posa LTVA's, Wiley Wells and Coon Hollow Campgrounds) are not anywhere near the BSPP site, and thus it makes no sense to require Solar Millennium to "prepare and distribute interpretative materials including a construction schedule and safety information regarding trucks and other heavy equipment on local roads" to users of these sites. We ask that BLM not include this measure in any ROD or that it provide a better explanation for its necessity.

BLM-REC-4, -REC-5, and OHV-1 (PA/FEIS at 4.12-6, 4.16-10): BLM defines the "start of construction" as the date that BLM grants a Notice to Proceed (NTP) (following issuance of any ROD). Because Solar Millennium was not aware of these new mitigation

Ms. Allison Shaffer
September 10, 2010
Page 5

measures until BLM published the PA/FEIS on August 20, 2010, Solar Millennium cannot coordinate the construction activities in the 60-day timeframe proposed if BLM issues an NTP together with, or shortly after, any ROD. Accordingly, Solar Millennium requests that BLM reduce the timeframe in these new measures to 15 days. If BLM includes these measures in any ROD as written, we note that on September 2, 2010, Solar Millennium met with BLM to begin consultation concerning its compliance with these measures.

BLM-REC-4 (PA/FEIS at 4.12-6): Solar Millennium is uncertain what recreation activities and/or areas BLM believes may be impacted by construction or operation of the BSPP. We ask that BLM more specifically identifies these activities and/or areas if BLM includes this condition in any ROD. Solar Millennium submits that any such impacts will be minimal, particularly in light of the low recreational use of the project site and surrounding areas. See FEIS at 4.12-3.

BLM-OHV-2 (PA/FEIS at 4.16-10): Solar Millennium does not believe that a new trail is required. There appear to be other trails on the NECO map that connect to the northern area from a different route to the east. If BLM retains this condition any ROD, Solar Millennium asks that BLM provide the criteria by which it “may” require Solar Millennium to construct a new trail.

BLM-BIO-7a (PA/FEIS at 4.17-9, 4.21-15): Solar Millennium supports this measure as it will ensure that the monitoring required under CEC COC BIO-7 and other mitigating measures uses available climatological data to discern impacts or trends related to climate change.

BLM-VIS-1 (PA/FEIS at 4.18-17): Mirrors with a white, non-reflective background are the international standard for solar thermal power projects. Solar Millennium is consulting with mirror vendors to determine whether they can alter the mirror background without affecting mirror performance. In the event they cannot, Solar Millennium would like to work with BLM to determine whether the standard background would sufficiently reduce visual impacts, and requests modification of this measure to allow for such consultation.

BLM-WATER-1 (PA/FEIS at 4.19-24): Solar Millennium already has designed the evaporation ponds to include at least two feet of freeboard. This measure is unnecessary.

BLM-BIO-21 (PA/FEIS at 4.21-15): The condition should simply refer to the more current CEC COC BIO-21, as amended, which was developed in consultation with and among BLM, the CEC, USFWS, and CDFG.

Ms. Allison Shaffer
September 10, 2010
Page 6

B. Mitigation measures included in PA/FEIS Chapter 5 (Consultation, Coordination and Public Involvement) but not in Chapter 4

In its Responses to Public Comments on the Draft EIS, Chapter 5 sets forth the following mitigation measures that are not adopted or included in Chapter 4:

- **BLM-BIO-10** (PA/FEIS at 5-38);
- **BLM-SOIL&WATER-11** (PA/FEIS at 5-43, 5-51);
- **BLM-SOIL&WATER-12** (PA/FEIS at 5-43); and
- **BLM-SOIL&WATER-14** (PA/FEIS at 5-44).

Solar Millennium would like to know whether BLM will include these Chapter 5 measures in any ROD as enforceable measures. In the event that BLM does include one or more of these measures in any ROD, we have the following comments on those measures.

BLM-BIO-10 (PA/FEIS at 5-38): As the CEC's COC BIO-10 recognizes, Solar Millennium's Desert Tortoise Relocation/Translocation Plan will be approved by USFWS, BLM, CEC and CDFG and will impose the appropriate management standards. In drafting and executing this Plan, Solar Millennium will comply with the most current desert tortoise protocol released by USFWS with respect to desert tortoise translocation. Including this measure in light of the CEC's COC BIO-10 is unnecessary.

BLM-SOIL&WATER-11, -SOIL&WATER-12, -SOIL&WATER-14 (PA/FEIS at 5-43 to 5-44, 5-51): Solar Millennium is unclear how to comply with the requirement that it incorporate "the likely effects of climate change of increased rainfall and flooding." Climate change impacts are difficult to ascertain and predict, and a drainage design, once built, cannot be changed. Moreover, Solar Millennium already has designed the BSPP's drainage channels to accommodate more flows than would occur in a 100-year storm event (which inherently account for the potential effects of climate change). If BLM insists on including these measures in any ROD, it would be impossible for Solar Millennium to meet other deadlines. Detailed designs for the first phase of drainage (for BSPP Units 1 and 2) already have been completed and submitted to the CEC's Chief Building Officer (CBO) pursuant to CEC requirements. Solar Millennium requests that BLM not include these measures in any ROD.

C. Errata in mitigation measures

The list of conditions found at page 4.2-12 of the PA/FEIS (Environmental Consequences – Impacts on Air Resources) does not mention AQ-SC7, but that condition is included in Appendix G. Solar Millennium requests clarification as to whether AQ-SC7 applies to the BSPP.

Compliance-13 at Appendix G, page 8, is missing the last paragraph. That paragraph should read: "**Verification Change:** A verification may be modified by the CPM

Ms. Allison Shaffer
September 10, 2010
Page 7

without requesting an amendment to the decision if the change does not conflict with the conditions of certification and provides an effective alternate means of verification.”

III. Comments on specific statements/issues

Attachment 1 is a table of specific statements and issues in the PA/FEIS and our comments concerning them, organized by where each issue first appears in the PA/FEIS.

* * * *

We appreciate the opportunity to provide comments on the Blythe PA/FEIS. Please let us know if you have any questions or require further information.

Sincerely,



Matthew J. Sanders
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Jim Abbott, Acting State Director, BLM-California

**Comments of Solar Millennium
Blythe Solar Power Project - PA/FEIS**

ATTACHMENTS

<u>No.</u>	<u>Description</u>
1	Solar Millennium comments on specific PA/FEIS issues/statements (incorporated by reference into September 10, 2010 comment letter)
2	Solar Millennium, Table 5.6-3R: Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2) (submitted to CEC July 12, 2010)
3	Letter from Jim Abbott, BLM-California Acting State Director, to Regional Director of U.S. Fish & Wildlife Service, Region 8, regarding Eagle Act Consultation for Renewable Energy Projects (August 26, 2010)
4	BSPP Biological Survey List (Solar Millennium)

Attachment 1

Attachment 1 (incorporated by reference)

Comments of Solar Millennium on BSPP PA/FEIS

* Comments are organized by where the issue or statement first appears in the PA/FEIS.

#	SECTION	PAGE	ISSUE	COMMENTS
Executive Summary				
1	Executive Summary, Chapter 1	ES-4, 1-4, 2-14	The FEIS states that the Blythe Solar Power Project (BSPP) will be constructed of four identical units.	The four BSPP units are not identical, as FEIS page 2-5 recognizes.
2	Executive Summary	ES-4	The FEIS states that “[t]he BSPP would be connected to Southern California Edison’s planned Colorado River Substation, which would be located approximately five miles southwest of the BSPP area, via the proposed gen-tie line, a bundled double circuit 230 kV transmission line.”	The proposed gen-tie line is a double-circuit, 230 kV line, but it is not bundled.
3	Executive Summary, Chapter 2	ES-5, 2-13	The FEIS states that “[t]he routing for each of these [communications] lines would be adjacent to the Black Rock Road, and the site access road.”	<p>The routing description is incorrect. As Solar Millennium explained in its comments on the CEC’s PMPD:</p> <p>Voice and data communications would be provided by a new twisted pair telecommunications cable. The routing for this cable will end at the existing infrastructure near Mesa Drive. In addition, the BSPP has two other telecommunications lines required by CAISO to provide operational data to the Colorado River Substation. The primary transmission-related telecommunications line will be strung overhead along the same poles as the 230 kV gen-tie line to the Colorado River Substation. The redundant transmission-related telecommunications cable will be buried cable similar to the BSPP’s telecommunications cable. The routing for both of the buried telecommunications cables will be adjacent to the site access road for the portion north of I-10. The redundant telecommunications line continues south of I-10 to the Colorado River Substation following the route of the gen-tie line, while the BSPP’s telecommunications cable follows Black Rock Road to Mesa Drive.</p>

**Attachment 1 (incorporated by reference)
Comments of Solar Millennium on BSPP PA/FEIS**

#	SECTION	PAGE	ISSUE	COMMENTS
4	Executive Summary	ES-9	Table ES-2 contains blank boxes for cultural impacts under Reconfigured and Reduced Acreage alternatives.	These boxes presumably should be filled in.
5	Executive Summary	ES-42	Table ES-17 says: "Transport large equipment complaint with CalTrans."	This appears to be an error. Solar Millennium gathers that this sentence should read "Transport large equipment permit from CalTrans," but would like confirmation.
6	Executive Summary, Chapter 3 – Vegetation Resources	ES-45, 3.18-2, 3.23-8, 4.17-2, 4.17-8	The FEIS is unclear about the acres of dunes that the BSPP may affect.	The FEIS is correct (page 3.18-2) that the project site contains no sand dunes or sand dune habitat. The FEIS also correctly states (pages ES-45, 3.23-8) that there are 58.2 acres of dunes, although those dunes are located entirely within the linear disturbance areas and the site for the proposed Colorado River Substation. Solar Millennium will mitigate impacts to the 58.2 acres at a 3:1 ratio per the NECO Plan Amendment.
7	Executive Summary, Chapter 4 – Wildland Fire Ecology	ES-51, 4.20-4	The FEIS states that wildland fire risk would increase "to a slight, but unknown degree."	Solar Millennium agrees that the risk of wildland fire caused by the BSPP is slight. To prevent the spread of any fire resulting from facility operations, the facility will incorporate fire suppression facilities designed by a Fire Protection Engineer. Fire protection equipment will be installed and maintained in accordance with applicable NFPA standards and project facilities will be designed and operated in conformance with Uniform Fire Code requirements for safe storage, dispensing, use, and handling of hazardous materials. Specifically, smoke, heat, and flame detectors will be included into the critical plant control systems. Automatic deluge and sprinkler systems are included in occupied areas like the control room. Flow valves, isolation valves and other prevention measures are incorporated to contain and control qualities of exposure in the solar field areas. Two fire fighting foam trucks (for suppressing heat transfer fluid (HTF) fires) will be onsite and centrally located near the assembly hall. Operations personnel will be trained / qualified in fire fighting methods and will be the first responders.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>Finally, no vegetation will be allowed onsite, meaning that no plants or other materials will be able to burn and carry a fire offsite. Solar fields, roads, and other areas will be paved or made of hardpacked dirt and kept free of weeds and other extraneous materials.</p> <p>See also Comment on Issue #54 (concerning risk of fire from HTF use and storage).</p>
Chapters 2, 3 and 4 generally				
8	Chapters 2, 3, and 4	<i>passim</i>	The FEIS is inconsistent about whether excess land will be relinquished from Solar Millennium's ROW application and returned to BLM.	<p>Solar Millennium understands from BLM that excess land not used by the BSPP will be returned to BLM. The ROD should state this fact clearly.</p> <p>For the BSPP, Solar Millennium applied for 9,400 acres but would use only 7,025 (subject to final design requirements). Thus, 2,375 acres—25% of the land applied for—would be returned to BLM.</p> <p>The return of excess land is absent from, but highly relevant to, the FEIS's discussion of cumulative effects. Some but not all of the cumulative effects analyses recognize that not all renewable energy projects proposed on BLM lands within the CDCA Plan boundaries will be developed, and thus that those analyses may be overly conservative (i.e., tend to overestimate impacts). However, those analyses are overly conservative for another reason: even for those projects that are developed, excess land will be returned to BLM.</p>
9	Chapters, 2, 3, 4	<i>passim</i>	The Project Description states at page 2-1 that the BSPP's planned life is 30 years, but could be shorter, while Chapters 3 and 4 state that the planned life is 30-40 years.	The estimated operating life of the BSPP is 30-40 years.
10	Chapters 2, 3, 4	2-10, 2-15,	The FEIS contains repeated references to HTF heaters.	The BSPP will not employ HTF heaters.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
		4.11-8, 4.11-10, 4.11-13, 4.18-4, 4.18-5, etc.	<p>For example, page 2-15 states: “During winter, a natural gas-fired HTF heater would be used when weather conditions dictate (i.e. on cold nights). An HTF expansion vessel and overflow vessel would be required to accommodate the volumetric change that would occur when heating the HTF to the operating temperature.”</p> <p>Page 4.11-8 states: “Natural gas at the proposed facility only would be used to fuel the auxiliary boilers and HTF heaters.”</p>	<p>The paragraph at page 2-15 should be revised to read: “At times where circulation alone is insufficient to provide adequate freeze protection (such as winter nights), the auxiliary boiler, which will typically run at 25 percent capacity overnight to provide steam for the STG steam seals, will be utilized at 100 percent capacity to provide steam to an HTF heat exchanger to further heat the HTF.”</p> <p>Regarding page 4.11-8, natural gas will not fuel any HTF heaters. The HTF heat exchangers will use steam from the auxiliary boilers as the heating medium.</p>
Chapter 2 – Proposed Action and Alternatives				
11	Chapter 2	2-3	The FEIS states that “[a] weather station located in each power block provides real-time measurements of weather conditions that affect the solar field operation. Radiation data is used to determine the performance of the solar field.”	<p>The BSPP will have weather stations in the solar fields, not just in the power blocks. As Solar Millennium explained in its comments on the CEC PMPD:</p> <p>“A weather station located in the power block areas provides real-time measurements of weather conditions that affect the solar field operation. Two to four additional weather stations may be required per unit for energy-scheduling accuracy. These additional weather stations would be located within the solar fields. Radiation data is used to determine the performance of the solar field.”</p>
12	Chapter 2	2-4	<p>The FEIS lists the “Major Project Components,” including:</p> <ol style="list-style-type: none"> 1. Power Block Unit #1 (northeast); 2. Power Block Unit #2 (northwest); 3. Power Block Unit #3 (southwest); 4. Power Block Unit #4 (southeast); 5. Access road from Black Rock Road to onsite office; 6. Office and parking; 7. Land Treatment Unit (LTU) for bioremediation/land farming of HTF-contaminated soil; 	<p>This list is incorrect and should be revised as follows (corrections are in bold):</p> <ol style="list-style-type: none"> 1. Solar Field & Power Block Unit #1 (northeast); 2. Solar Field & Power Block Unit #2 (northwest); 3. Solar Field & Power Block Unit #3 (southwest); 4. Solar Field & Power Block Unit #4 (southeast); 5. Access road from and including upgraded portion of Black Rock Road to onsite office; 6. Office and parking;

Attachment 1 (incorporated by reference)
Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			8. Warehouse/maintenance building and laydown area; 9. Onsite transmission facilities, including central internal switchyard; 10. Dry wash rerouting; and 11. Groundwater wells used for water supply.	7. Land Treatment Unit (LTU) for bioremediation/land farming of HTF-contaminated soil; 8. Warehouse/maintenance building, assembly hall , and laydown area; 9. Onsite transmission facilities, including central internal switchyard; 10. Dry wash rerouting; and 11. Groundwater wells used for water supply; 12. Telecommunications lines; and 13. Natural gas pipeline.
13	Chapter 2	2-4	The FEIS lists the components of each power block, including “3. One HTF freeze protection heat exchanger.”	Each power block will contain <u>two</u> HTF freeze protection heat exchangers.
14	Chapter 2	2-11	The FEIS states that the solar mirror washing for the BSPP would require approximately 30 acre feet per year (ac-ft/yr) of water.	The BSPP will use approximately <u>230</u> ac-ft/yr of water for mirror washing. The total water demand during operation, including these 230 ac-ft, will be approximately 600 ac-ft/yr.
15	Chapter 2, Chapter 4 – Lands & Realty	2-13, 4.6-6, 4.22-1, 4.19-7	The FEIS is inconsistent in describing what level of post-project restoration will be required. For example: <ul style="list-style-type: none"> ▪ Page 2-13 does not specify level of required restoration; ▪ Page 4.6-6 states that land would be available for other uses “depending on the condition of the land and the use proposed”; ▪ In the context of onsite vegetation, page 4.22-1 states: “The BSPP would irretrievably commit resources over the 30-40 year life of the project. After 30-40 years, the BSPP is planned to be decommissioned and the land returned to its pre-project state.” ▪ In the context of washes and drainages, page 4.19-7 states: “During decommissioning, the BSPP site would be restored to its existing condition.” 	Solar Millennium understands that BLM is in the process of preparing decommissioning guidelines for large-scale solar projects. Solar Millennium is preparing a general decommissioning plan prior to the issuance of any Notice to Proceed. We have understood that BLM intends to require stabilization of the site (including potential revegetation and removal of above ground equipment) but not to restore to “pre-project” or “existing” conditions, and seek confirmation of this understanding. We also seek confirmation that specific decommissioning requirements will be determined in a detailed decommissioning plan to be developed closer to the time that decommissioning will actually occur.
16	Chapter 2	2-15	In describing the Heat Collection Elements (HCEs), the FEIS states:	The HCEs are steel pipes, not steel tubes.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			<p>“The HCEs of the four solar plants would be comprised of a steel tube surrounded by an evacuated glass tube insulator. The steel tube would have a coated surface, which would enhance its heat transfer properties with a high absorptivity for direct solar radiation, accompanied by low emissivity. Glass-to-metal seals and metal bellows would be incorporated into the HCE to ensure a vacuum-tight enclosure. The enclosure would protect the coated steel tube and reduce heat losses by acting as an insulator.”</p>	
17	Chapter 2	2-20	<p>The FEIS states that “[t]he waste water treatment system would require two 4-acre evaporation ponds per power block. Two ponds were selected for reliability. The plant would operate on one pond for approximately 24 months, and then switch to the second pond.”</p>	<p>Each plant will operate using one evaporation pond for approximately <u>four</u> months, not 24 months, and then switch to the other pond.</p>
18	Chapter 2	2-25, 2-27 to 2-30	<p>The FEIS states that BLM encouraged Solar Millennium to “locate its project on public land with the fewest potential conflicts.”</p>	<p>Solar Millennium would like to elaborate on the process Solar Millennium undertook to “locate its project on public land with the fewest potential conflicts.”</p> <p>Taking into account 16 different environmental criteria, Solar Millennium conducted a detailed review of four site alternatives in East of Lancaster, El Centro, Johnson Valley, and Chuckwalla Valley. The presence of Areas of Environmental Concern at the Johnson Valley and Chuckwalla Valley sites made their selection unlikely (the Chuckwalla Valley also included part of a Desert Wildlife Management Area). However, the feasibility of site control, Solar Millennium’s ability to secure thousands of acres for the project, was another key consideration. Solar Millennium determined that three owners was the maximum number it should consider dealing with. This factor strongly weighed against selection of the site East of Lancaster (1,370 parcels), and the Johnson Valley and Chuckwalla Valley sites (29 and 9 owners, respectively). The El Centro site involved only two owners, including BLM. However at 3,500 acres, this site was significantly smaller than other options under consideration.</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
19	Chapter 2	2-31	The FEIS states that linear Fresnel technology is outside Solar Millennium's expertise.	<p>As the CEC has noted in its June 4, 2010 RSA, Part One (pages B.2-59 to B.2-60) and August 10, 2010 PMPD (page 32), linear Fresnel technology is proprietary and not currently available to other developers.</p> <p>Solar Millennium would like to add that non-parabolic trough solar technologies are not within Solar Millennium's core competency and as a result are not viable alternatives in light of BLM's purpose and need. In addition, those technologies, as compared with the proposed solar trough technology, would not substantially change the severity of visual impacts, biological resources impacts and cultural impacts because land requirements and water use vary only marginally among the technologies. See CEC RSA at B.2-59 to B.2-60 (June 4, 2010) (explaining that linear Fresnel "technology would not eliminate the significant impacts of the proposed solar trough technology at this site.").</p> <p>Finally, linear Fresnel technology, unlike Solar Millennium's parabolic trough technology, is unproven in terms of performance and cost at a large scale. Linear Fresnel technology is not a proven commercial product for implementation at a large scale today. (The Kimberlina Solar Thermal Energy Plant in Bakersfield, California is a 5 MW plant that began operation in October 2008. Others are in development or early construction, but none of these approaches a utility-scale installation.) See also CEC RSA at B.2-59 to B.2-60 (June 4, 2010) (explaining that a 1000 MW linear Fresnel facility is only "theoretically possible," and that Ausra, Inc., the company that has patented the technology, "has changed its focus to being a technology and equipment provider rather than an independent power developer and owner and will focus on medium-sized (50 MW) solar steam generating systems for</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				customers including steam users, such as food processors, enhanced oil recovery firms, and utilities for power augmentation systems that deliver steam into existing fossil-fuel power plants.”).
20	Chapter 2	2-31	The FEIS explains why solar photovoltaic (PV) technology was rejected as an alternative.	<p>Solar Millennium would like to add that concentrating solar thermal (CST) technology has certain advantages over PV. CST has better peak capacity characteristics and fewer and less significant short-term fluctuations. The latter comes from the fact that when intermittent clouds pass over a PV system, output can change quickly and drastically. CST systems, in contrast, have thermal inertia in their HTF. Specifically, an operator can slow the flow rate of a system’s HTF in anticipation of cloud cover, thereby increasing HTF temperatures and avoiding short-term fluctuations in energy output. <u>See also</u> Comment to Issue #16.</p> <p>Finally, CEC Staff’s analysis of renewable energy technology options indicates that contributions from each commercially available renewable technology will be needed to meet SCE’s RPS requirements and to achieve the statewide RPS target for 2020 (between 45,000 GWhs to almost 75,000 GWhs according to the 2009 IEPR). Therefore, the combined contribution of the alternatives of wind, other solar technologies, geothermal, and biomass is needed to complement rather than substitute for the Blythe Solar Power Project solar thermal contribution to meeting SCE and statewide RPS requirements.</p>
21	Chapter 2	2-31	The FEIS explains why distributed generation was rejected as an alternative.	Solar Millennium would like to add that, while it is possible to achieve 1,000 MW of distributed solar energy over the coming years (California 1 million Solar Roofs Initiative), the limited numbers of existing facilities make it difficult to conclude with confidence that this much distributed solar will be available within the timeframe required for the

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>BSPP. Barriers exist related to interconnection with the electric distribution grid.</p> <p>In addition, the costs of distributed solar projects tend to be supplemented by special funding programs. Of the 598 MW installed in investor-owned utility territories, 342 MW were installed under the CSI Program at 31,000 sites, and 256 MW were installed through other programs, including the California Energy Commission's New Solar Homes Partnership (NSHP), the Self-Generation Incentive Program (SGIP) and the Emerging Renewables Program (ERP). All of these installations took more than five years to complete.</p> <p>Distributed generation has certain advantages over remote installations, including the ability to avoid transmission and distribution system losses and the ability to defer transmission line upgrades. However, especially when installed in urban areas, the small scale of the projects sacrifices economies of scale and the solar resources are not as good as those found in the California desert. <u>See</u> Rebuttal Testimony of Arne Olson on Behalf of BrightSource Energy, Inc. and First Solar Inc., California P.U.C. Proceeding A 09-05-027 (July 31, 2010). For example, during the peak hour in 2009, CSI installed solar systems had a "peak-hour capacity factor" of 0.59, meaning that 59 percent of all installed solar capacity was performing at the peak hour. <u>See</u> "California Solar Initiative Annual Program Assessment" June 30, 2010, Prepared by the California Public Utilities Commission. In contrast, the BSPP will operate at an 80% capacity factor in the peak hours.</p> <p>California's RPS goals cannot realistically be met through the exclusive use of distributed generation systems. If</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>every available commercial rooftop resource identified in prior feasibility studies were to be developed, the resulting generation capacity would just barely meet the state's goals. This assumes that all commercial rooftops would be made available for such a program and that all projects would be connected on the utility side of the meter (client side connections do not count toward RPS goals). Setting aside the timing issues of negotiating the rights to develop on countless rooftops, it is simply not realistic to assume that every rooftop with potential use as an urban solar generation site will be made available. See Rebuttal Testimony of Arne Olson on Behalf of BrightSource Energy, Inc. and First Solar Inc., California P.U.C. Proceeding A 09-05-027 (July 31, 2010); see also CEC BSPP PMPD at 32 (August 10, 2010) (describing challenges associated with distributed generation in meeting RPS goals).</p>
22	Chapter 2	2-32	The FEIS explains why wind energy was rejected as an alternative.	<p>Wind energy development in the San Geronio Pass (between Beaumont and Palm Springs along the I-10 corridor) is significant and has its origins in the late 1970s. The lack of development of wind resources in the Desert Center and Blythe area is a clear statement of the lack of a viable wind resource, and there is no evidence to suggest that the project site would be a viable site for wind power development. Indeed, the known viable wind resource areas in California are under active development to respond to California RPS goals.</p> <p>Utility grade wind projects also have their own significant environmental impacts on views, species (particularly birds), and other resources. A wind alternative would not necessarily reduce impacts in comparison to the BSPP.</p>
23	Chapter 2	2-32	The FEIS explains why geothermal technology was rejected as an alternative.	Solar Millennium would like to reiterate that there is no demonstrated geothermal potential in or near the project

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>area. See FEIS at 3.8-4 (“There are no mineral leases within the BSPP area. The BLM’s Prospectively Valuable maps for leasable minerals show that there is low potential for the occurrence of oil and gas, geothermal resources, oil shale or tar sands, coal, sodium, potassium and phosphate.”).</p> <p>The nearest known geothermal resource is in the Imperial Valley and it is unlikely that an undiscovered significant geothermal resource is lying in wait in California. See U.S. Department of the Interior, <u>U.S. Geological Survey Fact Sheet 2008-3082</u> (posted Sept. 2008) (noting that “regions with significant geothermal potential but few identified geothermal systems include northeastern Nevada, western Utah, southern Idaho, eastern Oregon, and parts of New Mexico and Colorado.”).</p>
24	Chapter 2	2-33	The FEIS explains why energy efficiency and demand-side management were rejected as an alternative.	In addition, as the CEC has explained, “[b]ecause of [California’s] energy efficiency standards and efficiency and conservation programs, California’s energy use per person has remained stable for more than 30 years while the national average has steadily increased.” Despite the progress that California has made in this area, “stabilizing per capita electricity use will not be enough to meet the carbon reduction goals of AB 32.” CEC, <u>2009 California Integrated Energy Policy Report, Final Commission Report: CEC-100-2009-003-CMF</u> , at 4 (2009). This is true not least because electricity demand will increase as population increases. See <i>id.</i> at 227.
Chapter 3 – Affected Environment				
25	Chapter 3 – Introduction	3.1-1	The FEIS states that “[t]he proposed action includes a 230-kilovolt (kV) transmission line that would interconnect with the regional grid at Southern California Edison’s (SCE) planned Colorado River Substation about five miles southwest of the plant site.”	The referenced transmission line is a <u>double-circuit</u> 230 kV line.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
26	Chapter 3 – Mineral Resources, Paleontological Resources, Soil Resources; Chapter 4 – Public Health & Safety	3.8-3, 3.11-3, 3.15-2; 4.11-47 to 4.11-48	The FEIS refers to a “preliminary geotechnical investigation” and says that it “does not cover the alignment of the proposed off-site linears to the south.”	Solar Millennium would like to add that 15 additional geotechnical borings will be completed in September 2010 for the BSPP Unit One power block area, subject to an approved Determination of NEPA Adequacy (DOI-BLM-CA-060-0010-0064-DNA) dated August 13, 2010. Post-NTP, more geotechnical borings may be drilled in the gen-tie area, power block and other areas onsite to support final detailed engineering designs.
27	Chapter 3 – Mineral Resources	3.8-5	The FEIS states that “[t]here is potential for the BSPP to use mineral materials on or near the site for its own construction needs after proper permitting for use of the material.”	<p>This statement is incorrect. The BSPP does not include plans to import/export mineral materials such as sand. When required, fill for the project will be taken from sand/soil that has already been cut for other project development purposes. In other words, soil cut and fill volumes will be equal and thus there is no net increase or decrease of on site soils or minerals.</p> <p>Materials for the production of concrete for project use will need to be imported to the onsite concrete batch plant. However, Solar Millennium does not interpret the term “mineral materials” to include concrete, its ingredients, or other engineered materials.</p>
28	Chapter 3 – Public Health & Safety	3.12-8	The FEIS states that “emergency services access roads must be installed and made serviceable prior to and during the time of construction The BSPP would provide two all-weather access roads in accordance with County and fire code requirements to provide adequate access for emergency vehicles.”	During the first phase of construction, Solar Millennium will build the primary access road to the BSPP site. However, the secondary access road may be built later. Solar Millennium has communicated this plan to, and obtained approval from, the Riverside County Fire Department, consistent with CEC COC Worker Safety-6.
29	Chapter 3 – Soils Resources	3.15-1	The FEIS states that 80% of soils at BSPP site have not been mapped, and that Solar Millennium therefore commissioned a “general survey to characterize the soil conditions.”	<p>Solar Millennium conducted detailed soil surveys.</p> <p>The CEC requires a map at a scale of 1:24,000 and</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>description of soil types. An investigation of the literature revealed that the Natural Resources Conservation Service (NRCS) had only mapped 20% of the BSPP footprint at a 2nd Order scale of 1:20,000. Beyond the work performed by the NRCS, there was no other detailed information available in the literature that described the soils at the Blythe site. The USGS soils map, while covering the entire site, was only conducted at a 4th-order level and a scale insufficient to meet the CEC requirement. As a result, the geotechnical program was expanded to include a soils mapping component, supplemented by laboratory analysis of soil properties from samples collected from the 15 test pits and 30 soil borings dug at the site. The mapping produced 19 soil units throughout the site within the series identified by the NRCS. The testing program was of sufficient density to address the lateral variability in soil types (i.e., facies variations) and support the hydrologic modeling and erosion potential analysis provided to the CEC.</p>
30	Chapter 3 – Special Designations	3.16-1	The FEIS states that there are no wilderness characteristics based on a wilderness inventory conducted in 1979.	<p>Solar Millennium would like to add that, as the FEIS indicates (page 3.16-2), there is no evidence—including that gathered through extensive and recent onsite biological surveys—that conditions at the project site have changed since a wilderness inventory was conducted in 1979. In addition, neither those surveys nor other evidence suggests that the site contains wilderness characteristics as they are defined in the Wilderness Act, 16 U.S.C. § 1131(c).</p>
31	Chapter 3 – Transportation & Public Access – OHV Resources	3.17-4	The FEIS states that “Black Rock Road, a two lane, two-way roadway, extends westerly from Mesa Drive parallel to and on the north side of I-10. Its paved width is approximately 24 feet; the road has graded shoulders on both sides.”	<p>The FEIS’s description of Black Rock Road implies that the road is entirely paved; however, only a small portion is paved. Solar Millennium will be upgrading most of the road’s 1.25-mile length from Mesa Drive to the BSPP’s primary access road.</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
32	Chapter 3 – Vegetation Resources	3.18-1	The FEIS notes that “more than half the region’s plant species are herbaceous annuals, which reveal themselves only during years of suitable precipitation and temperature conditions.”	<p>Solar Millennium conducted spring plant surveys in 2009 and 2010, during which there was adequate precipitation to make those surveys representative.</p> <p>The extent of spring germination of annual plant species is a function of the amount of rainfall received during the late fall and winter months (approximately November through February). The historical average for rainfall during these months in the Blythe area is 1.50 inches. During these months in 2009, when the first plant survey was conducted, the project site subject to survey (the Biological Resources Study Area (BRSA)) received 1.34 inches of precipitation. During the same period in 2010, when the second plant survey was conducted, the BRSA received 3.88 inches of precipitation. Thus, precipitation was not a limiting factor for spring 2009 and 2010 botanical surveys of the BRSA.</p> <p>As for fall plant surveys, full botanical surveys did not occur in fall 2009 due to inadequate precipitation. Botanists from Solar Millennium’s consultant, AECOM, plan to conduct fall botanical surveys during 2010. They will conduct a thorough survey of the Phase 1a construction area in September. For the remaining areas of the BRSA, the botanists will continue to monitor the weather through the end of October to determine the optimal survey period. In any event, AECOM will conduct botanical surveys of the entire remaining (i.e., non-Phase 1a) BRSA between September and November. This survey approach is consistent with CEC COC BIO-19 and has been vetted by the relevant agencies.</p>
33	Chapter 3 – Water Resources	3.20-19	“The Applicant provided graphical results of FLO-2D modeling for existing conditions that attempted to present the extents and depths of surface flow across the BSPP during the 100-year event. The methods utilized for the FLO-2D analysis were not provided in the	The methodology and the graphical results are based on the FLO-2D model which is a three-dimensional mathematical model overlaid of the proposed grading and drainage plan. This is included in the original Post-

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			Drainage Report or its Technical Memorandum. The graphical results of the analysis were difficult to interpret”	Development Drainage Conditions Report. (Section Two of report covers methodologies for the model.) An updated version of this report will be sent to the CEC CBO for review next week according to the requirements of CEC COCs SOIL&WATER-10, -11, and -12.
34	Chapter 3 – Water Resources	3.20-22, 4.19-22	The FEIS states that “[e]ach evaporation pond will have a minimum evaporative surface area of 3.5 acres resulting in a total of seven acres of evaporation ponds for each unit or a total of 28 acres of ponds for all four 250 MW units.”	As indicated in documents filed with, and issued by, the CEC and the Regional Water Quality Control Board, the evaporative surface of each pond will be 4, not 3.5, acres, yielding a total of 8 acres for each 250 MW unit and a total of 32 acres for all four 250 MW units.
35	Chapter 3 – Wildlife Resources	3.23-9	The FEIS describes Couch’s spadefoot toads, their potential habitat on the BSPP site, and the BSPP’s potential impacts on that habitat.	<p>Pursuant to BIO-26, Solar Millennium will be required to determine the extent of potential ponding habitat for, and BSPP impacts on, Couch’s spadefoot toads. Specifically, Solar Millennium is in the process of preparing a detailed toad protection and mitigation plan based on the results of a previously conducted survey to map potential ponding habitat for the toad on the BSPP site.</p> <p>Additional surveys will be required if Solar Millennium creates ponds to mitigate impacts (Solar Millennium must survey the created ponds after summer rains until Solar Millennium can document that they can pond water for nine days). Alternatively, Solar Millennium may purchase mitigation land with potentially ponded areas equivalent to its impacts that meet other toad habitat criteria.</p>
36	Chapter 3 – Wildlife Resources; Chapter 4 – Wildlife Resources	3.23-11, 4.21-6 to -7	<p>The FEIS (page 3.23-11) states that “2010 surveys found two golden eagle territories within ten miles of the project boundary in the McCoy Mountains and the Big Maria Mountains, but found no active eagle nests within 10 miles of the BSPP.” <u>See also</u> FEIS at 4.21-6 to 4.21-7.</p> <p>The FEIS (page 4.8-8) states that “[s]everal BLM sensitive wildlife species . . . are present or likely to occur on habitat associated with the</p>	<p>Solar Millennium would like to clarify the extent (or lack thereof) of golden eagle activity within and near the BSPP site; to correct certain inaccuracies contained in the FEIS and in Acting State Director Jim Abbott’s August 26, 2010 letter; and to comment on certain recommendations in that letter.</p> <p>Based on extensive helicopter surveys conducted in April</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			<p>proposed BSPP and its alternatives,” including golden eagles. Similarly, the FEIS (page 4.21-7) states that, while the BSPP site is not expected to be used for foraging by golden eagle pairs, “the BSPP may affect golden eagle foraging habitat at a regional level.”</p> <p>In addition, in an August 26, 2010 letter (Attachment 3 to these comments) from Jim Abbott, BLM-California Acting State Director, to the Regional Director of the U.S. Fish & Wildlife Service, Region 8, Acting State Director Abbott requests confirmation of initial golden eagle take determinations for fast track renewable energy projects on BLM land. One of these projects is the BSPP. The letter (page 5) states that there are two golden eagle territories within 10 miles of the project site and that the closest inactive nest is 1.5 miles from the site.</p>	<p>and May 2010 (<u>see</u> FEIS at 3.23-11), there is only one golden eagle territory within 10 miles of the BSPP site and it is inactive. Moreover, the closest inactive nest is 3 miles to the west of the site. This nest was in poor condition and showed strong signs of weathering and is the process of deteriorating. Finally, the closest active nest was located in the Big Maria Mountains more than 10 miles northeast of the site. This nest was not occupied (i.e., had no fledglings or eggs).</p> <p>Acting State Director Abbott’s letter recommends (page 5) “annual Golden Eagle inventory during construction to determine occupied/unoccupied territory.” To the extent this is a recommendation to conduct full protocol surveys of golden eagle territories within 10 miles of the project site, such surveys are unnecessary and exceed what the CEC has required. Given the facts above, and as the FEIS recognizes (<u>see</u> FEIS at 4.21-7), the BSPP is not anticipated to adversely impact golden eagles. Solar Millennium should simply be required to conduct a ground survey within one mile of the project site for any nests during construction, consistent with CEC COC BIO-24.</p> <p>Finally, Acting State Director Abbott’s letter refers to an Avian Protection Plan for golden eagles. However, the APP required by the CEC and being prepared by Solar Millennium does not require surveys for golden eagles given their complete absence in and near the project site. CEC COC BIO-24 <u>does</u> require foot surveys. If those surveys reveal an occupied nest, then Solar Millennium must submit a separate Golden Eagle Monitoring and Management Plan to avoid construction-related impacts during construction. COC BIO-24 was developed in consultation with and among BLM, the CEC, USFWS, and CDFG. For these reasons, an APP that addresses golden</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				eagles is unnecessary, and we respectfully request that BLM and FWS do not impose any requirement to prepare one.
Chapter 4 – Environmental Consequences				
37	Chapter 4 - Introduction	4.1-1	The FEIS notes that “[t]he scope of the impact analyses presented in this chapter is commensurate with the level of detail for the alternatives provided in Chapter 2, Alternatives Including the Proposed Action, and the availability and/or quality of data necessary to assess impacts.”	Solar Millennium would like to add that, except where noted in the FEIS, there is sufficient high-quality data to conduct a thorough analysis of impacts. These data are summarized in each section and references are included at the end of the FEIS. See also Attachment 4 (list of studies conducted and submitted by Solar Millennium).
38	Chapter 4 – Introduction	4.1-9	The FEIS discusses the unlikelihood that all proposed renewable energy projects will be developed.	See Comment on Issue #8.
39	Chapter 4 – Air Resources	4.2-6	The FEIS states that the BSPP’s stationary emissions sources include “f. HTF ullage system (four total).”	The BSPP will employ only one HTF ullage system venting continuously at a low rate. Daily emission rates are limited by CEC COC AQ-21, which the CEC developed in consultation with the Mojave Desert Air Quality Management District (MDAQMD), as follows: AQ-21. Emissions from this equipment may not exceed the following emission limits, based on a calendar day summary: a. VOC as CH ₄ – 1.5 lb/day, verified by compliance test. b. Benzene – 0.75 lb/day, verified by compliance test. Verification: As part of the Annual Compliance Report, the project owner shall include the test results demonstrating compliance with this condition and the project owner shall make the site available for

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				inspection of records by representatives of the District, ARB, and the Energy Commission.
40	Chapter 4 – Air Resources	4.2-6	The FEIS states that each of the BSPP’s four HTF piping systems will employ four pump seals and 10 pressure valves.	Each HTF piping system will employ seven pump seals and may employ more than 10 pressure valves depending upon final design requirements.
41	Chapter 4 – Air Resources	4.2-6	The continued use of the Kern County APCD method for calculation of piping fugitives (i.e., the use of light liquid emission factors for 16 hours per day) results in a requirement to provide offsets (the analysis in the FEIS that relies on this method estimates that the fugitive emissions would exceed 33 tons per year). Adaptive management principles, discussed as a means for reducing the emissions estimate, may not be sufficient to avoid the offset requirements.	The CEC and the Mojave Desert Air Quality Management District (MDAQMD) determined that heavy liquid emission factors were appropriate for the BSPP based upon the clear definition of heavy versus light liquids in U.S. EPA Guidelines. The Final Determination of Compliance and the CEC’s August 10, 2010 PMPD do not require any offsets for fugitive emissions as a result.
42	Chapter 4 - Global Climate Change	4.3-4	The FEIS states that “natural gas would be used in the two auxiliary boilers used for HTF freeze protection”	The BSPP will employ only one auxiliary boiler per plant, not two, for a total of eight boilers for the entire project. All air modeling was based on this equipment, so the emissions calculations in the FEIS are correct; the quoted fragment in the FEIS is simply a misstatement.
43	Chapter 4 – Global Climate Change	4.3-10	The FEIS states that “the proposed facilities would in no way support additional drying of soils on site, or otherwise exacerbate potential changes in soil moisture associated with climate change.”	Solar Millennium agrees with this statement and would like to explain why. Removal of vegetation during construction will halt transpiration of water in soil, leaving evaporation from the surface as the only means of reducing soil moisture. In this sense, the soil under the BSPP will lose moisture more slowly than the soil under nearby undisturbed desert, regardless of changes in climate during the lifetime of the Project. Soil moisture to a depth of 10 feet below the ground surface (bgs) was measured during the geotechnical investigation at a range of 0.3% to 16% with most of the soil samples collected having moisture at percentages below 5%. The two mechanisms that have the potential to affect moisture content in the root zone (assumed to be surface-10 feet bgs) that are related to the BSPP are the

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>change in evapotranspiration caused by the removal of the vegetation and the introduction of moisture through water applied during grading (4,100 acre-feet over 69 months) during the daily washing of the mirrors (230 acre-feet annually). Removal of vegetation during construction will halt transpiration of soil water, leaving evaporation from the surface as the only means of reducing soil moisture. The site in general is largely un-vegetated, with most of the vegetation present in the drainage channels and swales. Given the historic climate condition, it is presumed that evaporate plays a much more significant role in the loss of moisture in the upper soil zone to 10 feet bgs. With the reduction in vegetation, the soil under the project will lose moisture more slowly than the soil under nearby undisturbed desert, regardless of changes in climate during the lifetime of the BSPP. The application of water through grading, while changing the bulk density of the soil represents about 1.2 inches of water applied over the disturbed project area over 69 months. Correspondingly, the water applied annually for mirror washing represents 0.07 inches of water applied over the disturbed area. In either case, the moisture content of the soils to a depth of 10 feet are not likely to change significantly given the area evapotranspiration rate of 71 inches.</p> <p>Moreover, the BSPP site does not have areas with dense vegetation that would provide substantive protection from moisture loss. Therefore the relative contribution from plants would not be substantive enough to affect the soil moisture content long term when it comes to global climate changes. The BSPP also would create shadows on the ground that could offset any soil moisture loss just as much as desert vegetation.</p>
44	Chapter 4 – Global	4.3-11, 4.3-12	The FEIS states that if the Reduced Acreage alternative were selected, “other renewable projects would likely be developed” . . . “that would	This statement does not account for the benefits from concentrating renewable energy generation facilities.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
	Climate Change		compensate for the loss of generation”	<p>Concentrating renewable generation projects maximizes renewable energy production, minimizes sprawl, and reduces infrastructure investment to bring the power to market, thus reducing overall costs to ratepayers. Co-located facilities minimize disturbance to natural and visual resources by reducing the need for additional transmission corridors and by reducing the need for infrastructure such as water wells and/or water pipelines, natural gas pipelines, temporary laydown areas, and temporary and permanent access roads, all of which would be required in greater quantities if the BSPP units were developed at separate locations. Co-located facilities also consolidate impacts of lighting, noise, and human presence at a single location, rather than introducing them to multiple environments. Co-located facilities reduce edge effects compared to individual plants on separate sites (for example, the border of a single four square mile facility is eight miles, but four one-mile square facilities have 16 miles of border, increasing the amount of contact between facilities and natural resources). Finally, and related, co-located facilities reduce habitat fragmentation.</p>
45	Chapter 4 – Cultural Resources	4.4-4	<p>The FEIS states that “480 acres of BLM-managed land for [relocated] Unit 3 [under Reconfigured Alternative] has not been surveyed for cultural resources,” but later, on the same page, implies that the survey has taken place.</p>	<p>Solar Millennium would like to make clear that a detailed cultural resources survey was for the Unit 3 area between March 10 and March 16, 2010 by the following consultants:</p> <p>Collin Tuthill Julie Roy Brendan Fitzsimons Andrew Lown Marcos Ramos Nara Cox Shane Wetherbee Roy Pettus Matthew Tennyson</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				Julianne Toenjes Wayne Glenny Linda Kry Tiffany Contreras Bruce Gothar James Wallace Benjamin Vargas
46	Chapter 4 – Cultural Resources	4.4-8	The FEIS describes the BSPP’s “unavoidable adverse impacts” on cultural resources.	Solar Millennium’s cultural resources consultant, AECOM, has conducted Class III intensive pedestrian surveys of the BSPP project sites and associated linears as well as CEC-required buffers around the limits of disturbance. Class III cultural resources technical reports detailing the findings of these surveys have been submitted to BLM for review and approval. Solar Millennium is a signatory to the BLM’s Programmatic Agreement (PA), currently in preparation, which will identify potentially eligible cultural resources and provide guidelines for resource treatment and monitoring efforts. Following the signing of the PA, Solar Millennium will submit phased Historic Properties Treatment Plans for each construction phase which will detail the site-specific measures to mitigate adverse impacts.
47	Chapter 4 – Lands & Realty	4.6-1	Regarding fiber optic cables, the FEIS states: Page 4.6-1: “The fiber optic cable would either be attached to the gen-tie line or buried in a shallow trench along the same alignment as the road and gen-tie and gas lines and would either cross over or bore under any existing authorized use.” Page 4.6-2: “Potential impacts from the fiber optic cable would be the same as either the overhead power line or buried gas line, depending on whether the cable is strung on the gen-tie line or buried in a shallow trench beside the access road.”	The BSPP will require 3x fiber optic cables coming into the site: <ol style="list-style-type: none"> 1. Buried Fiber optic cable from Frontier Communications for plant voice and data; 2. Approximately 10.5 miles of aerial Optical Ground Wire (OPGW) conductor to be strung on the gen-tie poles from the Colorado River Substation to the BSPP 230kV Switchyard; and 3. Approximately 10.5 miles of buried All Dielectric

**Attachment 1 (incorporated by reference)
Comments of Solar Millennium on BSPP PA/FEIS**

#	SECTION	PAGE	ISSUE	COMMENTS
			<p>Page 4.6-2: "Potential impacts to Interstate 10 from the overhead gen-tie line (and fiber optic cable if strung on [the] gen-tie line) would be mitigated by abiding by the requirements of the California Department of Transportation (CalTrans) and industry standards (SOPs) and best management practices (BMPs) for crossing highways. Potential impacts to I-10 from the underground pipeline (and fiber optic cable, if buried) would also be mitigated by implementing the requirements of the Federal Highway Administration (FHWA), CalTrans and SOPs and BMPs for crossing under highways."</p>	<p>Fiber Optic Cable from the Colorado River Substation to the BSPP 230kV Switchyard.</p> <p>The FEIS is correct that these lines will follow the same alignments as the road, gen-tie and gas lines, and that they would "either cross over or bore under any existing authorized use."</p>
48	Chapter 4 – Lands & Realty	4.6-2	<p>The FEIS states: "As proposed, the gen-tie line would cross multiple existing uses both north and south of I-10. Once across the highway, the line would turn to the west and parallel the highway and existing power lines to the point of interconnection with the planned Colorado River substation."</p>	<p>Once crossing over the I-10, the gen-tie line will proceed south for approximately 1 mile and then southwest for approximately 0.5 mile before heading west. The line will need to cross over two existing power lines, but it will not run parallel with any <u>existing</u> transmission lines to the Colorado River Substation. The existing SCE 500kV Devers to Palo Verde #1 transmission line runs in a north-westerly direction south of the proposed gen-tie line.</p>
49	Chapter 4 – Lands & Realty	4.6-4	<p>The FEIS states, as part of its cumulative impacts discussion, that permitting the BSPP and other renewable energy projects would "restrict the use of the lands during the life of those projects reducing the number of acres of lands available to be managed by BLM for other multiple uses."</p>	<p>BLM's California Desert Conservation Area (CDCA) Plan covers 25 million acres. Of this area, BLM administers approximately 10.5 million acres. The June 2010 BLM solar projects applications list (updated as of August 27, 2010) shows 37 projects in the area of CDCA/BLM jurisdiction. These projects propose to use 344,183 acres to generate 68,988 MW. As discussed in the FEIS and in these comments, many of these projects will not be developed, and even for those that are, excess land will be returned to BLM (in the case of the BSPP, excess land will amount to 25% of the land applied for). Based on these numbers, solar development will occupy only a small fraction of the land that BLM administers under the CDCA Plan.</p> <p>The FEIS correctly indicates that the BSPP would be consistent with the CDCA Plan with an appropriate</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>amendment. Among other things, FLPMA requires that BLM manage the lands under its jurisdiction for “multiple use and sustained yield.” <u>Public Lands Council v. Babbitt</u>, 167 F.3d 1287, 1301 (10th Cir. 1999), <u>aff’d</u>, 529 U.S. 728 (2000); <u>see also</u> 43 U.S.C. §§ 1701(a)(7), 1701(a)(8), 1702(c), 1712(c)(1); 43 C.F.R. § 1601.0-5(i) (2003). The courts recognize that BLM has broad discretion in meeting this mandate. <u>See Public Lands Council</u>, 167 F.3d at 1305; <u>Natural Resources Def. Council v. Hodel</u>, 624 F. Supp. 1045, 1058 (D. Nev. 1985), <u>aff’d</u>, 819 F.2d 927 (9th Cir. 1987). BLM does not need to permit every possible use on every acre, and one acceptable multiple use, including in the CDCA, is energy development.</p>
50	Chapter 4 – Lands & Realty	4.6-6	The FEIS states that SOPs and BMPs designed and adopted by the power industry would be followed to reduce or eliminate potential problems that might result from the gen-tie line crossing I-10 and existing power lines north and south of the highway.	<p>Per CEC COC TSLN-1, the Project will follow Southern California Edison’s EMF resign guideline for the design and construction of the 230-kV interconnection line except where it conflicts with Federal Aviation Agency (FAA) and/or the Riverside County Airport Land Use Commission (ALUC) rules and regulations.</p> <p>Note that the gen-tie will not cross any existing power lines north of the I-10 crossing.</p>
51	Chapter 4 – Multiple Use Classes	4.8-7	The FEIS states that “[a]ll of the action alternatives would affect a small portion of critical habitat.”	The BSPP site (including the linears) contains no designated critical habitat for any listed species, and the BSPP would not affect any designated critical habitat.
52	Chapter 4 – Public Health & Safety	4.11-6 to 4.11- 7 (Table 4.11-1), 4.11-9	<p>Table 4.11-1 of the FEIS identifies the hazardous materials that will be used during construction and operation of the BSPP.</p> <p>Page 4.11-9 states that each unit of the BSPP would store 1.3 million gallons of HTF.</p>	The BSPP will use 2.2 million gallons of HTF (Therminol VP-1 Biphenyl (26.5 percent); Diphenyl Ether (73.5 percent)) per unit, not 1.3 million gallons as Table 4.11-1 and page 4.11-9 indicate. This correct amount was identified in the CEC’s PMPD and was used to develop CEC COC HAZ-MAT-1. That COC references an Appendix A (Table 5.6-3R), the latest version of which

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>Solar Millennium submitted to the CEC on July 12, 2010. However, FEIS Appendix G omits Table 5.6-3R. Solar Millennium requests that BLM include HAZ-MAT-1 Table 5.6-3R in Appendix G. We have included Table 5.6-3R as Attachment 2 to these comments. (Note that the quantities listed in Table 5.6-3R are cumulative, i.e., for all 4 BSPP units.)</p> <p>Table 4.11-9 and the discussion that follows do not, but should, indicate that the BSPP will use hydrogen for turbine cooling. Specifically, the entire BSPP will use hydrogen in the generator cooling loop and “tube trailer.” The cumulative (i.e., all 4 units) piping system inventory will be 1,400 pounds with 2,600 pounds in storage. The BSPP will employ a pressure safety tank, crash posts, and pressure relief valves to ensure that the hydrogen is used and stored safely. See HAZ-MAT-1 Appendix A (Table 5.6-3R) (Attachment 2) (July 12, 2010).</p>
53	Chapter 4 – Public Health & Safety	4.11-8	<p>The FEIS states:</p> <p>“At the BSPP site, natural gas would not be stored on-site but delivered by the Southern California Gas Company (SCG) via a new 10-mile pipeline (shown in Figure 2a) that would connect to an existing main south of I-10. Approximately eight miles of pipeline would be installed within the site boundaries and two miles off-site (Solar Millennium 2009a, Section 2.5.5.1).”</p>	<p>SCG will install a gas metering and pressure/transfer station adjacent to the primary site access road approximately 400 feet north of the I-10 right-of-way. Solar Millennium will install, own and operate the gas line from the transfer station to the BSPP site.</p>
54	Chapter 4 – Public Health & Safety	4.11-9	<p>The FEIS refers to high flammability of Therminol (HTF) and states that “fires have occurred at other solar generating stations that use it.”</p>	<p>While previous fires have occurred at other solar thermal facilities, the risk of a fire at the BSPP will be significantly lower, for at least three reasons.</p> <p>First, Solar Millennium’s plant design will include design features that reduce the risk of HTF-related fires. Such features include: (1) larger solar collectors than previous solar thermal facilities, which have fewer ball joints and</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>therefore fewer points at which HTF could leak, and (2) a sufficient number of isolation valves that can be manually, remotely, or automatically activated. The valves would be placed such that a maximum of 1,250 gallons of HTF would leak if all the fluid in the isolated loop should leak out. Should this leak catch fire, it would take only about 15 minutes for the HTF to burn off completely. This second feature is consistent with CEC COC HAZ-4.</p> <p>Second, the fire that is most frequently cited with respect to fire hazards posed by solar thermal plants is the January 1990 incident at the 80 MW SEGS VIII facility in Harper Lake, California. This incident involved a significant fire in the plant's power block area caused by an explosion of HTF in one of the storage tanks. However, the SEGS VIII facility used HTF storage tanks that were blanketed with natural gas and were not installed or managed properly by the plant operator at the time. Since this 1990 incident, solar thermal plants have switched all components of the HTF system to use nitrogen blankets rather than natural gas blankets. Nitrogen blankets are much safer and more reliable than natural gas blankets, and therefore make the risk of a fire like the 1990 incident at Harper Lake much more remote.</p> <p>Third, two fire-fighting foam trucks (for suppressing HTF fires) will be onsite and centrally located near the assembly hall. Operations personnel will be trained and qualified in fire-fighting methods and will be the first responders. In addition, when a leak is detected, operations personnel will defocus the mirrors, which will stem or stop the flow of HTF in all but the most severe leak events (i.e., rupture of a collection tube). But, even if the entire 1,250 gallons of HTF in a given loop were to drain and be ignited, it would take about 15 minutes for the fluid to completely burn.</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
55	Chapter 4 – Public Health & Safety	4.11-30	<p>The FEIS states:</p> <p>“An overhead 230-kV single circuit, three-phase transmission line and 52 steel monopoles, ranging from 90 feet to a maximum of 145 feet in height and spanning less than 10 miles, would proceed on a route directly south from the BSPP power block and eventually cross I-10 and turn westward to SCE’s planned Colorado River Substation. Forty-three of the 52 monopoles are located in Blythe Airport Compatibility Zones, D, C, and B1.”</p>	<p>The gen-tie line will be a <u>double</u> circuit 230kV transmission line strung on tubular steel monopoles and H-frame structures. The structure heights range from 70 to 145 feet in height over a distance of approximately 10.5 miles. The exact number of poles will be determined as part of the final design but will most likely exceed 80. The proposed route proceeds in a southerly direction from the BSPP 230 kV switchyard, eventually crossing over I-10 and turning westward to connect to the SCE Colorado River Substation.</p> <p>As for the number of poles within the Blythe Airport Compatibility Zones, there will be 0 poles in Zone B1, 4 poles in Zone C, 37 in Zone D, and 12 in Zone E.</p>
56	Chapter 4 – Public Health & Safety	4.11-30 to 4.11- 31	<p>The FEIS references a letter from the Riverside County Airport Land Use Commission (ALUC) in which the ALUC explains that the BSPP may have yielded “potential hazards to flight for the Blythe Airport.”</p>	<p>The ALUC has sent a letter to the CEC expressing concerns about the BSPP’s potential effects on aviation at Blythe Airport. The ALUC is concerned about further encroachment of power plants, potential thermal plume issues, and glint and glare issues.</p> <p>Although the ALUC is an advisory council and has no jurisdiction over the BSPP, the CEC evaluated whether the BSPP would comply with the Blythe Airport Master Plan and whether the BSPP would yield unmitigable cumulative impacts on the Blythe Airport’s future use. It is not clear that the BSPP was required to comply with the Master Plan with regard to glint and glare. In any event, the CEC staff was unable to make these determinations and, in an abundance of caution, recommended override findings for both consistent with 20 C.C.R. § 1755(d).</p>
57	Chapter 4 – Public Health & Safety	4.11-38	<p>The FEIS discusses the BSPP’s potential effects on Blythe Airport and the risk that the BSPP will attract additional birds to the area. The FEIS states that the “evaporation ponds proposed as part of the BSPP would be netted and monitored to prevent birds from landing</p>	<p>CEC COC BIO-25 is not limited to netting the ponds to exclude birds and other wildlife. It also requires visual bird deterrents and adaptive management and remedial action to discourage wildlife use if monitoring detects bird use at</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			<p>on them. However, this might not be enough to preclude the evaporation ponds from serving as an attractant to birds.”</p>	<p>the ponds. Considering <i>all</i> of these measures, the CEC’s PMPD (page 471) correctly concludes that the BSPP will not result in an increase in the number of birds in the vicinity of the Blythe Airport.</p> <p>See also comment on Issue #72.</p>
58	Chapter 4 – Recreation	4.12-5	<p>The cumulative impacts discussion does not mention that many renewable projects will not get built, and that those that do will be smaller than proposed (excess land).</p>	<p>See Comment on Issue #8.</p>
59	Chapter 4 – Transportation & Public Access – OHV Resources	4.16-2	<p>The FEIS states that the BSPP will result in the loss of legal access to two inholdings.</p>	<p>If BLM approves the BSPP, when construction commences on the southeastern unit (Unit 4), the 160-acre northern parcel of private land between Units 3 and 4 will be entirely surrounded by construction activities. In this final phase of construction, Solar Millennium will leave open an access way through to the south. The northern parcel will be fenced for approximately 80% of its perimeter except for the southern-facing access way. A security gate will be located north of the culverts/bridge over the drainage channel so that the land owner can use Solar Millennium’s bridge.</p> <p>During Project operation, security personnel will maintain vehicle license plate numbers and grant access to vehicles with matching plates. Visitors may accompany landowners onto the property, although long-term guests (defined as guests staying more than three days) will be required to participate in the safety orientation required for landowners.</p> <p>The southern 160-acre parcel is located southeast of Unit 3, outside the fence line of the BSPP facility. Access to this property will never be hindered during construction or operation of the facility.</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
60	Chapter 4 – Transportation & Public Access – OHV Resources	4.16-9	The FEIS states that “[t]he overlapping construction schedules of these projects [Palen, Genesis, and Desert Sunlight] would result in cumulatively considerable impacts to I-10 as well as to local streets, highways, and intersections in the vicinity of the BSPP site.” The FEIS states that CEC COC TRANS-2 will mitigate these construction-based cumulative impacts.	Solar Millennium would like to add that CEC COC TRANS-2 requires that the required traffic plan include a work schedule that limits worker traffic moving onto or off of the property during peak commute times. Alternatively, the project proponent can offer other incentives to “ensure that Interstate 10 operates at a Level of Service (LOS) C or higher during peak travel hours” (including incentives to use public or group transportation options and traffic controls that might encourage other commuters to avoid the area during construction). These measures account for the potential transportation impacts during the construction periods of other nearby solar projects.
61	Chapter 4 – Transportation & Public Access – OHV Resources	4.16-11	The FEIS states that “[t]he McCoy Wash, a navigable wash, would be transected by the BSPP site which would result in closure of the wash to OHV users.”	This is incorrect. The McCoy Wash does not run through the BSPP site. Although Solar Millennium’s original SF-299 right-of-way application included lands through which the McCoy Wash runs, Solar Millennium has since amended its application to remove those lands. The current application for which BLM is considering granting a right-of-way does not include the McCoy Wash.
62	Chapter 4 – Vegetation Resources	4.17-2, 4.17-9	The FEIS states that “[t]he BSPP would alter the hydrology of the area by re-routing these waterways through five engineered channels thereby altering washes downstream of the BSPP,” and that this alteration is a residual impact to “an extensive network of desert washes comprising approximately 250-600 acres of ephemeral drainages.”	Solar Millennium would like to add that the washes would be rerouted to the same discharge points and would be required to have the same flows as pre-project conditions. The FEIS is correct that rerouting still might yield residual downgradient changes. However, as part of the BSPP, Solar Millennium designed the channels to minimize such impacts by maintaining the discharge location and flows (to the extent feasible) and proposing mitigation for potential indirect impacts.
63	Chapter 4 – Vegetation Resources	4.17-8	The FEIS concludes that the BSPP and other renewable energy projects could result in “cumulatively considerable” impacts to Harwood’s Woollystar, Harwood’s milk-vetch, dunes, sand sheets, sandy washes, and contribute to the “inevitable” spread of Sahara	These impacts will be mitigated by several factors and measures. First, as the FEIS repeatedly recognizes, many proposed solar and other projects will never be developed, and even for those that are, project footprints will be

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			mustard and the destruction of 10.8% of sandy habitat designated as part of the NECO Plan Amendment.	<p>smaller than the areas applied for (i.e., excess land will be returned, undeveloped, to BLM). See Comment on Issue #8. For the BSPP, Solar Millennium applied for 9,400 acres but would only develop 7,025 (subject to final design requirements), a 25% reduction.</p> <p>Second, the CEC and BLM have imposed extensive land acquisition, enhancement, and/or mitigation measures that will offset the impacts on these and other sensitive or rare species and habitats. The spread of invasive weeds like Sahara mustard will be prevented with a robust Weed Management Plan required in CEC COC BIO-14.</p>
64	Chapter 4 – Vegetation Resources	4.17-9	The FEIS states that, “[d]espite mitigation measures, the chance of invasion and spread of weeds and the chance of human-caused wildfires would persist to the areas surrounding the BSPP, threatening the surrounding vegetation and special status plant species.”	The risk that the BSPP would contribute to the spread of invasive weeds will be fully addressed and mitigated in the Weed Management Plan required in BIO-14.
65	Chapter 4 – Visual Resources	4.18-5	Table 4.18-3 includes an entry for HTF heaters with 50 x 22 x 80 stacks.	As indicated in Comment on Issue #10, the BSPP will not employ HTF heaters. Any visual impacts associated with these heaters, including their stacks, would be eliminated.
66	Chapter 4 – Visual Resources	4.18-18	The FEIS states that “[v]isual impacts to dispersed recreational users in the McCoy, Big Maria, and Little Maria Mountains due to the size and scale of the BSPP” cannot be mitigated.	A smaller solar project would have similar impacts. See FEIS 4.18-15 (explaining that a reduced acreage alternative would not substantially reduce visual impacts).
67	Chapter 4 – Water Resources	4.19-6 to 4.19-9	<p>The FEIS describes the Project Drainage Report (AECOM, 2010a) and sets forth various reasons why the Report is “insufficient for final design.”</p> <p>The FEIS also states that “[t]here is a large disparity reported between the two conditions as summarized in Table 4.19-2. The differences between the pre- and post-development peak discharges appear too great to be accounted for by changes in on-site flow conditions. In addition, the total runoff volumes reported in the Drainage Report for pre- and post-development conditions do not seem to be well-correlated. Detailed explanation and documentation of this disparity</p>	As had been planned and approved by the agencies, Solar Millennium will submit next week a revised drainage report to the CEC’s Chief Building Officer (CBO). This report fully addresses the data gaps identified in the FEIS concerning the initial Project Drainage Report. All aspects of drainage design must meet CEC COCs, including COC SOIL&WATER-11, which requires that post-development drainage runoff conditions must closely match pre-development conditions.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
			has not been provided in the Project Drainage Report (AECOM, 2010a)."	
68	Chapter 4 – Water Resources	4.19-11	"The Applicant has prepared a Draft Channel Maintenance Plan, which addresses some of the potential issues associated with long term operation of the channels. However, the plan does not adequately address the issue of the collection of offsite flows or the use of soil cement along areas subject to inflows from offsite watersheds. The document also references the use of riprap for erosion mitigation; however, riprap would not be allowed on the BSPP site due to its incompatibility with biological resources in the area."	<p>Consistent with the CEC's COCs, Solar Millennium will submit a Final Channel Maintenance Plan prior to the start of construction on the BSPP's drainage channels.</p> <p>Solar Millennium does not plan to use rip-rap in any primary drainage channels that are located outside desert tortoise fencing. Solar Millennium may use rip-rap in two places: (1) in box culverts on the access road to address CDFG's requirement that pre- and post-flow conditions closely match, and (2) inside solar fields that are wholly enclosed within tortoise fencing and are inaccessible to wildlife. Solar Millennium has sought approval from CDFG for this limited use of rip-rap.</p>
69	Chapter 4 – Wildlife Resources	4.21-2	The FEIS states that "[t]ortoises moved outside their home ranges would likely attempt to return to the area from which they were moved, therefore making it difficult to isolate them from the potential adverse effects associated with BSPP construction."	If BLM issues a ROD approving the BSPP, Solar Millennium will adopt a Desert Tortoise Relocation/Translocation Plan, as required by CEC COCs BIO-9 and BIO-10, as well as the Biological Opinion. The Plan will be reviewed and approved by the U.S. Fish & Wildlife Service, the CDFG, the CEC, and BLM.
70	Chapter 4 – Wildlife Resources	4.21-5	The FEIS states that "[p]ermanent loss of occupied Mojave fringe-toed lizard habitat is considered a major impact since this habitat is declining in availability in the region. In addition, indirect impacts that degrade habitat and increase the risk of mortality are also considered major impacts to this species." However, the FEIS does not directly state that the BSPP will result in such "major impacts."	<p>As noted in Solar Millennium's opening testimony on biological resources before the CEC, the BSPP would impact 0.0009%—nine ten thousandths of one percent—of Mojave fringe-toed lizard dune habitat in the NECO planning area. This is not a major impact.</p> <p>Although the FEIS refers to alleged "indirect impacts," it does not state what those are, nor why those impacts would or could be "major." Solar Millennium submits that the BSPP will not have any such indirect impacts, and that, even if it could, those impacts would be fully mitigated by the mitigation measures imposed by the CEC and BLM.</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
71	Chapter 4 – Wildlife Resources	4.21-5	Regarding the spadefoot toad, the FEIS states that “[w]ithout species-specific survey results and with limited occurrence information, it is difficult to assess the potential for direct and indirect impacts to Couch’s spadefoot toads.”	<u>See</u> Comment on Issue #35.
72	Chapter 4 – Wildlife Resources	4.21-11, 4.21-12	<p>On page 4.21-11, the FEIS states that results of a 1986 study showed that much of the risk of bird collisions came from their attraction to “adjacent evaporation ponds and agricultural fields,” but incorrectly states that the BSPP would not use evaporation ponds.</p> <p>On page 4.21-11 to -12, the FEIS discusses the BSPP’s evaporation ponds, but does not discuss measures Solar Millennium would take to prevent them from being an attractant for birds.</p>	<p>As the FEIS recognizes further down on the same page and elsewhere, the BSPP <u>would</u> use evaporation ponds. However, the FEIS’s conclusion—that such ponds will not increase the risk of bird collisions—still applies.</p> <p>As noted in the CEC’s PMPD, COC BIO-25 requires: (1) netting of all evaporation ponds to exclude birds and other wildlife; (2) additional visual bird deterrents and a rigorous monitoring program to verify that the netting is effective in excluding birds and other wildlife; and (3) adaptive management and remedial action to discourage wildlife use, if monitoring detects bird use at the ponds.</p> <p>Even if resident or migratory birds were initially attracted to the ponds, the netting would preclude use of the ponds for drinking, foraging, resting or nesting, and birds would be unlikely to linger in an area that provides no habitat or foraging opportunities. Accordingly, the aviation assessment concluded that, with the implementation of BIO-25, the BSPP will not increase in the number of birds in the vicinity of the Blythe Airport.</p> <p><u>See also</u> Comment on Issue #57.</p>
73	Chapter 4 – Short-Term versus Long-Term Productivity	4.23-1	The FEIS states: “As discussed earlier in Section 4.22, Irreversible and Irretrievable Commitment of Resources, the proposed action and alternative . . . would all also provide a long-term benefit by providing electric power without any increase in the use of non-renewable resources such as fossil fuels, which would result in a benefit to air quality and a reduction in carbon-based emissions.”	Solar Millennium would like to add that, by reducing carbon emissions that would otherwise result from fossil fuel-generated electricity, the BSPP also would aid in efforts to fight global climate change.

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
Chapter 5 – Consultation, Coordination, and Public Involvement				
74	Chapter 5 – Responses to Comments	5-29, 5-31	The FEIS states that the selected gen-tie route “include[s] areas not previously surveyed for biological and cultural resources.”	<p>The gen-tie re-route cultural resources survey was completed by Solar Millennium’s cultural resources consultant, AECOM, between April 30 and May 28, 2010. The survey crew included the following personnel:</p> <p>Collin Tuthill Julie Roy Brendan Fitzsimons Andrew Lown Marcos Ramos Nara Cox Shane Wetherbee Roy Pettus Matthew Tennyson Julianne Toenjes Wayne Glenny Linda Kry Tiffany Contreras Bruce Gothar James Wallace Benjamin Vargas</p> <p>The results of these surveys were provided to BLM in a letter report dated May 11, 2010. A final addendum report was completed and submitted to BLM on July 23, 2010 (Vargas 2010). Minor comments were made by BLM and a revised final report was submitted on August 25, 2010.</p> <p>Biological surveys were conducted in spring 2010 for the reconfigured project disturbance area to survey areas not surveyed in 2009, including the re-routed gen-tie line. The major focus of the biological investigation was to assess potential impacts to special status plant and wildlife species that may occur within the Proposed Project BRSA and the</p>

Attachment 1 (incorporated by reference)
 Comments of Solar Millennium on BSPP PA/FEIS

#	SECTION	PAGE	ISSUE	COMMENTS
				<p>Reconfigured Alternative BRSA. Surveys were conducted to map vegetation communities and waters of the State and to determine the presence or absence of special status plant and wildlife species. These surveys were conducted in accordance with applicable regulations and established survey protocols for various special status species. The fieldwork focused on rare plant surveys, delineation of jurisdictional areas, protocol surveys for desert tortoise (<i>Gopherus agassizii</i>; DT) and western burrowing owl (<i>Athene cunicularia hypugaea</i>; WBO), avian point count surveys, and a general wildlife inventory.</p>

Attachment 2

**BLYTHE SOLAR POWER PROJECT (09-AFC-6)
JUNE 16, 2010 CEC STAFF REBUTTAL**

Date: July 12, 2010

**Staff's Rebuttal Testimony Blythe Solar Power Project June 16, 2010
Hazardous Materials Management, Alvin Greenberg, Ph.D.**

Background:

Staff has no objection to the clarification or to accepting a revised list of hazardous materials. Staff does, however, object to Table 5.6-3R listing the amounts of hazardous materials by power block instead of the entire site. Staff would very much prefer that the maximum amount of each hazardous material that the applicant wishes to use and store on the entire site be listed. Staff feels that it is misleading to list the amount per power block as the entire site is contiguous, shares the same security perimeter, shares the same command and control systems, share the same fire suppression water loop, and are owned by the same company. As an example of how other regulatory agencies will treat this site, one Risk Management Plan will be required for the entire site (not each power block), one Hazardous Materials Business Plan will be required, and if it were under the jurisdiction of the U.S Department of Homeland Security Chemical Facility Anti-Terrorism Standards (6 CFR Part 27), the storage at the entire site would be considered as being present, not the amount at one power block.

Technical Areas: Worker Safety and Hazardous Materials

WORKSHOP REQUEST-4

Information Required:

Staff requests that the applicant revise Table 5.6-3R to reflect the total amounts of each hazardous material that will be used and stored on-site when the project is built to completion and all power blocks are operating.

Response:

Please see attached TABLE 5.6-3 revised for an updated list of the hazardous materials likely to be used at the Blythe Solar Power Project based on the current understanding of the project design and process requirements. The total quantities identified now reflect the cumulative total to be stored on site considering all four power blocks as Staff has requested.

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Sulfuric Acid, 29.5% solution CAS No. 7664-93-9	High toxicity; Hazard class – Corrosive, water reactive	1,000 lbs	PEL: 1 milligram per cubic meter (mg/m ³)	Contained in batteries; 8,000 gal total inventory	Isolated from incompatible chemicals and secondary containment
Carbon Dioxide CAS No. 124-38-9	Low toxicity; Hazard class – Nonflammable gas	Not Applicable	TLV: 5,000 ppm (9,000 mg/m ³) TWA	Carbon steel tank; 60 tons maximum onsite inventory	Carbon steel tank with crash posts
Therminol VP-1 Biphenyl (26.5%) CAS No. 92-52-4 Diphenyl ether (73.5%) CAS No. 101-84-8	Moderate toxicity, Hazard class – Irritant; Combustible Liquid (Class III-B)	Biphenyl = 100 lbs (45.4 kg) Diphenyl ether = Not applicable	Biphenyl = PEL: 0.2 milliliters per cubic meter (ml/m ³) (8-hr TWA) TLV: 0.2 ml/m ³ (1 mg/m ³) (8-hr TWA) Diphenyl ether = TLV: 1 ml/m ³ (8-hr TWA) TLV: 2 ml/m ³ (15-min TWA) PEL: 1 ml/m ³ (7 mg/m ³) (15-min TWA)	8.8 million gal in system, no additional onsite storage.	Continuous monitoring of pressure in piping network; routine inspections (sight, sound, smell) by operations staff; isolation valves throughout piping network to minimize fluid loss in the event of a leak; prompt clean up and repair

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Lube Oil CAS No. 64742-65-0	Low toxicity Hazard class – NA	Not applicable	None established	Carbon steel tanks, 40,000 gallons in equipment and piping, additional maintenance inventory of up to 2,200 gallons in 55-gallon steel drums	Secondary containment area for each tank and for maintenance inventory
Mineral Insulating Oil CAS No. 8042-47-5	Low toxicity Hazard class – NA	Not applicable	None established	Carbon steel transformers; total onsite inventory of 144,000 gallons	Used only in transformers, secondary containment for each transformer
Diesel Fuel CAS No. 68476-34-6	Low toxicity; Hazard class – Combustible Liquid	Not applicable	PEL: none established TLV: 100 mg/m ³ (ACGIH)	Carbon steel tank (4,600 gallon [generator & fire water pump engine])	Stored only in fuel tank of emergency engine, secondary containment
Hydrogen	Low toxicity; Hazard class – Flammable gas	Not applicable	None Established	In generator cooling loop and "tube trailer"; piping system inventory 1,400 pounds; plus 2,600 lbs in storage trailer	Pressure safety tank, crash posts, pressure relief valves
Nitrogen CAS No. 7727-37-9	Low toxicity; Hazard class – Non-Flammable Gas	Not applicable	None established	Carbon steel tank; 30,000 lbs total inventory	Carbon steel tank with crash posts
Hydraulic fluid CAS No. 64741-89-5	Low to moderate toxicity; Hazard class – Class IIIB Combustible Liquid	Not applicable	TWA (oil mist): 5 mg/m ³ STEL: 10 mg/m ³	Carbon steel tanks and sumps; 2000 gallons in equipment, maintenance inventory of 440 gallons in 55-gallon steel drums	Found only in equipment with a small maintenance inventory; maintenance inventory stored within secondary containment

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Welding gas Acetylene CAS No. 74-86-2	Moderate toxicity; Hazard class – Toxic	10,000 lbs	PEL: none established	Steel cylinders; 200 cubic feet each, 3200 cubic feet total on site	Inventory management, isolated from incompatible chemicals
Welding gas Oxygen CAS No. 7782-44-7	Low toxicity; Hazard class – Oxidizer	Not applicable	PEL: none established	Steel cylinders; 200 cubic feet each, 3200 cubic feet total on site	Inventory management, isolated from incompatible chemicals
Welding gas Argon CAS No. 7440-37-1	Low toxicity; Hazard class – Non-flammable Gas	Not applicable	PEL: none established	Steel cylinders; 200 cubic feet each, 3200 cubic feet total on site	Inventory management
Activated Carbon CAS No. 7440-44-0	Non-toxic (when unsaturated), low to moderate toxicity when saturated, depending on the adsorbed material; Hazard class – combustible solid	Not Applicable	TWA (total particulate): 15 mg/m ³ TWA (respirable fraction): 5 mg/m ³ TLV (graphite, all forms except graphite fibers): 2 mg/m ³ TWA	Used in eight x 2,000-lb canisters, 16,000 lbs total inventory, no additional storage	No excess inventory stored on site, prompt disposal when spent
Calcium Hypochlorite 100% CAS No. 7778-54-3	Moderate toxicity; Hazard Class – Corrosive, Irritant	10 lbs	PEL: none established Acute oral toxicity (LD50): 850 mg/kg [Rat].	Minimal onsite storage for water treatment, not expected to exceed 200 lbs	Inventory management, isolated from incompatible chemicals

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Water treatment chemical Sodium Carbonate (soda ash)	Low toxicity; Hazard class – Irritant	Not Applicable	TBD	40 tons	Stored in steel silos. Inventory management, isolated from incompatible chemicals
Water treatment chemical Lime (calcium oxide)	Moderate toxicity; Hazard class - Irritant	Not Applicable	TBD	40 tons	Stored in steel silos. Inventory management, isolated from incompatible chemicals
Water treatment chemical Magnesium Chloride	Non-toxic; Hazard class – NA	Not Applicable	TBD	2000 gallons	Inventory management
Water treatment chemical Sodium Bisulfate (aka sodium hydrogen sulfate)	Low toxicity; Hazard class – Irritant	Not Applicable	Sodium bisulfite = PEL: none established; TLV: 5 mg/m ³ TWA	2000 gallons	Inventory management, isolated from incompatible chemicals
Boiler water treatment chemical Ferric Sulfate (35% solution) CAS Number 10028-22-5	Moderate toxicity; Hazard class - Irritant	1,000 lbs	TBD	40,000 gallons	Inventory management, isolated from incompatible chemicals and secondary containment

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Water treatment chemical NALCO Tri-Act 1800 <i>or equivalent</i> Cyclohexylamine (5 – 10%) Monoethanolamine (10 – 30%) Methoxypropylamine (10 – 30%)	High toxicity; Hazard class – Corrosive, Class II Combustible liquid	Not Applicable	Cyclohexylamine = TLV: 10 ppm (41 mg/m ³) Monoethanolamine = TLV: 3 ppm (7.5 mg/m ³) TWA: 3 ppm (7.5 mg/m ³) STEL: 6 ppm (15 mg/m ³) Methoxypropylamine = TLV: 5 ppm TWA STEL: 15 ppm	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO Elim-Ox Carbohydazide (5 - 10%) <i>or equivalent</i>	Moderate toxicity; Hazard class – Sensitizer	Not Applicable	Carbohydazide = PEL: none established	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO 3D Trasar 3DT185 Phosphoric Acid (60 -100%) <i>or equivalent</i>	High toxicity; Hazard class – Corrosive	Not Applicable	Phosphoric acid = PEL: 1 mg/m ³ (TWA) TLV: 1 mg/m ³ (TWA), STEL: 3 mg/m ³	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Water treatment chemical NALCO 3D Trasar 3DT177 or equivalent Phosphoric acid (30%)	Moderate toxicity; Hazard class – Irritant	Not Applicable	Phosphoric acid = PEL: 1 mg/m ³ (TWA) TLV: 1 mg/m ³ (TWA), STEL: 3 mg/m ³	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO 3D Trasar 3DT190 or equivalent	Low toxicity; Hazard class – Irritant	Not Applicable	None established for mixture	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO Acti-Brom (R) 7342 or equivalent Sodium bromide	Low toxicity; Hazard class – Irritant	Not Applicable	Sodium bromide = PEL: none established	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO pHfreedom® 5200M or equivalent Sodium salt of phosphonomethylated diamine	Low to moderate toxicity; Hazard class – Irritant	Not Applicable	Sodium salt of phosphonomethylated diamine = PEL: none established	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO PCL-1346	Low toxicity; Hazard class – Irritant	Not Applicable	None established for mixture	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Water treatment chemical NALCO Permacare (R) PC-7408 Sodium bisulfite	Low toxicity; Hazard class – Irritant	Not Applicable	Sodium bisulfite = PEL: none established; TLV: 5 mg/m ³ TWA	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO BT-3000 or equivalent Sodium hydroxide Sodium tripolyphosphate	High toxicity; Hazard class – Corrosive	Not Applicable	Sodium hydroxide = PEL: 2 mg/m ³ Sodium tripolyphosphate = PEL: none established	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Boiler water treatment chemical, pH adjustment Sodium Hydroxide (50%) CAS Number 1310-73-2	High toxicity; Hazard class – Corrosive	1,000 lbs	Sodium hydroxide = PEL: 2 mg/m ³	40,000 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical NALCO 8338 or equivalent Sodium nitrite Sodium tolytriazole Sodium hydroxide	Moderate toxicity; Hazard class – Toxic	Not Applicable	Sodium nitrite = PEL: none established Sodium tolytriazole = PEL: none established Sodium hydroxide = PEL: 2 mg/m ³	Plastic totes, 8 x 400 gallons	Inventory management, isolated from incompatible chemicals and secondary containment

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Water treatment chemical 93%-98% sulfuric acid CAS No. 7664-93-9	High toxicity; Hazard class – Corrosive, water reactive	1,000 lbs	PEL: 1 mg/m ³	4,000 gallons	Inventory management, isolated from incompatible chemicals and secondary containment
Water treatment chemical Sodium Hypochlorite (13% solution) CAS No. 7689-52-9	High toxicity; Hazard class – Poison-B, Corrosive	100 lbs	Workplace Environmental Exposure Limit (WEEL) - STEL: 2 mg/m ³ PEL: 0.5 ppm (TWA), STEL: 1 ppm as Chlorine TLV: 1 ppm (TWA), STEL: 3 ppm as Chlorine	4,000 gallons	Inventory management, isolated from incompatible chemicals
Oxygen Scavenger Reagent Acetic Acid 60% CAS No. 64-19-7 Iodine 20% CAS No. 7553-56-2 De-ionized water 20% CAS No. 7732-18-5	Moderate toxicity; Hazard Class – Corrosive, Irritant	5,000 lbs	PEL: 10 ppm TWA PEL: 0.1 ppm N/A	Minimal onsite storage for water treatment, not expected to exceed 200 lbs	Inventory management, isolated from incompatible chemicals

Table 5.6-3R Summary of Special Handling Precautions for Large Quantity Hazardous Materials (Rev.2)

Hazardous Material and CAS No. ¹	Relative Toxicity ² and Hazard Class ³	RQ ⁴ pounds (kg)	Permissible Exposure Limit (PEL)	Storage Description; Capacity	Storage Practices and Special Handling Precautions
Boiler water treatment oxygen scavenger Carbohydrazide CAS No. 497-18-7	High toxicity; Hazard class – Irritant	Not applicable	Carbohydrazide = PEL: none established	2,400 gallons	Inventory management, isolated from incompatible chemicals
Herbicide Roundup® or equivalent CAS No. 38641-94-0	Low toxicity; Hazard class – Irritant	Not applicable	Isopropylamine salt of glyphosphate = no specific occupational exposure has been established	No onsite storage, brought on site by licensed contractor, used immediately	No excess inventory stored on site
Soil stabilizer Active ingredient: acrylic or vinyl acetate polymer or equivalent CAS No. Active ingredient is 'Not Hazardous'	Non-toxic; Hazard class – NA	Not applicable	None established	No onsite storage, supplied in 55-gallon drums or 400-gallon totes, used immediately	No excess inventory stored on site

¹ CAS No. – Chemical Abstracts Service registry number. This number is unique for each chemical.

² Low toxicity is used to describe materials with an NFPA Health rating of 0 or 1. Moderate toxicity is used describe materials with an NFPA rating of 2. High toxicity is used to describe materials with an NFPA rating of 3. Extreme toxicity is used to describe materials with an NFPA rating of 4.

³ NA denotes materials that do not meet the criteria for any hazard class defined in the 1997 Uniform Fire Code.

⁴ RQ - Reportable Quantity for hazardous substance as designated under section 102(a) defined under CERCLA. (To note: As previously discussed in the text, Table 5.6-3 includes those chemicals stored or used in excess of 55 gallons for liquids, 500 pounds for solids, and 200 cubic feet for compressed gases. These quantities coincide with the thresholds for reporting under California's HMBP requirements).

Attachment 3



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.ca.blm.gov

In Reply Refer To:
1510 (P)
CA930

AUG 26 2010

Memorandum

To: Regional Director, U.S. Fish and Wildlife Service, Region 8
2800 Cottage Way, Sacramento, California 95825

From: Acting State Director, California

Subject: Eagle Act Consultation for Renewable Energy Projects

The Bureau of Land Management is reviewing applications for fast track renewable energy projects. Part of our environmental review includes an assessment of impacts to eagles and whether approving the project would likely result in the taking of eagles, which are federally protected under the Bald and Golden Eagle Project Act (Eagle Act). Our staffs have been in early consultation for most of these projects.

I am requesting that you review the attached initial determinations of the likelihood of take of an eagle that reflects the outcomes of the discussions between our staffs to date. If the Service concurs that eagle take is likely, please advise the Bureau on whether or not an avian protection plan (APP) would provide adequate protective measures to avoid the take of eagles or sufficient conservation measures to off-set anticipated take enabling the project to reach the "no net loss" standard established in the Final Rule on Eagle Act Take Permits (74 FR 46835, September 2009).

BLM, in consultation with your staff, has identified four wind energy projects we believe would result in take and where an APP is unlikely to mitigate to the no net loss standard. Should you concur with these conclusions, I suggest the USFWS and BLM hold a meeting with project applicants to explain and discuss our findings. Given these four wind energy projects are actively in the project design and NEPA documentation processes stage, a timely response will allow applicants to determine how to proceed with the best available information.

The attached table identifies the projects and the initial assessment regarding take of eagles prepared in consultation with your staff. A summary of specific information for each project is also enclosed. If you or your staff should need additional information or assistance, please contact Amy L. Fesnock at 916-978-4646 or amy_fesnock@blm.gov.

Attachments:

1. Table of BLM Initial Determinations
2. Summary of Project Specific Information for Projects

Table of BLM Initial Determination and Requested Dates for Concurrence from FWS

Project	BLM's Determination	Requested Date of Concurrence
Daggett Ridge Wind	Impact to breeding, Take likely	09/15/2010
Granite Wind	Impact to breeding, Take likely	09/15/2010
Iberdrola Tule Wind	Impact to breeding, Take likely	09/15/2010
Ocotillo Wells Wind	Impact to breeding, Take likely	02/11/2011
Devers-Palo Verde	No impact to breeding, Take likely , APP needed	09/15/2010
El Dorado Ivanpah	No impact to breeding, Take likely , APP needed	10/01/2010
Ivanpah SEGS solar	No impact to breeding, Take Unknown, APP needed	09/15/2010
Tessera Calico solar	No impact to breeding, Take Unknown, APP needed	09/15/2010
Tessera Imperial Valley	No impact to breeding, Take Unknown, APP needed	09/15/2010
Chevron Lucerne solar	Take Unlikely, no APP	09/15/2010
NextEra Genesis solar	No impact to breeding, Take Unknown, APP needed	10/01/2010
Solar Millineum Blythe	No impact to breeding, Take Unknown, APP needed	10/01/2010
Solar Millineum Palen	No impact to breeding, Take Unknown, APP needed	01/31/2011
First Solar Desert Sunlight	No impact to breeding, Take Unlikely, no APP	02/11/2011
Invenergy Wind- Eagle Lake	Take likely but mitigable, APP needed	02/11/2011
Walker Ridge Wind-Ukiah	Take likely but mitigable, APP needed	02/11/2011

Summary of Pertinent Data for Assessing Potential Effects to Eagles

Project Title: Chevron Lucerne

Project Type/Size: Photovoltaic, 45 megawatts, 516 acres
Project Location: San Bernardino County, 8 miles east of Lucerne

Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 4
Status of Territories: 2 active, 2 historic
Closest Nest: 5.5 miles

Proposed Conservation Measures:
Transmission lines built to standards of the Avian Power Line Interaction Committee
Preconstruction nest surveys

Assessment of Impacts to breeding pairs and progeny: no impact
Assessment of Impacts to floaters, migrating birds, wintering birds: no impact

Project Title: Ivanpah Solar Energy Generating System

Project Type/Size, Solar Towers, 370 megawatts, 3,640 acres
Project Location: eastern San Bernardino County, 4.5 miles southwest of Primm, Nevada
Species of Concern: Golden Eagles
Surveys: none completed, relied on BLM historic data
Number of Territories within 10 miles of Project boundary: 3 territories
Status of Territories: 1 active, 2 unknown (presumed historic)
Closest Nest: 4.3 miles

Proposed Conservation Measures:
Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)
Preconstruction nest surveys

Assessment of Impacts to breeding pairs and progeny: no impact
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Tessera Calico

Project Type/Size, SunCatchers, 850 megawatts, 6,215 acres

Project Location: San Bernardino County, 37 miles east of Barstow

Species of Concern: Golden Eagles

Surveys: Helicopter surveys completed in 2010

Number of Territories within 10 miles of Project boundary: 4 territories

Status of Territories: 1 active, 3 historic

Closest Nest: 3.5 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Avian mortality surveys

Preconstruction nest surveys

Establishment of no-disturbance buffer zones around active nests

Assessment of Impacts to breeding pairs and progeny: no impact

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Tessera Imperial Valley

Project Type/Size: Suncatchers, 709 megawatts, 6,144 acres

Project Location: western Imperial County, 14 miles west of El Centro, and 4 miles east of Ocotillo

Species of Concern: Golden Eagles

Surveys: Helicopter surveys completed in 2010

Number of Territories within 10 miles of Project boundary: 1 territory

Status of Territories: 1 active

Closest Nest: ~9 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Avian Mortality Surveys (2 years)

Assessment of Impacts to breeding pairs and progeny: loss of foraging habitat

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Daggett Ridge

Project Type/Size: wind turbine, 82.5 megawatts, 1,957 acres
Project Location: San Bernardino County, 4 miles southeast of Barstow

Species of Concern: Golden Eagles
Surveys: relied on BLM data and ground surveys from 2005-8
Number of Territories within 10 miles of Project boundary: 7 territories
Status of Territories: 5 active, 2 historic
Closest Nest: 0.5 miles from project, one territory concurrent with ROW

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)
Clearing of suitable nesting habitat on project site during non-breeding season
Preconstruction surveys and no work buffers for nesting eagles.
Construct 3 nest structures 2 miles away from project boundary.
Conduct 5 years of monitoring of golden eagle nesting post construction.
Band and satellite transmitter resident raptors for 5 years.
Provide funding to raptor rehabilitation center.
Minimization of night lighting on turbines and other facilities to avoid avian collisions
Avoidance of creating habitat for prey near turbines
Avoidance of siting turbines adjacent to the upwind side of ridge crests

Assessment of Impacts to breeding pairs and progeny: expect to lose one territory, eagle mortality
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Granite Wind

Project Type/Size: Wind turbines, 59-84 megawatts, 2,756 acres (2,086 acres BLM land)
Project Location: San Bernardino County, 14 miles east of Victorville

Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 11 territories
Status of Territories: 9 active, 2 historic, one overlaps part of ROW
Closest Nest: ~ 0.5 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)
Clearing of suitable nesting habitat on project site during non-breeding season
Minimization of night lighting on turbines and other facilities to avoid avian collisions
Avoidance of creating habitat for prey near turbines
Avoidance of siting turbines adjacent to the upwind side of ridge crests

Assessment of Impacts to breeding pairs and progeny: anticipate losing a territory, eagle mortality
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Iberdrola Tule Wind

Project Type/Size: Wind Turbines, 200 megawatts, 15,500 acres
Project Location: western San Diego County, 60 miles east of San Diego

Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 9 territories
Status of Territories: 7 active, 2 historic
Closest Nest: 1000 feet from turbines on Tribal lands, ~1.5 miles to turbines on BLM lands

Proposed Conservation Measures:
Preconstruction surveys for nesting birds.

Assessment of Impacts to breeding pairs and progeny: loss of one territory, eagle mortality
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Devers-Palo Verde II

Project Type/Size: Transmission line, 230 miles of new 500 kV line, 50 miles of upgrades
Project Location: Harquahala Substation in Arizona (near Palo Verde nuclear plant) to Devers Substation in North Palm Springs, CA

Proposed Conservation Measures:
Transmission lines built to standards of the Avian Power Line Interaction Committee

Assessment of Impacts to breeding pairs and progeny: unknown
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: NextEra Genesis

Project Type/Size: Solar Trough, 250 megawatts, 1,800 acres
Project Location: eastern Riverside County, 25 miles west of Blythe

Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 2 territories
Status of Territories: 1 active, 1 historic
Closest Nest: ~7.5 miles

Proposed Conservation Measures:
Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)
Pre-construction nest surveys

Assessment of Impacts to breeding pairs and progeny: no impact
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Solar Millennium Blythe

Project Type/Size, Solar Trough, 968 megawatts, 7,025 acres

Project Location: eastern Riverside County, 8 miles west of Blythe

Species of Concern: Golden Eagles

Surveys: Helicopter surveys completed in 2010

Number of Territories within 10 miles of Project boundary: 2 territories

Status of Territories: 1 active, 1 historic

Closest Nest: 1.5 miles (this is the inactive one), 10 miles is the active one

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Avian Mortality Surveys (2 years)

Pre-construction nest surveys

Annual Golden Eagle inventory during construction to determine occupied/unoccupied territory

Assessment of Impacts to breeding pairs and progeny: no impact

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: El Dorado-Ivanpah

Project Type/Size: Transmission line, 35 miles of new 230 kV line, several upgrades

Project Location: Eldorado Substation in Nevada to proposed Ivanpah substation in California

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Assessment of Impacts to breeding pairs and progeny: unknown

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: BRP-Steam Power

Project Type/Size: geothermal well connecting to existing power plant currently producing 12-17 megawatts, 38-43 megawatts will be produced by this project allowing the power plant to reach its unrealized capacity of 55 megawatts, 138 acres

Project Location: northwestern portion of The Geysers, west of Cobb in unincorporated Lake County near its boundary with Sonoma and Mendocino Counties

Species of Concern: Golden Eagles

Surveys: none conducted, no territories within 20 miles via CNDDB

Number of Territories within 10 miles of Project boundary: none known, nesting habitat is present

Status of Territories: none

Closest Nest: 23 miles

Proposed Conservation Measures:

Preconstruction surveys within 1 miles of project. If nest found, construction delayed until fledging or no surveys, but construction LOP of February 1 to June 15.

Assessment of Impacts to breeding pairs and progeny: none

Assessment of Impacts to floaters, migrating birds, wintering birds: none

Project Title: Haiwee Geothermal

Project Type/Size: geothermal well, 60 megawatts, 22,060 acres, with 4,500 for 3 specific leases

Project Location: Inyo County, east of Inyo National Forest, west of China Lake Naval Air Weapons Station, and south of the South Haiwee Reservoir.

Species of Concern: Golden Eagles

Surveys: no surveys

Number of Territories within 10 miles of Project boundary: none via CNDDDB and BLM database

Status of Territories: none

Closest Nest:

Proposed Conservation Measures:

Preconstruction surveys will be conducted at the time of the site development plan. If nests found, they will be buffered or construction will avoid nesting season.

Assessment of Impacts to breeding pairs and progeny: none

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Solar Millennium Palen

Project Type/Size: Solar Trough, 500 megawatts, 5,200 acres

Project Location: Riverside County, 10 miles east of Desert Center

Species of Concern: Golden Eagles

Surveys: Helicopter surveys completed in 2010

Number of Territories within 10 miles of Project boundary: 3 territories

Status of Territories: 2 active, 1 historic

Closest Nest: 5.5 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Avian Mortality Surveys (2 years)

Pre-construction nest surveys.

Assessment of Impacts to breeding pairs and progeny: none

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: First Solar Desert Sunlight

Project Type/Size: Solar photovoltaic, 550 megawatts, 3,045-4,245 acres
Project Location: eastern Riverside County, 6 miles north of Desert Center
Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 8 territories
Status of Territories: 6 active, 2 historic
Closest Nest: 1.5 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)
Pre-construction nest surveys

Assessment of Impacts to breeding pairs and progeny: none
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Ocotillo Express Wind

Project Type/Size: wind turbines, 500 megawatts, 15,000 acres
Project Location: western Imperial County, 5 miles west of Ocotillo

Species of Concern: Golden Eagles
Surveys: Helicopter surveys completed in 2010
Number of Territories within 10 miles of Project boundary: 4 territories
Status of Territories: 2 active, 2 historic
Closest Nest: 2.5 miles

Proposed Conservation Measures:

Have not been developed yet, in the NOI stage of NEPA

Assessment of Impacts to breeding pairs and progeny: eagle mortality
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Invenergy Wind

Project Type/Size: wind turbines, 51 megawatts, 11,407 acres
Project Location: Lassen County, 15 miles north of Susanville (In Eagle Lake Field Office)

Species of Concern: Golden Eagles and Bald Eagles
Surveys: Nest, point count surveys, helicopter – 2 years
Number of Territories within 5 miles of Project boundary: 3
Status of Territories: active
Closest Nest: 2.25 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee
Avian Mortality Surveys (2 years)

Assessment of Impacts to breeding pairs and progeny: eagle mortality
Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Project Title: Walker Ridge Wind Project

Project Type/Size: wind turbines, 67 megawatts, 8,157 acres

Project Location: Lake and Colusa Counties, 25 miles west of Williams (In Ukiah Field Office)

Species of Concern: Golden Eagles and Bald Eagles

Surveys: Helicopter, nest

Number of Territories within 10 miles of Project boundary: 1 historic BE nest sighted

Status of Territories: Historic in CNDDDB and appeared historic in survey

Closest Nest: 1.9 miles

Proposed Conservation Measures:

Transmission lines built to standards of the Avian Power Line Interaction Committee

Avian Mortality Surveys (2 years)

Assessment of Impacts to breeding pairs and progeny: none

Assessment of Impacts to floaters, migrating birds, wintering birds: unknown

Attachment 4

BSPP Biological Survey List (Solar Millennium)

Document Name	Date	Docket Log #	Notes	What species were included in the document	What part of the site was discussed in the document
Application for Certification Section 5.3	8/24/2009	52937		DT, WBO, Coachella Valley milkvetch, Gila woodpecker, Gilded flicker, Swainson's hawk, Angel trumpets, Harwood's milkvetch, Fairyduster, Alkali mariposa lily, Crucifixion thorn, Las Animas colubrine, Glandular ditaxis, California satintail, Orocopia sage, Desert spikemoss, Coves' cassia, Dwarf germander, Jackass clover, Orcutt's woody-aster, Ferruginous hawk, Crissal thrasher, Loggerhead shrike, Yellow warbler, American badger, Desert kit fox, Nelson's bighorn sheep, Pallid bat, Waters of the United States and State	BSPP and BRSA as of August 2009
BIOLOGICAL RESOURCES TECHNICAL REPORT	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	DT, WBO, Loggerhead shrike, Yellow warbler, Ferruginous hawk, American badger, Desert kit fox, Nelson's bighorn sheep, Swainson's hawk, pallid bat, Gila woodpecker, gilded flicker, and crissal thrasher, Waters of the United States and State	BSPP and BRSA as of August 2009
JURISDICTIONAL DELINEATION REPORT FOR REGULATED WATERS OF THE UNITED STATES AND STATE	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	Waters of the United States and State	BSPP and BRSA as of August 2009
BOTANICAL SURVEY REPORT	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	Waters of the United States and State, Coachella Valley milkvetch, Angel trumpets, Harwood's milkvetch, Fairyduster, Alkali mariposa lily, Crucifixion thorn, Las Animas colubrine, Glandular ditaxis, California satintail, Orocopia sage, Desert spikemoss, Coves' cassia, Dwarf germander, Jackass clover, Orcutt's Woody-aster, Foxtail cactus, Utah vine milkweed, California ditaxis	BSPP and BRSA as of August 2009
AVIAN POINT COUNT TECHNICAL REPORT	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	Loggerhead Shrike, Black-tailed Gnatcatcher, Ash-throated Flycatcher, Verdin, Black-throated Sparrow, Horned Lark, Lesser Nighthawk, Mourning Dove, House Finch, Gambel's Quail, Common Raven, White-winged Dove, Costa's Hummingbird, Northern Mockingbird, Barn Swallow, Yellow-rumped Warbler, Western Kingbird, Wilson's Warbler, Northern Rough-winged Swallow, Cliff Swallow, Orange-crowned Warbler, Nashville Warbler, Black-headed Grosbeak, Yellow Warbler, Red-winged Blackbird, Dusky Flycatcher, Dusky/Gray Flycatcher, Townsend's/Hermit Warbler	BSPP and BRSA as of August 2009
DESERT TORTOISE TECHNICAL REPORT	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	DT	BSPP and BRSA as of August 2009
WESTERN BURROWING OWL TECHNICAL REPORT	8/24/2009	52937	AFC Appendix F Biological Resources Supporting Documentation	WBO	BSPP and BRSA as of August 2009
Notification of Lake or Streambed Alteration Form FG2023	Nov-09	52937		Waters of the State, WBO, American badger, Desert kit fox, Ferruginous hawk, Loggerheaded shrike, Nelson's bighorn sheep, Yellow warbler	BSPP and BRSA as of Fall 2009
Application for the California Endangered Species Act Section 2081 (B) Incidental Take Permit and Revised Desert Tortoise Technical Report (including Fall 2009)	1/12/2010	54815		DT	BSPP and BRSA as of Fall 2009
Draft Biological Assessment	3/8/2010	55806		DT	BSPP and BRSA as of March 2010
Supplemental Biological Resources Technical Report	2/16/2010		CEC Data Adequacy Response - Bio Supplement Attachment A	Waters of the State, DT, WBO, Swainson's Hawk, Gila Woodpecker, and Gilded Flicker, Loggerhead Shrike, American Badger, Desert Kit Fox, Nelson's Bighorn Sheep, Mojave Fringe-Toed Lizard	BSPP and BRSA as of Fall 2009

BSPP Biological Survey List (Solar Millennium)

Document Name	Date	Docket Log #	Notes	What species were included in the document	What part of the site was discussed in the document
CEC STAFF DATA REQUESTS 45 - 97	1/6/2010			DT, WBO, MFTL, Bighorn Sheep, Waters of the State, special-status plants, Avian Point Counts, Coachella Valley Milkvetch, Harwood's milkvetch, Dwarf germander, Utah milkvine, Desert unicorn	BSPP and BRSA as of Fall 2009
BIOLOGICAL RESOURCES DATA	6/14/2010	57135		DT, WBO, Botanical, Waters of the State	Spring 2010 survey areas
PROPOSED SURVEY APPROACH AND METHODOLOGIES	3/30/2010	57092	Docketed 6/11/2010	DT, WBO, Botanical, Golden Eagle, Waters of the State	Spring 2010 survey areas
BIOLOGICAL RESOURCES TECHNICAL REPORT	6/16/2010	57200	Preliminary Spring 2010 Survey Results	DT, WBO, Botanical, Waters of the State	Spring 2010 survey areas
Western Burrowing Owl Technical Report	6/16/2010	57195	Spring 2010 Survey Results	WBO	Spring 2010 Survey areas
Responses to Selet CURE Data Requests Set One	6/14/2010	57134		MFTL, CST, DT, WBO, GOEA, nest surveys, Botanical,, jurisdictional waters delineation, Nelson's bighorn sheep,	Spring 2010 Survey areas
Draft Summary - 2010 Spring Survey Results	5/10/2010	56623		DT, WBO, Botanical, Waters of the State	Spring 2010 Survey areas
Golden Eagle Survey Results	6/16/2010	57186	by Wildlife Research Institute	Golden Eagle	Golden Eagle helicopter surveys in the area
Approved Jurisdictional Determination	8/4/2010	57926		Waters of the State	BSPP and BRSA as of Spring 2010
Responses to CEC Workshop Questions - Biological Resources	5/14/2010	56822		Vegetation Communities, Waters of the State, Botanical, American badger, DT, Desert kit fox, Ferruginous hawk, Loggerhead shrike, Northern harrier, MFTL, Swainson's hawk, WBO, Sonoran yellow warbler, CST	Spring 2010 Survey areas
Letter From W. Graham re: Survey Results and Impact Calculations for BIO.	6/14/2010	57133		DT, Rare plants, State waters	BSPP and BRSA as of Spring 2010
Blythe Habitat Mitigation and Monitoring Plan	1/4/2010			State waters, DT, WBO, MFTL	BSPP and BRSA as of January 2010
Blythe Supplemental Staff Assessment - Biology Information Request	6/11/2010	57206	A. Harron	DT, Jurisdictional waters, are plants	BSPP and BRSA as of Spring 2010



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

September 19, 2010

Via Electronic & U.S. Mail

Alan Solomon
Siting, Transmission and Environmental
Protection Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Allison Shaffer
Project Manager
Palm Springs South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, California 92262

To Whom it May Concern:

Metropolitan's Comments on Plan Amendment/Final Environmental Impact Statement for the Blythe Solar Power Project, DOI Control No. FES 10-41 & CEC Docket No. 09-AFC-6

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Plan Amendment/Final Environmental Impact Statement for the Blythe Solar Power Project (collectively, "FEIS").

Metropolitan submitted comments on the draft EIS for the Blythe Solar Power Project (Project) on June 15, 2010 that are attached hereto and incorporated by reference. In sum, as a contractor receiving delivery of Colorado River water, Metropolitan remains concerned about the Project's potential direct and cumulative impacts on water supplies, specifically potential impacts on Colorado River and local groundwater supplies.

In reviewing the mitigation measures associated with the Project's use of groundwater as it relates to Metropolitan's Colorado River supplies, Metropolitan noted numerous references to mitigation measures which were confusing and in some cases, inaccurate. For instance, in FEIS Section 4.19, mitigation measures are labeled as "WATER," whereas in Appendix G and in the Bureau of Land Management's (BLM's) response to our prior comments (response), mitigation measures are labeled "SOIL&WATER." Therefore, in reviewing Section 4.19, Metropolitan is unsure whether the "WATER" mitigation measures refer to the same "SOIL&WATER" mitigation measures in Appendix G. Furthermore, it is not clear whether the specific mitigation measures referenced in BLM's response are accurately represented in Appendix G. For instance, on page 5-54 of the response, mitigation measure SOIL&WATER-17 is referenced, however, this mitigation measure is not included in Appendix G. As a result, Metropolitan is precluded

Alan Solomon and Allison Shaffer

September 19, 2010

Page 2

from a complete and accurate review of the final mitigation measures for direct and cumulative impacts to Colorado River and local groundwater supplies.

In Mitigation Measures SOIL&WATER-1 through SOIL&WATER-18, the FEIS addresses potential impacts to water resources. Section 4.19.5 more specifically states that WATER-1 and WATER-15, require that the applicant eliminate any impacts to the Colorado River supplies by "ensur[ing] that either (1) potential effects on the Colorado River hydrology are avoided entirely, or (2) the applicant applies for and receives an allocation of water from the Colorado River." In Appendix G, SOIL&WATER 2 requires submittal of a Water Supply Plan to the Compliance Project Manager (CPM) and SOIL&WATER 16 provides an accounting method which would require additional investigation and calculation of the potential for groundwater pumping on site to affect the Colorado River. SOIL&WATER-16 requires submittal of a report detailing the modeling effort to estimate, among other things, the amount of subsurface water flowing from the surface water due to project pumping. Metropolitan requests to be included, along with the Colorado River Board of California, in BLM's process of reviewing all groundwater and hydrogeological monitoring and reporting provided by the project owner related to local groundwater and Colorado River resources prior to BLM's approval of the reports.

We appreciate the opportunity to provide input to your planning process. If we can be of further assistance, please contact Dr. Debbie Drezner at (213) 217-5687.

Very truly yours,


John Shamma
Manager, Environmental Planning Team

DSD/cms

Attachment: Comment Letter on Blythe Solar DEIS dated June 15, 2010

cc: Gerald R. Zimmerman, Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1068



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

JUNE 15, 2010

Via Electronic & U.S. Mail

Alan Solomon
Siting, Transmission and Environmental
Protection Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Allison Shaffer
Project Manager
Palm Springs South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, California 92262

To Whom it May Concern:

Notice of Availability of the Draft Environmental
Impact Statement and Revised Staff Assessment for the Chevron Energy Solutions/Solar
Millennium, Blythe Solar Power Project and Possible California Desert Conservation
Area Plan Amendment, CEC Docket No. 09-AFC-6, BLM Docket No. CACA 48811

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Revised Staff Assessment and Draft Environmental Impact Statement (collectively, "DEIS") for the Blythe Solar Power Project and Possible California Desert Conservation Area Plan Amendment (Project). The U.S. Bureau of Land Management (BLM) is the lead agency under the National Environmental Policy Act (NEPA) for the DEIS and the California Energy Commission (CEC) is the lead agency (for licensing thermal power plants 50 megawatts and larger) under the California Environmental Quality Act (CEQA) and has a certified regulatory program under CEQA. Under its certified program, CEC is exempt from having to prepare an environmental impact report. Its certified program, however, requires environmental analysis of the project or a "staff assessment," including an analysis of alternatives and mitigation measures to minimize any significant adverse effect the project may have on the environment.

Metropolitan is pleased to submit comments for consideration by BLM and CEC during the public comment period for the DEIS and staff assessment.¹ In sum, Metropolitan provides these comments to ensure that any potential impacts on its facilities in the vicinity of the Project and on the Colorado River water resources are adequately addressed.

¹ Comments on the DEIS and Revised Staff Assessment are due June 16, 2010 per the Federal Register notice. 75 Fed. Reg. 13275 (March 19, 2010). This comment deadline applies to the CEC's Revised Staff Assessment issued June 4, 2010 regardless of whether it is finalized separately from BLM's DEIS as the relevant comment periods may not be reduced or altered retroactively.

Background

Metropolitan is a public agency and regional water wholesaler. It is comprised of 26 member public agencies serving more than 19 million people in six counties in Southern California. One of Metropolitan's major water supplies is the Colorado River via Metropolitan's Colorado River Aqueduct (CRA). Metropolitan holds an entitlement to water from the Colorado River. The CRA consists of tunnels, open canals and buried pipelines. CRA-related facilities also include above and below ground reservoirs and aquifers, access and patrol roads, communication facilities, and residential housing sites. The CRA, which can deliver up to 1.2 million acre-feet of water annually, extends 242 miles from the Colorado River, through the Mojave Desert and into Lake Mathews. Metropolitan has five pumping plants located along the CRA, which consume approximately 2,400 gigawatt-hours of energy when the CRA is operating at full capacity.

Concurrent with its construction of the CRA in the mid-1930s, Metropolitan constructed 305 miles of 230 kV transmission lines that run from the Mead Substation in Southern Nevada, head south, then branch east to Parker, California, and then west along Metropolitan's CRA. Metropolitan's CRA transmission line easements lie on federally-owned land, managed by BLM. The transmission lines were built for the sole and exclusive purpose of supplying power from the Hoover and Parker projects to the five pumping plants along the CRA.

Metropolitan's ownership and operation of the CRA and its 230 kV transmission system is vital to its mission to provide Metropolitan's 5,200 square mile service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

Project Understanding

Pursuant to the Project Description in the DEIS, Solar Millennium, LLC and Chevron Energy Solutions, the joint developers of this project (collectively, "Proponents"), propose to construct, own, and operate the Blythe Solar Power Project. The project is a concentrated solar thermal electric generating facility with four adjacent, independent, and identical solar plants of 250 megawatt (MW) nominal capacity each for a total capacity of 1,000 MW nominal.

The Project will utilize solar parabolic trough technology to generate electricity. With this technology, arrays of parabolic mirrors collect heat energy from the sun and refocus the radiation on a receiver tube located at the focal point of the parabola. A heat transfer fluid (HTF) is heated to high temperature (750°F) as it circulates through the receiver tubes. The heated HTF is then piped through a series of heat exchangers where it releases its stored heat to generate high pressure steam. The steam is then fed to a traditional steam turbine generator where electricity is produced.

The Project water needs would be met by use of groundwater pumped from one of two wells on the plant site. Water for domestic uses by project employees would also be provided by onsite groundwater treated to potable water standards. During construction, the Project proponent anticipates using up to 4,100 acre-feet of water over the course of 60 months. Following

construction and for long-term operations, the average total annual water usage for all four units combined is estimated to be about 600 acre-feet per year (afy).

The Project site is located approximately two miles north of U.S. Interstate-10 (I-10) and eight miles west of the City of Blythe in an unincorporated area of Riverside County, California. The Blythe Airport is about one mile south of the site. The applicants have applied for a right-of-way grant from BLM for about 9,400 acres of flat desert terrain. The total area that will be disturbed by Project construction and operation will be about 7,030 acres. The area inside the project's security fence, within which all Project facilities will be located, will occupy approximately 5,950 acres.

Land Use Issues: Potential Impacts on Metropolitan Facilities

Although Metropolitan has not yet identified any direct impacts, the Project is in the general vicinity of Metropolitan facilities, perhaps as close as 8 miles. As described above, Metropolitan currently has a significant number of facilities, real estate interests, and fee-owned rights-of-way, easements, and other properties (Facilities) located on or near BLM-managed land in southern California that are part of our water distribution system. Metropolitan is concerned with potential direct or indirect impacts that may result from the construction and operation of any proposed solar energy project on or near our Facilities. In order to avoid potential impacts, Metropolitan requests that the final EIS and staff assessment include an assessment of potential impacts to Metropolitan's Facilities with proposed measures to avoid or mitigate significant adverse effects.

Metropolitan is also concerned that locating solar projects near or across its electrical transmission system could have an adverse impact on Metropolitan's electric transmission-related operations and Facilities. From a reliability and safety aspect, Metropolitan is concerned with development of any proposed projects and supporting transmission systems that would cross or come in close proximity with Metropolitan's transmission system. Metropolitan requests that the final EIS and staff assessment analyze and assess any potential impacts to Metropolitan's transmission system.

Water Resources: Potential Impacts on Colorado River and Local Water Supplies

Metropolitan is also concerned about the Project's potential direct and cumulative impacts on water supplies, specifically potential impacts on Colorado River and local groundwater supplies. As noted above, Metropolitan holds an entitlement to imported water supplies from the Colorado River. Water from the Colorado River is allocated pursuant to federal law and is managed by the Department of the Interior, Bureau of Reclamation (USBR). In order to lawfully use Colorado River water, a party must have an entitlement to do so. *See* Boulder Canyon Project Act of 1928, 43 U.S.C. §§ 617, et seq.; *Arizona v. California*, 547 U.S. 150 (2006).

As noted above, the Project proposes to use approximately 4,100 af of water during construction and 600 afy for long-term operations, using groundwater from a groundwater basin that is hydrogeologically connected to the Colorado River, within an area referred to as the "accounting surface." The extent of accounting surface area for the Colorado River was determined by the

Alan Solomon, Allison Shaffer
June 15, 2010
Page 4

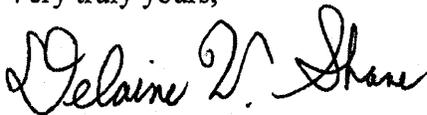
U.S. Geological Survey (USGS) and USBR as part of an on-going rule-making process. *See* Notice of Proposed Rule Regulating the Use of the Lower Colorado River Without an Entitlement, 73 Fed. Reg. 40916 (July 16, 2008); USGS Scientific Investigation Report No. 2008-5113. To the extent the Project uses Colorado River water, it must have a documented right to do so.

Entities in California are using California's full apportionment of Colorado River water, meaning that all water is already contracted and no new water entitlements are available in California. In addition, the California contractors have agreed in the 1931 Seven Party Agreement to prioritize the delivery of California's Colorado River water among themselves. Under this priority agreement, proponents would have to obtain water from the existing junior priority holder, Metropolitan, which has the authority to sell water for power plant use. Metropolitan is willing to discuss the exchange of a portion of its water entitlement subject to any required approvals by Metropolitan's Board of Directors and so long as the Proponents agree to provide a replacement supply through an agreement with Metropolitan. As required by mitigation measures SOIL&WATER-2 and SOIL&WATER-16 in the Revised Staff Assessment, Proponents must fully address the impacts on Colorado River water resources and provide full mitigation for such impacts, including replacement of supply.

Additionally, CEC should assess the potential cumulative impacts of the use of the scarce Colorado River and local groundwater supplies in light of other pending renewable energy projects within the Colorado River Basin and the local groundwater regions. Metropolitan requests that the final EIS and staff assessment address the Proponent's water supply and any potential direct or cumulative impacts from this use.

We appreciate the opportunity to provide input to your planning process and we look forward to receiving future environmental and related documentation on this project. If we can be of further assistance, please contact Dr. Debbie Drezner at (213) 217-5687.

Very truly yours,

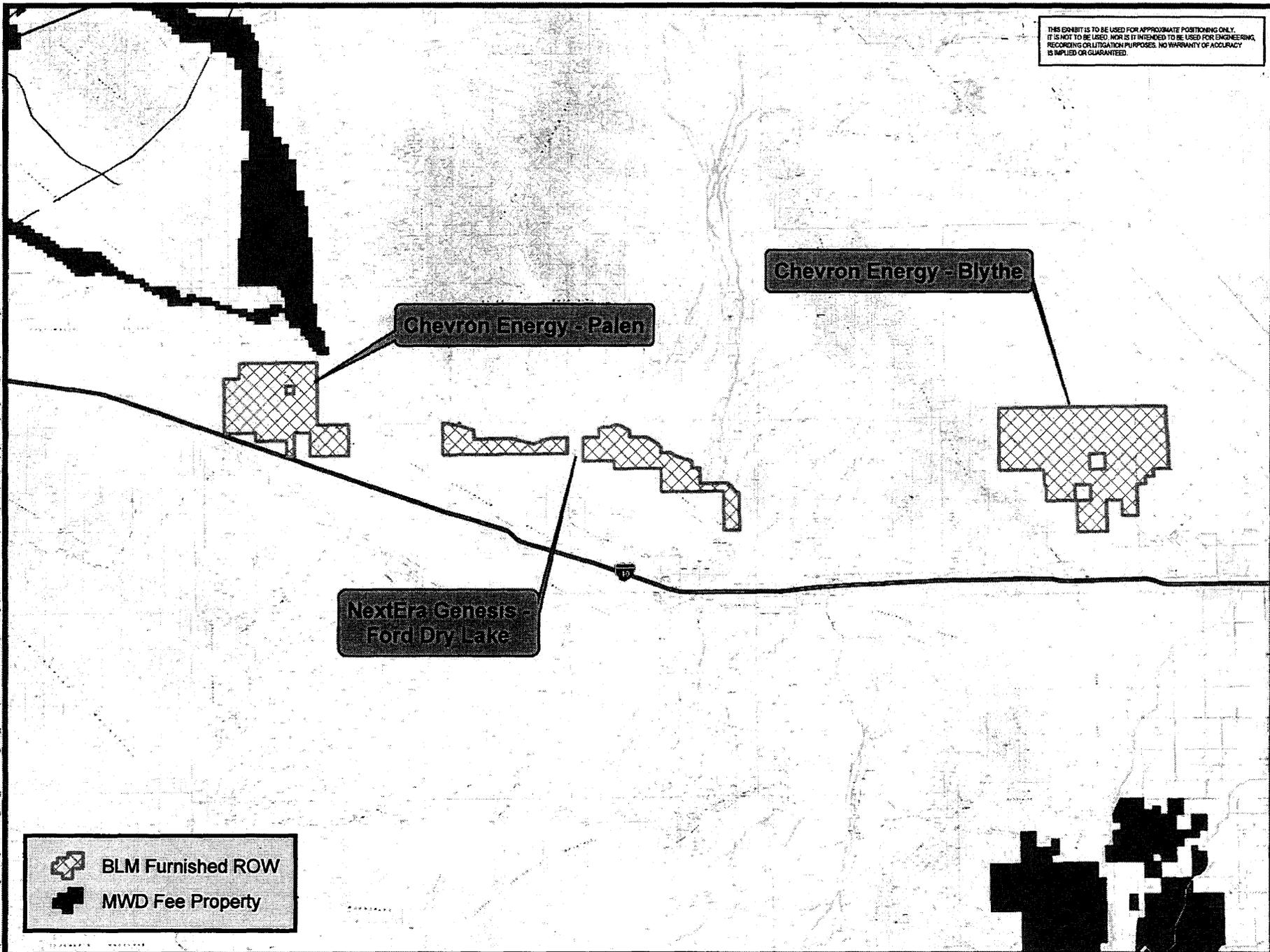


Delaine W. Shane
Manager, Environmental Planning Team

DSD/dsd
(Public Folders/EPT/Letters/EPT Final Letters PDF/2010/15-JUN-10C.doc)
Enclosures: Map

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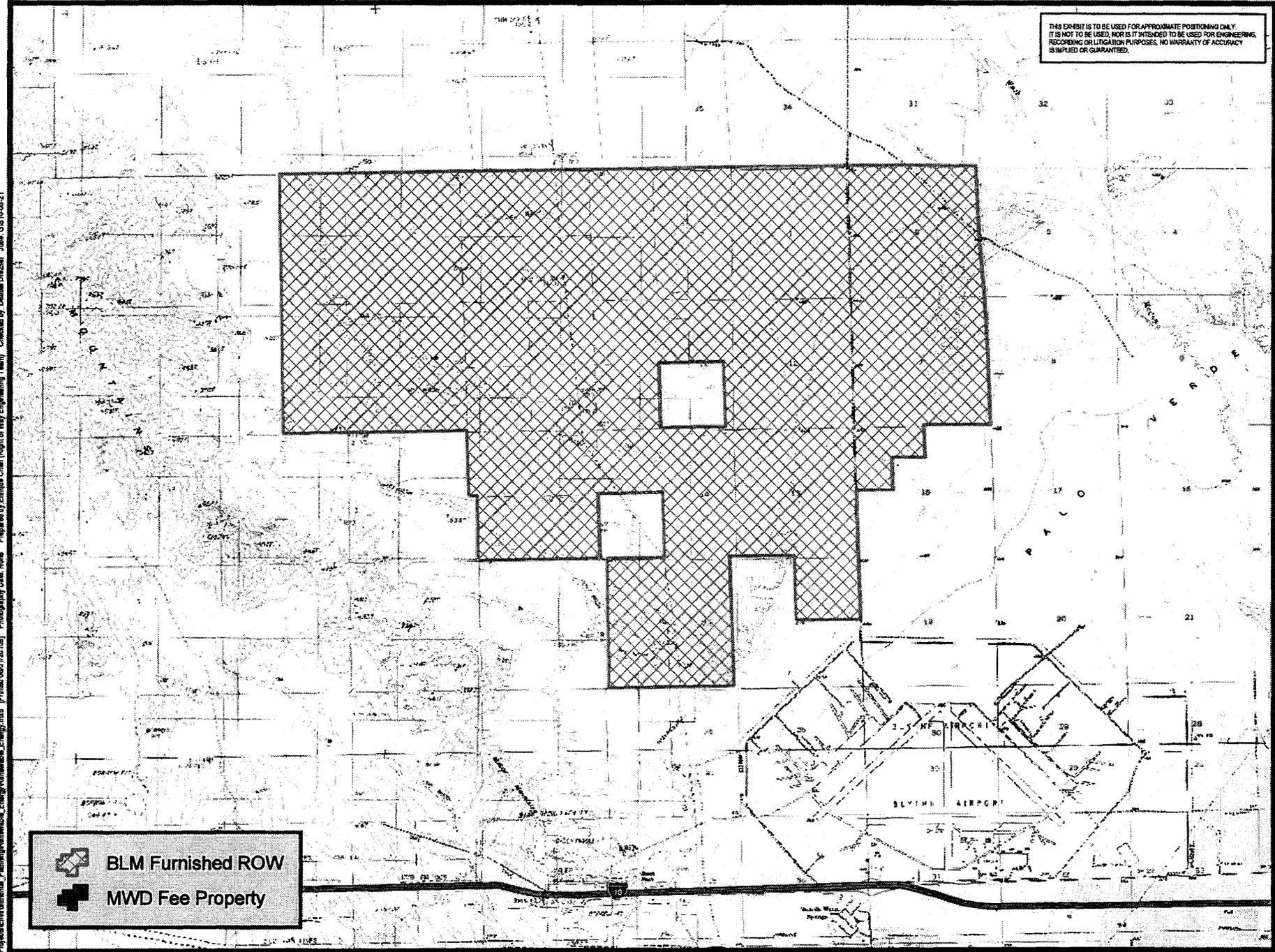
Project: Environmental / Air Quality / Renewable Energy / Renewable Energy / need / Printed: 08/01/2019 / Photography Date: None / Prepared by: Enrique Chan (Right of Way Engineering Team) / Checked by: Debra Drazner / Job #: GIS1045-21



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Project: Environmental Planning\Renewable_Energy\Renewable_Energy.mxd Printed: 06/01/2016 Prepared by: Enrique Chen (Right of Way Engineering Team) Checked by: Debbie Druezer Job#: GIS10-05-21

 BLM Furnished ROW
 MWD Fee Property



SALLY PETERSON
P.O. BOX 5036
BALBOA ISLAND, CA 92662
(949) 673-7362

10 SEP -7 PM 1:51

September 3, 2010

Holly-

You were very helpful to me way back in early spring when I was trying to get a feel as to what was going on with the solar development in Blythe. We had a property for sale and had a flurry of interested parties and I didn't have a clue. I have now had crash courses in both solar uses and mitigation. Last time we spoke, it was about mitigation land. I realized at that point that one of our properties should be preserved. Though my father always pictured it as a great golf course development, it is a significant piece of land, environmentally. With all the potential development of land by the solar companies, some corridors should be preserved. You and I talked about how preserving land locally would actually be a benefit and you had suggested that I submit a letter during the public comment period. I was very slow in doing this as I thought it was self-serving. But, as I drove back to Orange County from Blythe the other day, I decided that someone representing Blythe should speak up as there is talk about the mitigation moneys going elsewhere. Thus, I sent the attached letter.

I don't think that I was ever specific with you as to why I thought that our lands in particular should be preserved. Our land is basically the mouth of the McCoy Wash, the main wash of the watershed northwest of Blythe. We are at the northwest corner of the Palo Verde Valley with its extensive farmland. We are bordered on the east by farmland that extends to the Colorado River and south to the south end of the valley. In addition to an aerial photo, I have included a map showing our relationship to DFG and BLM lands. My family's land, in purple, has a DFG parcel (brown) to the southeast, BLM (green) to the southwest and northwest. I also have a couple parcels that are colored in yellow that are located up McCoy Wash, between my family's land and large blocks of BLM land. With the extensive development of BLM lands for solar purposes, it has become clear that at least the McCoy Wash should be preserved. We have had interest in our land for mitigation purposes by solar developers and feel that they are the appropriate parties to transfer this land to BLM. It is my understanding that if the solar companies transfer the land directly to BLM, it would save BLM money and time. I know the procedure for the acquisition of mitigation lands is ever-changing, so I may be on your doorstep in the future. But in the mean time, I hope my efforts are beneficial to all. And I am also making an effort to encourage other neighbors who have adjacent lands in the wash to make it available.

So, as you said, maybe some good can come from all of this.

Again, thank you for your help and time.

Sally Peterson

**SALLY PETERSON
P.O. BOX 5036
BALBOA ISLAND, CA 92662
(949) 673-7362**

September 2, 2010

Allison Shaffer
Project Manager
Palm Springs South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92262

**RE: Draft Environmental Impact Statement and Possible Desert Conservation Area
Plan Amendment for the Chevron/Solar Millennium Blythe Solar Power Project.**

Dear Ms. Shaffer,

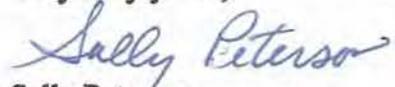
As a property owner in Blythe, we truly have a vested interest in the development of this project. We would request that the mitigation for the environmental impacts of this project directly benefit the Blythe area. It is stated in the Staff Assessment and Draft Environmental Impact Statement that some of the mitigation land be from the same or nearby watersheds. We also know that there have been indications that an effort will be made to consolidate mitigation funds to acquire larger blocks of land. This does make sense, but the blocks of land designated are not the Blythe area.

We feel that the conclusion that there is no environmental benefit to this development can be changed to a positive benefit by the acquisition of local lands that have greater significance environmentally than the lands taken by the Blythe Solar Power Project either for their importance as migration corridors, significant desert washes, or connecting existing public lands. Even the establishment of designated off-road vehicle corridors would benefit the local environment as the off-roading is currently widespread.

The Palo Verde College is located on the mesa east of the Blythe Solar Power Project. The Community College is starting a solar technology program, but might also be encouraged and/or supported in the development of a "desert stewardship" program. They might be included in reclaiming of lands acquired.

We do hope that you will make all effort to benefit the area impacted and thus encourage you to specify that the mitigation lands be from the project's watershed area.

Very truly yours,



Sally Peterson

cc: Tom Pogacnik, BLM
Vicki L. Campbell, BLM
Holly Roberts, BLM
David Lane, City of Blythe

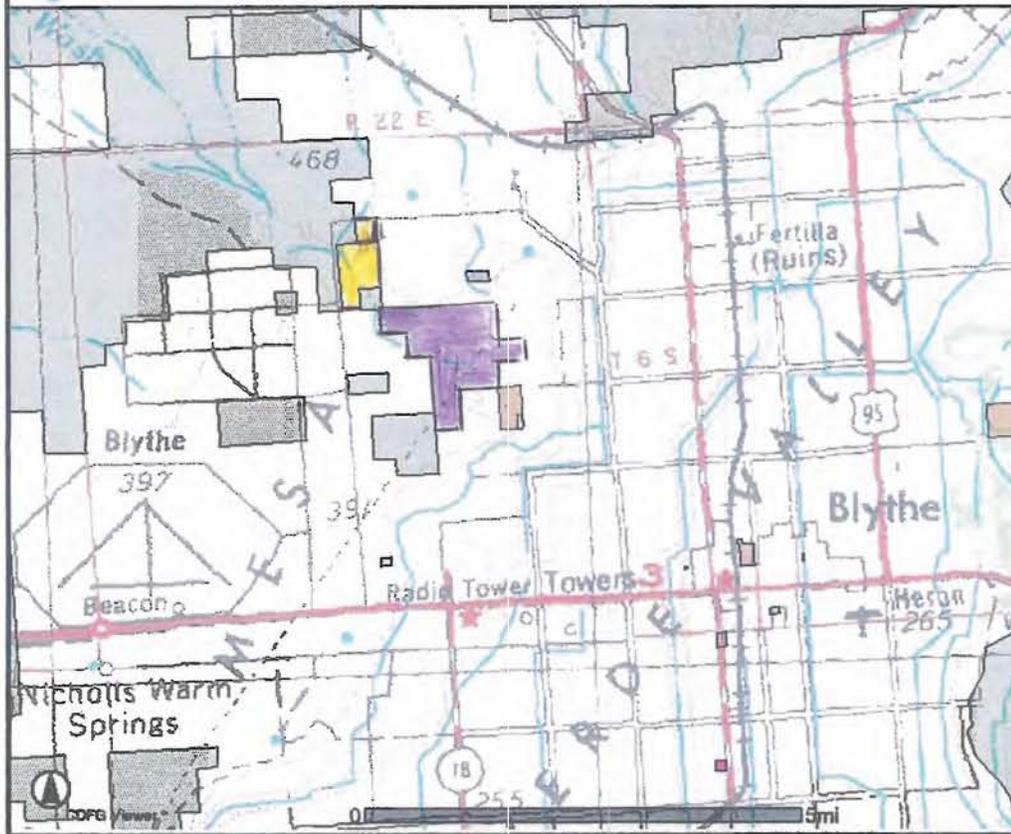


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Map Legend

DFG Facilities

- Air Services
- Boat Services
- Division Branch
- Field Office
- Fish Hatchery
- Laboratory
- Miscellaneous
- Regional Headquarters
- Screen Shop
- State Headquarters
- Storage
- Training Academy
- Warehouse
- Wildlife Conservation Board

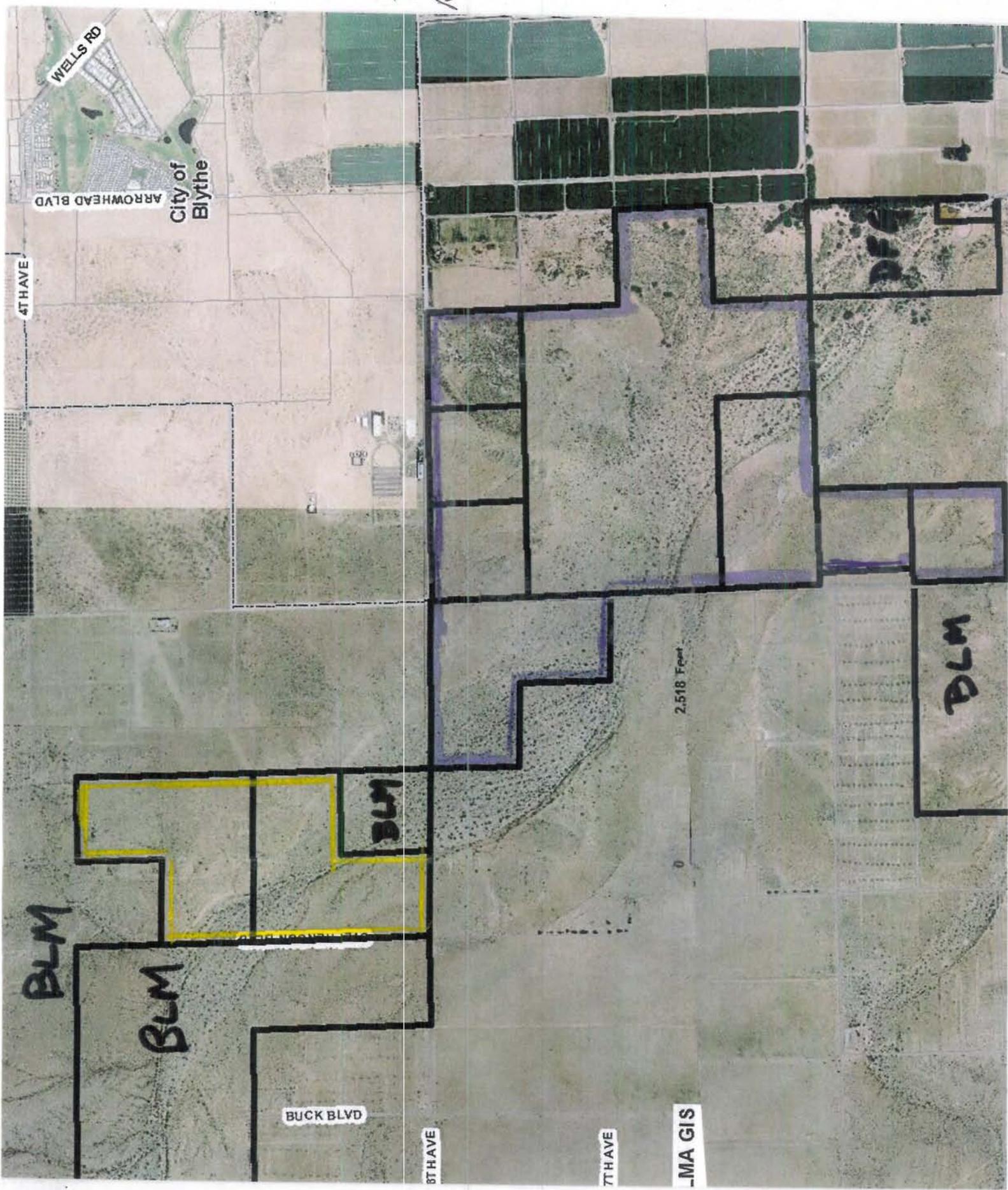
DFG Owned Lands

- Ecological Reserve
- Fish Hatchery
- Miscellaneous
- Public Access
- Undesignated
- Wildlife Area

California Protected Areas Database (CPAD) Units

- Federal
- State
- County
- City
- Special District
- Non-Profit
- Other
- Unknown

T6S
R22E



BLM

BLM

BLM

BLM

2,518 Feet

4TH AVE

WELLS RD

City of
Blythe

ARROWHEAD BLVD

BUCK BLVD

5TH AVE

6TH AVE

LMA GIS



Brendan Hughes
<jesusthedude@hotmail.com>

09/13/2010 10:38 PM

To <capssolarblythe@blm.gov>,
<asolomon@energy.state.ca.us>

cc

bcc

Subject Comments on Blythe Solar Power Project FEIS/Proposed
Decision

To whom it may concern:

I would like to urge BLM and CEC to reject the Blythe Solar Power Project proposal for several reasons. First, dedicating such a large amount of public land to a single use is contrary to BLM's multiple-use mandate. A smaller proposal would be more in line with this mandate. Also, cultural resources and sacred sites for native people will be permanently altered or destroyed by this project. Finally, impacts to the federally-threatened desert tortoise will be severe and unmitigable. The 2009 and 2010 wildlife surveys found ample evidence of desert tortoises, and full surveys are likely to reveal the presence of many live tortoises. The translocation effort that will result if this project is approved will likely cause the death of 25 percent of these tortoises in the short term, and perhaps as much as 50 percent or more mortality in the long term. Translocation would be a failed endeavor, and should not be attempted for this sensitive, threatened species.

BLM and CEC should not be held hostage to the deadlines for ARRA funding, especially if it requires ignoring science and responsible land management for political expediency. ARRA funding should go to deserving projects that have minimal impacts on landscapes and wildlife, such as the Beacon Solar Energy Project or large-scale distributed solar projects in urban areas. BLM and CEC should reject this destructive proposal, and shift the focus of the applicant to previously-disturbed sites, such as the Blythe Mesa Alternative. This project would disturb very little intact habitat, and would produce the same amount of power as the Preferred Alternative. BLM and CEC should be responsible stewards of our natural heritage and say NO to bad projects.

Thank you for your consideration.

Brendan Hughes
61093 Prescott Trail
Joshua Tree, CA 92252



kim bauer
<gartrax@hotmail.com>
09/16/2010 05:16 PM

To <capssolarblythe@blm.gov>
cc
bcc
Subject

my comment on the the Final Environmental Impact Statement (FEIS) for the proposed Chevron Energy Solutions/Solar Millennium Blythe Solar Power Project (BSPP) in eastern Riverside County, Calif is ***negative*** on approval by the blm.the project and related projects which the power board commissioners have already stated would environmentally detrimental to the specific area,is too damaging to the general area overall in respect to the amount of projects being developed,upwards of 59 square miles, as well as the feis statement that the total disturbed habitat for species is extensive.

September 17, 2010

Laura Cunningham
Kevin Emmerich
Basin and Range Watch
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COMMENTS ON THE BLYTHE SOLAR POWER PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT

Basin and Range Watch is a group of volunteers who live in the deserts of Nevada and California, working to stop the destruction of our desert homeland. Industrial renewable energy companies are seeking to develop millions of acres of unspoiled habitat in our region. Our goal is to identify the problems of energy sprawl and find solutions that will preserve our natural ecosystems and open space.

Cultural Resources

We have had long discussions with members of the Chemehuevi and Mojave Tribes, and would point out that representatives of these groups tell us they believe BLM to have largely ignored their concerns. That the California Energy Commission had to use overriding considerations to approve the project despite significant unmitigable impacts to cultural resources tells us the native groups may have important concerns that have not been addressed.

Current archaeology and ethnology recognize that many differing cultures can share the same landscape and have differing but overlapping interpretations of the cultural landscape (T. J. Ferguson and Chip Colwell-Chanthaphonh, editors, 2006, *History Is In The Land: Multivocal Tribal Traditions in Arizona's San Pedro Valley*, University of

Arizona Press: Tucson). This is the case on the project site as well, with different groups using the cultural landscape in different ways, and this should be respected.

And in this study, the interpretations and worldviews of the living Native cultures is often different and at odds with the archaeological community.

Page 3.4-24 states that the Native American Heritage Commission was consulted, and that, "The NAHC identified no places of traditional cultural importance within the BSPP APE from the search of their Sacred Lands File..." Yet this is by no means an exhaustive search of people who have an interest in the area, and we have found many Tribal representatives who say they were not consulted, and who tell us many sacred sites exist on the project area. They are concerned that they are being ignored, and that these valuable cultural sites will be destroyed. Much of the tradition is still oral, and so would not be recorded in NAHC files. This in no way belittles its importance. Ideally the ROW would not be granted so that the process could be slowed down, and all interested Native people could be properly consulted, have site visits that are recorded for posterity, and concerns adequately addressed. This is not happening in the race to approve Fast-tracked projects, and crucial traditional cultural sites will be lost.

BLM formal consultation with tribes does not appear to work well, as we found many elders who have knowledge of the traditional sites also do not read or write, and so would not be able to respond to written communication, let alone read an environmental review document. Among the Chemehuevi, band organization makes leadership diffuse, not centralized, so government-to government consultation is less than perfect and much is missed.

On page 3.4-25, the FEIS states, "In a February 8, 2010, e-mail to the BLM Palm Springs Field Office, the Chairperson of the La Cuna de Aztlan Sacred Sites Protection Circle expressed concern that the proposed BSPP would be constructed on a Kokopeli geoglyph and other images and ancient trails that lead to other geoglyphs a few miles away. The geoglyph and other resources have been evaluated by the BLM and under two independent third party research reports which found that the geoglyph figures south of the project area and west of the airport are of recent origin and therefore not subject to Section 106."

The multivocal and living traditions of the tribal groups and individuals complicates this interpretation. BLM is using current scientific methods to evaluate these geoglyphs, but this ignores the equally valid interpretations of the Tribes who support the antiquity of these geoglyphs. The BLM could be accused of ignoring other traditions and cultures, and bias towards the Western Scientific Worldview. We have talked with members of the Chemehuevi and Mojave Tribes (personal Communication September 2010), who see the Kokopelli geoglyph as a valid, living part of their tradition as well, in their modern quest to rediscover their culture and relations to the land. This should be respected. Modern ethnology that respects Multivocal Traditions, without applying Western values, should be followed. Again, the Tribes are saying their own interpretations are being ignored.

Even the Western archaeological materials and features identified on the project site warrant more study and certainly preservation *in situ*, not destruction. Recovery of small amounts of scientific information, without Native consultation and site visits, before construction, does not preserve or mitigate these important sites. Prehistoric trails, lithic scatters, potsherds, roasting pits, quarries, hearths, geoglyphs, cleared areas, and historic materials will be forever lost. This is unacceptable.

The World War II military training features are also deserving of preservation, not destruction. The FEIS says on page 3.4-27, "These sites are important for their association with Gen. George S. Patton and for their ability to contribute to an understanding of how American soldiers were trained during WWII. Existing information is not sufficient to determine the boundaries of a DTC/C-AMA Cultural Landscape (Historic District) or to specify the contributors to the district. Further research would be needed to determine the landscape boundaries, its period of significance, and all additional contributing resources." This alone should halt the project so that American history can be respected.

The integrity of the Halchidhoma Trail needs to be preserved if it runs through Palo Verde Valley, and connector trails and sites link to it. Such a massive solar project that will scrape the ground 100% in the project footprint will not allow this.

Page 3.4-27 says, "Existing information is not sufficient to determine the boundaries of a Prehistoric Trails Network Cultural Landscape (Historic District) or to specify the contributors to the district. Further research would be needed to determine the landscape boundaries, its period of significance, and all additional contributing resources." The project should not be approved so that this research can be done.

Global Climate Change

The DEIS identifies the SF6 gas, hexafluoride as a greenhouse gas but fails to mention that it is 24,000 times more potent than CO2 and that new transmission lines are one of the main sources of these gases. New transmission would have to be constructed for this project.

From the Environmental Protection Agency web site: <http://www.epa.gov/electricpower-sf6/basic.html>

The greenhouse gas called SF6 is used primarily in electricity transmission - and is emitted in especially large amounts in construction of new lines - and is 24,000 times as potent as CO2 in its global warming impacts. The Environmental Protection Agency has declared "that the electric power industry uses roughly 80% of all SF6 produced worldwide." Ideally, none of this gas would be emitted into the atmosphere. In reality significant leaks occur from aging equipment, and gas losses occur during equipment maintenance and servicing. With a global warming potential 23,900 times greater than CO2 and an atmospheric life of 3,200 years, one pound of SF6 has the same global warming impact of 11 tons of CO2. In 2002, U.S. SF6 emissions from the electric power industry were estimated to be 14.9 Tg CO2 Eq.

Carbon sink: Scientific studies have revealed that desert ecosystems and minerals have the ability to store CO2 gases. Have Desert Researchers Discovered a Hidden Loop in the Carbon Cycle? Richard Stone: Science 13 June 2008: Vol. 320. no. 5882, pp. 1409 - 1410 DOI: 10.1126/science.320.5882.1409

Removal of 7,000 acres of habitat will increase the carbon content of the atmosphere.

Alternatives

The EIS fails to consider an adequate off-site alternative. The reasons explained for this relates to the applicant's inability to find enough land that could be put together to create a project that is this large. The EIS fails to justify a reason that then applicant can not create smaller projects on more impacted agricultural lands or other private lands. Given the impacts to cultural, biological, visual and water resources, we feel that the BLM should not be willing to sacrifice these resources for an energy project that will create so many problems.

The EIS eliminates the following alternative technologies:

- Stirling energy systems technology
- Solar power tower technology
- Linear Fresnel technology
- Photovoltaic technology

The EIS states that the BLM has eliminated these alternatives because they are "ineffective". Because the BLM is considering other large utility scale projects in the California Desert that would use power tower technology, Stirling energy systems technology and photovoltaic technology, we do not feel that the BLM did an adequate analysis of these alternatives. While many of the impacts would be the same, some of these technologies would at least have considerably less impacts to water resources. It would seem that these alternatives were eliminated to help the applicant. We request that more time be taken to fully analyze a scope of alternative technologies.

Basin and Range Watch Preferred Alternative:

Basin and Range Watch supports a No Action Alternate that declares the site inappropriate for solar energy development and designates the site an Area of Critical Environmental Concern to preserve the outstanding cultural resources located throughout the region.

The EIS fails to consider enough alternatives and fails to follow the requirements of NEPA listed below. Furthermore, BLM fails to justify the reason that they support their preferred alternative. There is no quantitative data that proves that this project will have economic benefits and offset greenhouse gas emissions.

NEPA Requirements:

According to the CEQAs NEPA-implementing regulations (40 CFR 1502.14), an EIS should present the environmental impacts of the Proposed Action and all reasonable alternatives in comparative form, defining the issues and providing a clear basis for choice by decision-makers and the public. The CEQ has stated that “reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant” (CEQ, 1983). The alternatives section shall a) rigorously explore and objectively evaluate all reasonable alternatives, and, for alternatives that were eliminated from detailed study, briefly discuss the reasons for their elimination; b) devote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits; c) include reasonable alternatives not within the jurisdiction of the lead agency; d) include the alternative of no action; e) identify the agency’s preferred alternative(s), if one or more exists, in the draft statement and identify such alternative(s) in the final statement unless another law prohibits the expression of such a preference; and f) include appropriate mitigation measures not already included in the proposed action or alternatives.

Distributed Generation:

This is the best alternative that can be legally considered not within the jurisdiction of the lead agency. Distributed generation in the built environment should be given much more full analysis, as it is a completely viable alternative. Granite Wind will need just as much dispatchable baseload behind it, and also does not have storage. But environmental costs are negligible with distributed generation, compared with the Granite Wind project. Distributed generation cannot be “done overnight,” but neither can large transmission lines across hundreds of miles from remote central station plants to load centers. Most importantly, distributed generation will not reduce the natural carbon-storing ability of healthy desert ecosystems, will not disturb biological soil crusts, and will not degrade and fragment habitats of protected, sensitive, and rare species.

Alternatives should be looked at that are in load centers, not closest to the project site. There is a need to consider the “macro” picture, the entire state, to look at maximum efficiency.

A Master comprehensive plan should exist before large expensive inefficient wind energy projects are sited and built out in the wildlands. This plan should carefully analyze the recreational and biodiversity resources of the California Desert. A list of assumptions should be included detailing the plan for integrating various fuels mixes and technologies into each utility's plan, an overall state plan, and a national plan. Loads should be carefully analyzed to determine whether additional capacity is needed for peaking, intermediate, or baseload purposes. Unit size, which impacts capital and operating costs and unit capacity factors, has a direct bearing on the relative economics of one technology over another. A plan might recommend that smaller units built in cities and spaced in time offer a less risky solution than one large unit built immediately.

Large-scale central station solar plants have been sited very far from load centers out in remote deserts, with the only criterion being nearness to existing transmission lines and natural gas lines. Very little thought has been given to the richness of biological resources, the cumulative impacts on visual scenery to tourists, the proximity to ratepayers, or the level of disturbance of the site.

The California Energy Commission says there will be a need to build many new efficient natural gas peaker or baseload plants to back up the renewables planned, and this will undoubtedly be the case in Nevada as well. Instead, the renewables should be distributed generation in load centers, which will provide much more efficiency, rather than inefficient remote central station plants that reduce biodiversity and require expensive transmission lines. This reduces the risk, as distributed generation is a known technology and has been proven in countries like Germany where incentive programs have been tested. Incentive programs can be designed in an intelligent manner to vastly increase distributed generation. Incentives for remote projects like the Blythe Solar Project are unproven to lower risk and may actually raise debt levels with runaway costs associated with poor siting and higher-than-anticipated operating and maintenance costs.

Biological Resources:

The project's questionable output will impair the biological integrity of the lower Colorado Desert bioregion.

The below quote comes from the Environmental Impact Statement for the Blythe Solar Power Plant in the Affected Environment section:

"The site is located within the within the Palo Verde Mesa of the Sonoran Desert region of southeastern California, an alluvial-filled basin that is bounded by the Mojave Desert to the north and by the McCoy Mountains, Little Maria Mountains, and Big Maria Mountains to the west, northwest, and northeast, respectively, extending southwest to the Palo Verde Mountains. The Palo Verde Mesa is bounded by the Palo Verde Valley to the east, which is generally formed by flood plain deposits of the Colorado River. The unique position of the region at the junction with the Neotropic ecozone to the south contributes to the presence of a number of rare and endemic plants and vegetation communities specially adapted to this bi-modal rainfall pattern, and not found elsewhere in California. These include microphyll woodlands, palm oases, and a number of summer annuals that only germinate after a significant warm summer rain. Although the region supports numerous perennial species, including a wide variety of cacti, more than half of the region's plant species are herbaceous annuals, which reveal themselves only during years of suitable precipitation and temperature conditions."

Over 7,000 acres of desert tortoise habitat will be forever lost.

The project will impact over 50 acres of Mojave fringe-toed lizard habitat.

The McCoy Mountains and have supported historic bighorn sheep populations and represent a recovery and connectivity potential for the species.

Habitat for several rare plants will be removed including the Harwood's milk-vetch.

Microphyll woodlands should be preserved as they are crucial in maintaining healthy ecosystem function in the Colorado Desert.

Land Use:

The project area is located mostly on public lands. Will the project site be designed to have access corridors going through it? What kind of "mitigation" would be provided to compensate for disruption of access? Has this been considered? The Bureau of Land Management's multiple use philosophy simply can not be met if so many acres are going to be sacrificed for only one use. Plans to convert so much public land use to energy use only violates BLM's multiple use philosophy.

Hazardous Materials:

Solar Millennium will use millions of gallons of Therminol or Heat Transfer Fluid (HTF). HTF fires from leaks is one of the primary concerns of having the facility so close to a public highway. A plan needs to be developed now for public review. There are many unanswered questions: Will each loop in the solar field be isolated by a valve to close it off in case of fire? Would manual control be better than remote because of issues of wiring failure in such a large facility? Can valves be made to close automatically with a spring control after reaching a certain temperature, as is being proposed for the Solar Millennium Ridgecrest project in California?

Conclusion:

This project was planned and approved too fast. Unresolved hydrology, visual, cultural and biological issues are abundant and outstanding. The BLM should not be using fast track procedures to over-ride and side step these issues. A No Action Alternative that designates the site unsuitable for energy development should be adopted for this project.

Thank you,

Kevin Emmerich

Laura Cunningham

Basin and Range Watch

P.O. Box 70

Beatty, NV 89003



via email and USPS

September 17, 2010

Allison Shaffer, Project Manager
1201 Bird Center Drive
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CAPSSolarBlythe@blm.gov

Re: Comments on the Proposed Resource Management Plan-Amendment and Final Environmental Impact Statement (PA/FEIS) for the California Desert Conservation Area (CDCA) Plan and Blythe Solar Power Project (BSPP), Riverside County, California

Dear Ms. Shaffer,

On behalf of the Center for Biological Diversity's 255,000 staff, members and on-line activists in California and throughout the western states, we submit these comments on the proposed California Desert Conservation Area ("CDCA") Plan Amendment and Final Environmental Impact Statement ("FEIS") for the Blythe Solar Power Project (BSPP), Riverside County, California (hereinafter "proposed project" or "BSPP").

The development of renewable energy is a critical component of efforts to reduce greenhouse gas emissions, avoid the worst consequences of global warming, and to assist California in meeting emission reductions set by AB 32 and Executive Orders S-03-05 and S-21-09. The Center for Biological Diversity (the "Center") strongly supports the development of renewable energy production, and the generation of electricity from solar power, in particular. However, like any project, proposed solar power projects should be thoughtfully planned to minimize impacts to the environment. In particular, renewable energy projects should avoid impacts to sensitive species and habitat, and should be sited in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors and the efficiency loss associated with extended energy transmission, and sprawling industrial development sites on public lands that will undermine conservation goals. Only by maintaining the highest environmental standards with regard to local and regional impacts, and effects on species and habitat, can renewable energy production be truly sustainable.

The Center submitted scoping comments on December 23, 2009 and submitted detailed comments to the BLM on the Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment for the BSPP on June 16, 2010 along with references. We incorporate those comments herein in full.

The Center uses science, policy and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and habitats in the California deserts on lands managed by the BLM within the CDCA including the desert tortoise, bighorn sheep, Mojave fringe-toed lizards and rare plants, which will be affected by the proposed project. The Center has worked to ensure robust conservation in the CDCA for many years including participating in the process for approval of the bioregional plans within the CDCA including the Northern and Eastern Colorado Plan (NECO) where the project is located. The Center's board, staff, and members use the lands and waters within the CDCA planning area, including the lands and waters that would be affected by the proposed Project, for quiet recreation (including hiking and camping), scientific research, and aesthetic pursuits.

The Center's interests also include interests in science-based conservation planning in the California desert on BLM lands and others. To that end, the Center is a stakeholder participant in the Desert Renewable Energy Conservation Plan process, where appropriate siting of renewable energy projects is a key focus, and the Center has provided scoping comments on the BLM's Solar Programmatic EIS.¹

The agency preferred alternative for the proposed project would cover approximately 7,025 acres (approximately 11 square miles) of public lands in the western Colorado River Valley on the Palo Verde Mesa adjacent to the Palen/McCoy Wilderness Area and about 3 miles north of Interstate 10 and 8 miles west of the town of Blythe. The project also includes construction of 10 miles of natural gas pipeline, 5 miles of new transmission (gen-tie line) and an upgraded access road. "The unique position of the region at the junction with the Neotropic ecozone to the south contributes to the presence of a number of rare and endemic plants and vegetation communities specially adapted to this bi-modal rainfall pattern, and not found elsewhere in California." FEIS at ES-7. The project site is habitat for the federally threatened desert tortoise and the Nelson's bighorn sheep - a BLM special status species - and supports dry desert wash woodland - a BLM sensitive vegetation community. The gen-tie line would affect sand dunes, a known sensitive natural community, and Mojave fringe-toed lizard, a BLM sensitive species. The Center is concerned that the environmental review pursuant to NEPA, the FLPMA compliance, and the ESA compliance for this proposed project have been rushed and are inadequate to provide full and fair public review and participation. In addition, the Center is concerned that the lack of prior planning by BLM for siting of this proposed project and others

¹ The Center also provided comments to the BLM on the NECO plan amendment to the CDCA plan and protested the proposed amendment on September 3, 2002. In the comments and the protest the Center specifically addressed the fact that increased protections for the desert tortoise and other imperiled species that live in these fragile desert lands were necessary especially from the impacts of ORV use (both lawful and unlawful use). In addition the Center opposed the BLM's adoption of a plan for new guzzlers in this area, explaining the FEIS for the plan amendment failed to address or analyze many issues relating to potential impacts from installation of guzzlers and their effects on wildlife and plant communities along with the impacts of installation and maintenance and supporting infrastructure including potentially new roads.

could undermine the conservation goals of the CDCA Plan as a whole and result in a sprawling industrial development in currently undeveloped areas of the western Colorado River Valley, undermining recovery of the desert tortoise in this area, potentially severely impacting the Mojave fringe-toed lizard in the most southeastern part of its range and precluding permanent re-establishment of bighorn sheep in the McCoy mountains. As a result, if the plan amendment for the proposed project is approved (particularly along with other projects nearby including NextEra (FPL) McCoy Project, the McCoy Soleil Project and the Big Maria Vista Solar Project – on BLM managed lands) it will result in industrial sites nearly back to back across the western Colorado River Valley. This areas is currently primarily open space and wild lands including occupied desert tortoise habitat that should be protected to achieve the necessary conservation for this threatened and declining species and other goals of the bioregional plan as a whole.

The proposed plan amendment would allow an industrial-scale solar power plant to be built on public lands that are occupied habitat for imperiled species, which is not consistent with the CDCA plan or FLMPA. The decision to adopt the plan amendment is not based on adequate environmental review as required by NEPA (including failure to provide adequate response to public comment); and the decision to adopt the plan amendment is not consistent with BLM's policies and agreements regarding conservation of listed species and rare plants.

The Center has provided detailed comments on the DEIS explaining the shortcomings in the environmental review, asking for a supplemental EIS to answer those deficiencies and opposing the proposed amendment to the CDCA. Additional comments are provided below regarding the FEIS.

- Adoption of a plan amendment to allow a large-scale industrial facility on MUC class L lands is inappropriate. Under the CDCA Plan, Multiple-use Class L (Limited Use) “protects sensitive, natural, scenic, ecological, and cultural resources values. Public lands designated as Class L are managed to provide for generally *lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished.*” CDCA Plan at 13 (emphasis added). While the CDCA Plan does allow for amendments to the plan to accommodate solar energy production where appropriate, the environmental review for this project shows that this site is inappropriate and that the site configuration will maximize impacts to surrounding public lands and resources due to fragmentation and edge effects. The proposed project is a high-intensity, single use of resources that will displace all other uses and that will eliminate over 7,000 acres of desert tortoise habitat and destroy habitat for Nelson’s bighorn sheep, the Mojave fringe-toed lizard, many rare plants and valuable microphyll woodlands among other direct and indirect impacts of the proposed project. The proposed project is inappropriate for a Limited Use area such as this one and the terms of the proposed plan amendment are inconsistent with the CDCA Plan.
- The proposed Plan amendment is not consistent with the bioregional planning approach in the CDCA Plan. The overarching principles expressed in the Decision Criteria in the CDCA are applicable to the proposed project including minimizing the number of separate rights-of-way, providing alternatives for consideration during the processing of applications, and “avoid[ing] sensitive resources wherever possible.” CDCA Plan at 93. The BLM should have

taken a more comprehensive look at the plan amendment to determine: 1) whether industrial scale projects are appropriate for any of the public lands in this area; 2) if so, how much of the public lands are suitable for such industrial uses given the need to balance other management goals including desert tortoise conservation and recreational uses among others; and 3) the location of the public lands suitable for such uses, if any.

- The proposed plan amendment is not consistent with FLPMA which requires BLM to prevent unnecessary or undue degradation of public lands. 43 U.S.C § 1732(b). The BLM has failed to show that it is necessary to approve the proposed large-scale solar industrial project on this site and that there are no other suitable alternative sites within the CDCA that would be more appropriate.
- The proposed Plan amendment is not consistent with FLPMA's planning provisions which require that in developing and revising land use plans, the BLM consider many factors and "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences . . . consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values." 43 U.S.C. § 1712(c). It is also inconsistent with the FLPMA provisions which contemplate that BLM will prepare and maintain adequate inventory data on the resources of an area and that information be used to inform the planning process. 43 U.S.C. § 1711(a); 43 U.S.C. § 1701(a)(2).
- Adoption of a plan amendment to allow a large-scale industrial facility at this location is inappropriate. The Proposed Plan amendment and the FEIS do not adequately consider whether and how the project may increase off-road vehicle use in this area. While 7 miles of existing routes are proposed to be closed (FEIS at 4.16-1), and any re-routing is deferred to a potential future NEPA process, the closure of these routes may significantly increase unlawful impacts from ORVs on species and habitats surrounding the proposed project.

The FEIS admits that the improved access road will cause impacts to species. FEIS at 4.21-4:

Increased Risk from Roads/Traffic. Vehicle traffic would increase as a result of construction and improvement of access roads, increasing the risk of injuring or killing desert tortoise. The potential for increased traffic-related tortoise mortality is greatest along paved roads where vehicle frequency and speed is greatest though tortoises on dirt roads also could be affected depending on vehicle frequency and speed. Census data indicate that desert tortoise numbers decline as vehicle use increases and that tortoise sign increases with increased distance from roads (Nicholson 1978; Hoff and Marlow 2002). Additional unauthorized impacts that could occur from casual use of the access roads in the BSPP area include unauthorized trail creation.

Nonetheless, the BLM failed to adequately consider mitigation measures or to adopt any measures to protect the resources of these public lands from the likely increase in ORV use in this area and the noted potential for unauthorized trail creation.

- The inadequacies in the environmental review for the project as provided in the DEIS and the FEIS include, but are not limited, to the following:
 - Deferring identification and analysis of impacts to resources including late summer/early fall blooming plants including rare species.
 - Failing to prepare and maintain an inventory of public land resources, BLM also failed to adequately address the resources of this area in reviewing the proposed plan amendment. *See Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006) (discussing need for BLM to take into account known resources in making management decisions); *ONDA v. Rasmussen*, 451 F.Supp. 2d 1202, 1212-13 (D. Or. 2006) (finding that BLM did not take a hard look under NEPA by relying on outdated inventories and such reliance was inconsistent with BLM’s statutory obligations to engage in a continuing inventory under FLPMA).
 - Failing to adequately describe the baseline condition of the environmental resources of this area.
 - Failing to utilize the best available science in the FEIS. As part of the Desert Renewable Energy Conservation Plan (DRECP), an Independent Science Advisor committee was convened, and they have recently produced Draft Recommendations for the DRECP² In that document the independent scientists state that “*Every effort should be made to avoid and minimize any new disturbance of soil surfaces in the siting, design, construction, and maintenance of any and all project features.*” [original emphasis] at pg.3 and “*The plan should embrace a primary goal of avoiding and minimizing any additional habitat loss or fragmentation.*” [original emphasis] at pg.5. The science advisors go on to say “*avoid siting developments where they will disrupt essential physical geological processes.* Two important examples are eolian (wind-driven) systems such as active sand dunes, and low-slope alluvial fans that produce sheetwash that sustains downslope desert vegetation through runoff. Avoid developments that might affect the production, transport, or settling of wind-blown sands or that could divert, disrupt, or channelize natural sheetflows.” [original emphasis] at pg.6. Other species specific recommendations are also included in this report that the BLM needs to incorporate into the FEIS.
 - Failing to adequately identify and analyze the likely impacts to desert tortoise and its habitats from the project including direct, indirect and cumulative impacts. The FEIS (at 4.8-7) states that “All of the action alternatives would affect a small portion of critical habitat.” Yet a description of the actual amount of critical habitat for the desert tortoise is not identified in the FEIS, and the SA-DEIS originally stated that no critical habitat would be affected by the proposed project. Impacts to critical habitat are not addressed in the compensatory mitigation requirements (FEIS at 4.21-15). While the FEIS identifies a mitigation ratio of 1:1 for desert tortoise habitat outside of

² <http://www.energy.ca.gov/2010publications/DRECP-1000-2010-008/DRECP-1000-2010-008.PDF>

critical habitat, it does not provide any mitigation for indirect impacts identified on 13,850 acres (FEIS at 4.21-13) or fragmentation impacts due to the proposed industrial-scale solar project in this location surrounded by wild-lands and adjacent to a wilderness area. The Center suggests that the mitigation should be **at least 2:1** to account for the edge-effects and fragmentation of habitat in this area. Additionally the FEIS identifies the “total desert tortoise compensatory mitigation – Mitigation Measure Bio-12” for the proposed action as 7,02 acres³ (FEIS at 4.21-15). Further, the FEIS does not provide sufficient monitoring and reporting requirements for direct and indirect impacts to the affected species during construction and operations so that the agencies will be able to know whether additional protective measures are needed as construction proceeds or during the operational life of the project.

- Failing to adequately identify and analyze the likely impacts to bighorn sheep and its habitat from the project including direct, indirect and cumulative impacts. The impacts to bighorn sheep occur due to destruction of 922 acres of spring foraging habitat (FEIS at 4.21-8), yet the mitigation is to install a guzzler (BLM BIO-21, FEIS at 4.21-15). The FEIS fails to justify how installing a guzzler actually mitigates impacts to 922 acres of spring foraging habitat. The Center opposes BLM adopting this so-called mitigation measure because a guzzler is not appropriate mitigation for the loss of forage habitat and the significant environmental impacts of installation and maintenance of a guzzler have not been adequately analyzed. The significant impacts of a new guzzler include both the direct impacts from development and maintenance in remote areas (often near or in wilderness), and indirect impacts such as attracting ravens and other predators that in turn predate on desert tortoise and other species in the area. These and other significant impacts have not been addressed. As a result it is inappropriate to require the guzzler as a mitigation measure for this project.
- Furthermore, even assuming for the sake of argument along that a guzzler were a reasonable mitigation measure for the impacts of the project, which it is not, the impacts from the proposed guzzler is unanalyzed in the DEIS or FEIS. No evidence is presented that expanding the range of the bighorn, or fundamentally altering the range by placement of artificial water sources, will benefit the bighorn. As far as we know, no research on the effectiveness of current guzzlers or the effects these guzzlers have on seasonal wildlife patterns in the area is available. Do guzzlers change bighorn population movement at different times of the year or under different types of stress (drought, pregnancy)? Will they enhance or diminish the connectivity of subpopulations (demes)? Where is the evidence that existing guzzlers are beneficial for these bighorn populations? Without such evidence, how can BLM plan to add a new one especially as mitigation for impacts? **None of these questions are answered or even analyzed in the FEIS.**

It is unclear where the guzzler is to be located. Areas where guzzlers are proposed may be less suitable or more dangerous for bighorn for any number of reasons;

³ This appears to be a typo that must be corrected in the ROD. It should read 7,027 acres.

predators, disease, insufficient forage. Bighorn may become dependent on these artificial guzzlers – especially under climate change scenarios. Will the guzzler artificially maintain populations through water availability that are not supported by food availability? The cumulative impacts of existing guzzlers are not analyzed – where is this assessment? Installation of the guzzler may attract greater numbers of bighorn sheep, but will also attract greater numbers of other species as well. Will this re-plumbing of desert habitat alter other animal species behavior, dispersal and movement patterns, predation patterns and forage use, and plant populations? Will it attract greater numbers of predators such as ravens with adverse impacts on the desert tortoise? Will it create a cascade of artificial ecological effects in one or several species? **None of these critical questions are answered or even analyzed in the FEIS.**

- In addition, the FEIS fails to analyze whether the guzzler affect natural springs in the area and potentially draw water away from natural springs. Guzzlers are often installed with 4 wheel drive vehicles and backhoes and installation requires access through washes, ground disturbance, and a permanent visible structure. In many cases, the CDFG has insisted on maintaining guzzlers by motor vehicle access pursuant to the 1997 MOU, and on inspecting the guzzlers annually (or more frequently) by motor vehicle as well. As a result, the proposed “mitigation measure” of adding a guzzler would also lead to creation of additional new roads and disturbance in whatever area the guzzler is proposed. None of these issues are adequately identified or analyzed in the EIS.
- Failing to adequately identify and analyze impacts to migratory birds, Couch’s spadefoot toads, golden eagles burrowing owls, desert kit foxes, badgers and other wildlife, rare insects, rare plants, and rare plant communities.
- The FEIS fails to assure protection and species conservation for the mitigation areas that are acquired by BLM to off-set impacts of the proposed project. The mitigation areas must provide appropriate habitat for the impacted species and may also host additional rare species, and should provide refugia areas for desert tortoise and other species. These areas should be preserved at the highest level for conservation – for example they should be designated as DWMA or other ACEC - and should preclude future disturbances in order to ensure that tortoises and other species will not be moved more than once, and to conserve other rare species that will be impacted by this project. Although a BLM plan amendment is necessary to allow the proposed project to move forward, the BLM failed to address the potential need for a plan amendment to ensure protection of the mitigation areas as well.
- Failing to establish success criteria for any potential desert tortoise relocation or translocation necessary during construction or operations in order to ensure that any incidental “take” of tortoise will be minimized as required under the ESA.

- Failing to adequately address impacts to desert dry wash woodlands—also called microphyll woodlands—and failing to provide adequate mitigation for impacts to this rare plant community that provides habitat for many species. Mitigation for loss of this rare habitat type on the project site should be **at minimum 2:1**.
- Failing to adequately address impacts to air quality particularly regarding PM10 emissions in an already impaired basin and provide for adequate mitigation.
- Failing to adequately assess the impacts to soils, particularly the loss of intact cryptobiotic soil crusts, desert pavements and other stable soils. The impacts to soils are also closely tied to the increase of PM10 due to the project and these issues have not been adequately addressed or mitigated.
- Narrowing the purpose and need to such an extent that the BLM failed to adequately address a meaningful range of alternatives. Failing to analyze a range of appropriate project alternatives including distributed generation, a phased alternative, and off-site alternatives on previously disturbed or degraded lands. .
- Failing to adequately address direct, indirect, and cumulative impacts to groundwater resources in the Palo Verde Mesa groundwater basin during construction and operations.
- Failing to adequately address the impacts to surface waters from the loss of natural washes and other features as well as increased erosion.
- Failing to adequately address impacts to groundwater resources from the project and impacts to federal reserved water rights. The BLM must ensure that if the Blythe project goes forward, there are no impacts to federal reserved water rights in the nearby wilderness or on other BLM lands. The FEIS discusses the impacts to groundwater as they relate to the fully appropriated Colorado River and discusses the need for the Project applicant to secure rights to that water from a private party or otherwise. *See* FEIS at 4.19-2, 5-46 “Implementation of the BSPP would be subject to myriad permitting and entitlement requirements. Unless and until all required approvals are obtained, the project could not proceed. If the Applicant is unable to obtain a legal right to use Colorado River water, it would not be able to implement the project. In other words, the BSPP would be viable upon obtainment of the necessary water rights and all other requisite approvals; by contrast, it would not be viable without water rights if Colorado River water were, in fact, required.” The Center appreciates this clarity from BLM. However, the BLM should also require that even if it is determined that the project does not need to obtain water rights for all of the groundwater used, project applicant or ROW holder does not accrue any water rights by from using the groundwater below these public lands for this project. The Center again urges BLM to protect the public’s interest in the groundwater under these public lands by expressly requiring that any rights *arguably* created by use of groundwater on this site for the project are quit claimed back to the BLM at no cost at

the end of the project term. In no case should the ROW holder be able to transfer or sell any water rights that *arguably* could be created by use of groundwater for the proposed project to any third party or off site. In addition, the ROW holder must expressly agree not to seek any compensation for returning and such water rights to the BLM in favor of the public at the end for the project term.

- Deferring development of a detailed plans to protect resources until after public participation is completed, including, but not limited to, the following: the Biological Resources Mitigation Implementation and Monitoring Plan; Desert Tortoise Relocation/Translocation Plan; the Common Raven Monitoring and Control Plan; the Closure, Conceptual Restoration Plan; the Burrowing Owl Mitigation and Monitoring Plan; the Weed Management Plan; Revegetation Plan; the Nesting Bird Monitoring and Management Plan; Compensation Lands Management Plan; Avian Protection Plan; Burrowing Owl Mitigation Plan; Drainage, Erosion, and Sedimentation Control Plan; Habitat Enhancement/Restoration Plan; Special-Status Plant Mitigation Plan; Decommissioning and Reclamation Plan; Golden Eagle Monitoring and Management Plan; or the Couch's Spadefoot Toad Protection and Mitigation Plan. In addition, numerous species of bats are identified as potentially occurring on site, but no specific analysis of impacts is included or mitigations proposed other than the general "Those species that are likely to occur on the BSPP would be protected under a number of mitigating measures meant to avoid, minimize, or compensate for impacts from the project." FEIS at 4.8-8.
- Failing to adequately address the potential for wildland fire due to project construction and operations. The Center appreciates the BLM including additional information in the FEIS regarding Land Use Plan Amendment Consistency and fire issues. However, the FEIS appears be attempting to separate the issue of fire on other BLM lands from fires occurring on site even if those fires originate from the project site. *See* FEIS at 4.8-5 ("However, the specific fire management plan is not relevant to the types of fires that would be addressed by the applicant. Should a fire occur in the area that is not specific to the facility, it would be addressed by BLM, not by the applicant, and it would be addressed in conformance with the Fire Management Plan, and therefore, would conform to the guideline for Fire Management for this multiple use class."). While it is not entirely clear what the definition of a fire "in the area that is not specific to the facility" would be. The FEIS appears to state that a fire that spread from the project site would be managed in two different ways -- by BLM through the 1996 FMAT on BLM lands outside of the project site, and by Riverside County Fire Department and the Project applicant on the project site. This makes little sense. The Center urges the BLM to require fire control measures for the Project that address a situation where fire spreads from the project site into other BLM lands, including wild lands, as well as a restoration and revegetation plan if there is such a fire. Responsibility for fire management is not only a factor of where a fire *occurs* that but also a factor of the *cause or source* of a fire.

- Failing to discuss any mitigation measures for greenhouse gas emissions (GHG) from the project. The FEIS still fails to discuss, no less adopt, any mitigation measures for the GHG created from the project. There is no discussion of reducing GHG by using alternative fuels or highly efficient vehicles and equipment. The FEIS does not analyze any alternatives to avoid or minimize the long-term emissions of this powerful GHG from operations and no mitigation measures are provided.
- Failing to adequately address the significant cumulative and growth inducing impacts of industrial scale solar projects, new roads and transmission infrastructure across the undisturbed public lands in the western Colorado River Valley without prior planning or consideration of alternatives. Although this area is identified in the Solar PEIS maps that process is not completed and BLM states it is not relying on that planning, yet this project would form a keystone of that “zone” and its placement is key to how the “zone” would be configured on the landscape in this area. The issues relevant to the first step in creating a solar energy zone are not adequately addressed in the EIS.

As detailed above and in the comments submitted previously to the BLM on the Draft EIS by the Center, the environmental review to date is inadequate and incomplete and the proposed plan amendment is inconsistent with the CDCA Plan, FLPMA and other policies, laws, and regulations. Therefore, the Center encourages the BLM to reject the proposed CDCA Plan amendment for the proposed Blythe Solar Power Project in Riverside County, California.

Please do not hesitate to contact me if you have any questions regarding these comments

Sincerely,



Heene Anderson
 Biologist/Desert Program Director
 Center for Biological Diversity
 PMB 447, 8033 Sunset Blvd.
 Los Angeles, CA 90046
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lbelenky@biologicaldiversity.org

cc: (via email)

Ken Corey, USFWS, Ken_corey@fws.gov
 Kevin Hunting, CDFG, khunting@dfg.ca.gov
 Stephanie Skophammer, EPA, skophammer.stephanie@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 20 2010

John Kalish
Field Manager
BLM Palm Springs-South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92262

Subject: Final Environmental Impact Statement/Proposed Resource Plan-Amendment
for the California Desert Conservation Area and Blythe Solar Power Project,
Riverside County, California [CEQ#20100329]

Dear Mr. Kalish:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the Blythe Solar Power Project in Riverside County, California. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Joint Draft Environmental Impact Statement (DEIS) and Staff Assessment and provided comments to the California Energy Commission (CEC) and the Bureau of Land Management (BLM) on July 12, 2010. We rated the DEIS as *Environmental Concerns—Insufficient Information (EC-2)*, primarily due to concerns regarding potential impacts to ephemeral washes, groundwater, and biological resources, as well as the need for reconsideration of the restrictive purpose and need statement in order to allow for evaluation of a full range of reasonable alternatives.

EPA appreciates BLM's thorough responses to our comments on the DEIS. We commend BLM for committing to include all mitigation commitments for biological, air, and water resources in the Record of Decision (ROD). EPA continues to have concerns, however, regarding drainage plans and groundwater mitigation. In our comments on the DEIS, we requested additional information regarding BLM's finalized drainage plans. We requested demonstration that downstream flows would not be disrupted due to the elimination of 592.4 acres of ephemeral drainages in order to create a flat, uniform, and vegetation-free project site. According to the FEIS, downstream flows will be disrupted, and the existing Drainage Report and Channel Maintenance Plan are incomplete, insufficient for final design, and do not adequately address the issue of collection of offsite flows (pgs. 4.19-7 through -11). Mitigation SOIL&WATER-11 indicates that a Drainage

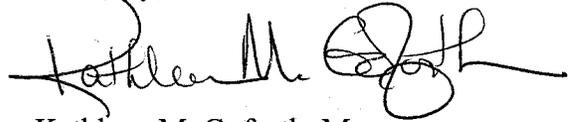
Report shall be submitted 60 days before project implementation and will include the use of structures intended to “allow flow to spread out in a manner that mimics existing sheet flow conditions downstream of the BSPP” (pg. 4.19-7). EPA acknowledges that BLM will commit to this mitigation in the ROD, and continues to recommend that the Drainage reports and plans include designs to minimize impacts to habitat downstream as much as possible. Mitigation commitments should be structured to include adaptive management in order to minimize the possibility of mitigation failure. The ROD should include the response to be taken by BLM if a substantial mitigation failure is detected. This could include conditioning the right-of-way approval to require the applicant to restore any severely impacted watersheds that may result from mitigation failure.

Additionally, EPA remains concerned about mitigation concerning groundwater impacts in the Palo Verde Basin region. Specifically, the Blythe Project may induce groundwater withdrawals from the Colorado River, and cumulative effects from foreseeable projects in the region will “likely induce additional subsurface inflow from the Colorado River” (pg. 4.19-21). EPA commends BLM for implementing mitigation measures SOIL&WATER-2 through -6 to reduce impacts to groundwater in the region. Although we are pleased to see the commitment to mitigation monitoring, we remain concerned about the details regarding this mitigation. Specifically, BLM offers mitigation that will monitor and offset inflow from the Colorado River (SOIL&WATER-2), but does not provide details of how the applicant will know when it begins to reach this threshold of withdrawal nor what activities will be implemented to offset inflow. EPA recommends that a detailed plan be completed so as to reduce risk from inducing inflow, given that Colorado River water is already fully appropriated and other large solar projects that propose to withdraw groundwater are located in the same groundwater basin.

The Blythe Solar Power Project, as proposed, would have a footprint of 7,025 acres on currently undisturbed public land, and generate 1000 megawatts of electricity. EPA recognizes the value of this project’s contribution to California’s renewable energy goals. We note, however, that the Reduced Acreage Alternative would reduce the project footprint and megawatts by only 25%, while avoiding over 50% of the impacts, measured in acres, to ephemeral drainages, including the most valuable desert tortoise habitat and State waters on the site. These ephemeral washes provide many important ecosystem functions, including plant and animal habitat, wildlife connectivity, and flood control; and onsite impacts to these valuable resources can be expected to induce additional impacts far beyond the project footprint. We continue to encourage BLM to consider adopting the Reduced Acreage Alternative, which would protect the most valuable habitat on the project site, while still greatly advancing California’s transition to renewable energy generation.

We are available to discuss all recommendations provided. Please send one hard copy and one CD ROM copy of the responses to FEIS comments and the ROD to us when they are filed with our Washington D.C. office. If you have any questions, please contact me at 415- 972-3521, or contact Stephanie Skophammer, the lead reviewer for this project. Stephanie can be reached at 415-972-3098 or skophammer.stephanie@epa.gov.

Sincerely,

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

Kathleen M. Goforth, Manager
Environmental Review Office

Cc: Jim Abbott, Bureau of Land Management, California State Office
Allison Shaffer, Bureau of Land Management, Palm Springs Field Office
Alan Solomon, California Energy Commission
Shannon Pankratz, US Army Corps of Engineers
Tannika Engelhard, United States Fish and Wildlife Service
Becky Jones, California Department of Fish and Game
Michael Picker, Office of the Governor

La Cuna de Aztlan Sacred Sites Protection Circle

Alfredo A. Figueroa
424 N. Carlton Ave
Blythe, Ca 92225



Phone: (760) 922-6422
E-mail: lacunadeaztlan@aol.com

September 20, 2010

Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous people c/o OHCHR-UNOG, Office of the High Commissioner for Human Rights, Palais Wilson, 1211 Geneva 10, Switzerland
E-mail: indigenous@ohchr.org

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
Facsimile: (202) 456-2461

U.S. Department of the Interior-By US mail
Secretary of the Interior
Ken Salazar
1849 C Street, N.W.
Washington DC 20240

Recovery.gov
Recovery Accountability and Transparency Board
Attention: Hotline Operators
P.O. Box 27545
Washington, D.C. 20038-7958
Facsimile: (877) 329-3922
E-mail: Ray.Madden@hq.doe.gov

Docket No. 07-AFC-6-By US mail
**Notice to Correct or Cure Violations
of the Bagley-Keene Open Meeting Act**
Energy Commission's Docket Unit,
1516 Ninth Street, MS-4,
Sacramento, CA 95814

Attn: Allison Shaffer,
BLM Project Manager,
Palm Springs South Coast Field Office,
1201 Bird Center Drive,
Palm Springs, CA 92262

E-mail: CAPSSolarBlythe@blm.gov

BLM Director (210),
Attention: Brenda Williams,
P.O. Box 66538,
Washington, DC 20035
Protests: Brenda_Hudgens-Williams@blm.gov

RE: Public Protest Comments

La Cuna de Aztlán Sacred Sites Protection Circle is hereby protesting and submitting this public comment against the California-based concentrating solar power (CSP) developer Solar Millennium, 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 human rights to fast track the development of large industrial solar thermal electric projects that will literally pave over and completely destroy hundreds of square kilometers of undeveloped wilderness whose entire landscape (including this project's site) is considered sacred to our indigenous nations along the Colorado River and the entire American Continent.

Special Rapporteur this project specifically violates Article 8¹ of United Nations Declaration on the Rights of Indigenous Peoples (7 September 2007) because the development of the Blythe Solar Power Project (BSPP) will cover 9.3 square miles in Riverside County in Southern California with long rows of parabolic troughs that are right over the top of the giant geoglyphs of Kokopilli/Quetzalcoatl, Cicimitl, El Tosco and ancient Indian trails interconnecting other geoglyphs considered sacred to the Mojave, Paiute, and Chemehuevi peoples. This would violate Article 8 d) which prohibits "action which has the aim or effect of dispossessing them [Indigenous Peoples] of their lands, territories or resources". Specifically the United States proposed action would destroy cultural resources; these giant geoglyphs of Kokopilli/Quetzalcoatl, Cicimitl, El Tosco and the trails that interconnect them and other giant geoglyphs. Such destruction would be tantamount to cultural genocide to the Mojave, Paiute, and Chemehuevi peoples.

For the past 54-years we have been studying the sacred sites along the Colorado River and our relations with the Uto-Aztec Culture and Codex's. In 2008, thanks to our Arizona Congressman Raul Grijalva, we received a Memorandum of Understanding from the Bureau of Land Management (Yuma, Arizona office) to be the guardians of the world famous Blythe Giant Intaglios and over 250 other geoglyphs (Ground images) along the Colorado River, beginning in Needles, California (In the North) down to Yuma, Arizona (In the South).

Our Tribes and other organizations are fully aware of the situation of trying to provide renewable energy with solar power plants. However, these solar power projects are proposed to be built on top of some of our most sacred sites. Especially the Blythe Solar Power Site, that is proposed to be built next to the Blythe Airport, where the world famous giant image of Kokopilli (The Hunchback Figure with the Flute) that is seen all over the Southwest United States and Northwest Mexico is located. The Kokopilli geoglyph is 200 feet long, by 50 feet wide. Included in the same area are the geoglyphs of Cicimitl (The Great Spirit) which is 50 feet long, by 50 feet wide and El Tosco (The Spirit that descends from Tamoanchan) which is 95 feet long by 35 feet wide. The area also includes a 16-Level Temple which is 200 feet long by 30 feet wide and hundreds of other sacred sites and trails.

According to Chief Gary Harrison, the Athapaskans left the Colorado River and went north to Alaska before the last Ice Age. Many nations left the area, beginning with the Olmeca, who went south, thousands of years ago. The Chichmeca followed soon after and then the Tolteca and Yaqui in the 5th century, followed by the Azteca/Mexica in the 12th century. The Lower Colorado River Valleys have been a major crossroad within the western hemisphere, with some of the nations going full circle. These nations traveled to the four directions and later returned to the Colorado River Valleys. (Krober, 1976)

The major interests to this study are the three main linguistic families that claim to have originated on the Colorado River. They are the Uto-Aztecan (Nahua): Pima, Tohono O'odam, Yaqui, Hopi, Chemehuevi, Paiute, Cahuilla, Azteca/Mexica, Tarahumara, Cora, Huichol, Tlaxcalteca, Tarasco and Chichimeca. In addition, the Hokan (Yuman) Mojave, Quechan, Kamias, Yavapai, Hualapai, Cocopah, Halchidoma, Havasupai, Pai Pai, Chumash, Pomo, Shasta, Seris (in Sonora) and the Maya Chontal (in Yucatan and Guerrero). As well the Athapaskan, Apache, Navajo, Janos, Athapaskan (in Alaska and Canada).

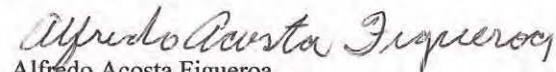
There are five native reservations in the Lower Colorado River Valleys from north to south, including the Fort Mojave, near Needles, California, Chemehuevi, Colorado River Indian Tribes, Quechan and Cocopah, south of Yuma, Arizona. Of those five, the Mojave and Chemehuevi are the most prominent nations in the Palo Verde/Parker Valleys.

For years, Blythe residents have known of these images, hence the off road damages that can be seen on the aerial photos. In the book of the Cahuilla "*Mukat's People*" by Mr. Lowell John Bean, he states that the trails and other sites were maintained throughout their lifetime.

In conclusion, the Chemehuevi Tribe, La Cuna de Aztlán Sacred Sites Protection Circle and Bureau of Land Management will have to work closely together to be able to save our sacred sites from total destruction.

Unfortunately, all the publicity given to the sacred sites during this campaign against the solar panel sites has created another form of destruction. Many people have become curious and these areas are being swamped with visitors from all over to visit the sacred sites. We are discouraging them from canvassing the area until we have these areas secured and fenced off.

Sincerely,



Alfredo Acosta Figueroa

Chemehuevi Tribal Monitor

La Cuna de Aztlán Sacred Sites Protection Circle Elder/Historian

Atlanta
Beijing
Brussels
Chicago
Frankfurt
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
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(415) 856-7225
matthewsanders@paulhastings.com

September 20, 2010

75524.00003

VIA OVERNIGHT MAIL AND EMAIL

Ms. Allison Shaffer
Project Manager
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92264
(760) 833-7100
CAPSSolarBlythe@blm.gov
Allison_Shaffer@blm.gov

Re: **Further PA/FEIS Comments, Blythe Solar Power Project, CACA - 048811**

Dear Ms. Shaffer:

By letter dated September 10, 2010, we provided comments on behalf of Solar Millennium, LLC on the Plan Amendment/Final Environmental Impact Statement (PA/FEIS) for the Blythe Solar Power Project (BSPP), CACA - 048811. In that letter, we stated as follows:

Finally, the PA/FEIS asserts that the Palo Verde Mesa Groundwater Basin, which underlies the BSPP site and from which the BSPP will draw groundwater, is hydrologically connected to the mainstream of the Colorado River through the Palo Verde Valley Groundwater Basin, and that groundwater pumping for the project could induce additional groundwater flow from the River. See PA/FEIS at ES-12, 3.20-2 to -15, 4.19-1, 4.19-21 to -24, 5-46 to 5-48, 5-54 to 5-55, Appendix C-8. As a result, the PA/FEIS asserts in some places that Solar Millennium must obtain an entitlement to Colorado River water under the Bureau of Reclamation's proposed—but now withdrawn—accounting surface method. See PA/FEIS at 5-46, Appendix C-8. [Footnote 1] Both assertions are erroneous, as shown by information submitted to and generated by the CEC for which the FEIS does not, but should, account. Solar Millennium may submit additional comments on this issue before the close of the public comment period.

Footnote 1: In other places, the PA/FEIS more appropriately recognizes that the BSPP's water impacts may require an entitlement or be mitigated with use reduction or recharge measures. See PA/FEIS at 4.19-24 (stating that Colorado River entitlement or water

Ms. Allison Shaffer
September 20, 2010
Page 2

mitigation measures will offset any adverse impact); PA/FEIS at 5-48 (stating that Solar Millennium must obtain a Colorado River entitlement “or the replacement or commensurate reduction in use of groundwater, or recharge to groundwater at another point in the basin”) (emphasis added); id. (stating that “Mitigation Measure SOIL&WATER-2 would mitigate potential reductions in flow to the Colorado River by requiring acquisition of entitlements or offsets to Lower Colorado River water.”); PA/FEIS at 5-54 (discussing ability of mitigation measures to offset potential impacts to Colorado River; “[t]herefore, the proposed action would not interfere with any water right or MWD’s ability to divert water from the Colorado River.”).

We would like to provide additional comments on this issue. Those comments are contained in the three documents attached to this letter. Because BLM published the PA/FEIS on August 20, 2010, and provided a 30-day public comment period that closes on September 20, 2010, these further comments are timely-filed.

We appreciate the opportunity to provide further comments on the BSPP PA/FEIS. Please let us know if you have any questions.

Sincerely,

Handwritten signature of Matthew J. Sanders in cursive script.

Matthew J. Sanders
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

Attachments

cc: Jim Abbott, Acting State Director, BLM-California
Sandra McGinnis, Planning & Environmental Coordinator, BLM-California

**Further Comments of Solar Millennium
Blythe Solar Power Project - PA/FEIS**

ATTACHMENTS

<u>No.</u>	<u>Description</u>
1	Memorandum from Barry H. Epstein to Alice Harron, "Assessment of Blythe FEIS Water Resources Analysis" (Sept. 8, 2010)
2	Resume of Barry H. Epstein, Partner, Fitzgerald Abbott & Beardsley LLP
3	Letter from Solar Millennium to Colorado River Board of California regarding comments on California Energy Commission, Presiding Member's Proposed Decision, Docket No. 09-AFC-6 (Sept. 20, 2010)
4	Excerpts (Errata Nos. 62 and 78) from California Energy Commission, Errata to the Presiding Member's Proposed Decision, Docket No. 09-AFC-6 (Sept. 14, 2010)

Attachment 1



TO: Alice Harron, Solar Millennium

FROM: Barry H. Epstein

RE: Assessment of Blythe FEIS Water Resources Analysis

September 8, 2010

This memo was prepared, with the assistance of Solar Millennium's consultants for the Blythe Solar Power Project ("BSPP"), for transmittal by you to the Bureau of Land Management ("BLM") to discuss significant concerns with the analysis of groundwater impacts in the BLM's Final Environmental Impact Statement ("FEIS") for the BSPP.¹

Overall, BLM's FEIS for the BSPP is a thorough, well-written NEPA review of the BSPP. However, the Water Resources sections (3.20 and 4.19) rely upon flawed factual analysis and misunderstandings of applicable water rights laws. These sections of the FEIS apply concepts that have never been applied to any other pumping from the thousands of existing wells in the general vicinity of the Colorado River (except for a very small number of wells in immediate proximity to the River). As a result, the FEIS could have negative, precedent-setting consequences for vast areas of BLM lands in the southwest, and could substantially undermine its directive to support renewable project development on federal lands.

I. FEIS Facts and Analysis of Groundwater Impacts from Pumping Are Flawed:

The FEIS appears to have utilized the California Energy Commission ("CEC") staff's analysis as to Palo Verde Mesa Groundwater Basin ("Mesa Basin") conditions and impacts – specifically in attempting to identify the BSPP's proposed use of groundwater as having potential impacts to the Colorado River. That analysis, apparently carried forward in the FEIS, contains key factual errors.

One critical error is that the FEIS analysis presupposes a free flowing connection between the Colorado River and the Palo Verde Mesa groundwater basin. Groundwater flow and more importantly groundwater geochemistry show that there is a distinct demarcation between the groundwater below the Mesa and water in the river.² Groundwater modeling provided in the

¹ As such, this memo is not an attorney-client privileged communication but also does not waive any such privilege as to any other attorney-client communications on this subject or any other subject.

² Blythe Solar Power Project (CEC 09-AFC-06), Appendix J.3, Hydrogeologic Investigation Report, Application for Certification, Blythe Solar Power Project, Riverside County, California, Figure J.3-5, Water Level Contour Map (updated AFC Figure 5.17-7), Figures J.3-9 and J.3-10, Fluoride and Chloride Iso-concentrations in Groundwater, Palo Verde Mesa Groundwater Basin (updated AFC Figures 5.17-11 and 5.17-12, respectively).

Application for Certification to the CEC and in subsequent communications with the CEC showed that the pumping influence would not extend to the river 10 miles away.³

Another significant error is the FEIS's failure to account for the contribution of deep percolation from irrigation in the Palo Verde Valley Groundwater Basin ("Valley Basin") as a significant source of recharge to the groundwater. The water balance used as a foundation of the analysis [FEIS page 3.20-7] ignores the presence of 104,500 irrigated acres on the Palo Verde Valley, and the deep percolation recharge of applied irrigation water that adds 65,000 to 95,000 acre-feet of recharge water annually to the groundwater basin that lies between the River and the Mesa.⁴ This groundwater is the dominate recharge influence to the Mesa Basin, and its presence renders movement of water from the River to the Mesa Basin impossible.⁵ Indeed, the introduction of that volume of water over more than a century has created a saturated soil condition that has required the installation of an elaborate drainage system to convey water out of the Valley Basin so as to keep groundwater levels below the root zone.⁶

Since the Valley Basin sits between the Mesa Basin and the Colorado River, and is oversaturated from deep percolation of applied irrigation water over more than a century, the FEIS's assumption that water from the River would slowly migrate towards the Mesa Basin due to groundwater pumping for the BSPP project is incorrect.⁷

Third, even were BSPP pumping to actually influence the Colorado River, another key factual error in the FEIS is the failure to identify (or analyze) the temporal component of that effect. The BSPP wells are located 10 miles from the closest point of the River. Based on the rate of groundwater flow, it would take several decades (if at all) for BSPP pumping to have any effect on the River.⁸ This is very important to account for since the time factor that separates groundwater and surface water is important to understanding the distinction between the two systems (i.e., groundwater moves significantly slower). Secondly, if molecules of water can only be evaluated as a change in 'flux' in a theoretical model over years or decades or centuries, there is no way to measure or detect any change in the river, and no river water user will be affected in

³ Blythe Solar Power Project (CEC 09-AFC-06), Application for Certification, Section 5.17 Water Resources, Appendix J – Water Resources Supporting Documentation.

⁴ This assumes 10% deep percolation (as in the CEC water budget), and total applied water ranging from 650,000 to 950,000 acre-feet annually depending upon acreage fallowed for the transfer program with MWD according to Ed Smith, General Manager of PVID. (Personal communication to Mike Flack and Jeff Harvey, August 12, 2010.)

⁵ See the groundwater "divide" central to the valley as shown by the Department of Water Resources on their depiction of the Palo Verde Mesa Groundwater Basin (DWR 7-39). See also, Blythe Solar Power Project (CEC 09-AFC-06), Appendix J.3, Hydrogeologic Investigation Report, Application for Certification, Blythe Solar Power Project, Riverside County, California, Figure 5.17-6 and the differential groundwater movement along this divide shown as divergent water level contours in the central portion of the valley.

⁶ Blythe Solar Power Project (CEC 09-AFC-06), Soil and Water Resources, Opening Testimony, pp. 11-12.

⁷ *Id.*

⁸ See range in hydraulic conductivity values reported (by Metzger and others 1973) and from the aquifer test results reported in Appendix J.3, Hydrogeologic Investigation Report, Application for Certification, Blythe Solar Power Project, Riverside County, California (CEC 09-AFC-06). Conductivity values are reported in feet per day.

any way.⁹ A definable impact for NEPA purposes must be based upon some measurable change, and under these circumstances, there is no definable impact.

Rather than reaching conclusions and requiring mitigation without a factual basis, the BLM FEIS should do what the CEC resolved to do after recognizing flaws in its analysis, which is to require detailed modeling analysis of the groundwater system, followed by specified mitigation if the model shows a potential change in flux for surface water systems.¹⁰

II. As a Legal Matter, No Entitlement to Colorado River Water Is Required for Pumping from the Mesa Basin:

Without citation to any legal authority or recognition that its analysis would be radically precedent setting, the FEIS concludes that, as a legal matter, water pumping from the Mesa Basin constitutes “water drawn from the mainstream [of the Colorado River] by underground pumping” (which water is considered surface water under the Law of the River and cannot be diverted without a Colorado River entitlement).¹¹ This legal conclusion is not supported by any legal authority, is contrary to the practice for the existing ±581 water supply wells that exist on the Mesa Basin, and is inconsistent with the Law of the River and California water rights law. It appears to us that the FEIS’s interpretation could also be harmful to BLM’s own interests.

FEIS Position Is Inconsistent with All Precedents; No Explanation for Disparate Treatment

The FEIS reports that there are 581 existing water supply wells extracting water from the Mesa Basin. [FEIS, 3.20-15] Not a single one of those 581 wells has been required to obtain an entitlement to Colorado River water.¹² Rather, these wells are simply exercising groundwater rights (overlying or appropriative rights) recognized under California water law.¹³

BLM’s suggestion that BSPP would require a Colorado River entitlement for its groundwater pumping is inconsistent with the practice in place for these 581 existing wells. The overwhelming number of Mesa Basin wells that are not considered to require a Colorado River entitlement (and do not have one) underscores the aberrant nature of the FEIS’s conclusion. The FEIS neither recognizes the incongruity of its position nor provides any basis for concluding that BSPP should be subjected to disparate treatment.

⁹ There are no mechanisms available to monitor the change in flux from the river to the groundwater at a scale that would be induced by the pumping if the pumping were to induce a change.

¹⁰ Blythe Solar Power Project (CEC 09-AFC-06), Conditions of Certification, Soil & Water – 16. (Copy attached.)

¹¹ Consolidated Decree, *Arizona v. California*, 547 U.S. 150, 153 (2006).

¹² See, Decision, Blythe Energy Project Phase I (CEC 99-AFC-8), pp. 205 – 206.

¹³ It is worth noting that some of these wells have very significant production levels, with groundwater production for wells in the Mesa Basin averaging 1,650 gpm. [FEIS, 3.20-11] Typical pumping rates for the BSPP are 388 gpm, with maximum pumping of 568 gpm – well below the average of the existing pumping that is occurring from the Mesa Basin without any Colorado River entitlement. [FEIS, 2-18]

FEIS Position is Not Consistent with the Law of the River

The Law of the River involves the allocation of Colorado River water between the Colorado River basin states – California, Arizona, Nevada, New Mexico, Utah, Colorado and Wyoming – and certain tribes. The Colorado River Compact, the Boulder Canyon Project Act, and the series of U.S. Supreme Court decisions in *Arizona v. California* are key components of the Law of the River. The primary court decision is *Arizona v. California* (1964) 376 U.S. 340, subsequently modified at 439 U.S. 419 (1979) and 466 U.S. 144 (1984). Those and subsequent relatively minor rulings were compiled in the court's Consolidated Decree, *Arizona v. California*, 547 U.S. 150 (2006). However, except for specific allocations of water and recognition of specific perfected rights, the substantive provisions of the Supreme Court's ruling have not changed since the original Decision in 1964.

The Law of the River has never been interpreted by a court to mean that pumping of groundwater from the Mesa Basin – or from any other location except in the immediate proximity of the River – falls within the meaning of the phrase “water drawn from the mainstream by underground pumping.” Accordingly, the FEIS’s statement that water from the Mesa Basin “is likely subject to the Colorado River Compact, 1922, the Boulder Canyon Project Act, and the Consolidated Decree 547 U.S. 150 (2006)(U.S. Supreme Court)” is utterly without legal support in the Law of the River.

Further, throughout its development, the Law of the River has always involved the allocation of the annual quantity of diversions from the Colorado River, and the management of water releases to satisfy the annual quantity of diversions allocated to each of the states and others. In contrast, percolating groundwater does not move at a speed that can be related to annual diversion allocations. Under the best of circumstances, and as noted above, the BSPP water that the FEIS would treat as water withdrawn from the Colorado River and subject to the Law of the River allocation would take upwards of several decades to migrate from the surface water system to the groundwater system in the location of the BSPP wells.¹⁴ There is no legal basis for considering pumping of decades old groundwater as constituting surface water of the Colorado River subject to diversion control under the annual allocation methodology of the Law of the River.

FEIS Position May Harm BLM, Its Mission, and Its Directive to Support Renewable Project Development on Federal Lands

The FEIS’s suggestion that an entitlement is required for pumping from the Mesa Basin could pose significant challenges for BLM and its managed lands.

Its position would effectively limit the multiple use opportunities on those lands by (incorrectly) restricting overlying pumping from BLM lands for any use of those lands. Moreover, this broad (but incorrect) interpretation of the Colorado River entitlement requirements effects not only BLM land overlying the Mesa Basin but also many other BLM lands overlying groundwater basins in the region of the Colorado River.

¹⁴ The BSPP wells are approximately 10 miles from the closest point of the Colorado River.

Although this (unwarranted) interpretation would affect all land uses requiring water, this is particularly harmful to BLM's instructions to facilitate solar development by making it much more difficult (and expensive) for any solar or other renewable project to obtain necessary water for construction and operations.¹⁵ Indeed, the FEIS reports exactly this in its cumulative impacts analysis, concluding that the foreseeable projects would induce additional inflow from the Colorado River and would also require a Colorado River entitlement. [FEIS 4.19-20 – 21]

In addition, the FEIS's position would imply that existing wells pumping on BLM lands, if any, are unlawful since none of those wells has Colorado River entitlements.

FEIS Is Directly Contrary to California Water Rights Law

Under California law, an overlying landowner may pump underlying groundwater for reasonable and beneficial uses. Except in a few unique circumstances that do not apply to a well miles from a surface water system, groundwater is not regulated as surface water.

California law clearly defines water in the Mesa Basin as groundwater subject to pumping under California overlying or appropriative groundwater rights regime, and not as subsurface flow of the Colorado River subject to the Law of the River.

Under California water law, nearly all subsurface water is legally classified as groundwater. The only subsurface waters that are considered to be surface water – and therefore subject to surface water rights regulation – are waters in “subterranean streams flowing through known and definite channels.” Cal. Water Code § 1200. The legal standard for such a subterranean stream requires (1) a subsurface channel must be present, (2) the channel must have relatively impermeable bed and banks, (3) the course of the channel must be known or capable of being determined by reasonable inference, and (4) groundwater must be flowing in the channel. *SWRCB D.1639 (1999)* [Garrapata Creek].

These subterranean streams generally fall into to types: (1) the underflow of a surface stream, or (2) a definite underground stream. Underflow is water in the soil, sand and gravel in the bed of a stream. *City of Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 623, 630. It must be flowing in a known and definite channel and in the same direction as the surface stream to which it is connected. That is, it is water that is really part of the flow of the surface stream in the immediately adjacent subsoils that are part of the streambed. An underground stream is water flowing in a definite “contracted and bounded channel.” *Cave v. Tyler* (1905) 147 Cal. 454, 456; Cal. Water Code §1200.

In a 2002 report commissioned by the Cal. State Water Resources Control Board (“SWRCB”), Professor Joseph Sax explained the California Legislature’s purpose in including subterranean streams within the definition of surface waters subject to SWRCB jurisdiction:

¹⁵ See FEIS Table 4.19-5 for a list of proposed solar projects – many apparently on BLM land – all of which will require groundwater from a basin that likely would be considered drawing from the Colorado River under BLM’s (incorrect) analysis.

[T]he purpose was to protect the integrity of the permitting agency's jurisdiction over surface stream appropriations by preventing unpermitted taking of groundwater that appreciably and directly affects surface stream flows. The concern was essentially to close a loophole that would have been left if any taking of water from a subsurface location would leave the permitting agency powerless in the face of wells or tunnels that were effectively underground facilities for withdrawing stream water. At the same time, it is clear that the legislation was not intended to create permitting jurisdiction over all groundwater whose pumping would in any way, or at any time, affect surface streams. The statute was without doubt meant to leave much tributary groundwater as part of a separate legal regime outside the permit system that was being established.¹⁶

Further making clear that water in a traditional aquifer is not considered surface water, the California Supreme Court has held:

Water moving by force of gravity in a valley or basin of wide extent, ...and moving generally through the whole or through a large portion of the basin...composed of alluvial or other deposit lying throughout the entire basin...do not constitute a watercourse...."
City of Los Angeles v. Pomeroy (1899) 124 Cal. 597, 627.

Further, subsurface water is presumed to be percolating groundwater, unless proved to be underflow or an underground stream. *Arroyo Ditch & Water Co. v. Baldwin* (1909) 155 Cal. 280, 284.

The FEIS itself makes clear that water in the Mesa Basin is not possibly underflow or an underground stream. For example, the FEIS reports that only the Valley Basin (the next basin closer to the Colorado River) was the historic floodplain of the Colorado River and that the Mesa Basin is outside the floodplain. [FEIS, 3.20-2] Although not all water underlying land within a floodplain necessarily constitutes subsurface flow treated as surface water under California water rights law, the opposite clearly is the case – subsurface waters beyond the floodplain could not possibly be part of the surface flow. The FEIS acknowledges that groundwater flow and geochemistry demonstrate that there are other sources of water to the Mesa Basin, and that not all of the water beneath the Mesa is sourced from underflow from the valley or the Colorado River. In fact, after more than a century of irrigated agriculture on the valley floor and decades of saturated conditions in the Valley Basin (requiring that drains be installed to maintain the water table and prevent surface water-logging), none of the water beneath the Mesa can be sourced from underflow from the Colorado River under existing conditions.

California water law also makes clear that groundwater includes water that has escaped from surface streams. *Montecito Valley Water Co. v. Santa Barbara* (1904) 144 Cal. 578, 584. Thus, even if a portion of the water in the Mesa Basin finds its ultimate source in the Colorado River

¹⁶ Joseph L. Sax, , *Review of the Laws Establishing the SWRCB's Permitting Authority Over Appropriations of Groundwater Classified as Subterranean Streams and the SWRCB's Implementation of those Laws*, SWRCB No. 0-076-300-0, January 19, 2002, p. 7.

over a period of years, decades or more, that water still is groundwater unregulated by the Law of the River.

Indeed, all groundwater finds its original source in surface water.¹⁷ Substantial portions of this recharge water come directly from surface streams. (Other major sources of groundwater recharge are diffuse surface water – e.g., rainfall that percolates before joining a surface stream – and artificially applied water (such as irrigation) that percolates.) If all groundwater that finds its source in surface streams were surface water, very little subsurface water in California would be classified as groundwater. In fact, however, groundwater supplies about 30 percent of California’s urban and agricultural water demands.¹⁸

Perhaps most clearly to the point: The Mesa Basin is a recognized groundwater basin by the State of California.¹⁹

The Bureau of Reclamation’s Previously Proposed Accounting Surface Rule Is Not Applicable

In a sweeping attempt to extend the Law of the River and in contravention of California water rights law, in 2006 the Bureau of Reclamation proposed to define a massive area of lands surrounding the Colorado River as within the “Accounting Surface” of the River. That proposed rule was withdrawn, having never been adopted. The Accounting Surface concept is only a former proposal that was withdrawn and has no legal status.

That a federal agency, at some point in the future, may enact a regulation affecting water pumping (or any other aspect of the BSPP operations) is not a basis for environmental review or imposition of mitigation under NEPA. The FEIS is only appropriately comparing the impacts of the BSPP to the Affected Environment – the current environmental conditions.

Moreover, even if some Accounting Surface rule is adopted, its contents cannot be known today so any assumptions about what such a rule might provide is far too speculative to include in environmental review under NEPA.

Indeed, the only times the issue of whether water extracted from the Mesa Basin is Colorado River water requiring a Colorado River entitlement has been adjudicated, such pumping was found not to require such an entitlement.

[T]he Bureau of Reclamation does not presently exert jurisdiction over groundwater use and does not control any area wells or account for groundwater use in the Palo Verde Valley or Mesa.... The Bureau does not currently account for other wells on the Mesa or

¹⁷ “Groundwater originates as surface water.” California’s Groundwater, Bulletin 118, Dept. of Water Resources, p. 3.

¹⁸ California’s Groundwater, Bulletin 118 (Update 2003), Dept. of Water Resources, p. 2.

¹⁹ California’s Groundwater, Bulletin 118 (Update 2003), Dept. of Water Resources, p. 203, 208.

anywhere in the Palo Verde Valley in this fashion, or any other groundwater activity for any use.²⁰

The Commission finds that Palo Verde mesa groundwater and Colorado River water are legally distinct. The overland owner has rights under California law to use groundwater. Other than the few cases of underflow, the [U.S. Bureau of Reclamation] has not asserted jurisdiction to directly regulate groundwater use from wells that are known to be in aquifers that are recharged by Colorado River water.... [The proposed project's] use of groundwater from on-site wells is not an unauthorized use under state or Federal law.²¹

III. Mitigation Measures are Inconsistent with the CEC PMPD Requirements:

As noted above, the FEIS analysis of water supply appears to have relied upon the analysis of the CEC staff. Similarly, the mitigation measures suggested in the FEIS adopt by reference mitigation measures proposed by the CEC staff. However, in important ways, the CEC's mitigation measures have been superseded in the PMPD. Unless modified, the FEIS mitigation measures will be inconsistent with the measures imposed by the CEC. This creates an unworkable set of project approvals.

* * *

We hope that in bringing these matters to your attention, BLM will recognize the advisability of correcting this situation.

²⁰ Decision, Blythe Energy Project Phase I (CEC 99-AFC-8), pp. 205 – 206.

²¹ Decision, Blythe Energy Project Phase II (CEC 02-AFC-1), p. 254.

**BLYTHE SOLAR POWER PROJECT
SOIL AND WATER RESOURCES**

CONDITIONS OF CERTIFICATION

ESTIMATION OF SURFACE WATER IMPACTS

SOIL&WATER-16: To further assess the impacts from Project pumping, the project owner shall estimate the increase in discharge from surface water to groundwater that affects recharge from the Palo Verde Valley Groundwater Basin (USGS) to the Palo Verde Mesa Groundwater Basin (USGS). This estimate may be used for determining the appropriate offset volume in accordance with SOIL&WATER-2. The project owner shall do the following to provide an estimate for review and approval by the CPM:

1. The project owner shall conduct a detailed analysis of the contribution of surface water to the PVMGB from the Project's groundwater extraction activities at the end of the 30 year operational period. The detailed analysis shall include:

a. The conceptual model developed in the AFC and the Staff Assessment, and any changes resultant from further analysis in support of numerical modeling;

b. The use of an appropriately calibrated and constructed groundwater flow model of the Palo Verde Valley and Palo Verde Mesa Groundwater Basin, inclusive of the Mesa and floodplain shall include:

i. Horizontal and vertical geometry information gained through on- and offsite investigations conducted as part of the hydrogeological field investigations for the AFC, and any subsequently documented investigation performed as part of the model development ;

ii. Aquifer properties developed as part of the AFC and any subsequently documented investigations performed as part of the model development, and an assessment of aquifer properties available from other published sources. The properties used shall be representative of the available data, and will be used in calibration of the flow model under ASTM standards and methods.; and

iii. The modeling effort shall include a sensitivity analysis where in the most sensitive variables will be identified and varied within a reasonable range outside of the calibration value to provide an assessment of the range of potential impacts from the Project pumping on the recharge from the Palo Verde Valley Groundwater Basin to the Palo Verde Mesa Groundwater Basin.

c. Reporting of the results of the modeling effort

d. Estimation of the increased contribution of surface water discharge to groundwater and the change in recharge to the Palo Verde Mesa Groundwater Basin attributable to Project groundwater pumping.

2. The analysis shall include the following elements:

a. The change in groundwater flux to the regional aquifer from surface water sources attributable to Project pumping in any for the life of the Project (30 years) until pre-project (within 95%) conditions are achieved;

b. A sensitivity analysis that would provide a range in the potential changes in flux relative to variation in the key model variables as a result of Project pumping for life of the Project until pre-project (within 95%) conditions are achieved;

3. The project owner shall present the results of the conceptual model, numerical model, transient runs and sensitivity analysis in a report for review and approval by the CPM. The report shall include all pertinent information regarding the development of the numerical models. The report shall include:

- a. Introduction
- b. Previous Investigations
- c. Conceptual Model
- d. Numerical Model and Input Parameters
- e. Sensitivity Analysis
- f. Transient Modeling Runs
- g. Conclusions

Verification: Within thirty (30) days following certification of the proposed Project, the project owner shall submit to the CPM for their review and approval a report detailing the results of the modeling effort. The report shall include the estimated amount of subsurface water flowing from the surface water due to project pumping. This estimate shall be used for determining the appropriate volume of water for mitigation in accordance with SOIL&WATER-2.

Attachment 2



Barry H. Epstein

Professional Experience and Background

PROFESSIONAL EXPERIENCE:

- Attorney specializing in land use, natural resources, water, energy and environmental law.
- Areas of expertise include:
 - Land use regulation and development entitlements
 - California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA)
 - Surface and ground water rights, water supply and water quality
 - Energy facility siting and public utility regulation
 - Coastal regulation
 - Open space and agricultural land preservation
- Experience includes project development, government practice, litigation, transactions and legislation.

POSITIONS HELD:

- **Fitzgerald Abbott & Beardsley LLP, Oakland, California**
 - Managing Partner (2004 to 2008)
 - Chair of the Land Use, Environment & Natural Resources practice group (1999 to present)
 - Partner (1999 to present)
- **Law Offices of Barry H. Epstein, San Francisco, California**
 - Principal (1993 to 1999)
- **Grueneich, Ellison & Schneider, San Francisco, California**
 - Managing Partner (1991 to 1993)
 - Partner (1991 to 1993)
 - Associate (1988 to 1991)
- **State of California, Coastal Conservancy, Oakland, California**
 - Staff Counsel (1985 to 1988)
- **Heller, Ehrman, White & McAuliffe, San Francisco, California**
 - Litigation Associate (1982 to 1984)

EDUCATION:

- **J.D., University of Michigan Law School, May 1982**
- **Masters of Public Policy, University of Michigan School of Public Policy, May 1981**
- **B.S., Business Administration, University of California, Berkeley, June 1978, Phi Beta Kappa**

LAW PRACTICE EXPERIENCE:

Water Rights and Supply

Representative assignments:

- Advising clients regarding groundwater pumping, allocations, entitlements, contracting and exchange matters within the Colorado River basin under the Law of the River and the Lower Colorado Water Supply Project.
- Representing urban water district in State Water Resources Control Board water rights hearings to establish minimum instream flows, sedimentation control, and other fish protection measures.
- Representing overlying landowners in multi-party litigation involving claims of prescriptive rights to a groundwater basin, imported water, recharge and basin boundaries.
- Representing riparian owners with regard to a judicial water rights adjudication and Decree.
- Representing rural landowners in litigation over ground water, spring water, and water system rights and CC&Rs.
- Advising development client in transfer of surface water rights for groundwater recharge and use project.
- Analyzing water supply, related infrastructure, treatment, and transmission arrangements for large industrial property owner; interpreting existing contracts; and negotiating contract modifications.
- Litigating adequacy of Water Supply Assessment (SB 610) and underlying water rights for major residential development project.
- Analyzing surface, groundwater and purchase water supply options for City's municipal golf course.

Representative clients:

Bar-X Ranch, Chowchilla Water District, City of Livermore, City of Santa Clara, Cuesta La Honda Guild, Delta Wetlands, Green Valley Landowners Association, Handal Family Vineyards LLC, Lake Lucerne Mutual Water Company, Madera County Farm Bureau, Marina Community Partners LLC, McEvoy of Marin LLC, Pacific Gas & Electric Company (PG&E), Pebble Ridge Vineyards LLC, Peninsula Open Space Trust, Pine Gulch Creek Association, Safeway Inc., Santa Maria Valley Landowner Group, Star Route Farms, Western Aggregates, Inc., Windfield Ranch LLC, USS-POSCO Industries, other private landowners.

Energy and Power Plant Siting

Representative assignments:

- Representing public agencies, nonprofit organizations and private parties in numerous water and electricity ratemaking and policy proceedings before the California Public Utilities Commission and the California Energy Commission.
- Lead counsel in California Energy Commission site certification proceeding for 550 MW natural gas-fired merchant powerplant.
- Lead counsel in county permitting process for solar PV facilities.
- Providing advice for siting and environmental review of transmission lines.
- Representing electricity customers in acquiring and contracting for Direct Access and other energy services.
- Assisting in due diligence analyses for siting renewable power generation project facilities.

Representative clients:

California Public Utilities Commission, Ecology & Environment, FPL Energy, Inc., The Gap Inc., Mulqueeny Ranch Properties, Natural Resources Defense Council, Regional Council of Rural Counties, San Francisco Community Power Cooperative, Sunlaw Energy Corporation (and affiliates), SunPower Corporation, other private energy customers.

LAW PRACTICE EXPERIENCE (continued):

Land Use

Representative assignments:

- Advising a variety of public, private and nonprofit clients regarding subdivision, lot line adjustments, zoning, development entitlements, annexation and CEQA documentation in various California jurisdictions.
- Securing land use permits and approvals for residential, commercial, industrial, governmental and agricultural development projects.
- Litigating CEQA disputes on behalf of public agency defendants, real parties in interest/applicants and farming and citizen group petitioners.
- Analyzing and confirming the legal parcel status of rural properties.
- Defending public agencies and real parties in interest in regulatory takings cases.
- Arranging for the use of transferable development credits.
- Providing counsel to master consultant to U.S. Coast Guard and California State Lands Commission for NEPA/CEQA and related legal compliance for proposed offshore liquefied natural gas facility.
- Formerly served as in-house counsel for state agency, providing advice on CEQA compliance, agricultural land preservation (Williamson Act) and other land use matters.

Representative clients:

Ecology & Environment Inc., Fremont Realty Capital, Healdsburg Grove Development Company, Madera County Farm Bureau, City of Oakland, Pacific Lutheran Theological Seminary, Peterson Holding Company, Schnitzer Steel Industries, Inc., The Smith River Alliance, State Coastal Conservancy, State Lands Commission, Sunlaw Energy Corp., Title Nine Sports, Inc., U.S. Coast Guard, various private landowners and professional fiduciaries.

Wetlands, Bay, Coastal and Ocean

Representative assignments:

- Negotiating terms of Clean Water Act 404 permits from the U.S. Army Corps of Engineers and 401 Certifications from the Regional Water Quality Control Boards, including mitigation agreements.
- Assisting engineering team in feasibility analysis of options for disposal and re-use of S.F. Bay dredged material.
- Drafting and negotiating a multi-agency wetlands mitigation banking agreement for a major southern California port project.
- Advising master consultant to U.S. Navy in compliance with National Environmental Policy Act (NEPA), Coastal Zone Management Act (CZMA), Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA) and other laws applicable to worldwide deployment of advanced submarine detection technology.
- Handling California Coastal Commission and Coastal Zone Management Act (CZMA) permitting issues for California coastal projects.
- Representing landowners in resolving wetlands enforcement matters initiated by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and California Coastal Commission.
- Negotiating terms of Streambed Alteration Agreements with the California Department of Fish & Game.

Representative clients:

City of Livermore, Concept Marine Associates, County of Alameda, Marine Acoustics Inc., Port of Oakland, Star Route Farms, State Coastal Conservancy, Thomas Reid Associates, U.S. Navy, private landowners.

PROFESSIONAL ACTIVITIES AND AFFILIATIONS:

- **Advisor (former Executive Committee Member)**, Environmental Law Section, State Bar of California
- **Executive Committee Member (former Chair)**, Environmental Law Section, Bar Association of San Francisco
- **Member**, American Bar Association, Section on Environment, Energy & Resources
- **Admitted to Practice**, State Bar of California (December 1982), State Bar No. 104402; U.S. District Courts: Northern District of California, Eastern District of California, Southern District of California

PUBLICATIONS AND SPEAKING ENGAGEMENTS:

- **CEQA Rules for Agency Actions Affecting Climate Change**, California Environmental Law Reporter, November 2008
- **Sprawl and "Paper Water": A Reality Check from the Courts**, Environmental Law News, Winter 2003
- **Corporate Water Footprinting – Best Practices in Corporate Water Stewardship: Water Policy Development**, Green Power Conferences, December 2-3, 2009
- **Environmental Land Use Law in New Jersey and California: A Comparative Approach**, N.J. Bar Association Mid-Year Meeting, November 5, 2009
- **Proclamations, Protestations and Litigation: California's Drought Response**, The State Bar of California, Environmental Law Section Annual Yosemite Conference, October 16, 2009
- **Of Whales, Wetlands, Forests and Oil Slicks: The Annual Supreme Court Review**, Bar Association of San Francisco Environmental Law Section, November 13, 2008
- **Environmental Issues for Nanotechnology**, IEEE San Francisco Bay Area Nanotechnology Council, May 20, 2008
- **Conservation Easements: Water and Mineral Rights – Special Problems, Special Opportunities**, CLE International, November 17, 2008 and September 28, 2007
- **Groundwater Rights, Regulation and Use in Northern California**, Lorman Education Services, September 27, 2006
- **Water Quality & Water Supply Issues Affecting New Development**, The State Bar of California, Environmental Law Section, August 11, 2006
- **The Development Approval Process**, Lorman Education Services, August 10, 2006
- **No Water, No Houses: California's New Water Supply Framework**, Fresno Bar Association, April 20, 2006
- **Water Rights 101: Is it Wet? Is it Mine?** Real Estate Roundtable Forum, April 14, 2005
- **Water Supply & Land Use**, University of San Francisco School of Law Water Law Symposium: Water in the 21st Century, January 22, 2005
- **Recent Developments: The California Environmental Quality Act**, Fresno Bar Association, April 15, 2004
- **Conservation Easements: Who, What, Where, Why, When and How**, State Bar of California, Environmental Law Section Annual Yosemite Conference, October 2003
- **Land Use Law Update in California**, National Business Institute, October 13, 2003
- **Zoning and Land Use Law in California**, Lorman Education Services, April 25, 2003
- **The Anatomy of Conservation Easements**, State Bar of California Annual Meeting, September 2003
- **Environmental Liabilities of Trustees and Other Fiduciaries**, Alameda County Bar Association (Oakland, 2003) and Continuing Education of the Bar (San Francisco, 2001 and 2000)

RECOGNITION AND AWARDS:

- **“Top 100 Lawyers in California,”** Daily Journal, 2009
- **Rated “AV” by Martindale-Hubbell,** that organization's highest rating for quality and ethics
- **“Top East Bay Lawyers,”** East Bay Business Times, June 23, 2006
- **Northern California “Super Lawyers,”** each year 2004 - 2010
- **“Best Lawyers in the Bay Area,”** Bay Area Magazine, September/October 2005

COMMUNITY ACTIVITIES:

- **The Julia Morgan School for Girls** – Founding Board member of independent girls' middle school.
- **Coastal Conservancy Association** – President and Board member of nonprofit organization supporting the work of the California State Coastal Conservancy.
- **Sustainable Agriculture Education (SAGE)** – Advisory Board member

Attachment 3

September 20, 2010

Gerald R. Zimmerman, Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1068

Re: Response to Colorado River Board's Letter to Alan H. Solomon, California Energy Commission, regarding Presiding Member's Proposed Decision (PMPD) for the Blythe Solar Power Project, September 14, 2010

Dear Mr. Zimmerman:

We were very disappointed by the content of the Colorado River Board's (CRB) last minute letter to the California Energy Commission (CEC) concerning the Blythe Solar Power Project (BSPP). We feel compelled to reply directly for the record to correct your unfounded claims.

At the outset, we want to ensure that CRB understands the BSPP has been designed for maximum water efficiency. BSPP is a dry-cooled project and has – at significant expense – incorporated water conservation BMPs and water-efficient technology. Thus, with regard to your reference to the August 12, 2010 letter from three Lower Colorado River Basin states suggesting that BLM require use of best management practices and water use efficient technologies (paragraph 6), such considerations are ingrained into the project design. Further, the CEC has independently reviewed and conditioned BSPP specifically with a view to ensuring all feasible water efficiency measures.

With respect to the bulk of your letter, it appears to be predicated on the assertion that the BSPP involves "*Colorado River water use due to the groundwater pumping at this project site*" (paragraph 2). This assertion is based on water law and policy that do not exist.

Although contemplated and previously noticed in the Federal Register (with a comment period that expired over two years ago), the Bureau of Reclamation (BOR or Reclamation) has not adopted an Accounting Surface Rule. It is our understanding that Reclamation is presently in the process of substantially reformulating the concept. Unless and until the Accounting Surface identified in the two USGS papers you reference (USGS Water Investigation Reports, WRI 94-4005 and WRI 00-4085) is afforded legal status (if such ever occurs), it does not provide a valid basis for claims concerning the BSPP pumping from the Palo Verde Mesa Groundwater Basin (Mesa Basin).

Nor do the two USGS papers separately provide a basis for the claims in your letter. As you are well aware, USGS papers do not establish water law, groundwater regulation, or federal policy with regard to Colorado River surface water accounting. In fact, the USGS papers did not make any determination regarding an "Accounting Surface area" as you imply; rather, they made an "assumption" regarding an extensive Colorado River Aquifer and presented an Accounting Surface "concept." The USGS assumptions were predicated on very simplistic geologic assessments and two-dimensional modeling, with no analysis or recognition of physical conditions specifically existing in and relevant to the Mesa Basin – notably including an absence of analysis of the physical conditions in the Palo Verde Valley Groundwater Basin (Valley Basin) that lies between the Mesa Basin and the Colorado River.



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For example, the USGS papers assume hydraulic connection between the distant aquifers and the River but ignore the presence of 104,500 irrigated acres on the Palo Verde Valley, and the deep percolation recharge of applied irrigation water that adds approximately 65,000 to 95,000 acre-feet of recharge water annually to the groundwater basin that lies between the River and the Mesa Basin. The presence of this groundwater renders movement of water from the River to the Mesa Basin essentially impossible. Indeed, the introduction of that volume of water over more than a century has created a saturated soil condition that has required the installation of an elaborate drainage system to convey water out of the Valley Basin so as to keep groundwater levels in the Valley below the root zone.

Since the Valley Basin sits between the Mesa Basin and the Colorado River, and is oversaturated from deep percolation of irrigation water applied over more than a century, the USGS's assumption that water from the River is hydraulically connected in a free flowing manner with the Mesa Basin cannot be supported.

Although you cite to the Consolidated Decree, the definition of "consumptive use" has not changed since the original 1964 decree, and has always included "*water drawn from the mainstream by underground pumping.*" Nowhere else in California or western water law has the notion of underground pumping from a surface water system extended to groundwater pumping many miles from the surface watercourse. It is unprecedented in more than a century of western water law to interpret the Supreme Court's use of the term "mainstream" as meaning any and all connected aquifer systems irrespective of their distance from the River channel. Indeed, we note that your letter glosses over the substantial difference between the phrase "hydraulically connected with the Colorado River" (even were such connection to exist in the case of the Colorado River and Mesa Basin) and the legal standard of "water drawn from the mainstream by underground pumping" as used in the Law of the River. We are aware of no legal support for the implied assertion that these phrases mean the same thing.

To the contrary, we do not believe the Law of the River has or will be interpreted by a court to mean that pumping of groundwater from the Mesa Basin – or from any other location except in the immediate proximity of the River – falls within the meaning of the phrase "water drawn from the mainstream by underground pumping." Accordingly, the assertion in your letter that groundwater pumped from the Mesa Basin requires "a valid contract between the Secretary of the Interior and the water user for such use" is without legal support.

Further, throughout its development, the Law of the River has always involved the allocation of the annual quantity of diversions from the Colorado River, and the management of water releases to satisfy the annual quantity of diversions allocated to each of the states and others. In contrast, percolating groundwater does not move at a speed that can be related to annual diversion allocations. Even if the irrigation practices in the Palo Verde Valley were ignored completely, the BSPP water that the CRB would treat as water withdrawn from the Colorado River and subject to the Law of the River allocation would take upwards of several decades to migrate from the surface water system to the groundwater system in the location of the BSPP wells, approximately 10 miles from the closest point of the Colorado River. There is no legal basis for considering pumping of decades old groundwater as constituting surface water of the Colorado River subject to diversion control under the annual allocation methodology of the Law of the River.

The groundwater proposed to be used for the BSPP is presently governed as groundwater subject only to California groundwater law, as it has been for over a century.

If adopted as originally proposed, Reclamation's Accounting Surface policy would result in federalizing millions of acre-feet of State of California groundwater, and could ultimately adversely affect thousands of landowners and groundwater users, potentially resulting in many millions of dollars of economic impacts – obviously a radical change in water law.

Your implied assertion that the CRB can impose a requirement for any groundwater user to obtain an entitlement to Colorado River water (paragraphs 4 and 5) is equally erroneous, since your agency does not grant entitlements to Colorado River allocations or control rights to use of California groundwater. Such a claim also appears to be an arbitrary and unprecedented treatment of the proposed solar power projects, since neither the CRB nor Reclamation has to our knowledge ever asserted that any other groundwater user on the Palo Verde Mesa or the Chuckwalla Valley must have such an entitlement, or ever attempted to account for their water use as a part of consumptive use of River water on an annual accounting basis. (There are approximately 581 water supply wells that exist on the Mesa Basin.)

CRB's contentions have caused confusion for the agencies that do not have expertise concerning the Law of the River, and they have had a detrimental effect on the permitting and financing of solar projects which are using minimal water (all are dry cooling) and are attempting to lead California towards producing the most renewable energy in the world and reducing greenhouse gas emissions.

As you may know, the PMPD was adopted by the full CEC at its September 15 meeting. We expect to proceed with the BSPP and look forward to making a substantial contribution to California's greenhouse gas emission reduction goals with this renewable generation project. We trust that this letter serves to correct the claims you have made. Please feel free to contact the undersigned should you have any further concerns.

Sincerely,



for
Alice L. Harron
Sr. Director, Development and Permitting

Cc: Ms. Lorri Gray-Lee, Regional Director, U.S. Bureau of Reclamation
Ms. Holly Roberts, Associate Field Manager, Palm Springs-South Coast Field Office, BLM
Mr. Allan H. Solomon, California Energy Commission
Ms. Eileen Allen, California Energy Commission
Mr. William J. Hassencamp, The Metropolitan Water District of Southern California

Attachment 4



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE
BLYTHE SOLAR POWER PROJECT
BY PALO VERDE SOLAR, I, LLC

DOCKET No. 09-AFC-6

ERRATA TO THE PRESIDING MEMBER'S PROPOSED DECISION

After reviewing the comments submitted by the parties and members of the public, we incorporate the following changes to the August 11, 2010 Presiding Member's Proposed Decision (PMPD):

GENERAL

All references to the acreage of the disturbed area should be 7,025 acres.
All references to the length of the transmission line should be approximately 10 miles.
All references to the four units being identical should be deleted.

INTRODUCTION

1. Page 2, first paragraph, line 7:

A weather station located in the power block areas provides real-time measurements of weather conditions that affect the solar field operation. ***Two to four additional weather stations may be required per unit for energy-scheduling accuracy. These additional weather stations would be located within the solar fields.*** Radiation data is used to determine the performance of the solar field.

2. Page 2, second paragraph:

Remove the reference to HTF heaters. HTF heaters were removed from the BSPP as referenced in Exhibit 29.

3. Page 2, third paragraph:

The number of wells should be changed from "one of two" to "up to 10" as referenced in Exhibit 52.

4. Page 2, fourth paragraph, first sentence:

At each solar field, to facilitate dust and contaminant removal, demineralized water from the primary desalination process, ~~reverse osmosis (RO) water,~~ would be used to spray clean the solar collectors.

No later than 30 days prior to beginning Project ground-disturbing activities, the Project owner shall provide written verification of Security for acquisition of the 922 acres of land in accordance with this condition of certification.

No later than 18 months from initiation of construction the Project owner shall provide written verification to the BLM, the CPM, and CDFG that no fewer than 922 929 acres of compensation lands or conservation easements that meet the criteria described in this condition have been acquired and recorded in favor of the approved recipient.

Security shall be refunded to Project owner once land has been acquired and recorded in favor of the approved recipient.

60. Page 317, Table to Condition of Certification BIO-28:

Phase	State Waters - Direct		State Waters – Indirect		<u>Bighorn Sheep</u>	
	Impact (acres)	Mitigation (acres)	Impact (acres)	Mitigation (acres)	Impact (acres)	Mitigation (acres)
Phase 1a	67	130	0	0	<u>27</u>	<u>27</u>
Phase 1b	231	409	36	51	<u>488</u>	<u>488</u>
Phase 2	294	665	146	189	<u>414</u>	<u>414</u>
Total	<u>5932</u>	<u>12054</u>	<u>133-182</u>	<u>179-240</u>	<u>929</u>	<u>929</u>

SOIL AND WATER RESOURCES

61. Page 321, first paragraph:

~~Based on the fact~~ **Staff asserts** that a hydraulic connection exists between local groundwater and the Colorado River, ~~therefore evidence suggests~~ **ing** that groundwater withdrawals from the PVMGB are largely balanced by recharge (inflow) from the river via the Palo Verde Valley Groundwater Basin. (Exhibit 200, pp. c.9-20 to C.9-31, and P. C.9-44). **Applicant, however, contends that the recharge is largely influenced by mounded groundwater in the Palo Verde Groundwater Basin, that prevents hydraulic connectivity between the PVMGB and the Colorado River. (Ex. 52, Soil and Water Resources Testimony.)**

62. Page 322, starting at line 7:

Based on the described connection between the PVMGB and the Colorado River, ~~however, the evidence~~ **Staff asserts** suggest that wells drawing groundwater from the PVMGB might be considered as withdrawing water from the river. (Exhibit 200, pp. C.9-44 and C.9-45). Water supplies in the Colorado River are fully appropriated, with the existing appropriations encompassing all consumptive uses (including

applicable groundwater pumping) pursuant to related Supreme Court decrees. ***While the Applicant agrees that Colorado River water supplies are fully appropriated, it and Staff agree that the BSPP would not require an entitlement to pump groundwater for the BSPP. (Ex. 52; 7/15/10 RT, 61:10 – 14.)*** ~~The Project applicant has not provided a detailed analysis of the proportion of proposed groundwater extraction that would be derived from basin recharge and Colorado River underflow. Based on this condition and the noted connection between the PVMGB and the river, Project-related groundwater withdrawal could potentially result in significant impacts related to the diversion of Colorado River water.~~

Public/agency comments from the Colorado River Board of California and Defenders of Wildlife were also received on this issue. These comments identified similar concerns as described above regarding a connection between the Colorado River and PVMGB, and related impacts from Project groundwater extraction. ***Rather than adjudicate the disagreements on whether the project pumping would cause a significant impact to the Colorado River, Applicant and Staff agreed to Conditions of Certification SOIL & WATER-2 and SOIL & WATER-15 as appropriate mitigation to offset its water use.***

The described potential impacts to groundwater basin balance identified in the Project technical analysis and public/agency comments would be addressed through Condition of Certification **SOIL & WATER-2** which we hereby adopt. Specifically, this condition requires the Project owner to implement a Water Supply Plan to mitigate Project impacts to ***Palo Verde Mesa Groundwater Basin from recharge from the Palo Verde Valley Groundwater Basin*** ~~Colorado River flows~~ (potentially including efforts such as conservation programs, funding of irrigation improvements, purchasing water rights, and/or tamarisk removal). (Exs. 200, pp. C.9-44 to C.9-46, C.9-97, C.9-98; 202, pp. 1 – 2.) We also adopt Condition of Certification **SOIL & WATER-16**, to help define the quantity of surface water contributing to Project groundwater extraction (i.e., to estimate the amount of water that must be replaced pursuant to Condition of Certification **SOIL & WATER-2**). It is also noted that future water use in the PVMGB may be governed by impending ***future*** regulations ***which may be*** being formulated by the U.S. Bureau of Reclamation (which oversees management and appropriation of Colorado River water). (Ex. 200, pp. C.9-45, C.9-76; 7/15/10 RT, 57:17 - 62:9.)

63. Page 325, first paragraph, first sentence:

Each of the proposed 250 MW units will have two ~~4~~ **3.5**-acre evaporation ponds to dispose of wastewater from sources including cooling tower and boiler blowdown (for a total of ~~seven~~ **eight** acres per unit, or ~~28~~ **32** acres for the entire Project site.)

64. ***Page 325, first paragraph, last sentence:***

Pond dimensions will be designed to provide adequate surface area and depth to accommodate proposed wastewater inflow and precipitation rates over the life of the Project (approximately 30 years), as well as to provide adequate freeboard for direct precipitation from ~~large~~ **100-year recurrence interval** storm events (i.e., to prevent overflow).

Specifically, this compliance would likely include implementation of a SWPP and/or DESCP, and a Drainage Report, as outlined in **SOIL & WATER-1** and **SOIL & WATER-11**.

75. Page 339, Finding 2:

2. Adherence to the procedures in the Condition of Certification **SOIL & WATER-1** (including the construction DESCP) and related CWA/NPDES permit requirements will avoid significant soil erosion and subsequent sedimentation during construction, conserve soil resources, maintain water quality, and prevent accelerated soil loss.

76. Page 339, Finding 3:

Project construction and operation will require approximately 22,100 af of groundwater extraction from the PVMGB, with this basin hydraulically connected to the *Palo Verde Valley* Colorado River.

77. Page 340, Finding 4:

4. Proposed Project groundwater withdrawals from the PVMGB could result in the use of Colorado River water, with water supplies in the river already allocated.

Renumber all subsequent findings accordingly.

78. Page 340, Finding 5:

5.4. Implementation of Condition of Certification **SOIL & WATER-2** and **SOIL & WATER-16** (if applicable) would reduce potential impacts related to groundwater basin balance in the PVMGB. *The Proposed Project does not require an entitlement of Colorado River Water to pump groundwater.* and associated effects to surface water from Colorado River inflow below a level of significance (although future water use in the PVMGB may be governed by impending regulations being formulated by the U.S. Bureau of Reclamation).

79. Page 340, Finding 10:

10.9. Implementation of Conditions of Certification **SOIL & WATER-7**, **SOIL & WATER-8**, **SOIL & WATER-17** and **SOIL & WATER-18** would reduce long-term impacts related to groundwater quality below a level of significance.

80. Page 341, Conclusions of Law:

3. Pursuant to Public Resources Code section 25500, this certification serves as the Water Code section 13263 Waste Discharge Requirements permit, as well as all other permits required by any state, local, or regional agency or federal agency to the extent permitted by federal law.

81. Page 341, Condition of Certification SOIL & WATER-1:

130. Page 497, First Paragraph

This Noise Ordinance also limits the hours of noisy construction activities within one quarter mile of a residence to the following hours:

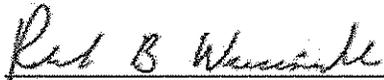
131. Page 509, first Paragraph, first sentence:

The project site consists primarily of desert scrub ~~but also includes portions of McCoy Wash with desert dry wash woodlands.~~

Dated: September 14, 2010, at Sacramento, California.



KAREN DOUGLAS
Chair and Presiding Member
Blythe Solar AFC Committee



ROBERT B. WEISENMILLER
Commissioner and Associate Member
Blythe Solar AFC Committee