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*protecting and restoring natural ecosystems and imperiled species through
science, education, policy, and environmental law*

via email and USPS

September 17, 2010

Allison Shaffer, Project Manager
1201 Bird Center Drive,
Palm Springs, CA, 92264
CAPSSolarNextEraFPL@blm.gov

Re: Comments on Proposed California Desert Conservation Area Plan Amendment and Final Environmental Impact Statement for the Genesis Solar Energy Project.

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 EIS ("FEIS") for Genesis Solar Energy Project (hereinafter "proposed project" or "Genesis") on public lands managed by the Bureau of Land Management ("BLM") in Riverside County, California.

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, the efficiency loss associated with extended energy transmission, and sprawling industrial development sites in remote areas of our 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 Genesis on July 8, 2010 along with references. We incorporate those comments herein in full. The Center is also a party to the proceedings for

Genesis at the California Energy Commission and the BLM is a part of that process, therefore, the Center incorporates all of the documents from those proceedings herein in full as well.

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, Mojave fringe-toed lizard and other wildlife, and rare plants and plant communities, 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 and the NECO planning area, including the lands and waters that would be affected by the proposed Project, for quiet recreation (including hiking, camping and photography), 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 1,800 acres (approximately 2.8 square miles) of public lands in the Chuckwalla Valley bordering the Palen/McCoy Wilderness Area and north of Ford Dry Lake, and about 6 miles north of Interstate 15 and the project also includes construction of 6.6 miles of a new access road. "The Proposed Action area would be located in a remote section of east central Riverside County, where land use is characterized predominantly by open space and conservation and wilderness areas." FEIS at 2-4. The project site is habitat for the federally threatened desert tortoise and provides sand source and sand transport necessary to the Mojave fringe-toed lizard—a BLM special status species. The 6.6 mile road impacts additional species including rare plants and the gen-tie line for the project crosses desert tortoise critical habitat in the Chuckwalla Desert Wildlife Management area as well. 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 could undermine the conservation goals of the CDCA Plan as a whole and result in sprawling industrial development in the Chuckwalla Valley, undermining recovery of the desert tortoise in this area and severely impacting the Mojave fringe-toed lizard in the southern edge of its range. If the plan amendment for the proposed project is approved (particularly along with other projects in the vicinity including the Palen Solar Power Project and

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 species that live in these fragile desert lands were necessary especially from the impacts of ORV use (both lawful and unlawful use).

the Desert Sunlight Project – all on BLM managed lands in the Chuckwalla Valley) it will result in industrial sites sprawling across the Chuckwalla Valley in desert tortoise habitat and Mojave fringe-toed lizard habitat that should be protected to achieve the necessary conservation for these 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 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 provided detailed comments on the DEIS explaining the shortcomings in the environmental review 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 M lands is inappropriate. Under the CDCA Plan, Multiple-use Class M (Moderate Use) “protects sensitive, natural, scenic, ecological, and cultural resources values. For public lands designated as Class M the CDCA Plan intends a “controlled balance between higher intensity use and protection of public lands. This class provides for a wide variety o[f] present and future uses such as mining, livestock grazing, recreation, energy, and utility development. Class M management is *also* designed to conserve desert resources and to mitigate damage to those resources which permitted uses may cause.” CDCA Plan at 13 (emphasis added). The proposed project is a high-intensity, single use of resources that will displace all other uses and that will significantly diminish (indeed, completely destroy) approximately 1,800 acres of habitat including impacting aeolian transport to the dunes ecosystem, directly impacting habitat for desert tortoise, Mojave fringe-toed lizard and other impacts to species and habitats.
- Adoption of a plan amendment to allow a large-scale industrial facility in such a remote area on public lands bordering a wilderness area is inappropriate. The Proposed Plan amendment and the FEIS do not adequately consider whether and how the proposed new primary access road created for the proposed project may increase off-road vehicle use in this area and thereby significantly increase impacts from ORVs on species and habitats surrounding the proposed project. The BLM has also failed to adequately consider whether and how the potential expanded ORV access via the new road – which is not a designated route in this area for ORV use — would also increase *unlawful* vehicle use off of designated routes and in the adjacent wilderness. The FEIS admits that the 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 may also 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 may occur from casual use of the access roads in the GSEP area include unauthorized trail creation.

Nonetheless, the BLM failed to adequately consider mitigation measures and failed to adopt any measures to protect the resources of these public lands from the likely increase in ORV use in this area from use of the new access road. The Center raised this issue in comments on the DEIS and specifically asked that the BLM consider a requirement that use of the new access road be limited, the road be gated, and have a guard. The Center continues to assert that such measures are necessary to ensure this new access road is only used for authorized uses *related to the proposed project* and any other authorized uses approved by the BLM (e.g., for access to cultural resources if needed). The Center believes that the proposed project is inappropriate in such a remote location requiring a new 6.6 mile road into an area that now has no designated routes for motorized vehicle access. In addition, the Center particularly opposes the BLM's failure to adopt adequate protections (such as providing a gate or guard or both) to ensure that the new access road does not cause impacts to the surrounding lands from vastly increased ORV use in a remote area that would significantly degrade the resources of these public lands including soils, habitat, wilderness, and other resources.

- 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 clearly this remote location is inappropriate and that the site configuration will significantly impact surrounding public lands and resources due to fragmentation and edge effects. No analysis of mitigation measures for these significant effects was provided in the DEIS or FEIS.
- The FEIS proposes to approve a new 6.6. mile access road to this remote site that has not been adequately addressed in the context of land use planning. In particular, approval of this remote siting may encourage other projects to propose similar sites in remote areas (near this project or in other areas), that also require installation of new roads that further fragment the desert and habitats for rare and common species. Before considering approval of an industrial scale project in such a remote area, BLM should have fully analyzed how such a decision may exacerbate the worst impacts of sprawl—fragmentation and expansion of infrastructure into areas of the CDCA that should remained intact in as large blocks as possible in order to protect habitat for imperiled species and other resources.
- 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 remote 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).
- The inadequacies in the environmental review for the project as provided in the DEIS and 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,*

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

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 Mojave fringe-toed lizard and their habitats from the project including direct, indirect and cumulative impacts. The FEIS fails to adequately address the impacts on these species and its habitats. Further, the FEIS does not provide sufficient monitoring and reporting requirements for direct and indirect impacts to these 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. The mitigation ratio of 5:1 for critical habitat impacts is appropriate. However, the mitigation ratio of 1:1 for desert tortoise habitat outside of critical habitat does not provide any mitigation for indirect impacts or fragmentation impacts due to the proposed industrial-scale solar project in this remote location surrounded by wild-lands and bordering a wilderness area. Mitigation for impacts to this habitat should be at minimum 2:1.
- 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 identify and analyze the impacts to migratory birds, golden eagles, burrowing owls, badgers, desert kit fox and other wildlife, rare insects, rare plants, and rare plant communities.

- 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 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. In addition impacts to sand source and sand transport have not been adequately addressed.
- Narrowing the purpose and need to such an extent that the BLM failed to adequately address a meaningful range of alternatives.
- The FEIS includes new language regarding the proposed Plan amendment which was expanded to allow not only this project (which has been evaluated in the EIS) but also “all other types of solar energy development” at this site without any environmental review of the impacts of “all other types of solar energy development.” As the BLM is aware, different solar energy development projects have different types and intensity of impacts on the environment—some more than this proposed project and some less. It is inappropriate to adopt a Plan amendment that is broader than the FEIS that was prepared to support the Plan amendment.
- Failing to analyze a range of appropriate project alternatives including distributed generation and off-site alternatives on previously disturbed or degraded lands.
- Failing to adequately address direct, indirect, and cumulative impacts to groundwater resources in the Chuckwalla basin during construction and operations, including the failure to adequately address impacts to groundwater resources from the project in the Chuckwalla basin and impacts to federal reserved water rights. The BLM must ensure that if the Genesis project goes forward in any form, the project applicant or ROW holder does not accrue new water rights on federal lands --- BLM should require 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. The Center raised this issue in our DEIS comments as a way to protect public property—the water rights underlying public lands and the reserved water rights to surface waters. In its response, BLM attempts to minimize the possibility that any water rights could be created. FEIS at 5-33. While the Center appreciates that BLM acknowledges that in order to use any of the groundwater off-site a new environmental review process would have to be undertaken, we believe that the FEIS may not have accurately addressed the complex issues of California water law and the *potential* that water rights would be claimed in future. Moreover, even if the BLM were correct regarding the need for an adjudication in order to

establish water rights to groundwater, then the BLM should include a condition that the ROW holder participate in the adjudication and/or that any rights that could be claimed through such a process can only accrue to the BLM and must be quit claimed back to the BLM at the end of the term. Finally, while it is understandable that BLM does not want to engage in speculative *analysis*, BLM should still include terms in the ROW that would protect these water rights if any adjudication occurs or any groundwater rights are *arguably* created in some other fashion. In sum, the BLM provides no valid reason for failing to include language in any ROW grant such as the one the Center proposed that would protect these important public property rights.

- The FEIS inappropriately defers development of a detailed and essential plans to protect resources until after public participation is completed, including, but not limited to, the following: decommissioning and reclamation plan including adequate revegetation criteria; Weed Management Plan; Biological Resources Mitigation Implementation and Monitoring Plan; Raven Management and Monitoring Plan; detailed revegetation plan for temporary disturbance; Burrowing Owl Mitigation and Monitoring Plan; Avian Protection Plan; Desert Tortoise Relocation/Translocation Plan; Management Plan for Compensatory Mitigation Lands for tortoise, fringe-toed lizards, drainages etc.; Special-status Plant Impact Avoidance and Mitigation Plan and the Couch's Spadefoot Toad Protection and Mitigation Plan. Additional plans that are not mentioned in the FEIS but need to be include Compensatory Mitigation Plan for State Waters; Desert Tortoise Compensatory Mitigation Plan; Bat Protection Plan; Plan for restoring sheet flow to the terrain downslope of the Project boundaries; and a Management Plan for Sand Dune/Fringe-toed Lizard.
- Failing to adequately address the potential for wild-land fire due to project construction and operations. In addition, failing to adequately address the fire hazard potential from the proposed project. The FEIS also fails to adequately address the potential impacts from two all-terrain fire engines for emergency personnel to enter the site in the event the main access to the plant is unavailable. There has been no pre-planning on this issue of alternative access which could have a significant impact on species and habitats.
- 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 construction or operations of the proposed project which are significant. There is no discussion of reducing GHG by using alternative fuels or highly efficient vehicles and equipment.
- Failing to adequately address growth inducing impacts.
- Failing to adequately address the significant cumulative and growth inducing impacts of sprawling industrial scale solar projects and new roads and transmission infrastructure across the Chuckwalla Valley without prior planning or adequate consideration of alternatives. These issues 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 Genesis Solar Energy Project in Riverside County, California.

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

Sincerely,



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To: Bureau of Land Management

September 14, 2010

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BLM Director (210), Protests
Attention: Brenda Williams, 1620 L
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Re: Request for 30 days extension on Protests and Comments on the Final EIS and Proposed California Desert Conservation Area (CDCA) Plan Amendment for CACA 048811, Chevron Energy Solutions/Solar Millennium Blythe Solar Power Plant, CACA 048880, Genesis Solar, LLC Genesis Solar Energy Project, and Plan Amendment LLCAD06000.

Dr. Lowell John Bean has a contract with the BLM to gather all the information concerning the proposed solar panel sites and their sacredness. He had until September 17, 2010 to submit his findings to the BLM but during the time of the interviews we discussed among us that this date was too soon and would not allow Dr. Bean to gather enough information. However, Dr. Bean was able to contact the BLM and he was granted an extension for October 1, 2010.

The tribes need additional time therefore to consult with Dr. Bean and therefore in behalf of our inter-tribal group La Cuna de Aztlan Sacred Site Protection Circle we respectfully request the BLM grant a 30 days extension on Protests and Comments on the Final EIS and Proposed California Desert Conservation Area (CDCA) Plan Amendment for CACA 048811, Chevron Energy Solutions/Solar Millennium Blythe Solar Power Plant, CACA 048880, Genesis Solar, LLC Genesis Solar Energy Project, and Plan Amendment LLCAD06000.

Sincerely,

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September 20, 2010

Allison Shaffer
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1201 Bird Center Drive
Palm Springs, CA 92262-8001

**Subject: FEIS Comments
Genesis Solar Energy Project**

Dear Ms. Shaffer,

Attached, for your consideration, is a compilation of comments from Genesis Solar, LLC (Genesis) on the Final Environmental Impact Statement (FEIS) for the Genesis Solar Energy Project (GSEP).

We have utilized the normal form/format for providing comments to BLM, adding attachments as needed. To the extent it would be helpful to your considerations, we invite you to reference the testimony (transcripts) and evidence provided at the California Energy Commission (CEC) hearings. Those items are accessible by internet at: http://www.energy.ca.gov/sitingcases/genesis_solar/documents/index.html

Summary of Comments

Genesis agrees with much of the FEIS analysis and conclusions, including the proposed mitigation measures. The attached comment form includes comments ranging from minor clerical corrections to recommendations to delete information that has been carried forward from the SA/DEIS that is either no longer accurate or has changed as a result of the dynamic CEC process.

To assist BLM and its consultants in reviewing the comment form and attachments, we have provided a summary of the table and attachments here.

1. Water Basin and Usage

Genesis disagrees with any characterization of the groundwater used for this project as impacting or requiring an entitlement of the Colorado River. Simply put the GSEP will not pump from the mainstream of the Colorado River, which is the sole legal condition that would require a Colorado River Entitlement. The GSEP is over thirty miles from the Colorado River, and now that the GSEP will utilize dry cooling technology, will pump on average no more than 202 acre feet per year (AFY) during operations. This issue was adjudicated at evidentiary hearing and the CEC Committee, after hearing all of the evidence and legal briefs on point, correctly decided that the GSEP does not require an entitlement of Colorado River. The CEC Committee based its decision on two uncontroverted facts. The first is that there is no rule or law that would require treating groundwater in the Chuckwalla Valley as Colorado River Water. It is undisputed that the United States Bureau of Reclamation (USBR) proposed a methodology to regulate water that is currently regulated as California groundwater by using an assumed simplified "Accounting Surface". Therefore, the Law of the River does not include accounting for California groundwater over thirty miles away from the Colorado River.

Second, it is undisputed that if such a rule were in place, which it is not, the GSEP will not cause the static water level to drop below that assumed surface. So even if the Accounting Surface were in place, the GSEP would still not require an entitlement of Colorado River Water.

The FEIS' erroneous conclusions that the GSEP requires a Colorado River Entitlement have raised questions from the parties responsible for the due diligence associated with obtaining a Federal Loan Guarantee for the project. Therefore it is necessary for the success of the GSEP that the BLM remedy this confusion as soon as possible.

2. Land Use and Recreation

The GSEP site does not support recreational activities. The area is closed to OHV use and Genesis does not believe that there has been any showing that the GSEP will contribute to any loss of recreational opportunities. This issue was explored thoroughly by the CEC Committee in evidentiary hearing and on that basis, the additional mitigation recommended by the FEIS is not necessary.

3. Sand Transport

At one time, the agency biologists believed that the GSEP had the potential to cause indirect impacts to Mohave Fringe Toed Lizard habitat (MFTL) due to entrainment of sand in the transport corridor. Since the SA/DEIS the GSEP footprint was modified slightly and it was determined that the area downwind of the GSEP was in fact not MFTL Habitat. Therefore, the 151 acres of indirect impact to MFTL should be deleted.

4. Cultural Landscapes

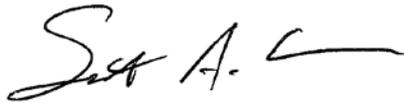
The FEIS includes requirements to mitigate from Prehistoric Quarries. Unlike the Blythe Solar Power Project, no such quarries are within the Area of Potential Effect of the GSEP and therefore the Prehistoric Quarry mitigation is not warranted.

5. Visual Resources

The FEIS includes requirements to paint the back sides of the solar troughs which is infeasible and not necessary to mitigate visual impacts. Additionally, the FEIS refers to a CEC Condition of Certification (VIS-3) which has now been deleted.

As stated in our comments submitted for the SA/DEIS, Genesis urges BLM to maintain the close coordination that they have accomplished with the CEC in the progression of this proposed project. It remains important for Genesis that the Final EIS and Record of Decision be consistent with the Final Decision of the CEC, which is scheduled for the 29th of September. To that end, any reference to CEC Conditions should be to the CEC Final Decision and not to the earlier Staff Assessment documents.

Respectfully submitted,



Scott A. Galati
Counsel to Genesis Solar, LLC

ATTACHMENT 1

GENESIS SOLAR ENERGY PROJECT FEIS COMMENT FORM

Genesis Solar Energy Project FEIS Comment Form

Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
Overall	Overall	global search to replace	BSPP with GSEP
Executive Summary			
ES-3	1 st full para	Not pursuing an “innovative technologies” loan.	Change sentence to read “. . . for eligible energy projects” (delete “that employ innovative technologies.”)
ES-3	Numbers 4 and 5	SCE	Change SCE to PG&E
ES-4	First sentence	BLM’s description of its Proposed Action	GSEP suggests changing the sentence to read: “BLM’s Proposed Action is issuance of a right-of-way grant and approval of a CDCA Plan Amendment to allow Genesis Solar, LLC (Applicant) to construct, operate, maintain and decommission the GSEP (hereinafter “Proposed Action”).”
ES-5	Distribution Line	“within the 230 kV ROW”	Change to “within the linear facilities ROW.” The distribution line will be within the ROW BLM issues for the multiple linear facilities – e.g., transmission line, access road, gas pipeline and distribution line – but may not be within a ROW issued specifically for the 230 kV transmission line.
ES-12	Table ES-2, veg	196.5 acres of sand dune lost	7.5 acres – as indicated in analysis and findings in CEQA proceeding
ES-12	Table ES-2, water, end of 1 st bullet	Incorrectly suggests that use of groundwater could impact Colorado River water when nothing in the record supports that position.	Delete last sentence “A fraction of this water could be drawn indirectly from induced flows from the Colorado River.” See attached position paper on this issue.
ES-13	Table ES-2, wildlife	<i>Operations</i> : disruption of migratory patterns;	Remove – there is nothing in the record to indicate that the project could disrupt migratory patterns.
Section 1			

Genesis Solar Energy Project FEIS Comment Form

Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
1-2	1.1.2, 1 st para	Not pursuing an “innovative technologies” loan.	Change sentence to read “. . . for eligible energy projects” (delete “that employ innovative technologies.”) In next sentence, delete “and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.”
1-3	1.2; 2 nd para	Missing a couple of linear facilities.	Change to read “. . . and offsite ancillary facilities including a 230 kV transmission line, access road, gas pipeline, distribution line, telecommunication lines , and drainage features . . . “
Section 2			
2-3	1 st para, line 3	Missing a couple of ancillary facilities that were analyzed.	Change to read “(access road, natural gas pipeline, distribution line and telecommunication lines) . . . “
2-3	5th paragraph, No. 2	“Two evaporation ponds; up to 30 acres each”	Two sets of evaporation ponds; up to 24 acres each”
2-4	2 nd para	The ROW description that will be included in the actual ROW Grant will be more refined.	Change to read “The Proposed Action is a ROW grant and LUP Amendment describing, approximately , the following BLM-administered land:”
2-6	3	Trough collector loop length is incorrect	Remove length reference or change to 1000 feet
2-10	Power Distribution Line	“within the 230 kV ROW”	Change to “within the linear facilities ROW.” The distribution line will be within the ROW BLM issues for the multiple linear facilities – e.g., transmission line, access road, gas pipeline and distribution line – but may not be within a ROW issued specifically for the 230 kV transmission line.

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
2-21	Wastewater – 1st Parag.piped to two, 30 acre evaporation ponds.....piped to multiple evaporation ponds sized up to 24 acres total at each facility for disposal”
2-22	Evap Pond Paragraph		“Evaporation ponds at each facility will be used for wastewater disposal. Each facility will have 3 ponds that together total up to 24 acres in size. The use of multiple smaller ponds at each facility will allow for a pond to be taken out of service”
Section 3			
3.2-1	3.2	The last sentence in the first paragraph stated “Colorado Desert....”	To be consistent, use “Sonoran Desert....”
3.3-7	3.3.6	Table 3.3-1 is outdated and does not include California GHG Emissions after 2005 (Source: CPUC 2008)	Please replace Table 3.3-1 with a new Air Resources Board California GHG Inventory for 2000-2008 (See Attached)
3.5-1	Last paragraph	Statement that the “total population of the two block groups within the six mile radius is 9,761 of which 7,457 are classified as (minorities)”	Need to delete: There is no population within a six mile radius of the center of the GSEP site.
3.8-1	4	Older Alluvium discussed.	Text should indicate that Older Alluvium is likely latest Pleistocene.
3.8-2	1	Ancient Lake Shoreline	Elevation of shoreline not provided (varies from 388 to 405’ msl.)
3.8-2	1	“A prominent east-west linear feature”	Replace with “A moderately strong tonal linear feature”
3.8-2	1	Ancient Lake Shoreline & Alluvial Deposition	This paragraph should be modified for the following reasons: The ancient shoreline from the (WP 2009) report that is cited here was only an interim report. Instead, the more refined and final analysis in the aeolian & ancient shore line report (WP 2010) clearly indicates that the highest lake stand in the

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
			site area SINCE the latest Pleistocene is at an elevation of ~377'. The ancient "4000bp" shoreline from the WP report is at an elevation of 388 to 405 feet and clearly extends over late Pleistocene fan surfaces (thus it did not exist here in the Holocene)
3.8-3	2 -end	This suggests only a thin veneer of younger alluvium.	The WP 2010 Aeolian and Ancient Lake shoreline report provides the data that supports that older Alluvium does indeed exist across the majority of the site at depths of the surface to 3 feet deep and should be expected to be encountered at those depths during grading. The exception is that below elevation ~377 feet Playa Lake sediments will be encountered in the near Surface. Incorporation of this distinction will provide a better understanding of the local geology and geomorphology.
3.8-3	4	".....CGS 2002b)"	Add "nor any designated earthquake fault hazard zones by Riverside County". Riverside county has their own fault hazard Zone maps and it is good to mention in reports within the county whether or not the site contains State and/or County Fault hazard zones.
3.18-1	Para 1, Section 3.18.2	"the eastern portion of the GSEP also supports stabilized and partially stabilized sand dunes"	For clarity, it should be noted in the text here that there is very little sand dune habitat; none on the plant site, and only 7.5 acres for the linears and Gen-tie
3.18-2	Para 1	1773 acres of Sonoran CB Scrub	Should be 1774 acres. (Change 60 to "65" in linears column).
3.18-2	Para 2	1 acre of Sand Dune	Should be 7.5 acres
3.18-2	Table 3.18-1	The acreage of sand dunes doesn't add up	Last column should be 3910.5
3.18-4	Para 2	91 acres	Should be 90

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
3.18-7	Last paragraph	"Sahara mustard....contributed to a relatively large portion of the plant biomass"	While widespread, Saharan mustard was not abundant except on dunes. It was common in washes, but not abundant. Therefore, it does not contribute to a large portion of the biomass.
3.20-2/ 3.20-3	last paragraph/first paragraph	This paragraph contains several inaccuracies and ambiguities regarding the CVGB and its relationship to the Colorado River.	<p>The second sentence incorrectly states that because the Chuckwalla Valley Groundwater Basin (CVGB) is tributary to the Colorado River System (i.e., the USGS had designated it as part of the Colorado River Aquifer) is it subject to the US Supreme Court Decree in AZ v. CA.</p> <p>The first sentence on page 3.20-3 incorrectly characterizes underflow from the CVGB to the PVMGB as "flow to the Colorado River Basin."</p> <p>The third sentence on page 3.20-3 states that "the basin" is subject to the Colorado River Compact, the Boulder Canyon Project Act and Consolidated Decree. It's unclear to what basin this statement refers, but it can be presumed to be the CVGB, which is not correct.</p> <p>See attached position paper.</p>
3.20-3	second paragraph	The second to last sentence concludes that groundwater underlying the project flows southeasterly and eventually influences the hydrology of the Colorado River.	We contend this is not possible due the existence of a groundwater pressure ridge (mound) between the river and the project that results from the application of 700,000+/- AFY of irrigation water in Palo Verde Valley; however, as documented in the RSA and the PMPD, we have agreed to disagree with CEC staff on this issue.
3.20-8	second full	Indicates outflow from CVGB to the PVMGB is	GSEP has provided information to BLM and the

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
	paragraph - Last sentence	400 AFY.	CEC indicating that the outflow from the CVGB to the PVMGB is 988 AFY and not 400 AFY. This information was provided in the "Response to CURE Water Resources Data Requests 1-9", submitted to CEC and dated April 28, 2010.
	Table 3.20-6	The table does not include the Aquifer properties results from the TW-2 pumping tests.	The TW-2 test results were presented in the "Supplemental Groundwater Resources Investigation for Genesis Solar," by WorleyParsons, dated February 5, 2010 and could be included in this table for completeness; however, these additional data "do not significantly change the assessment of average aquifer properties.
	Table 3.20-7	The table does not include water quality data from well TW-2, which was used for the current project design.	Insert the correct data from the table in the RSA.
	Table 3.20-8	The table does not include completion information for well TW-2.	Well completion data for well TW-2 could be added for completeness; however, this information does not change the impact conclusions.
3.23-7	1 st para	Talks about Spring 2010 surveys in the future	Surveys were completed in the Spring of 2010 (and reported).
3.23-7	Para 1	Future 2010 surveys. Survey results incorrectly stated	As stated above, the Spring 2010 have been completed. Also, strike "Preliminary" in third line. Results for 2010 were 30 fragments between 3000 and 5000 y.o.; 1 fragment >4 y.o.
Section 4			
4.4-11	The first BLM mitigation measure	Unlike the Solar Millennium Blythe project site, <u>the GSEP site does not have any prehistoric quarries</u> . To capture this fact, and to make this BLM condition consistent with the corresponding CEC Condition of Certification,	BLM-CUL-1: The Applicant shall contribute to a program to document two cultural landscapes described in Chapter 3.4 that will, in part, be impacted by the GSEP. These are:

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
		see suggested revision in the next column.	<p>(1) a Prehistoric Trails Network Archaeological Landscape (PTNAL), and (2) a Desert Training Center California-Arizona Maneuver Area Historic Archaeological Landscape (DTCHAL). The Applicant will follow the documentation program by contributing to the preparation of National Register of Historic Places (NRHP) nominations for the PTNAL and DTCHAL if the BLM determines, after reviewing the documentation, that they are eligible for the NRHP.</p>
4.9-3	1, Section 4.9.2 (Operation and Maintenance)	“The applicant plans to avoid the creation of annoying tonal (pure-tone) noises by balancing the noise emissions of various power plant features during plant design.”	Due to the lack of nearby noise sensitive receptors there isn’t expected to be any adverse impacts related to tonal noise; therefore, the “balance” of power plant noise emissions should not be required. This sentence should be deleted.
4.12-4	4.12.4 Mitigation Measures	There are four new mitigation measures identified in the text; BLM –REC 1 through 4	These new requirements have not been discussed before and do not seem to apply to the GESP. For instance, there is a requirement to schedule construction to avoid heavy recreation use periods, and a requirement to meet with other parks and agencies prior to construction to identify alternative recreational areas. As confirmed in the testimony in the CEC proceedings, the area is not used as recreational area. Accordingly, GSEP recommends deleting these four requirements.
4.12-4	4.12.5	Regarding the recreational opportunities and experience	Since the GSEP site is not used for recreation, there would be no loss of recreational opportunities and experiences. Deletion of the sentence is appropriate

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
4.14-5	2	Area of offsite impacts	The acreage numbers in this paragraph reflect earlier assessments prior to the project re-design which eliminated the south-eastern-most portion of the project and does not include the latest survey information presented at the CEC hearings, accomplished in coordination with BLM, CDFG and USFWS representatives. The redesign measurably reduced the sand transport “shadow” effect. In conjunction, the surveys of the “shadow” area resulted in a finding that no special or sensitive wildlife exist in this area. This paragraph should be modified to reflect that the effect of the sand transport downwind are “small” and the insignificant effect supports a corresponding conclusion that deflation will not occur.
4.15-4	4.15.4	Summary of Mitigation Measures	Delete this requirement to inventory water resources within wilderness areas in the basin – this requirement is not supported by the impact analysis. It appears this “Summary of Mitigation Measures” Section was placed here in error since 4.15.4 is titled the same as section 4.15.6 which is followed by the word “None.” Similarly, note that sections 4.15.3 and 4.15.5 are identical. GSEP recommends deleting sections 4.15.4 and 4.15.5; and renumbering sections ending 6 and 7
4.17-3	Table	Includes 151 acres of downwind impacts to sand dunes	Should be 0 to be consistent with CEC conclusions that were drawn in coordination with BLM, CDFG and USFWS representatives. See discussion above (4.14-5)
4.17-3	Table 4.17-1	Acreages for CB Scrub	To be consistent with CEC conclusions that were

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
		Indirect impacts to Playa and Sand Drifts over Playa	drawn in coordination with BLM, CDFG and USFWS representatives: CB Scrub should be 1774 acres. Playa – remove 151 acres of indirect impacts
4.17-8	2 nd para	Talks about adverse impacts to MFTL habitat due to sand transport	To be consistent with CEC conclusions that were drawn in coordination with BLM, CDFG and USFWS representatives, discussion should be removed
4.17-9		Talks about the secondary access road	This discussion should be removed since there will not be a secondary access road as agreed-to by the CEC and the County Fire department.
4.17-26	Table 4.17-3	Includes 151 acres of indirect impacts to MFTL habitat	Should be 0 as noted above; same with table 4.17-4 and 4.21-1
4.17-26	Table 4.17-3	Indirect impacts to MFTL habitat	Remove 151 acres and adjust total acreage per comments above
4.18-19	4.18.4 and 4.18.5	Reference to the Visual COCs	There are two references to VIS-3, a CEC Condition of Certification which has been deleted. Recommend that VIS-3 be deleted here as well.
4.18-19	BLM VIS-1	Requirement that the backs of solar troughs shall be color treated.	Recommend that the requirement be deleted or qualified as it may not be possible to color treat the troughs.
4.19-2	first paragraph	The first sentence implies that GSEP's pumping could eliminate or reverse groundwater flow through the narrows between the CVGB and the PVMGB and induce inflow of Colorado River water. This statement is not supported by the data. The second sentence states that the GSEP	The allegation of a potential reversal of flow between the CVGB and the PVMGB was removed from the RSA and replaced with the understanding that Genesis and CEC staff agree the GSEP will have an effect on the PVMGB but disagree whether that effect will propagate to the River. The usage of the term Colorado River Basin

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
		could impact the Colorado River Basin. This term is ambiguous and requires clarification.	requires clarification. The statement could be interpreted to imply the GSEP could impact the Palo Verde Valley Groundwater Basin, which would be consistent with the above-documented disagreement with CEC staff, or it could be interpreted to infer a direct effect on the Colorado River, which is incorrect. See also attached position paper.
4.19-2	third paragraph	The paragraph states that withdrawing groundwater in the CVGB could be considered withdrawing groundwater from the Colorado River Aquifer. It references the existence of the theoretical accounting surface and concludes based on this fact alone, that the project therefore has the potential to divert Colorado River water without an entitlement, and that all groundwater production at the site should therefore be considered Colorado River water.	This assertion was included in the SA but eliminated from the RSA. It is flawed in that it ignores the results of multiple modeling studies that all conclude the GSEP will not violate the accounting surface. Accordingly, this paragraph should be deleted, or at the very least the last sentence should be deleted. See also attached position paper.
4.19-14	third paragraph	The first sentence states there is a possibility the project could induce inflow from the Colorado River to the PVMGB.	<u>This is not supported by the data</u> but is within the bounds with our disagreement with CEC staff - documented in the RSA and PMPD. See attached position paper.
4.19-16	fifth paragraph	The last sentence cites an underflow of 1,200 AFY from the CVGB to the PVMGB.	This differs from the conclusion on page 3.20-8 and the most recent estimated amount Of 988 AFY.
4.19-16	seventh paragraph	The second sentence states there is a possibility the project could induce inflow from the Colorado River to the PVMGB.	This is not supported by the data but is within the bounds our disagreement with CEC staff - documented in the RSA and PMPD. See attached position paper.
4.19-17	first paragraph	Similar to the third paragraph on page 4.19-2.	Delete from 3 rd line: “. . .and the Colorado River

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
		The paragraph concludes (emphasis added) that since under a the <u>proposed</u> Accounting Surface methodology the project <u>could</u> be construed to be pumping Colorado River water if water levels fall below the accounting surface, the project <u>should</u> therefore be considered to be pumping Colorado River water. The available data indicate that not hypotheticals provided to support the conclusion do not hold true.	would be impacted.” Delete the sentence. See attached position paper.
4.19-17	2 nd para	This paragraph incorrectly states that CEC Condition of Certification S&W-19 is intended provide a refined analysis of the contribution of Colorado River water to GSEP pumping.	To make this consistent with CEC Condition of Certification S&W-19, change to: “. . .to conduct a refined analysis of the project’s effect on the PVMGB groundwater budget.”
4.19-17	third paragraph	The second sentence mistakenly states that for dry cooling, discharges to the evaporation ponds are decreased by only 50%.	The actual decrease is approximately 84 percent.
4.19-22	2 nd para	The first sentence includes an estimate of underflow from the CVGB to the PVMGB that has been superseded by a subsequent submittal to the CEC and BLM.	The most current estimate of underflow from the CVGB to the PVMGB is 988 AFY.
4.19-24	Last full para	This paragraph incorrectly implies CEC’s Conditions of Certification S&W-15 and 19 are premised upon a direct impact to Colorado River flows and the GSEP’s obtaining an entitlement to pump Colorado River water..	In order for this paragraph to be consistent with the corresponding CEC Conditions of Certification, this paragraph should be revised in its entirety to read: “(WATER-15 and WATER-19): Implementation of the proposed mitigation would ensure that impacts to groundwater resources are mitigated such that no residual impacts would occur.”
4.21-6	MFTL	Talks about indirect impacts	As discussed above – related to the sand transport

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
			effects, GSEP suggests deleting: 1) the second paragraph in this section as inconsistent with the final analysis and conclusions submitted as evidence in the CEQA analysis; also 2) the first sentence of the fourth paragraph in this section
4.21-7	1 st full paragraph	The last two sentences discuss “substantial” direct and indirect impacts to MFTL	A “substantial” impact is not supported by the final analysis and conclusions in the CEC hearings; having the participation of the BLM, USFWS and the CDFG (as noted above). The conclusions here should be modified here to reflect that there will be very little, if any, direct and indirect effects on the sand transport corridor.
4.21-16	Para 2	“indirectly affect 151 acres”	Delete (per comments above)
4.21-16	Table 4.21-1	Indirect impacts to MFTL habitat	Remove 151 acres and adjust total acreage
4.19-22	second paragraph	The cumulative water budget impact assumes wet cooling (probably no way around that). The amount of underflow predicted after project implementation is not based on the most recent underflow estimate of 988 AFY in the CURE Data Response Set 2. The second sentence indicates the project could induce inflow from the Colorado River into the adjacent groundwater basins and decrease the volume of water available in the Colorado River Basin. The terms used are somewhat ambiguous, but in any event the conclusions are not supported by the data.	The last sentence states that required mitigation will include offset of pumping elsewhere within the basin. This should be deleted as ambiguous and potentially inconsistent with mitigation measures Water-15 and 19.
4.19-24	sixth full paragraph	The paragraph states that the project may mitigate impacts to the Colorado River by	To maintain consistency, this paragraph should be changed to reflect the CEC conclusion that such an

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Page	Para, Section #	Issue Noted in FEIS	Suggested Correction
		obtaining an allocation to pump Colorado River water.	allocation is not required.
Section 5			
5-11	Response 2-003	Response to Comments	Delete the sentence: "As discussed in PA/FEIS Section 4.19, proposed groundwater extraction in support of the GSEP could interfere with groundwater flows that would otherwise be tributary to the Colorado River." See above comments on this topic and attached position paper.
5-16	3	Arco, Gunsight and Cipriano Soil Series	The references to these soil series seems to be a holdover from another project as these soil types do not occur in the project area.
5-19	Response 6-0606	Regarding the secondary access/spur road	Delete last two sentences as the CEC and County Fire Department concluded that the secondary/spur road would not be needed..

ATTACHMENT 2

CALIFORNIA GREENHOUSE GAS INVENTORY TABLE FOR 2000-2008

California Greenhouse Gas Inventory for 2000-2008
 — by Category as Defined in the Scoping Plan

 million tonnes of CO₂ equivalent - (based upon IPCC Second Assessment Report's Global Warming Potentials)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Transportation	171.13	173.71	180.36	178.03	181.71	184.32	184.11	183.84	174.99
On Road	159.40	161.69	168.40	166.17	169.22	170.82	170.49	170.79	163.30
Passenger Vehicles	126.91	129.25	135.43	132.83	134.24	134.51	133.80	133.34	128.51
Heavy Duty Trucks	32.49	32.45	32.97	33.34	34.98	36.31	36.68	37.45	34.79
Ships & Commercial Boats	3.77	3.56	3.87	4.04	4.06	4.36	4.45	4.38	4.32
Aviation (Intrastate)	2.68	2.50	2.66	2.59	2.64	2.70	2.68	2.96	2.42
Rail	1.86	1.87	2.48	2.41	2.89	3.32	3.50	3.15	2.52
Unspecified	3.41	4.08	2.94	2.81	2.90	3.11	3.00	2.56	2.44
Electric Power	103.92	120.62	106.49	109.89	119.96	110.98	107.66	111.10	116.35
In-State Generation	59.93	63.86	50.87	49.08	57.40	51.75	56.28	55.16	55.12
Natural Gas	51.06	55.55	42.42	41.01	48.66	43.21	47.62	47.20	48.07
Other Fuels	8.87	8.31	8.45	8.07	8.74	8.54	8.67	7.96	7.05
Imported Electricity	43.99	56.76	55.62	60.81	62.56	59.22	51.38	55.94	61.24
Unspecified Imports	13.83	24.69	25.42	30.21	31.32	28.44	26.40	30.57	35.19
Specified Imports	30.16	32.07	30.19	30.60	31.24	30.78	24.98	25.37	26.05
Commercial and Residential	42.93	41.02	43.79	41.38	42.54	40.79	41.47	41.83	43.13
Residential Fuel Use	30.13	28.62	29.35	28.31	29.34	28.08	28.46	28.61	28.45
Natural Gas	28.52	27.34	28.03	26.59	27.30	25.89	26.52	26.65	26.10
Other Fuels	1.61	1.27	1.32	1.72	2.04	2.19	1.93	1.96	2.35
Commercial Fuel Use	11.69	11.32	13.37	12.81	12.71	12.56	12.84	12.73	14.31
Natural Gas	10.24	10.07	12.11	11.34	11.13	10.90	11.58	11.35	12.51
Other Fuels	1.45	1.25	1.26	1.46	1.59	1.66	1.26	1.38	1.80
Commercial Cogeneration Heat Output	1.11	1.07	1.08	0.26	0.49	0.15	0.17	0.49	0.37
Industrial	97.27	94.70	96.73	96.14	90.87	90.72	90.47	93.82	92.66
Refineries	33.25	33.07	33.87	34.80	34.06	35.31	36.09	36.07	35.65
General Fuel Use	18.76	17.87	19.53	16.39	16.28	14.80	15.17	14.78	14.82
Natural Gas	13.82	11.92	12.80	10.26	10.53	9.86	9.90	9.76	9.14
Other Fuels	4.94	5.94	6.73	6.13	5.76	4.93	5.27	5.02	5.69
Oil & Gas Extraction [1]	18.41	18.45	17.37	19.51	19.31	18.01	16.48	16.52	17.04
Fuel Use	17.72	17.62	16.64	18.78	18.94	17.66	15.72	15.75	16.27
Fugitive Emissions	0.69	0.83	0.73	0.74	0.37	0.35	0.77	0.77	0.78
Cement Plants	9.41	9.51	9.61	9.72	9.82	9.92	9.75	9.17	8.61
Clinker Production	5.43	5.52	5.60	5.68	5.77	5.85	5.80	5.55	5.31
Fuel Use	3.97	4.00	4.01	4.03	4.05	4.07	3.95	3.62	3.30
Cogeneration Heat Output	11.96	10.69	10.84	10.79	6.19	6.91	6.90	11.22	10.47
Other Process Emissions	5.49	5.11	5.50	4.94	5.22	5.78	6.08	6.07	6.06
Recycling and Waste	6.20	6.28	6.21	6.29	6.23	6.52	6.59	6.53	6.71
Landfills [2]	6.20	6.28	6.21	6.29	6.23	6.52	6.59	6.53	6.71

California Greenhouse Gas Inventory for 2000-2008
— by Category as Defined in the Scoping Plan

million tonnes of CO2 equivalent - (based upon IPCC Second Assessment Report's Global Warming Potentials)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
High GWP	10.95	11.34	11.97	12.75	13.57	14.23	14.92	15.27	15.65
<i>Ozone Depleting Substance (ODS) Substitutes</i>	<i>8.55</i>	<i>9.30</i>	<i>10.12</i>	<i>10.92</i>	<i>11.74</i>	<i>12.41</i>	<i>13.05</i>	<i>13.47</i>	<i>13.89</i>
<i>Electricity Grid SF6 Losses [3]</i>	<i>1.14</i>	<i>1.15</i>	<i>1.07</i>	<i>1.05</i>	<i>1.05</i>	<i>1.04</i>	<i>1.00</i>	<i>0.97</i>	<i>0.96</i>
<i>Semiconductor Manufacturing [2]</i>	<i>1.26</i>	<i>0.89</i>	<i>0.78</i>	<i>0.78</i>	<i>0.78</i>	<i>0.78</i>	<i>0.87</i>	<i>0.84</i>	<i>0.80</i>
Agriculture [4]	25.44	25.37	28.42	28.49	28.82	28.99	29.90	28.26	28.06
Livestock	13.61	14.10	14.56	14.88	14.81	15.36	15.63	15.96	16.28
Enteric Fermentation (Digestive Process)	7.49	7.64	7.86	7.97	7.97	8.26	8.33	8.52	8.70
Manure Management	6.12	6.47	6.70	6.91	6.84	7.10	7.30	7.44	7.58
Crop Growing & Harvesting	8.01	7.46	9.48	9.41	9.51	9.03	9.08	8.53	7.95
Fertilizers	6.55	6.21	8.06	8.02	8.03	7.58	7.44	7.08	6.72
Soil Preparation and Disturbances	1.37	1.18	1.34	1.31	1.41	1.37	1.56	1.36	1.15
Crop Residue Burning	0.09	0.07	0.07	0.08	0.07	0.08	0.08	0.09	0.09
General Fuel Use	3.82	3.81	4.39	4.20	4.50	4.60	5.19	3.78	3.82
Diesel	2.51	2.68	3.02	2.94	3.15	3.38	3.85	2.66	2.93
Natural Gas	1.00	0.75	0.95	0.85	0.82	0.69	0.77	0.79	0.72
Gasoline	0.31	0.38	0.40	0.41	0.52	0.52	0.57	0.32	0.17
Other Fuels	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00
Forestry	0.19								
<i>Wildfire (CH4 & N2O Emissions)</i>	<i>0.19</i>								
Total Gross Emissions	458.03	473.23	474.15	473.15	483.88	476.73	475.31	480.85	477.74
Forestry Net Emissions	-4.72	-4.53	-4.40	-4.33	-4.32	-4.17	-4.04	-4.07	-3.98
Total Net Emissions	453.31	468.69	469.75	468.82	479.56	472.56	471.27	476.77	473.76

[1] Reflects emissions from combustion of natural gas, diesel, and lease fuel plus fugitive emissions
 [2] These categories are listed in the Industrial sector of ARB's GHG Emission Inventory sectors
 [3] This category is listed in the Electric Power sector of ARB's GHG Emission Inventory sectors
 [4] Reflects use of updated USEPA models for determining emissions from livestock and fertilizers

ATTACHMENT 3

GENESIS POSITION PAPER RELATING TO COLORADO RIVER

GENESIS POSITION PAPER RELATING TO COLORADO RIVER

BLM's FEIS for the Genesis Solar Energy Project (GSEP) is a thorough, well-written NEPA review of the GSEP. 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 or to the thousands of existing wells in the general vicinity of the Colorado 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.

The FEIS appears to rely heavily on earlier versions of analyses prepared by the California Energy Commission (CEC) Staff. Information concerning Colorado River Water Law is complex and it is understandable that the CEC and BLM's Staff have received seemingly conflicting information from different parties. . After full evidentiary hearings whereby the California Unions for Reliable Energy (CURE) asserted the GSEP required an entitlement of Colorado River Water, ultimately the Staff and the CEC Committee concluded that the GSEP would not require an entitlement to pump California groundwater. Even though Genesis and CEC Staff did not agree on the quantity of impacts to the groundwater basin, it is clear that CEC Staff and the Committee did not equate impacts to the groundwater basin water budget with requiring a Colorado River entitlement. BLM should do the same.

A. The Accounting Surface is Inapplicable to the GSEP and the GSEP Will Not Pump Water From the Mainstream of the Colorado River

As Genesis has contended since the beginning of this project, pumping of California Groundwater would not require an entitlement. To be clear, use of water in California is governed by Article 2 Section 10 of the California Constitution. It is well settled in California law that an owner of property has the right to put underlying groundwater to reasonable and beneficial use on overlying land. (See Katz v. Walkinshaw (1903) 141 Cal. 116). This right is called an overlying right and it is a real property right. As such the right to use groundwater pursuant to an overlying water right is part and parcel of the land.¹

The complex set of case law that governs allocation of Colorado River water is commonly known as the Law of the River. To lawfully use water from the mainstream of the lower Colorado River², a person or entity must have an entitlement. An entitlement authorizes a person or entity to use water from the lower Colorado River for beneficial use. An entitlement can be obtained as a decreed right as described in the Consolidated Decree

¹ The Federal government, as a property owner, enjoys the same rights as any other property owner to the use of groundwater. (See In re Waters of Hallett Creek Stream System (1988) 44 Cal.3d 448). Thus, the Federal government holds overlying rights to the use of water underlying the subject land and may grant Genesis the right to use this water. BLM manages the land at issue and is processing the application for a right-of-way (ROW) for the GSEP. Genesis has requested that the ROW (as modified by the Plan of Development) expressly authorize the use of groundwater for the project.¹ If approved, the ROW will be subject to the condition that all activities on the property are performed in accordance with the Plan of Development. Therefore BLM has the right to convey the right to use groundwater and may do so pursuant to the ROW.

² Lower Basin, defined as water use downstream of the Hoover Dam

entered by the United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) (Supreme Court Decree); a contract with the Secretary of the Interior (Secretary) managed by the United States Bureau of Reclamation (Bureau), or a Secretarial Reservation of Colorado River water.

Pursuant to the Supreme Court Decree, the Bureau accounts for all consumptive use of mainstream Colorado River water in the Lower Basin. As part of that accounting, the Bureau was directed to include water drawn from the mainstream by underground pumping. The Bureau collected data that persons with wells located very near the Colorado River bank were actually pumping groundwater from the Colorado River or groundwater that was replaced by Colorado River water. To address that situation, the Bureau proposed that groundwater pumped from wells in the Colorado River floodplain be considered to be Colorado River water. The Bureau also requested USGS to develop a method to identify wells in tributary aquifers outside the river floodplain that pump water that is replaced by water drawn from the lower Colorado River. The USGS identified a River Aquifer that has been refined over time and developed a model that identified a theoretical "Accounting Surface". The Accounting Surface is an elevation intended to represent the groundwater surface that would exist if the only source of groundwater in the River Aquifer were the Colorado River. Under the proposed methodology, wells in areas where the static water level is above the Accounting Surface would be considered to be pumping water that is not subject to Colorado River accounting; and, wells in areas where the static water level is below the Accounting Surface would be considered to be pumping water that will be replaced by Colorado River water, and thus subject to accounting.

In 2006, the Bureau published an Advanced Notice of Proposed Rulemaking in the Federal Register³, which was followed in 2008 by publication of the Official Notice of Proposed Rulemaking in the Federal Register.⁴ The Proposed Rulemaking would formally adopt the Accounting Surface Methodology for regulation of wells and groundwater that would be pumping groundwater that could be replaced by Colorado River Water. The Proposed Rulemaking would have added the Accounting Surface Methodology to 43 Code of Federal Regulations Section 415. The Proposed Rule was never adopted and in fact was withdrawn from consideration in 2009. A simple search of the Code of Federal Regulations indicates that Section 415 was never adopted or added to Title 43. Therefore, the Accounting Surface Methodology is not a law, regulation, standard, or plan that should apply to any project, including the GSEP. It is undisputed that the GSEP, located many miles from the Colorado River is not in the Colorado River Floodplain. Therefore, without a regulation which is entirely within the domain of the federal government, an entitlement of Colorado River Water cannot be required. The Accounting Surface Methodology should not, and cannot legally, be applied to the GSEP.

B. The Law of the River was not changed by the 2006 US Supreme Court Decree nor the USGS Studies

It is clear that the Supreme Court recognized that the Bureau has the ability to regulate the consumptive use the Colorado River water, including underground pumping from the

³ 71 FR 47763, Regulating Non-Contract Use of Colorado River Water in the Lower Basin

⁴ 73 FR 40916, Regulating the Use of Lower Colorado River Water Without an Entitlement

mainstream of the Colorado River, most recently reiterated in 2006.⁵ There has been some confusion that the 2006 reiteration of this principle somehow changed the Law of the River. However, the specific language in the 2006 Supreme Court Decree has **been the Law of the River in every Supreme Court Decision since 1963**. Specifically, that language comes from the June 1963 decision that became the first of six decrees titled *Arizona v. California* (1964) 376 U.S. 340, and it has been carried through subsequent decrees up to and including the 2006 decree⁶, reading:

(A) "Consumptive use" means diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation;

(B) "Mainstream" means the mainstream of the Colorado River downstream from Lees Ferry within the United States, including the reservoirs thereon;

(C) Consumptive use from the mainstream within a State shall include all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping, and including, but not limited to, consumptive uses made by persons, by agencies of that State, and by the United States for the benefit of Indian reservations and other federal establishments within the State;... (Id. at p. 340)

No intervening decision/decrees has ever changed the definition or application from the original opinion of 1963 through the 2006 decree. Simply stated, the Law of the River relative to groundwater pumping has not changed since 1963.

The only thing that is new is the proposal by the United States Geologic Survey (USGS) of methods that might be used to account for groundwater pumping from the Colorado River mainstream. This includes the Accounting Surface method, which has not been adopted. One basic limitation of the methods proposed by the USGS is that it relies on a definition of a Colorado River Aquifer which contains groundwater that **may** be in hydraulic contact with the river **over geologic time**. The definition of the Colorado River Aquifer is based solely on elevation and limited information regarding geology, and does not consider known variations in aquifer conditions or hydrogeology. As such, it is not a predictor of whether specific groundwater pumping is actually capable of interacting with the river and, if so, whether it happens over the course of a few years, millennia, or eons.

No party to these proceedings contends that these studies are part of the Law of the River and therefore should be treated as law. In fact, the proposed Accounting Surface methodology may conflict with existing groundwater law. It must be recognized that even if a tributary groundwater basin is connected to surface water such as the Colorado River in "geologic time", this does not mean that pumping from the groundwater would be pumping from the mainstream of the Colorado River. If that were the case, there would be no distinction between state groundwater law and surface water rights anywhere in the state.

⁵ *Arizona v. California* (2006) 547 U.S. 150

⁶ Id., at p. 153

By logical extension, anytime someone pumped groundwater, they would “in geologic time” potentially affect a surface water body.

The USGS further limited the applicability of its proposed accounting methodology to only those areas of the River Aquifer where static groundwater levels fall below the theoretical Accounting Surface. In other words, the proposed methodology posits that not all water from tributary groundwater basins should be treated as waters being pumped from the mainstream of the Colorado River. Even applying this simplistic model, it is undisputed that the GSEP will not cause the static groundwater table to drop below this theoretical Accounting Surface.

The FEIS agreed with the erroneous assertions contained in the Colorado River Board’s (CRB)⁷ comment letter. It is extremely important to note that in this letter, the CRB states merely, “***if it is determined that these wells are, in fact, pumping Colorado River water, a contract with the Secretary of the Interior would be required***”.⁸ (Emphasis added). Genesis does not disagree with that correct description of the law, but note that it does not prove, let alone assert, that GSEP will pump Colorado River water.

C. A Potential Impact to Colorado River Does Not Demonstrate the GSEP Requires an Entitlement of Colorado River Water

Even if BLM concluded that the GSEP could potentially impact flows to the Colorado River, which Genesis does not support, a finding of potential impact under NEPA is not the same as pumping from the mainstream of the Colorado River. Arguably, over the geologic timescale many underground aquifers may communicate with or be influenced by surface water sources. Genesis and Staff ultimately agreed that the Chuckwalla Valley Groundwater Basin communicates with the Palo Verde Mesa Groundwater Basin and, in order to streamline the project, Genesis has agreed to offset any effect on the flow across this boundary.⁹ Genesis does not agree that any effect on the flow across this boundary would result in a determination that the GSEP will pump water from the mainstream of the Colorado River. Even if there were some effect, the Law of River does not require an entitlement for an “effect”. It only requires an entitlement if the GSEP would pump from the mainstream of the Colorado River. That would mean that the GSEP would have to actually move water from the Colorado River into its wells, a physical impossibility based on simple hydrogeologic principals when one considers actual groundwater conditions in the Palo Verde Valley described in a number of other submittals to the NEPA process.

D. Even if the Accounting Surface Rule was Adopted, the GSEP Would NOT Require an Entitlement of Colorado River Water

Assuming that the Accounting Surface Rule was adopted in the future, the GSEP would not require an entitlement of Colorado River water simply because it will not draw the static

⁷ The CRB has no regulatory authority over Colorado River Water and is advisory only, with Metropolitan Water District as its largest member.

⁸ July 2, 2010 letter from Gerald Zimmerman, Colorado River Board to BLM Comments on SA/DEIS

⁹ CEC Conditions of Certification SOIL*Water-15 and -19

water level below the Accounting Surface. Groundwater modeling studies conducted by several parties all support this conclusion, including: (1) modeling conducted by WorleyParsons for the wet cooled project¹⁰; (2) modeling conducted by WorleyParsons for the dry cooled project¹¹; (3) modeling conducted for the Palen Solar Project¹²; (4) modeling conducted for the Eagle Crest Pumped Storage Project¹³; and (5) modeling for the Chuckwalla and Ironwood State Prison Expansion¹⁴. In addition, the latter modeling study was validated by approximately 20 years of groundwater level monitoring data¹⁰. The first and third modeling studies cited above are relied upon by the FEIS and demonstrate this undisputed fact. While the Accounting Surface is not applicable for the reasons articulated above, the simple fact is that if it were adopted, no entitlement would be necessary.

¹⁰ WorleyParsons, 2010, Groundwater Resources Investigation, Genesis Solar Energy Project, Riverside County, California. January 8.

¹¹ WorleyParsons, 2010, Technical Memorandum – Predicted Effects of Dry Cooling Water Demand on Groundwater Resources, Genesis Solar Energy Project, Riverside County, California. June 9.

¹² AECOM, 2009, Palen Solar Energy Project Application for Certification. August 24.

¹³ GEI Consultants, 2009, Eagle Mountain Pumped Storage Project – Revised Groundwater Supply Pumping Effects: October 23

¹⁴ Engineering Science, 1990, Water and Wastewater Facilities Engineering Study, California State Prison – Chuckwalla Valley. September.



Brendan Hughes
<jesusthedude@hotmail.com>

09/24/2010 01:38 PM

To <capssolarnexterafpl@blm.gov>,
<mmonasmi@energy.state.ca.us>

cc

bcc

Subject: Comments on Genesis FEIS

To whom it may concern:

I would like to urge BLM and CEC to reject the Genesis 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 habitat for the federally-threatened desert tortoise will be severe and unmitigable. Also, this project will impact the Mojave fringe-toed lizard. A project such as this one could hasten the decline of this sensitive species.

Additionally, this project is sited directly adjacent to the Palen-McCoy wilderness area. This siting will place an industrial zone next to an area set aside for wildlife and solitude, thus degrading the wilderness qualities of one of the gems of the California Desert. As a user of BLM's wilderness areas, I do not want this project placed next to this treasured landscape.

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 using fallow agricultural land around Blythe and Palo Verde. Such a 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 922



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

September 27, 2010

Via Electronic & U.S. Mail

Mike Monasmith
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 Final Environmental Impact Statement for the Genesis Solar, LLC Genesis Solar Energy Project and Proposed California Desert Conservation Area Plan Amendment, CEC Docket No. 09-AFC-8, BLM Docket No. CACA 4880

The Metropolitan Water District of Southern California (Metropolitan) has reviewed the Final Environmental Impact Statement and Possible California Desert Conservation Area Plan Amendment (collectively FEIS) for the Genesis Solar Energy Project (Project). Metropolitan submitted comments on the draft EIS on June 15, 2010 that are attached hereto and incorporated by reference. In sum, as a contractor receiving delivery of Colorado River supplies, 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.

The Bureau of Land Management (BLM) responded to Metropolitan's comment regarding potential impacts on Colorado River and local water supplies in response number 2-003, that "the proposed action would not interfere with any water right or MWD's ability to divert water from the Colorado River and therefore the Project would not have any direct or indirect effect on water resources, including the Colorado River and local groundwater supplies." Response 2-003 also states that proposed groundwater extraction in support of the Project could interfere with groundwater flows that would be tributary to the Colorado River, but that the mitigation measures WATER-15 and WATER-19 would mitigate or completely offset these effects and therefore, the proposed action would not interfere with any water right or MWD's ability to divert water from the Colorado River.

Nevertheless, the preamble to mitigation measure SOIL&WATER-15 in Appendix G (Metropolitan assumes that this mitigation measure is the same as WATER-15 referred to in response 2-003) reveals a difference of opinion between the Project Owner and the California Energy Commission regarding the Project's potential effects/impacts on the Colorado River and associated drains and, therefore, mitigation to offset any Palo Verde Valley Groundwater Basin water budget depletion will be required. This mitigation measure, SOIL&WATER-15, requires that the Project Owner submit a Water Supply Plan to the Compliance Project Manager (CPM)

Mike Monasmith, Allison Shaffer
September 27, 2010
Page 2

for review and approval thirty days before the start of extraction of groundwater for construction or operation.

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. These reports would include the Water Supply Plan discussed above, as well as the Water Policy Compliance Water Supply Plan (SOIL&WATER-18) and the report provided pursuant to SOIL&WATER-19.

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,



John Shamma
Manager, Environmental Planning Team

DSD/dsd

(J:\Environmental-Planning & Compliance\Completed Jobs\September 2010\Job No. 10092713)

Attachment: Comment Letter on Genesis Solar Energy Project DEIS dated June 15, 2010

cc: Gerald R. Zimmerman, Acting 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

Mike Monasmith
Siting, Transmission and Environmental
Protection Division
California Energy Commission
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/Staff Assessment for the NextEra Energy
Resources Genesis Solar Energy Project and Possible California Desert Conservation
Area Plan Amendment; CEC Docket No. 09-AFC-8, BLM Docket No. CACA 4880

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Draft Environmental Impact Statement/Staff Assessment (collectively, "DEIS") for the NextEra Energy Resources Genesis Solar Energy 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 July 8, 2010 per the Federal Register notice. 75 Fed. Reg. 18204 (April 9, 2010). This comment deadline applies to the CEC's Revised Staff Assessment issued June 11, 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

Genesis Solar LLC, a Delaware limited liability company and wholly owned subsidiary of NextEraTM Energy Resources LLC, proposes to construct, own, and operate the Genesis Solar Energy Project. The Project would be a concentrated solar electric generating facility that would be located in Riverside County, California.

The Project would consist of two independent solar electric generating facilities with a nominal net electrical output of 125 megawatts (MW) each, for a total net electrical output of 250 MW. Electrical power would be produced using steam turbine generators fed from solar steam generators. The solar steam generators receive heated transfer fluid from solar thermal equipment comprised of arrays of parabolic mirrors that collect energy from the sun.

The Project proposes use of a wet cooling tower for power plant cooling. Water for cooling tower makeup, process water makeup, and other industrial uses such as mirror washing would be supplied from on-site groundwater wells. Project cooling water blow down would be piped to lined, on-site evaporation ponds.

The Project water needs will be met by use of groundwater pumped from one of two wells on the plant site. Water for domestic uses by project employees will also be provided by onsite

groundwater treated to potable water standards. During construction, the Project proponent anticipates using up to 2,440 acre-feet of water over the course of approximately three years. Following construction and for long-term operations, the average total annual water usage for all four units combined is estimated to be about 1,644 acre-feet per year (afy).

The project is located approximately 25 miles west of the city of Blythe, California, on lands managed by BLM. The project is an undeveloped area of the Sonoran Desert. Surrounding features include the McCoy Mountains to the east, the Palen Mountains (including the Palen/McCoy Wilderness Area) to the north, and Ford Dry Lake, a dry lakebed, to the south. I-10 is located to the south of the Project.

Land Use Issues: Potential Impacts on Metropolitan Facilities

Although Metropolitan has not yet identified any direct land use impacts, the Project is in the general vicinity of Metropolitan facilities, perhaps as close as 4 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 resources, 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 2,440 af of water during construction and 1,644 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

Mike Monasmith, Allison Shaffer

June 15, 2010

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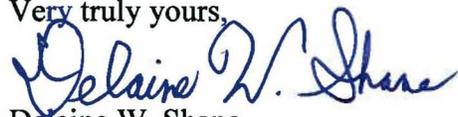
U.S. Geological Survey (USGS) and USBR as part of an on-going rule-making process. *See* Notice of Proposed Rule Regulating the Use of the Lower Colorado River Without an Entitlement, 73 Fed. Reg. 40916 (July 16, 2008); USGS Scientific Investigation Report No. 2008-5113. To the extent the Project uses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

Entities in California are using California's full entitlement 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, the following mitigation alternatives identified in SOIL&WATER-15 are no longer available to Proponents to mitigate impacts to Colorado River water resources: "payment for irrigation improvements in Palo Verde Irrigation District, purchase of water rights within the Colorado River Basin that will be held in reserve, and/or BLM's Tamarisk Removal Program." Instead, Proponents would have to obtain Colorado River water for the Project from the existing junior priority holder, Metropolitan, which has the authority to sell water for power plant use. Mitigation measure SOIL&WATER-15 should be revised accordingly. 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. Proponents must fully address the impacts on Colorado River water resources and provide full mitigation for such impacts, including replacement of supply.

Additionally, CEC and BLM 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

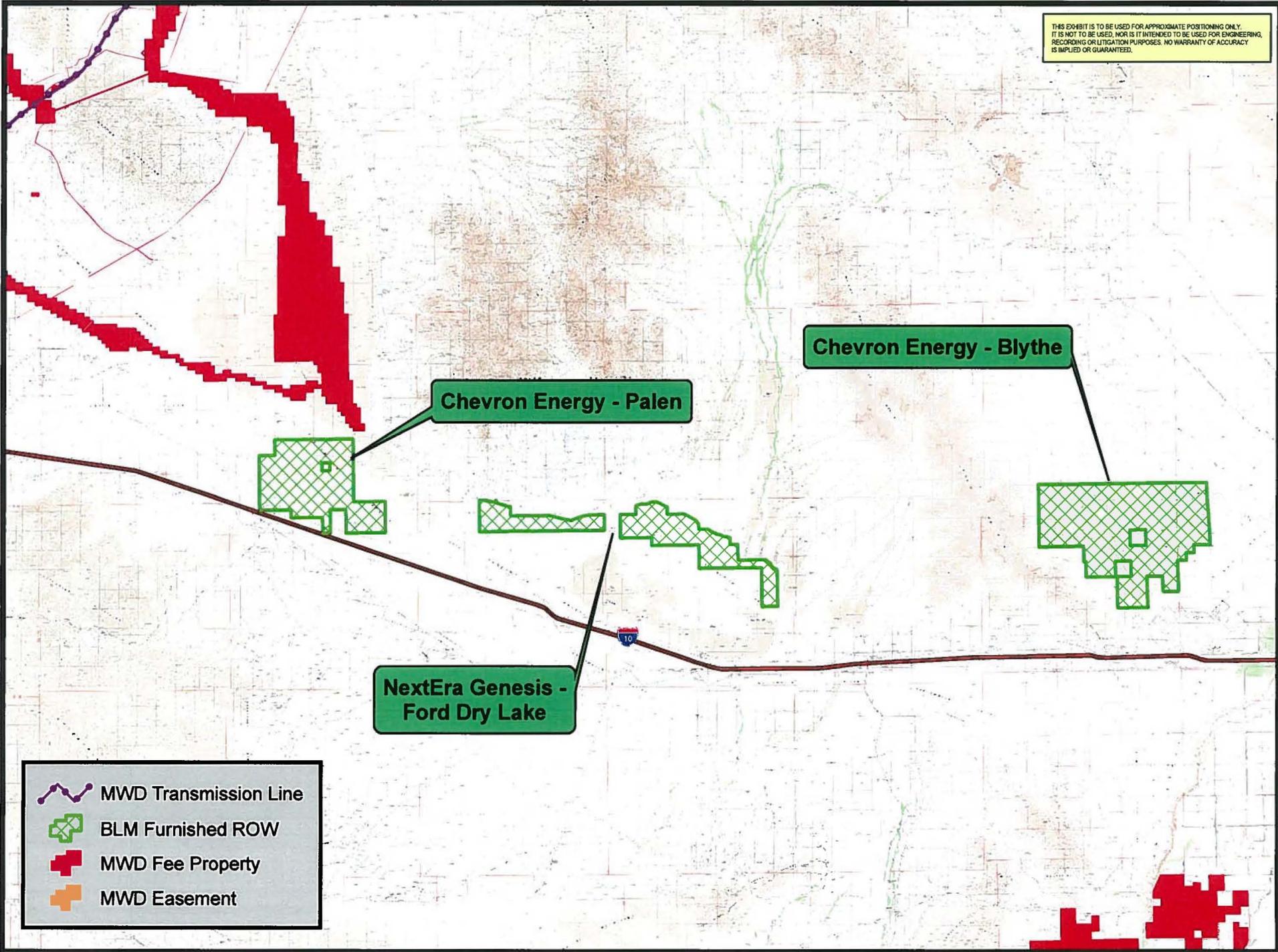
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Enclosures: Map

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Project:Environmental_Planning\Renewable_Energy.mxd (Printed 06/01/2010) Photography Date: None Prepared by:Enrique Chen (Right of Way Engineering Team) Checked by: Debbie Drzner Job# GIS1040621



Chevron Energy - Blythe

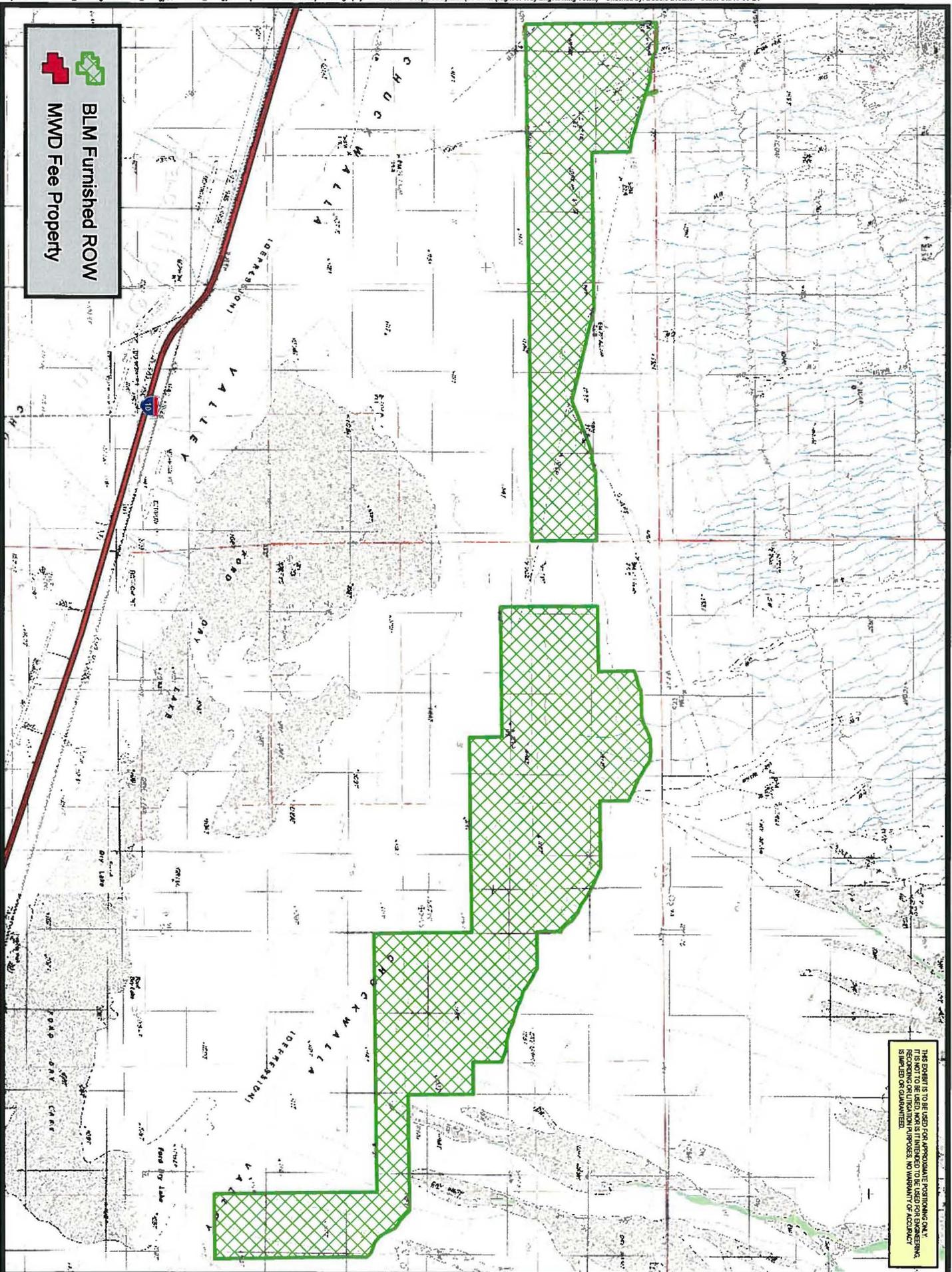
Chevron Energy - Palen

NextEra Genesis - Ford Dry Lake

-  MWD Transmission Line
-  BLM Furnished ROW
-  MWD Fee Property
-  MWD Easement



BLM Furnished ROW
MWD Fee Property



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Renewable Energy Projects
NextEra - Genesis

San Manuel Band of Mission Indians

September 27, 2010

Allison Shaffer, Project Manager
Palm Springs South Coast Field Office
Bureau of Land Management,
1201 Bird Center Drive
Palm Springs, California 92262.
CAPSSolarNextEraFPL@blm.gov
Sent By email and U.S. Mail

Re: Comments on Genesis Solar Project Final Environmental Impact Statement

Dear Ms Shaffer:

This letter constitutes comments on the Genesis Solar Project and the project FEIS.

The project EIS fails to adequately consider the cumulative effect on habitat of the desert tortoise and big horn sheep, animals considered a cultural resource by Indians. Habitat will be fragmented and loss of connectivity will threaten the tortoise, the big horn sheep and other species.

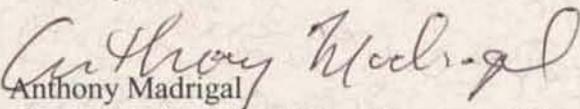
The San Manuel Band of Mission Indians endorses and adopts as its comments, the comments submitted by the Quechan Tribe dated February 16, 2010 in the section 106 process. The section 106 process of the NHPA requires agencies to take into account the effects on cultural resources prior to the issuance of any license. The 106 process has been impermissibly deferred.

The project will use 2,440 acre ft of water for construction and 1644 acre ft. for operations. The EIS fails to consider the cumulative impacts of this use on Colorado and local groundwater.

Also in light of the other renewable energy projects proposed in the area the EIS fails to consider the cumulative impacts on the environment and demands for water.

The BLM has failed to assemble sufficient information and adequately analyze information under the Federal Land Policy Management Act in amending the California Desert Conservation Plan.

Sincerely,



Anthony Madrigal

Director Policy and Cultural Resources Management



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

September 27, 2010

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

Subject: Final Environmental Impact Statement for the NextEra Energy Resources Genesis Solar Energy Project, Riverside County, California (CEQ #20100339)

Dear Mr. Kalish:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document 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 Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Land Management (BLM) on July 12, 2010. We rated the DEIS as *Environmental Objections – Insufficient Information* (EO-2) because the proposed action included wet cooling and the extraction of over 500 million gallons of groundwater, while similar proposed projects within the vicinity (e.g. the Blythe and Palen Solar Power Projects) would employ less-water-consumptive dry cooling technology. We also expressed concerns regarding impacts to habitats and ephemeral drainages, and requested additional information regarding project purpose, need, and alternatives; tribal consultation; and impacts to and from climate change.

The FEIS indicates that BLM has selected the Dry Cooling Alternative as the agency's Preferred Alternative (p. 2-38). EPA commends BLM for this selection, which would reduce project water use by 1,426 acre-feet per year (afy) during the operational phase, representing an 87% reduction in water use. This is a significant improvement and addresses our concerns regarding impacts to groundwater resources. The need for an entitlement of water from the Colorado River was not addressed in the Response to Comments. We recommend that BLM ensure that the necessary water entitlements are secured prior to project construction. Regarding impacts to habitats, we understand that BLM is working with the U.S. Fish and Wildlife Service and a Biological Opinion is expected before the Record of Decision (ROD) is signed.

EPA appreciates the reduction in impacts to 21 acres of State jurisdictional waters/ephemeral drainages (Table 4.17-3). We remained concerned, however, regarding the direct and indirect impacts to 90 acres of ephemeral drainages and the loss of associated hydrological and biological functions. The FEIS concludes that impacts from water and wind erosion as a result of site grading would be mitigated to less than significant levels; however, this

is not supported because the drainage report and channel erosion and maintenance plans are deferred to a later time, and their viability and potential effectiveness are not known. We remain concerned because the FEIS identifies obstacles to achieving effective mitigation for these impacts, including the incompatibility of the erosion control structures with wildlife traversability requirements (p. 4.19-9). Because this mitigation development is being deferred until after the ROD is signed, the ROD should identify the specific mitigation goals, specified in terms of measurable performance standards, to the greatest extent possible (Council on Environmental Quality (CEQ) Draft Guidance on NEPA Mitigation and Monitoring, February 18, 2010). Mitigation commitments should be structured to include adaptive management in order to minimize the possibility of mitigation failure. The ROD should also 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.

BLM dismissed many of EPA's comments on the DEIS by responding that they were not considered substantive as defined in BLM's NEPA Handbook, Section 6.9.2.1, or were beyond the scope of the FEIS. We disagree, and request that BLM reconsider some of these comments, since we believe they are relevant and appropriate. For example, our recommendation to explore the availability of reclaimed water in the project area is supported by 40 CFR 1502.14 (f), which directs agencies to include appropriate mitigation measures not already included in the proposed action or alternatives. Our recommendations to discuss the details and effectiveness of the mitigation for site drainage alternation and to discuss the availability of mitigation compensation lands in the Chuckwalla Valley watershed are appropriate. BLM responded to our request that the findings of the Army Corps of Engineers' Jurisdictional Delineation be included and discussed in the FEIS by stating that this process is independent and separate from NEPA and that it will be completed in accordance with relevant statutory and regulatory requirements (p. 5-60). EPA strongly encourages the integration of NEPA with the Clean Water Act (CWA) Section 404 process, to streamline permitting and to align the alternatives analyses of these processes. In the interest of avoiding unnecessary delays in renewable energy development and facilitating the development of the most environmentally sound renewable energy projects, we encourage BLM to view these other regulatory requirements as an essential part of the NEPA process.

EPA appreciates the opportunity to review this FEIS. If you have any questions, please contact me at (415) 972-3843, or contact Kathleen Goforth, Manager of the Environmental Review Office, at 415-972-3521 or goforth.kathleen@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Enrique Manzanilla', with a long horizontal flourish extending to the right.

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Jim Abbott, Bureau of Land Management, California State Office
Michael Picker, California Governor's Office
Allison Schaffer, Bureau of Land Management, Project Manager
Shannon Pankratz, US Army Corps of Engineers
Tannika Engelhard, United States Fish and Wildlife Service
Becky Jones, California Department of Fish and Game
Mike Monasmith, California Energy Commission

COLORADO RIVER BOARD OF CALIFORNIA

770 FAIRMONT AVENUE, SUITE 100
GLENDALE, CA 91203-1068
(818) 500-1625
(818) 543-4685 FAX



September 23, 2010

State Clearinghouse
1400 Tenth Street
P.O. Box 3044
Sacramento, CA 95812-3044

Regarding SCH# 2010 084 007: Notice of Completion & Environmental Document Transmittal for a Plan Amendment/Final EIS for the Genesis Solar Energy Project, August 2010, Bureau of Land Management, Riverside County, California

To Whom It May Concern:

The Colorado River Board of California (Board) has received and reviewed a copy of Notice of Completion & Environmental Document Transmittal for Plan Amendment/Final EIS for the Genesis Solar Energy Project, August 2010, Bureau of Land Management, Riverside County, California.

The Board's earlier comments on the draft EIS for the Genesis Solar Energy Project regarding the Colorado River water use due to the groundwater pumping at this project site have been incorporated in this Final EIS report. The earlier comments contained in the July 2, 2010 comment letter were addressed directly to the California Energy Commission. A copy of the Board's comment letter is also attached here for reference.

In this Final EIS report, the estimated groundwater extraction from the Chuckwalla Valley Groundwater Basin (CVGB) is about 4,104 acre-feet during the 36 months construction period. The total consumption during the operational 30-year period is estimated to be 49,320 acre-feet (1,644 acre-feet per year) for the wet cooling and 6,540 acre-feet (218 acre-feet per year) for the dry cooling alternative. According to the U.S. Geological Survey Water Investigation Reports (i.e., WRI 94-4005 and WRI 00-4085), the Genesis Solar Energy Project site is currently located within the "Accounting Surface" area, i.e. the CVGB groundwater underneath the project site is hydraulically connected with the Colorado River. Although "a fraction of this water could be drawn indirectly from the induced flows from the Colorado River" as stated in the Table ES-2 of the report, any amount of groundwater withdrawn from the CVGB aquifer that will be replaced by the Colorado River, in total or in part, is considered a use of Colorado River water.

According to the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.* entered March 27, 2006, (547 U.S. 150, 2006), the consumptive use of water means "diversion from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation" and consumptive use "includes all consumptive uses of water of the mainstream, including water drawn from the

mainstream by underground pumping." Also, pursuant to the 1928 Boulder Canyon Project Act (BCPA) and the Consolidated Decree, no water shall be diverted and/or delivered from storage or used by any water user without a valid contract between the Secretary of the Interior and the water user for such use, i.e., through a BCPA Section 5 contract.

As a result of previous discussions with other solar power/energy projects, the Board has identified a preferred option for obtaining a legally authorized and reliable water supply for these projects. That option involves obtaining water through an existing BCPA Section 5 contract holder, The Metropolitan Water District of Southern California. Although other options may be available, it is the Board's assessment that they could not be implemented in a timely manner and address the requirement that water consumptively used from the Colorado River must be through a BCPA Section 5 contractual entitlement.

Attached for your reference is a copy of three Lower Colorado River Basin states letter addressed to the Director of the U.S. Bureau of Land Management (BLM), Mr. Robert Abbey, regarding the siting and development of solar power/energy projects on public lands administered by the BLM and the long-term impacts to the water supplies. The letter requests that BLM include provisions in future right-of-way grants or leases that require use of best management practices and water use efficient technologies.

If you have any questions or require further information, please feel free to contact me at (818) 500-1625.

Sincerely,



 Gerald R. Zimmerman
Acting Executive Director

Attachments

cc: Ms. Lorri Gray-Lee, Regional Director, U.S. Bureau of Reclamation
Ms. Sandra McGinnis, Palm Springs-South Coast Field Office, Bureau of Land Management
Ms. Eileen Allen, California Energy Commission
Mr. Mike Monasmith, California Energy Commission
Mr. William J. Hasencamp, The Metropolitan Water District of Southern California
ESA Energy, 225 Bush Street, Suite 1700, San Francisco, California

COLORADO RIVER BOARD OF CALIFORNIA

770 FAIRMONT AVENUE, SUITE 100

GLENDALE, CA 91203-1068

(818) 500-1625

(818) 543-4585 FAX



July 2, 2010

Mr. Mike Monasmith
Project Manager
Siting, Transmission and Environmental
Protection Division
California Energy Commission
1516 Ninth Street, MS 15
Sacramento, CA 95814-5512

Dear Mr. Monasmith:

The Colorado River Board of California (Board), created in 1937, is the State agency charged with safeguarding and protecting the rights and interests of the State, its agencies and citizens, in the water and power resources of the seven-state Colorado River System.

The Board has reviewed the Staff Assessment and Environmental Impact Statement, Application for Certification for the Genesis Solar Energy Project in Riverside County, California. The applicant for the Genesis Solar Energy Project, Genesis Solar LLC, is seeking a right-of-way grant for approximately 4,640 acres of federal lands that are administered by the Bureau of Land Management (BLM). The Genesis Solar Energy Project proposes to use a wet cooling tower for power plant cooling. The total water consumption during the operational 30-year period and power purchase agreement with a California utility for the Genesis Solar Energy Project is estimated to be 1,644 acre-feet per year. In addition, the water use during the construction phase is estimated to be 2,440 acre-feet over the construction period. The water supply for the project will be pumped from on-site groundwater wells and stored on-site.

According to the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.* entered March 27, 2006, (547 U.S. 150, 2006), the consumptive use of water means "diversion from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation" and consumptive use "includes all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping." Also, pursuant to the 1928 Boulder Canyon Project Act (BCPA) and the Consolidated Decree, no water shall be delivered from storage or used by any water user without a valid contract between the Secretary of the Interior and the water user for such use, i.e., through a BCPA Section 5 contract.

Within California, BCPA Section 5 contracts have previously been entered into between users of Colorado River mainstream water and the Secretary of the Interior for water from the Colorado River that exceeds California's basic entitlement to use Colorado River water as set forth in the Consolidated Decree. Thus, no additional Colorado River water is available for use by new project proponents along the Colorado River, except through the contract of an existing BCPA Section 5

California Energy Commission
July 2, 2010
Page 2

contract holder, either by direct service or through an exchange of non-Colorado River water for Colorado River water.

The BLM lands proposed for the Genesis Solar Energy Project are currently located within the "Accounting Surface" area designated by U.S. Geological Survey Water Investigation Reports (i.e., WRI 94-4005 and WRI 00-4085). These reports indicates that the aquifer underlying lands located within the "Accounting Surface" is considered too be hydraulically connected to the Colorado River and groundwater withdrawn from wells located within the "Accounting Surface" would be replaced by Colorado River water, in part or in total. This means that if it is determined that these wells are, in fact, pumping Colorado River water, a contract with the Secretary of the Interior would be required before such a diversion and use is deemed to be a legally authorized use of this water supply.

As a result of discussions associated with two other solar power projects, including the Blythe and the Palen Solar Power Projects; and the Board has identified a preferred option for obtaining a legally authorized and reliable water supply for these projects. That option involves obtaining water through an existing BCPA Section 5 contract holder, The Metropolitan Water District of Southern California. Although other options may be available, it is the Board's assessment that they could not be implemented in a timely manner and address the requirement that water consumptively used from the Colorado River must be through a BCPA Section 5 contractual entitlement.

If you have any questions or require further information, please feel free to contact me at (818) 500-1625.

Sincerely,


for
Gerald R. Zimmerman
Acting Executive Director

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
Ms. Eileen Allen, California Energy Commission
Mr. William J. Hasencamp, The Metropolitan Water District of Southern California

ARIZONA DEPARTMENT OF WATER RESOURCES
COLORADO RIVER BOARD OF CALIFORNIA
SOUTHERN NEVADA WATER AUTHORITY

August 12, 2010

Mr. Robert Abbey, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5665
Washington, DC 20240

Re: Water Efficient Solar Power

Dear Mr. Abbey:

We are writing on behalf of the Arizona Department of Water Resources, the Colorado River Board of California, and the Southern Nevada Water Authority to communicate our joint concerns regarding current planning for concentrated solar power (CSP) projects throughout the southwestern United States, particularly in Arizona, California and Nevada.

Let us make clear at the outset that all of our agencies fully support the development of additional solar power projects in the southwestern United States and believe that solar power projects are a critical element in our nation's future sustainable electrical power portfolio. However, our concern is that in pursuing the realization of additional CSP projects that state, local and federal agencies do not overlook the energy-water nexus and the corollary adverse impacts that these projects can have on precious and finite water resources if there is not proper planning.

As you are well aware, there are currently numerous and disparate processes ongoing to permit large scale solar power projects in the southwestern United States. These processes include hundreds of individual right-of-way applications from project proponents on tens of thousands of acres managed by the Bureau of Land Management (BLM); the drafting of a Programmatic Environmental Impact Statement intended to establish "solar zones" in Nevada; a BLM "fast track" process in Arizona; and two bills currently pending before Congress, the *American Solar Energy Pilot Leasing Act of 2010* and the *Wind and Solar Leasing Act of 2010*.

With these multiple processes moving forward simultaneously, we believe that it is imperative that BLM apply a uniform standard regarding the efficient use of water for solar power projects. To that end we believe that any right-of way grant or lease issued by BLM for CSP projects in the southwestern United States should include a provision that requires that the best available water efficient technologies be utilized for solar power projects, including specifically that any CSP project utilize dry cooling technology.

Mr. Robert Abbey
Page 2
August 12, 2010

We thank you for your time and attention in this matter. If you have any questions regarding this correspondence, please do not hesitate to contact us directly.

Sincerely,

Arizona Department of Water Resources



Herbert R. Guenther, Director
(602) 771-8426
hrguenther@azwater.gov

Colorado River Board of California



Gerald R. Zimmerman, Executive Director
(818) 500-1625, ext. 308
grzimmerman@crb.ca.gov

Southern Nevada Water Authority



Patricia Mulroy, General Manager
(702) 258-3100
pat.mulroy@lvvwd.com

cc: The Honorable Shelley Berkley, United States Congress
The Honorable Barbara Boxer, United States Senate
The Honorable John Ensign, United States Senate
The Honorable Dianne Feinstein, United States Senate
The Honorable Dean Heller, United States Congress
The Honorable Jon Kyl, United States Senate
The Honorable Harry Reid, United States Senate
The Honorable Dina Titus, United States Congress

Notice of Completion & Environmental Document Transmittal

Appendix C

Mail to: State Clearinghouse, P. O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # **2010084007**

Project Title: Genesis Solar Energy Project
Lead Agency: Bureau of Land Management **Contact Person:** Sandra McGinnis
Mailing Address: 1201 Bird Center Drive **Phone:** 760.833.7100
City: Palm Springs **Zip:** 92264 **County:** Riverside

Project Location:
County: Riverside **City/Nearest Community:** Desert Center, CA
Cross Streets: n/a **Zip Code:**
Assessor's Parcel No.: Section: multiple Twp.: 6 S Range: 19E Base: S88M
Within 2 Miles: State Hwy #: Interstate 10 **Waterways:**
Airports: **Railways:** **Schools:**

Document Type:
 CEQA: NOP Draft EIR Joint Document
 Early Cons Supplement/Subsequent EIR Final Document
 Neg Dec (Prior SCH No.) Draft EIS Other FEIS/Plan Amendment
 Mit Neg Dec Other
 RECEIVED
 AUG 29 2010
 STATE CLEARING HOUSE

Local Action Type:
 General Plan Update Specific Plan Annexation
 General Plan Amendment Master Plan Redevelopment
 General Plan Element Planned Unit Development Use Permit Coastal Permit
 Community Plan Site Plan Land Division (Subdivision, etc.) Other

Development Type:
 Residential: Units _____ Acres _____ Water Facilities: Type _____ MGD _____
 Office: Sq.ft. _____ Acres _____ Employees _____ Transportation: Type _____
 Commercial: Sq.ft. _____ Acres _____ Employees _____ Mining: Mineral _____
 Industrial: Sq.ft. _____ Acres _____ Employees _____ Power: Type Solar Parabolic Trough MW 250 nominal
 Educational _____ Waste Treatment: Type _____ MGD _____
 Recreational _____ Hazardous Waste: Type _____
Total Acres (approx.) 1,800 Other: _____

Project Issues Discussed in Document:
 Aesthetic/Visual Fiscal Recreation/Parks Vegetation
 Agricultural Land Flood Plain/Flooding Schools/Universities Water Quality
 Air Quality Forest Land/Fire Hazard Septic Systems Water Supply/Groundwater
 Archeological/Historical Geologic/Seismic Sewer Capacity Wetland/Riparian
 Biological Resources Minerals Soil Erosion/Compaction/Grading Wildlife
 Coastal Zone Noise Solid Waste Growth Inducing
 Drainage/Absorption Population/Housing Balance Toxic/Hazardous Land Use
 Economic/Jobs Public Services/Facilities Traffic/Circulation Cumulative Effects
 Other _____

Present Land Use/Zoning/General Plan Designation:
Proposed Action to have supporting Plan Amendment Recommendations
Project Description: (please use a separate page if necessary)

Genesis Solar, LLC, has proposed the development of two independent solar electric facilities with a output of 125 MW each. The proposal would be designed to utilize solar parabolic trough technology. Genesis Solar is seeking a right-of-way grant of approximately 4,640 acres of BLM land.

State Clearinghouse Contact: (916) 445-0613

State Review Began: 08.23.2010

SCH COMPLIANCE 09.27.2010

Email/FEIS Review per Lead

Please note State Clearinghouse Number (SCH#) on all Comments

SCH#: 2010084007

Please forward late comments directly to the Lead Agency

AQMD/APCD 33

(Resources: 08, 28)

Project Sent to the following State Agencies

- | | |
|--|---------------------------------|
| <input checked="" type="checkbox"/> Resources | State/Consumer Sves |
| <input type="checkbox"/> Boating & Waterways | General Services |
| <input type="checkbox"/> Coastal Comm | Cal EPA |
| <input checked="" type="checkbox"/> Colorado Rvr Bd | ARB - Airport Projects |
| <input checked="" type="checkbox"/> Conservation | ARB - Transportation Projects |
| <input checked="" type="checkbox"/> Fish & Game # 6 | ARB - Major Industrial Projects |
| <input type="checkbox"/> Delta Protection Comm | SWRCB: Div. Financial Assist. |
| <input type="checkbox"/> Cal Fire | SWRCB: Wtr Quality |
| <input checked="" type="checkbox"/> Historic Preservation | SWRCB: Wtr Rights |
| <input checked="" type="checkbox"/> Parks & Rec | X Reg. WQCB # 7 |
| <input type="checkbox"/> Central Valley Flood Prot. | X Toxic Sub Ctrl-CTC |
| <input type="checkbox"/> Bay Cons & Dev Comm. | Yth/Adlt Corrections |
| <input type="checkbox"/> DWR | Connections |
| <input type="checkbox"/> Cal EMA | |
| <input type="checkbox"/> Resources, Recycling and Recovery | |
| <input type="checkbox"/> Bus Transp Hous | Independent Comm |
| <input type="checkbox"/> Aeronautics | X Energy Commission |
| X CHP | X NAHC |
| X Caltrans # 8 | X Public Utilities Comm |
| <input type="checkbox"/> Trans Planning | X State Lands Comm |
| <input type="checkbox"/> Housing & Com Dev | Tahoe Rgl Plan Agency |
| <input type="checkbox"/> Food & Agriculture | |
| <input type="checkbox"/> Health Services | Conservancy |

Comments attached

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

September 27, 2010

VIA E-MAIL [ORIGINAL WITH ATTACHMENTS TO FOLLOW BY OVERNIGHT MAIL]

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

Re: Comments on the Final Environmental Impact Statement for the Genesis Solar Energy Project and the Proposed California Desert Conservation Area Plan Amendment

Dear Ms. Shaffer:

We submit these comments on the Final Environmental Impact Statement ("FEIS"), prepared for the Genesis Solar Energy Project and the Proposed California Desert Conservation Area Plan Amendment (collectively "Project"), on behalf of California Unions for Reliable Energy ("CURE"), Richard Reed, G. Ron Ellis and Tom R. Martinez. As explained more fully below, the FEIS does not comply with the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and approval of the Project would violate the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq.* BLM may not approve the Project until it has complied with all relevant law and evaluated the Project impacts in a supplemental EIS, as required by NEPA.

CURE is a coalition of labor unions whose members construct, operate, and maintain power plants throughout California. CURE encourages sustainable development of California's energy and natural resources. Environmental degradation jeopardizes future growth and jobs by causing construction moratoriums, destroying cultural or wildlife areas, consuming limited fresh water resources, causing water pollution, and imposing other stresses on the environmental carrying capacity of the state. This in turn reduces future

employment opportunities for CURE's members. Additionally, union members live, recreate and work in the communities and regions that suffer the impacts of projects that are detrimental to human health and the environment. CURE therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment. Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The NEPA process allows for a balanced consideration of a project's socioeconomic and environmental impacts, and it is in this spirit that CURE offers these comments.

Richard Reed lives in Artesia, California, which is served by the Metropolitan Water District, a public agency that holds an entitlement to Colorado River water. Mr. Reed has a personal interest in protecting the Project site from unnecessary adverse impacts to protect the area's scarce Colorado River water resources.

G. Ron Ellis owns property, lives and recreates in Blythe, California. Mr. Ellis has a personal interest in protecting the Project site from unnecessary adverse impacts to preserve the area's plants and wildlife, water and cultural resources.

Tom Martinez resides and recreates in the area of Blythe, California. Mr. Martinez has a personal interest in protecting the Project site from unnecessary adverse impacts to preserve the area's plants and wildlife, water and cultural resources.

The Bureau of Land Management ("BLM") and the California Energy Commission ("CEC") prepared a joint Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS") for the Project to satisfy the requirements of NEPA and California Environmental Quality Act ("CEQA"), California Public Resources Code § 21000 *et seq.* Following publication of the SA/DEIS, BLM and the CEC informed the public that environmental review of the Project would be bifurcated, and that BLM would publish a final EIS that would evaluate the Project in accordance with NEPA. These comments are directed toward BLM's FEIS and the appendices attached to the FEIS.

We have reviewed the FEIS and its appendices in conjunction with other studies and materials developed as part of the concurrent review of the Project by

BLM and CEC. These comments were prepared with the technical assistance of David Whitley, Ph.D. The comments and qualifications of Dr. Whitley are attached.

I. NEPA VIOLATIONS

NEPA supplements and augments the authority of each federal agency, vesting each federal agency with the “responsibility and power to protect the environment and integrate environmental, social, and economic objectives when carrying out other federal agency functions.”¹ Each federal agency is directed to “interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act’s national environmental objectives.”² Consistent with NEPA’s mandate, the CDCA Plan requires BLM to analyze the environmental effects and the economic and social impacts of granting and/or implementing an applicant’s request to amend the CDCA to accommodate a specific proposed use.³ BLM’s rationale shall be based on “the principles of multiple use, sustained yield, and maintenance of environmental quality.”⁴

A. BLM Must Prepare a Supplemental Environmental Impact Statement

An agency’s NEPA responsibilities do not end with the initial assessment; supplemental documentation “is at times necessary to satisfy the Act’s action-forcing purposes.”⁵ As stated by the Supreme Court in *Marsh v. Oregon Natural Resources Defense Council*,

It would be incongruous . . . with the Act’s manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval.⁶

¹ Ronald E. Bass et al., *The NEPA Book: A Step by Step Guide to How to Comply with the National Environmental Policy Act* (2d. Ed. 2001), p. 2.

² 40 C.F.R. § 1500.6

³ *See Id.* (“Analysis of Proposed Amendments”).

⁴ *See Id.* (“Decision Criteria for Approval or Disapproval”) and 40 C.F.R. § 1500.6.

⁵ *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9th 2006).

⁶ 490 U.S. 360, 371 (1989).

A supplemental EIS must be prepared if the agency makes “substantial changes” in the proposed action that are relevant to environmental concerns or if there are “significant new circumstances or information” relevant to environmental concerns and bearing on the proposed action or its impacts.⁷ “This is a low standard.”⁸ A plaintiff need only raise a “substantial question regarding whether a project may have a significant effect.”⁹ If a change to an agency’s planned action affects environmental concerns in a different manner than previous analyses, the change is surely “relevant” to those same concerns.¹⁰

1. BLM Must Analyze All Connected Actions in a Supplemental EIS

To determine the scope of environmental impacts, agencies must consider connected actions. Connected actions are actions that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (1) automatically trigger other actions, which may require environmental impact statements; (2) cannot or will not proceed, unless other actions are taken previously or simultaneously; or (3) are interdependent parts of a larger action and depend on the larger actions for their justification.¹¹ A piecemeal evaluation of connected projects, or “segmentation,” is not permitted under NEPA when the segmented project “has no independent justification, no life of its own, or is simply illogical when viewed in isolation.”¹² One rationale for requiring an agency to consider “connected actions” together in the same EIS is that, otherwise, an agency could divide a project into several smaller actions, each of which might have an insignificant environmental impact when considered in isolation, but which taken as a whole have a substantial impact.¹³ “Federal agencies may not chop or segment

⁷ 40 C.F.R. § 1502.9(c)(1)(i)-(ii); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

⁸ *Klamath Siskiyou Wildlands Center*, 468 F.3d at 562.

⁹ *Id.*; see also *Price Road Neighborhood Association, v. United States Department of Transportation*, 113 F.3d 1505, 1509 (9th Cir. 1997) (“supplemental documentation is only required when the environmental impacts reach a certain threshold-i.e. significant (defined at 40 C.F.R. § 1508.27) or uncertain”)

¹⁰ *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (“*New Mexico*”).

¹¹ 40 C.F.R. § 1508.25.

¹² *One Thousand Friends of Iowa v. Mineta* (8th Cir. 2004) 364 F.3d 890, 894.

¹³ *Thomas v. Peterson* (9th Cir. 1985) 753 F.3d 754, 758.

a proposed action into small pieces to avoid the application of NEPA, or to avoid a more detailed assessment of the environmental effects of the overall action.”¹⁴

The Ninth Circuit applies an “independent utility” test to determine whether actions are “connected” for purposes of NEPA review.¹⁵ “Where each of two projects would have taken place with or without the other, each has ‘independent utility’ and the two are not considered connected actions.”¹⁶

For the Genesis Project, the Transition Cluster Phase II Interconnection Study Report (“Phase II Study”), which was published after the release of the SA/DEIS, identified several transmission system upgrades that must be completed before the Project (among other projects) can connect to the grid and produce energy. The FEIS states without any support that, “any actions as a result of the study are not considered connected actions.”¹⁷ The FEIS’ claim is internally inconsistent and inconsistent with case law.

First, the FEIS’s assertion that the transmission upgrades identified in the Phase II Study are not connected actions and, therefore, do not require a NEPA analysis is inconsistent with the FEIS itself. The FEIS provides an analysis of adverse effects from the Colorado River Substation expansion, one of the transmission system upgrades identified in the Phase II Study. It is unclear why BLM chose to analyze only the Colorado River Substation expansion and not the proposed Red Bluff Substation when the Project would require “looping the Colorado River substation connection to the Devers substation...into the Red Bluff substation.”¹⁸ In any event, just as BLM analyzed the Colorado River Substation expansion, BLM must analyze the other downstream facilities identified in the Phase II Study in a supplemental EIS.

Second, BLM’s claim that the transmission upgrades identified in the Phase II Study are not connected actions is inconsistent with case law. In *Thomas v. Peterson* (9th Cir. 1985) 753 F.2 754, the court held that the construction of a road to facilitate logging and the sale of timber that would result from that logging were “connected actions” that had to be addressed in a single EIS. The court pointed out that “the timber sales cannot proceed without the road, and the road would not be

¹⁴ Ronald E. Bass, et al. *The NEPA Book* (2d ed. 2001) p. 31.

¹⁵ *Earth Island Institute v. United States Forest Service* (9th Cir. 2003) 304 F.3d 886, 894.

¹⁶ *Native Ecosystems Council v. Dombeck* (9th Cir. 2003) 304 F.3d 886, 894.

¹⁷ FEIS, p. 5-20.

¹⁸ See Attachment 3, July 21, 2010 California Energy Commission Evidentiary Hearing p. 43.

built for the contemplated timber sales.”¹⁹ Thus, the court concluded that the two actions were “inextricably intertwined.”²⁰

Similarly here, the Project cannot proceed without the transmission system upgrades, and the transmission system upgrades would not be necessary but for the Genesis Project and other projects. In other words, the Project and the system upgrades are “inextricably intertwined”²¹ and are connected actions. Thus, NEPA requires BLM to analyze adverse effects from the transmission system upgrades identified in the Phase II Study in a supplemental EIS.

B. BLM Failed to Adequately Respond to Public Comments

NEPA’s procedural requirements “are to be strictly interpreted to the “fullest extent possible” in accordance with the policies embodied in the Act . . . grudging, pro forma compliance will not do.”²² NEPA’s public comment procedures are at the heart of the NEPA review process.²³ Responsible opposing viewpoints must be included in the final EIS. “This reflects the paramount Congressional desire to internalize opposing viewpoints into the decision-making process to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision.”²⁴ In responding to public comments on a DEIS, agencies are “obliged to provide “meaningful reference” to all responsible opposing viewpoints concerning the agency’s proposed decision Moreover there must be a good faith, reasoned analysis in response.”²⁵

Agencies are held to a more stringent standard with regard to responses to comments submitted by expert federal agencies. Specifically, courts have *required* the agency to respond to such comments and “to discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues

¹⁹ *Thomas v. Peterson* (9th Cir. 1985) 753 F.2d 754, 758.

²⁰ *Id.* at 759.

²¹ *Id.* at 759.

²² *State of Cal. v. Block*, 690 F.2d 753, 769 (9th Cir. 1982) (citing 42 U.S.C. § 4332(1) and *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir. 1974).

²³ *State of Cal.*, 690 F.2d at 770.

²⁴ *Id.* at 770-71.

²⁵ *Id.* at 773 (internal citations omitted).

raised.”²⁶ “This disclosure requirement obligates the agency to make available to the public high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken.”²⁷

Here, BLM failed to provide a good faith, reasoned analysis in response to public comments. BLM also failed to provide “high quality information” in response to expert federal agency comments from the Environmental Protection Agency (“EPA”). And, in some instances, BLM did not respond to comments at all. These omissions violate NEPA.

1. BLM Failed to Provide High Quality Information in Response to EPA’s Comments Regarding the Project’s Use of Colorado River Water

The EPA submitted comments on the SA/DEIS regarding the Project’s use of Colorado River water. Specifically, EPA stated that the

FEIS should also further describe the estimation of the impacts from withdrawing groundwater that is recharged by the Colorado River (at pg. C.9-2) and the effectiveness of the mitigation proposed. The expected effectiveness of the mitigation must be documented and committed to, and the FEIS should clarify whether or not an entitlement to water from the Colorado River aquifer would be needed. This information should be made available in the FEIS and the ROD.²⁸

BLM did not directly respond to EPA’s comments and instead referenced other responses to comments.²⁹ BLM never provided a response tailored to the Project’s use of Colorado River and although the FEIS concludes that all groundwater pumped by the Project would be considered Colorado River water,³⁰ BLM did not clarify whether the Project requires an entitlement to Colorado River water, as

²⁶ See *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1167 (citing 40 C.F.R. § 1502.9(b)).

²⁷ *Id.* (citing 40 C.F.R. § 1500.1(b)).

²⁸ United States Environmental Protection Agency Region IX Comments on the Draft Environmental Impact Statement for the NextEra Energy Resources Genesis Solar Energy Project, pp. 3-4.

²⁹ FEIS, p. 5-57.

³⁰ *Id.*, p. 4.19-17.

explained by EPA. BLM essentially ignored EPA's expert federal agency comments regarding the Project's use of Colorado River water. BLM's failure to adequately respond to EPA's comments violates NEPA.

2. BLM Failed to Provide a Good Faith, Reasoned Analysis in Response to CURE's Comments Regarding the Project's Use of Colorado River Water

CURE submitted comments on the SA/DEIS regarding the Project's impact on the Colorado River. Specifically, CURE provided that because the Project would significantly impact the fully adjudicated Colorado River, the EIS must identify the Applicant's entitlement to use Colorado River water. Without identification of the Applicant's entitlement, there is no information showing that the Project's proposal to pump groundwater is a reliable water source for the Project.³¹ Moreover, without identification of the Applicant's entitlement, the BLM would be approving an unauthorized use of Colorado River water without an entitlement.

In response to CURE's comments, BLM provided the following:

See Section 3.20 and 4.19 for discussion on Water Resources and Impacts to Water Resources along with Appendix G (conditions of certification – soil & water) for mitigation measures that address this issue.³²

BLM's response is a far cry from a "good faith, reasoned analysis." In fact, the response does not provide any analysis at all. Referring the reader to three entire sections of the FEIS in response to a tailored comment regarding one specific issue is not sufficient under NEPA. Furthermore, the sections referenced in the response do not even address CURE's comments. The FEIS states that all groundwater production at the Project site would be considered Colorado River water³³ and that the Project is subject to the United States Supreme Court Consolidated Decree *Arizona v. California*, 547 U.S. 150.³⁴ However, the FEIS does not analyze the reliability of groundwater as a water

³¹ CURE's Comments Concerning Draft Environmental Impact Statement for Genesis Solar Energy Project, p. 29.

³² FEIS p. 5-19.

³³ *Id.*, p. 4.19-17.

³⁴ *Id.*, p. 4.19-3.20-4.

source for the Project, nor does the FEIS discuss the Applicant's entitlement to Colorado River water. BLM's failure to provide a good faith, reasoned analysis in response to CURE's comments regarding the Applicant's entitlement to Colorado River water violates NEPA.

3. BLM Failed to Provide a Good Faith, Reasoned Analysis in Response to CURE's Comments Regarding the Affected Area, Impact Analysis and Mitigation for Rare Plants

NEPA requires agencies to take a "hard look" at the environmental consequences of a proposed action.³⁵ A hard look is defined as a "reasoned analysis containing quantitative or detailed qualitative information."³⁶ The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of the impact caused by the proposed action and the alternatives.³⁷ An EIS must provide a "full and fair discussion of significant environmental impacts and shall inform the decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment."³⁸

In its comments on the SA/DEIS, CURE stated that the SA/DEIS' affected area for the purpose of the BLM's analysis of significant effects and mitigation for rare plants failed to satisfy NEPA. As noted in CURE's comments, BLM made clear that the Applicant's rare plant survey effort was not an adequate basis for determining impacts to rare plants because the Applicant failed to conduct surveys for rare plants during the appropriate time of year. Hence the SA/DEIS required the Applicant to conduct appropriate surveys during the late-summer/early-fall.³⁹

Although the SA/DEIS attempted to analyze the Project's effects and formulate mitigation measures for rare plants, the analysis may bear little resemblance to the analysis and mitigation that will be required after significant

³⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273, 1284 (1st. Cir. 1996); see also *South Fork Band Council Of Western Shoshone Of Nevada v. U.S. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

³⁶ BLM, NEPA HANDBOOK, p. 55 (Jan. 2008) ("NEPA Handbook"), available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf.

³⁷ NEPA Handbook, p. 55; see also 40 C.F.R. § 1502.1 (2009).

³⁸ 40 C.F.R. § 1502.1.

³⁹ DEIS, p. C.2-88.

impacts to rare plants are actually identified through an adequate survey effort.⁴⁰ In other words, the SA/DEIS provides merely a guess. CURE also stated that once the Applicant completes the appropriate surveys and submits the results, the EIS must be revised and recirculated for public review and comment.

In response to CURE's comments, BLM stated, "[m]itigating measures BIO-19, BIO-8, and BIO-14, as well as others, avoid, reduce, or compensate for special status plants, including those not found on surveys to date, as pre-construction surveys are included as mitigation."⁴¹ BLM's response is a mere recitation of mitigation measure numbers; the response does not provide any "good faith, reasoned analysis." BLM's response does not address CURE's comment that an adequate impact analysis cannot be conducted until the affected area is determined. BLM's response also does not address the fact that appropriate mitigation cannot be crafted unless and until an adequate impact analysis is performed. Moreover, BLM's response does not provide any reasoned analysis supporting its claim that the listed measures would "avoid, reduce, or compensate for special status plants, including those not found on surveys to date."⁴² BLM's response completely fails to satisfy NEPA.

4. BLM Failed to Provide a Good Faith, Reasoned Analysis in Response to CURE's Comments Regarding the Affected Area, Impacts and Mitigation for Couch's Spadefoot Toad

In its comments on the SA/DEIS, CURE stated that BLM failed to adequately describe the affected area for Couch's spadefoot toad because the Applicant's surveys for Couch's spadefoot toads "were not conducted during the proper season (i.e., after summer rains)."⁴³ CURE further provided that although the SA/DEIS attempted to analyze the impacts and formulate mitigation measures for Couch's spadefoot toad, the analysis may bear little resemblance to the analysis and mitigation that will be required after significant impacts are actually identified through an adequate survey effort.⁴⁴ Additionally, CURE stated that NEPA

⁴⁰ CURE's Comments Concerning Draft Environmental Impact Statement for Genesis Solar Energy Project, pp. 11, 15.

⁴¹ FEIS, pp. 5-14, 5-16.

⁴² *Id.*, pp. 5-14, 5-16.

⁴³ CURE's Comments Concerning Draft Environmental Impact Statement for Genesis Solar Energy Project, pp. 12-13 (quoting DEIS, p. C.2-36).

⁴⁴ *Id.*, p. 13.

requires the assessment of impacts to Couch's spadefoot toad required in BIO-27 to be included in a revised EIS, not in a mitigation plan that would be provided by the Applicant after Project approval.⁴⁵ Finally, CURE commented that once the Applicant completes the appropriate surveys and submits the results, the EIS must be revised and recirculated for public review and comment.⁴⁶

In response to CURE's comments, BLM stated:

[t]emporary ponds created during seasonal rainstorms are important habitat for breeding. Couch's spadefoot toad breed primarily in response to summer storms, from May through September, so surveys have been scheduled for Summer or early Fall 2010.⁴⁷

BLM's response echoes the very problem here. Until the appropriately-timed surveys are conducted, it is impossible to determine whether breeding ponds would be impacted by the Project and how to adequately mitigate for those impacts. Furthermore, BLM's response does not provide a "good-faith, reasoned response" to CURE's comments, as required by NEPA. BLM's response simply does not offer any response to the fact that without survey results, the BLM cannot adequately describe the affected environment, analyze the Project's impacts, or identify appropriate mitigation for Couch's spadefoot toad. BLM's response also does not reply to CURE's comment that an impact analysis must be included in an EIS, not in a mitigation plan after a project's approval. BLM's response does not satisfy NEPA.

5. BLM Completely Failed to Provide Any Response to Technical Consultants' Comments Submitted by CURE

Attached to CURE's SA/DEIS comments were five technical experts' comments regarding the Project's significant effects on biological resources and soil and water resources, and significant effects associated with the Project's use of heat transfer fluid ("HTF"). CURE requested that BLM "consider and respond to these consultants' comments separately and individually."⁴⁸ However, BLM did not

⁴⁵ CURE's Comments Concerning Draft Environmental Impact Statement for Genesis Solar Energy Project, p. 16.

⁴⁶ *Id.*

⁴⁷ FEIS, p. 5-15.

⁴⁸ CURE's Comments Concerning Draft Environmental Impact Statement for Genesis Solar Energy Project, p. 2.

respond to the experts' comments at all. This is a blatant violation of NEPA. BLM must provide responses to the experts' comments in a supplemental EIS.

C. Failure to Take a "Hard Look" At Environmental Consequences

Section 101 of NEPA declares it is a matter of national policy to preserve important historic, cultural, and natural aspects of our national heritage. To achieve this goal, NEPA requires that agencies take a "hard look" at the environmental consequences of a proposed action.⁴⁹ A hard look is defined as a "reasoned analysis containing quantitative or detailed qualitative information."⁵⁰ The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of the impact caused by the proposed action and the alternatives.⁵¹

An EIS must provide a "full and fair discussion of significant environmental impacts and shall inform the decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment."⁵² "General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided."⁵³ "[L]ack of knowledge does not excuse the preparation of an EIS; rather it requires [the agency] to do the necessary work to obtain it."⁵⁴

An EIS must provide a full and fair discussion of every significant impact, as well as inform decision-makers and the public of reasonable alternatives which would avoid or minimize adverse impacts.⁵⁵ Impact analyses must include a discussion of the relationship between short-term uses of the environment and the

⁴⁹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273, 1284 (1st. Cir. 1996); see also *South Fork Band Council Of Western Shoshone Of Nevada v. U.S. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

⁵⁰ BLM, NEPA HANDBOOK, p. 55 (Jan. 2008) ("NEPA Handbook"), available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf.

⁵¹ NEPA Handbook, p. 55; see also 40 C.F.R. § 1502.1 (2009).

⁵² 40 C.F.R. § 1502.1.

⁵³ *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

⁵⁴ *National Parks & Conservation Association v. Babbitt*, 241 F.3d 722, 733 (9th Cir.2001), abrogated on other grounds by *Monsanto Co. v. Geertson Seed Farms*, 2010 WL 2471057, 12 (U.S.) (U.S., 2010) (emphasis added).

⁵⁵ *Id.*

maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.⁵⁶ The discussion of impacts must include both “direct and indirect effects (secondary impacts) of a proposed project.”⁵⁷

BLM failed to take a hard look at the Project’s effects on water, cultural and biological resources, as well as effects from the Project’s use of HTF.

1. BLM Failed to Take a “Hard Look” at the Project’s Significant Adverse Effects on the Colorado River

The FEIS correctly states that “[w]ater in the Colorado River is fully appropriated and the Colorado River would be impacted” by the Project.⁵⁸ Also, “all groundwater production at the [Project] site would be considered Colorado River water.”⁵⁹ However, the FEIS failed to take the next steps: (1) determining how much Colorado River water the Project would use; and (2) determining whether Colorado River water is a reliable water source for the Project, absent any evidence that the Applicant has an entitlement to Colorado River water pursuant to the United States Supreme Court consolidated decree *Arizona v. California* (2006) 547 U.S. 150.

In order to account for the Colorado River water drawn by Project pumping, modeling must be conducted to quantify how much Colorado River water the Project’s groundwater pumping would draw. The EIS must then identify the Applicant’s entitlement to that amount of Colorado River water. Without identification of the Applicant’s entitlement, there is no information showing that the Project’s proposal to pump groundwater is a reliable water source for the Project. Moreover, without identification of the Applicant’s entitlement, there is no information that the Applicant’s proposal to use water from the fully appropriated Colorado River is being used lawfully.

BLM’s analysis in the FEIS is insufficient under NEPA because it does not contain any evidence that would ensure that BLM has been informed of the environmental consequences of the Project (i.e., how much Colorado River the Project would use and whether the Colorado River is a legal and reliable water

⁵⁶ *Id.* at § 1502.16.

⁵⁷ *Id.* at § 1502.16(b); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁵⁸ FEIS, p. 4.19-17.

⁵⁹ *Id.*

source for the Project). In other words, BLM failed to take a “hard look” at the Project’s effect on the Colorado River, as required by NEPA.

2. BLM Failed to Take a “Hard Look” at the Project’s Significant Adverse Effects on Buried Cultural Resources

In the SA/DEIS and FEIS, BLM failed to take a hard look at the Project’s significant effects on buried cultural resources. The BLM failed to adequately identify the environmental consequences of the Project on these resources and therefore could not develop appropriate mitigation.

As explained by Dr. Whitley in his attached comments, test excavations are required to determine all of the significance values of an archaeological site. “The determination of eligibility based on surface evidence alone is appropriate only if site preservation is the presumptive management approach...”⁶⁰ Further, “surface evidence alone is often inadequate to provide an accurate estimate of site size, especially for sites with subsurface deposits. Surface evidence is adequate *only* to determine *surface* site size.”⁶¹

At the California Energy Commission’s evidentiary hearing for the Project, the Commission Staff archaeologist agreed with Dr. Whitley. Commission Staff agreed that test excavations are standard practice for establishing a “baseline” and analyzing impacts to buried cultural resources.⁶² The Staff archaeologist admitted that surface evidence alone is insufficient to establish archaeological site size and significance.⁶³ Staff also agreed that test excavations are necessary to determine whether buried resources are present on a site.⁶⁴ Finally, Staff agreed with Dr. Whitley that what the archaeological sites on the Project site contain has not yet been determined and therefore we don’t accurately know how much archaeology will be destroyed by the Project.⁶⁵ In other words, Energy Commission Staff and Dr. Whitley agree that in the absence of test excavations, it is not possible to determine the Project’s impacts to buried cultural resources.

⁶⁰ See Attachment 1 - Whitley Comments on BLM Determinations of NRHP Eligibility, p. 2.

⁶¹ *Id.*

⁶² See Attachment 4, July 21, 2010 California Energy Commission Hearing Transcript for Genesis Solar Energy Project, p. 183.

⁶³ *Id.*, pp. 169, 182.

⁶⁴ *Id.*, pp. 170.

⁶⁵ *Id.*, pp. 187-188.

Moreover, according to Dr. Whitley, additional analysis and testing is also necessary to develop appropriate mitigation measures for each of the Project's adverse impacts.⁶⁶ The types of mitigation that will be appropriate will vary depending upon the nature of the specific resource, and the significance values that are identified through the additional analysis and testing.⁶⁷ A prehistoric village containing a cemetery, for example, will likely be determined significant based both on its religious importance to Native Americans, and its potential to yield valuable scientific information about the past. A prehistoric tool-making workshop, in contrast, may be identified as significant solely due to its potential to provide archaeological information.⁶⁸

In sum, test excavations that provide information concerning the size, integrity and nature of each cultural resource must be conducted to properly determine site significance and appropriate mitigation. BLM's "analysis" in the FEIS is insufficient under NEPA because it is devoid of evidence that would ensure that BLM has been informed of the environmental consequences of the Project. In other words, BLM failed to take a "hard look" at cultural resources within the Project site and its area of impact, as required by NEPA.

2. BLM Failed to Take a "Hard Look" at Significant Effects to Biological Resources

In the SA/DEIS and FEIS, BLM failed to take a hard look at the Project's significant effects on rare plants and Couch's spadefoot toad.

a. BLM Failed to Adequately Describe the Area Affected for Rare Plants and Thus Failed to Adequately Analyze and Mitigate the Project's Effects on Rare Plants

As CURE explained in its comments on the SA/DEIS, BLM failed to adequately describe the area affected by the Project for numerous rare plant species. CURE's comments are also applicable to the FEIS. The facts remain the same here. The Applicant's rare plant survey still does not provide an adequate basis for determining significant impacts to rare plants because it

⁶⁶ See Attachment 1 - Whitley Comments on BLM Determinations of NRHP Eligibility, p. 2.

⁶⁷ Whitley Rebuttal Testimony on Cultural Resources for Genesis Solar Energy Project, p. 2.

⁶⁸ *Id.*

was conducted during the wrong time of year. Until the Applicant conducts appropriately-timed surveys, BLM cannot analyze the Project's effects on rare plants in accordance with NEPA. Although the SA/DEIS and FEIS attempted to analyze effects and formulate mitigation measures for these species, the analyses may bear little resemblance to the analysis and mitigation that will be required after effects to rare plants are actually identified through an adequate survey effort.

The Applicant has not yet submitted results from a late-summer/early-fall floristic survey, and thus the EIS' affected area, impact analysis and mitigation for Project impacts to rare plants still does not (and cannot) satisfy NEPA. Without the fall survey results, BLM cannot evaluate the Project's impacts on rare plants, and more importantly, BLM cannot avoid and minimize the impacts. Therefore, like the SA/DEIS, the FEIS failed to take a "hard look" at the Project's effects on rare plants.

b. BLM Failed to Adequately Describe the Area Affected for Couch's Spadefoot Toad and Thus Failed to Adequately Analyze and Mitigate the Project's Effects on Couch's Spadefoot Toad

CURE explained in its comments on the SA/DEIS that BLM failed to adequately describe the area affected by the proposed actions for Couch's spadefoot toad because the Applicant's survey for Couch's spadefoot toads was not conducted after summer rains. CURE's comments are also applicable to the FEIS. The Applicant's Couch's spadefoot toad survey still does not provide an adequate basis for determining significant impacts because it was conducted during the wrong time of year. Until the Applicant conducts appropriately-timed surveys, BLM cannot analyze the Project's effects on Couch's spadefoot toad. Although the SA/DEIS and FEIS attempted to analyze effects and formulate mitigation measures for these species, the analyses may bear little resemblance to the analysis and mitigation that will be required after effects to Couch's spadefoot toad are actually identified through an adequate survey effort. Therefore, like the DEIS, the FEIS failed to take a "hard look" at the Project's effects on Couch's spadefoot toad.

Furthermore, as explained by CURE in its comments on the SA/DEIS, the FEIS' requirement that the Applicant conduct an assessment of the

Project's impacts to Couch's spadefoot toad after Project approval, as mitigation, violates NEPA. NEPA requires that the BLM include an analysis of the Project's effects on Couch's spadefoot toad in the EIS, not in a mitigation plan that will be provided by the Applicant after Project approval. BLM's approach here clearly violates NEPA.

3. BLM Failed to Take a "Hard Look" at Significant Effects from the Project's Use of HTF

CURE submitted extensive comments on the SA/DEIS regarding BLM's failure to adequately disclose, analyze and mitigate reasonably foreseeable spills of HTF. CURE's comments are also applicable to the FEIS. Like the DEIS, the FEIS grossly underestimated potentially significant impacts from reasonably foreseeable spills of HTF. The DEIS and FEIS only analyzed 750 cubic yards of HTF-contaminated soil, but as expert Matt Hagemann noted in his comments on the DEIS, past HTF spills at the Kramer Junction facility generated much larger quantities of HTF. In fact, one spill alone generated 6,408 cubic yards of HTF-contaminated soil. Neither the DEIS, nor the FEIS provide any support for the assumption that the Project would produce only 750 cubic yards of HTF-contaminated soil. The FEIS failed to take a "hard look" at significant effects from reasonably foreseeable spills of HTF and therefore the FEIS violates NEPA.

Moreover, because the FEIS did not adequately analyze reasonably foreseeable spills of HTF, it could not provide specific measures to properly manage or dispose of hazardous substances, materials or wastes, which, in some cases, may involve several thousand gallons of HTF and several thousand cubic yards of HTF-contaminated soil.

In addition, BLM has yet to adequately analyze potential effects from benzene as a HTF degradation product. CURE submitted extensive comments from expert Hagemann regarding the DEIS' failure to analyze significant effect from benzene contamination of soil and groundwater. As Hagemann explained, benzene moves rapidly through soil, and, because benzene does not typically adsorb to soil, there is a potential for benzene contamination to significantly affect groundwater. Yet, the FEIS also fails to analyze potential effects from benzene. The FEIS failed to take a "hard look" at significant effects from benzene as a HTF degradation product.

D. BLM Failed to Include a Complete Discussion of Measures Required to Mitigate the Project's Significant Effects

In addition to a scientifically defensible analysis of project impacts, an EIS must include a discussion of “appropriate mitigation measures not already included in the proposed action or alternatives.”⁶⁹ All relevant, reasonable mitigation measures that could alleviate the environmental effects of a proposed action must be identified, even if they are outside the lead or cooperating agencies’ jurisdiction.⁷⁰ An EIS is inadequate unless it contains “a reasonably complete discussion of possible mitigation measures.”⁷¹

Mitigation includes “avoiding the impact altogether by not taking a certain action or parts of an action.”⁷² It also includes “minimizing impacts by limiting the degree or magnitude of the action and its implementation.”⁷³ The mandate to thoroughly evaluate all feasible mitigation measures is critical to NEPA’s purposes.⁷⁴ Hence, a “perfunctory description” or a “mere listing” of possible mitigation measures is not adequate to satisfy NEPA’s requirements.⁷⁵ That individual harms are somewhat uncertain due to limited understanding of the Project characteristics and baseline conditions does not relieve BLM of the responsibility under NEPA to discuss mitigation of reasonably likely impacts at the outset.⁷⁶

1. BLM Failed to Include in the FEIS Reasonable Measures to Reduce Significant Adverse Effects to the Colorado River

The FEIS concludes that:

[w]ater in the Colorado River is fully appropriated and ***the Colorado River would be impacted***. The U.S. Geological Survey has indicated that the

⁶⁹ 40 C.F.R. § 1502.14(f).

⁷⁰ NEPA Forty Questions, No. 19(b).

⁷¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

⁷² 40 C.F.R. § 1508.20(a).

⁷³ *Id.* at subd. (b).

⁷⁴ *Id.* at § 1500.1(c).

⁷⁵ *Neighbors of Cuddy Mountain*, 137 F.3d 1372, 1380 (9th Cir. 1998).

⁷⁶ *See South Fork Band Council of Western Shoshone of Nevada*, 588 F.3d at 727, citing *National Parks*, 241 F.3d at 733.

PVMGB and CVGB lie within a basin tributary to the Colorado River and that wells drawing groundwater could be considered to be withdrawing water from the Colorado River Aquifer (Wison et al., 1994). Consequently, the GSEP has the potential to divert Colorado River water without any entitlement to the water, and ***all groundwater production at the site would be considered Colorado River water.***⁷⁷

The FEIS also concludes that implementation of Conditions of Certification WATER-15 and WATER-19 would avoid the Project's impacts on the Colorado River.⁷⁸ However, WATER-15 and WATER-19 would not alleviate the Project's environmental effects on the Colorado River.

WATER-15 requires the Applicant to offset depletion of the PVMGB groundwater budget (which would induce flows from the Colorado River)⁷⁹ through various water conservation projects which may include paying for irrigation improvements in Palo Verde Irrigation District ("PVID"), paying for conversion to cultivation of crops with lower crop water demand in the PVID, using tertiary treated water, implementing water conservation programs in the CVGB, PVMGB or Colorado River flood plain communities, and/or participating in BLM's tamarisk removal program.⁸⁰ However, two of the water conservation projects included in the condition are not reasonable mitigation measures pursuant to NEPA, and there is no evidence in the BLM's record that any of the other proposed measures are feasible or would reduce significant effects.

The Metropolitan Water District ("MWD") submitted comments on the DEIS which stated that payment for irrigation improvements in PVID and BLM's tamarisk removal program are ***not*** available to the Applicant to mitigate impacts to Colorado River water resources. Rather, the Applicant would have to obtain Colorado River water through a re-entitlement from MWD. Thus, MWD stated that Soil&Water-15 (or WATER-15) should be revised accordingly. However, MWD's comments were ignored. Consequently, the FEIS' finding that WATER-15 would avoid the Project's impacts on the PVMGB (and therefore the Colorado River) is incorrect.

⁷⁷ FEIS, p. 4.19-17 (emphasis added).

⁷⁸ *Id.*, p. 4.19-24.

⁷⁹ See Attachment 5, California Energy Commission Staff Rebuttal Testimony for Genesis Solar Energy Project, p. 31.

⁸⁰ *Id.*, p. G-116.

Furthermore, there is no evidence that the remaining measures in WATER-15 are feasible or that they would be effective in reducing or avoiding the Project's effects on the PVMGB and Colorado River. For example, a condition that requires the Applicant to pay for water conservation projects without any evidence that water is actually available does not assure actual mitigation of impacts. Thus, BLM cannot find that the Project's adverse effect on the PVMGB and Colorado River would be avoided.

Likewise, WATER-19 does not provide reasonable mitigation to reduce or avoid the Project's impact on the Colorado River. In fact, WATER-19 does not address the Colorado River at all. Where the original condition of certification Soil&Water-19 would have measured how much Colorado River water the Project would draw, the new WATER-19 ignores the Colorado River altogether and instead focuses only the amount of decreased outflow from the CVGB to PVMGB as a result of proposed Project pumping.⁸¹

BLM concluded that because the Colorado River is fully appropriated under federal law, the Project would impact the Colorado River and all groundwater production at the site to be Colorado River water.⁸² Despite these findings, BLM disregarded the Project's use of Colorado River water and eliminated the modeling prescribed in the original Soil&Water-19 that would have showed how much Colorado River mainstream water the Project groundwater pumping would draw.

An important point here is that the Project would significantly effect the Colorado River because it is fully appropriated under federal law. There is simply no way that WATER-15 and -19 can mitigate this impact—neither the modeling of the decreased flow from the CVGB to the PVMGB proposed in WATER-19 nor paying for water conservation projects as proposed in WATER-15 will reduce or avoid this impact. In order to mitigate the Project's adverse effect on the Colorado River, BLM must require that the Colorado River water impacted by the Project be accounted for pursuant to federal law.⁸³ And in order to account for anything other than 100% use of Colorado River water drawn by Project pumping, modeling must be conducted to show how much Colorado River water the Project's groundwater

⁸¹ FEIS, pp. G-119-120.

⁸² *Id.*, pp. 3.20-3-3.20-4, 4.19-2, 4.19-16-4.19-17.

⁸³ *Arizona v. California* (2006) 547 U.S. 150.

pumping would draw. This is the only way to ensure that water from the fully appropriated Colorado River is not being used unlawfully.

If BLM does not require the Applicant to determine how much Colorado River water is drawn by Project groundwater pumping as mitigation for the Project's adverse effect on the Colorado River, the BLM must require an entitlement for 100% of the Project's water use. In the alternative, all Project pumping could be required to cease. According to the Bureau of Reclamation, the United States Supreme Court Consolidated Decree *Arizona v. California* 547 U.S. 150,

indicates that consumptive use includes not only use of water from the Mainstream but also includes water withdrawn from the mainstream by underground pumping.

Therefore, under the Decree, someone who diverts water from the Mainstream by underground pumping without authorization from the United States could be viewed as being in contempt of the Supreme Court, and that may provide a legal avenue to pursue termination of such pumping.⁸⁴

Therefore, mitigation for the Project's adverse impact on the Colorado River must include accounting for all Colorado River water drawn by the Project through a legal entitlement for the water, as required by the United States Supreme Court Decree.

2. BLM Failed to Include in the FEIS Reasonable Measures to Reduce Significant Adverse Affects to the Special-Status Plants

The proposed Project site is located in a "uniquely 'tropical' warm desert climate...which contributes to the presence of a number of rare and endemic plants and vegetation communities...not found elsewhere in California."⁸⁵ According to Energy Commission Staff, some of these plants have "a very high risk of extinction due to extreme rarity, very steep declines, or other factors. They're termed 'critically imperiled.'"⁸⁶ The FEIS concludes that the Project would result in

⁸⁴ See Attachment 6, Email from Steve Hvinden of the Bureau of Reclamation to Lorri Gray of the Bureau of Reclamation re: Genesis solar project question, January 15, 2010.

⁸⁵ DEIS, pp. C.2-99-100.

⁸⁶ See Attachment 7, July 12, 2010 California Energy Commission Evidentiary Hearing for Genesis Solar Energy Project, p. 182.

substantial impacts to several species of special-status plants that would be mitigated by BIO-19.⁸⁷

However, BIO-19 there is no evidence that BIO-19 would avoid, reduce or compensate for the Project's substantial effects on special-status plants. BIO-19 provides a "roadmap" for the Applicant to conduct late-season botanical surveys and what to do if special-status plants are identified through the survey effort. The 15-page roadmap boils down to this:

(1) "***If possible***, surveys shall occur at the appropriate time to capture the characteristics necessary to identify the taxon";⁸⁸ then

(2) If a California Natural Diversity Database ("CNDDDB") Rank 1 plant (i.e., critically imperiled), CNNDDB Rank 2 plant (i.e., imperiled), or CNNDDB Rank 3 plant "with local or regional significance" is identified, avoid the plant, ***if feasible. Avoidance is NOT required if the species is located within the permanent Project disturbance area.*** Further, avoidance need not occur if "avoidance would cause disturbance to areas not previously surveyed for biological resources...or would create...other restrictions";⁸⁹ but

(3) If avoidance is not feasible (i.e., if a special-status plant occurs within the permanent Project disturbance area, would cause disturbance to areas not previously surveyed, or would create "other restrictions"), the Applicant shall provide compensatory mitigation, ***if "opportunities for acquisition or restoration/enhancement exist"***;⁹⁰ but

(4) "In the event there are no opportunities for mitigation through acquisition or restoration/enhancement, a Study of Distribution and Status for the affected special-status plant species ***may*** be implemented or funded...The objective of this study would be to better understand the full distribution of the affected species, the degree and immediacy of threats to occurrences, and ownership and management opportunities, with the primary goal of future

⁸⁷ FEIS, pp. 4.17-10-12.

⁸⁸ FEIS, p. G-43.

⁸⁹ *Id.*, p. G-45.

⁹⁰ *Id.*, p. G-47.

preservation, protection, or recovery of the affected species within California.”⁹¹

The 15-page condition is a roadmap to nowhere.⁹² The 15-page condition was a laborious exercise in futility because it does not actually commit the Applicant to *any* mitigation whatsoever. Rather, the condition is a series of loopholes that, in the end, will fail to mitigate for “the rarest of the rare.”⁹³

First, the condition does not even require the Applicant to conduct late-season surveys at a time when special-status plants would be identified. That alone is enough to render the entire condition meaningless.

Second, the condition purports to require avoidance of certain plants, but in reality there is no requirement for avoidance. Avoidance is *not* required if a species is located within the permanent Project disturbance area, if avoidance would cause disturbance in areas not previously surveyed, or if avoidance would create “other restrictions.” Thus, it appears that avoidance could be infeasible in any and every case.

Third, there is no evidence that there is an opportunity to acquire compensation lands or provide restoration/enhancement of special-status plants. On the contrary, substantial evidence shows that that possibility is highly unlikely. According to Energy Commission Staff, these species are “the rarest of the rare.”⁹⁴ “[T]he Rank 1 plants are plants that are down from fewer than six viable occurrences statewide...By comparison, desert tortoise...is known from over 250 occurrences statewide.”⁹⁵ Thus, according to Commission Staff, “the reason that we are pushing for avoidance is because with five or fewer occurrences statewide, that means that the opportunities for mitigation off site are going to be pretty limited. They’re going to be very limited. The chances that...one of those five is going to be available for purchase...it’s pretty slim.”⁹⁶ The possibility of acquiring compensation lands for such rare plants becomes even slimmer considering that these plants, if found in the Chuckwalla Valley, are “going to be subject to hits from

⁹¹ *Id.*, p. G-53 (emphasis added).

⁹² See Attachment 6, July 12, 2010 California Energy Commission Hearing Transcript for Genesis Solar Energy Project, p. 184.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*, p. 182.

⁹⁶ *Id.*, p. 183.

many new proposed renewable energy projects, because this valley is disproportionately affected by renewable energy development. This area and the Palo Verde Mesa are going to be hit hard.”⁹⁷ Consequently, BLM’s proposed mitigation to acquire compensation lands or provide restoration/enhancement of special status plants is not feasible.

Furthermore, proposing mitigation that requires the acquisition of compensation lands containing a very rare species without determining whether such land is even available fails to ensure the mitigation is adequate and will be implemented.

Finally, under the proposed condition, if all else fails (i.e., avoidance, acquisition, and restoration/enhancement), and evidence shows that it will, the condition provides that the Applicant *may* fund or implement a study to promote the future preservation, protection or recovery of a plant species. The study, *if performed*, can be completed up to 30 months *after* the start of Project construction. This final step of BIO-19 is just as meaningless as the first, second and third steps. By stating that the Applicant “may” fund or implement a study, the condition does not require the Applicant to do anything. Further, even if the condition actually committed the Applicant to some action, there is *no* evidence in the record that funding or implementing a *future study* would mitigate the *Project’s* significant impacts to special-status plants. It is nothing short of ridiculous to assume that optional funding for something akin to graduate student research performed years after plants are destroyed will adequately mitigate the Project’s impacts.

In short, BIO-19 fails to provide any mitigation whatsoever for the Project’s substantial adverse effects to extremely rare plants. Thus, BLM cannot conclude that BIO-19 would “avoid, reduce, or compensate” for the Project’s substantial adverse effects to special-status plants.

⁹⁷ *Id.*, p. 193.

III. BLM FAILED TO INTEGRATE ITS NEPA REVIEW WITH STUDIES AND ANALYSES REQUIRED UNDER THE FEDERAL ENDANGERED SPECIES ACT AND THE BALD AND GOLDEN EAGLE PROTECTION ACT

BLM must “to the fullest extent possible . . . prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.”⁹⁸ BLM is also required to include in the “draft environmental impact statement . . . all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal.”⁹⁹

As noted in CURE’s comments on the SA/DEIS, BLM has made little effort to coordinate its environmental review with its consultation with the U.S. Fish and Wildlife Service regarding impacts to desert tortoise under Section 7 of the Endangered Species Act. BLM has also failed to coordinate its review of the Project with the need for a permit under the Bald and Golden Eagle Protection Act. This haphazard and segmented environmental review has greatly comprised BLM’s ability to fully evaluate the environmental consequences of the Project and the public’s ability to meaningfully participate in the environmental review process. The BLM should have drafted and circulated a Draft Incidental Take Permit, Protocol Golden Eagle Surveys and the take analysis pursuant to the Bald and Golden Eagle Protection Act. Additionally, BLM must draft and circulate an analysis of the impacts associated with the transmission upgrades necessary for the Project. The analysis of the transmission upgrades must be integrated into the Biological Assessment, the Programmatic Agreement and the Desert Tortoise Translocation Plan and all federal approvals.

IV. FLPMA VIOLATIONS

Through FLPMA, Congress directed the Secretary to initiate a comprehensive planning process and to establish a long-range management plan for the “use, development, and protection of the public lands within the California Desert Conservation Area [and required that such plan] take into account the

⁹⁸ 40 C.F.R. § 1502.25(a).

⁹⁹ 40 C.F.R. § 1502.25(b).

principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development.”¹⁰⁰

The CDCA Plan has served as the management plan for the CDCA for approximately thirty years. One of the foundational management principles of the CDCA Plan is to respond to:

“national priority needs for resource use and development, both today and in the future, including such paramount priorities as energy development and transmission, without compromising the basic desert resources of soil, air, water, and vegetation, or public values such as wildlife, cultural resources, or magnificent desert scenery. This means, in the face of unknowns, erring on the side of conservation in order not to risk today what we cannot replace tomorrow.”¹⁰¹

Under this Plan, BLM inventoried the desert area with public input and identified areas appropriate for wilderness, limited, moderate and intensive uses.

As a first step toward a mechanism for resolution of conflicts, Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA) which directed BLM to inventory CDCA resources and to prepare a comprehensive land-use management plan for the area.¹⁰²

BLM must carefully consider the extensive programmatic inventory that went into the establishment of the CDCA plan. In keeping with the plan, BLM must not approve intensive industrialization in areas that were not designated for intensive use.

A. CDCA Plan Should Not Be Amended in a Piecemeal Fashion

The objective of BLM’s resource management planning is to maximize resource values for the public through a *rational, consistently applied set of regulations and procedures* which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. “Consistent” application means

¹⁰⁰ 43 U.S.C. § 1781(d).

¹⁰¹ CDCA Plan, p.6 (“Management Principles”).

¹⁰² *Id.*, p. 5.

that the BLM's plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans.¹⁰³ Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.¹⁰⁴

The BLM is proposing to amend the CDCA on a project-by-project basis for a whole swath of industrial-scale renewable power plants. Many of these proposals are not on lands designated for intensive use under the CDCA. In fact, the DEIS concluded that solar, wind, and geothermal development applications have been filed on one million acres of the California desert under BLM management.¹⁰⁵

Because the CDCA was developed as a concerted effort with many federal and state agencies and enormous public input, it is improper to amend the Plan in such a piecemeal fashion on a project by project basis. The decision of whether to fundamentally change the character of the CDCA by permitting large industrial renewable development on areas not currently designated for intensive use should only be considered on a programmatic basis.

B. The Industrial Character of the Project Does Not Strike CDCA's Controlled Balance or Protect Sensitive Resources in Violation of the CDCA's Designation

In establishing the CDCA Plan, the California desert was inventoried for biological resources, cultural resources, recreational uses, grazing, mineral development and many other uses. As a result, the proposed action area is designated as Multiple-Use Class M (Moderate Use). Class M is distinguished from Class I (Intensive Use), which provides for concentrated uses of lands and resources to meet human needs [such as the industrialization that would occur under the proposed Project].¹⁰⁶

The BLM is considering amending the CDCA Plan to allow for solar power development on the Project site. Although renewable energy generation is a *conditionally* allowed use within Class M lands, BLM may only use these lands for solar power development under certain circumstances. For Class M lands, BLM must strike a controlled balance between higher intensity use and protection of

¹⁰³ 43 CFR § 1601.0-5.

¹⁰⁴ 43 CFR § 1601.0-2.

¹⁰⁵ DEIS p. B.3-1.

¹⁰⁶ *Id.*

public lands.¹⁰⁷ Although some degree of development is allowed, Class M management is also designed to conserve desert resources and to mitigate damage to those resources which permitted uses may cause.¹⁰⁸

Although it might be appropriate to allow some solar development on Class M lands, not all solar development is the same size or level of intensity. The intensity and size of the use associated with the proposed Project is fundamentally incompatible with the BLM's Class M designation. The proposed power plant will severely impact every aspect of the resources on the site by covering the site with a network of roads, mirrors and other infrastructure. The fragile desert pavement will be destroyed and the site will not likely recover for centuries, if ever.

Thus, the Project design has not been constrained to "maintain a controlled balance between higher intensity uses and protection of public land" as is required by the CDCA Class M designation. Thus, the Project is incompatible with the CDCA Plan designations that were adopted after a comprehensive planning effort and the BLM should not override the wisdom of this planning effort for the short-term benefits that may or may not accrue from the siting of this experimental power plant.

BLM failed to assess the proposed Project's impact on sensitive values or to strike the controlled balance between the high intensity use and protection of public lands, as required by FLPMA and the CDCA Plan.

C. BLM May Not Approve the Project Because it Would Severely Diminish Wildlife Resources Within the Project Region

FLPMA requires BLM to manage public lands

in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.¹⁰⁹

¹⁰⁷ *Id.*

¹⁰⁸ CDCA Plan, p. 13.

¹⁰⁹ *See* 43 U.S.C. §§ 1701(a)(8), 1702(c) (defining "multiple use" as "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for

The FEIS determined that the Project “would permanently diminish the extent and value of native animal communities in the region” and 1,746 acres of “the native wildlife communities would be permanently lost.”¹¹⁰ The 1,746 acres that would be permanently lost provides habitat for the desert tortoise, a federal and State threatened species, including 24 acres with the Chuckwalla Desert Critical Habitat Unit.¹¹¹ In light of this finding, BLM may not approve the Plan Amendment to allow the significant diminishment of wildlife resources within the Planning Area. Such approval would be inconsistent with the CDCA Plan.

D. BLM Failed to Preserve Rare Plants on the Project Site

BLM must manage public lands in a way that will protect the ecological and environmental values, that will preserve and protect certain public lands in their natural condition, and that will habitat for wildlife.¹¹² As explained above, the FEIS does not provide adequate mitigation for the Project’s substantial adverse effects to special-status plants that are the “rarest of the rare.” As a result, BLM has not ensured the protection of the ecological and environmental values of the lands, nor has BLM ensured the preservation and protection of the lands in their natural condition and as habitat for wildlife, as required by FLPMA.

E. BLM Failed to Evaluate and Preserve the Cultural Resources Within the Project Site

BLM must manage public lands in a way that will protect historical and archaeological values.¹¹³ As explained above, BLM failed to adequately test or analyze subsurface cultural resources on the Project site. Impacts to these resources were not adequately analyzed or mitigated in the DEIS or the FEIS. As

renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values . . .”).

¹¹⁰ FEIS p. 4.21-23.

¹¹¹ *Id.*

¹¹² See 43 U.S.C. §§ 1701(a)(8), 1702(c) (defining “multiple use” as “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values . . .”).

¹¹³ See 43 U.S.C. §§ 1701(a)(8), 1702(c) (defining “multiple use” as “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values . . .”).

such, BLM has unequivocally failed to evaluate and ensure that cultural resources are evaluated and preserved, as required by FLPMA and the CDCA Plan. BLM may not approve the Plan Amendment until it has ensured that it has balanced the need for development with efforts to preserve cultural resource values.

F. BLM Failed to Preserve and Protect Water Resources

FLPMA requires BLM to manage public lands in a way that will protect water resources. The FEIS concludes that the Project would adversely impact the Colorado River. As detailed above, the FEIS does not present mitigation that would reduce or avoid the Project's impacts on the Colorado River. Thus, BLM has not satisfied the requirements of FLPMA.

V. CONCLUSION

Thank you for the opportunity to submit comments on the FEIS.

Sincerely,

/s/

Rachael E. Koss

REK:
Attachments



"INFO PEWTRUSTS.ORG"
<usacitizen1@live.com>

09/05/2010 03:37 PM

To <capssolarnexterafpl@blm.gov>, <info@magazine.com>

cc

bcc

Subject PUBLIC;comment ON FEDERAL REIGSTER

BLM IS AN UGLY AGENCY. THEY ARE CURRENTLY INVOLVED IN CORRALLING HORSES OFF OPEN SPACE OWNED BY NATIONAL TAXPAYERS AND SENDING THEM TO SLAUGHTERHOUSES OR KILLING THEM IN THE CORRALLING. THIS PLAN STINKS TO HIGH HEAVEN. DONT TAKE VIRGIN LAND FOR SOLAR USE. AND DONT LET THEM USE OPEN PUBLIC SPACE FOR THIS. LET THEM BUY PRIVATE LAND. LET THEM USE PRIVATE LANDFILLS FOR THEIR SOLAR PANELS. LET THEM PUT SOLAR PANELS ON PRIVATE HOMES AND BUSINESSES. DONT LET THEM FILL UP VIRGIN OPEN SPACE THAT NATIONAL TAXPAYERS HAVE WORKED AND SLAVED TO SAVE FOR THEIR KIDS FUTURE TO SEE A LITTLE OPEN SPACE. THIS IS A HORRIFIC IDEA.
JEAN PBULIC 15 ELM ST FLOHRAM PARK NU07392

[Federal Register: August 30, 2010 (Volume 75, Number 167)]

[Notices]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048880, LLCAD06000, L51010000.FX0000, LVRWB09B2520]

Notice of Availability of the Final Environmental Impact
Statement for the Genesis Solar, LLC Genesis Solar Energy Project and
Proposed California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of
1969, as amended (NEPA), and the Federal Land Policy and Management Act

of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed California Desert Conservation Act Plan Amendment/ Final Environmental Impact Statement (EIS) for Genesis Solar LLC's Genesis Solar Energy Project (GSEP) and by this notice is announcing its availability.

DATES: The publication of the Environmental Protection Agency's (EPA) Notice of Availability (NOA) of this Final EIS in the Federal Register initiates a 30-day public comment period. In addition, the BLM's planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed CDCA Plan Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that EPA publishes its NOA in the Federal Register.

ADDRESSES: Copies of the Proposed Plan Amendment/Final EIS for the GSEP have been sent to affected Federal, state, and local government agencies and to other stakeholders. Copies of the Proposed Plan Amendment/Final EIS are available for public inspection at the Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262. Interested persons may also review the document at the following Web site: http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Genesis_Ford_Dry_Lake.html. Submit comments on the Final EIS to the Palm Springs South Coast Field Office at the address above or e-mail them to CAPSSolarNextEraFPL@blm.gov.

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Allison Shaffer, BLM Project Manager, telephone (760) 833-7100; address (see ADDRESSES, above); or e-mail CAPSSolarNextEraFPL@blm.gov.

SUPPLEMENTARY INFORMATION: Genesis Solar, LLC has submitted an application to the BLM for development of the proposed GSEP, which would consist of two independent solar electric generating facilities with a nominal net electrical output of 125 megawatts (MW) each, resulting in a total net electrical output of 250 MW. The Proposed Action would be designed to utilize solar parabolic trough technology to generate electricity.

Genesis Solar, LLC is seeking a right-of-way (ROW) grant for approximately 4,640 acres of land. Construction and operation of the Proposed Action would disturb a total of about 1,800 acres within the site boundaries, and approximately 90 acres for linear facilities and drainage features outside the site boundaries.

The proposed GSEP would be approximately 27 miles east of the unincorporated community of Desert Center and 25 miles west of the Arizona-California border city of Blythe in Riverside County, California.

The Applicant proposes to construct the GSEP in two phases, which would

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be designed to generate a combined total of approximately 250 MW of electricity. Phase 1 would consist of the Unit 1 (western) power block, access road, natural gas pipeline, and electric transmission line. Phase 2 would consist of the Unit 2 (eastern) power block. The project would also include above-ground and subsurface fiber optic lines.

The overall site layout and generalized land uses are characterized as follows:

1. 250-MW facility including solar generation facilities; on-site switchyard (substation); administration, operations, and maintenance facilities: approximately 1,800 acres.
2. Two wastewater evaporation ponds: Up to 30 acres each (located within the 1,800-acre site).
3. A new generation-tie line to route generated electrical power transmitted from the GSEP switchyard by way of a southeasterly ROW, that would connect to the Southern California Edison 500-230 kV Colorado River substation via the existing Blythe Energy Project Transmission Line between the Julian Hinds and Buck substations.
4. Additional linear facilities off-site, including a 6.5-mile access road and natural gas pipeline.
5. Surface water control facilities for storm water flow and discharge.
6. Temporary construction laydown area(s) within the larger site footprint. No additional laydown areas outside the project footprint are contemplated.

Access to the site would be via a new 6.5-mile long, 24-foot wide (approximately 18.9 acres) paved access road extending north and west from the existing Wiley's Well Road. Wiley's Well Road is accessible by both eastbound and westbound traffic off Interstate 10 at the Wiley's Well Road Interchange. The new access road would be constructed entirely on BLM-administered land.

The BLM's purpose and need for the NEPA analysis of the GSEP project is to respond to Genesis Solar, LLC's application under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to approve, approve with modification, or deny a ROW grant to Genesis Solar, LLC for the proposed GSEP project. The BLM will also consider amending the California Desert Conservation Act (CDCA) Plan of 1980, as amended, in this analysis. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not identified in that Plan be considered through the plan amendment process. If the BLM decides to grant a ROW, the BLM would also amend the CDCA Plan.

In the Final EIS, the BLM's Preferred Alternative is the direct dry cooling project alternative with a 250 nominal MW output which includes a CDCA Plan Amendment. In addition to the Preferred Alternative, the Final EIS analyzes the following alternatives: The proposed action with a 250 nominal MW output, wet-cooling technology and an amendment the CDCA Plan to make the area suitable for solar energy development; a reduced acreage alternative which includes a 150 nominal MW output, wet cooling technology, and an amendment to the CDCA Plan to make the area suitable for solar energy development; and an amendment to the CDCA Plan without approving any project. As required under NEPA, the Final EIS analyzes a no action alternative, which would not approve the GSEP or amend the CDCA Plan. The BLM also analyzes an alternative that denies the GSEP, but amends the CDCA Plan to designate the project area as suitable for other possible solar energy power generation projects, and an alternative to deny the project and amend the CDCA Plan to designate the project area as unsuitable for solar energy power generation projects. The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283 Enhancing Renewable Energy Development on the Public Lands and 3285A1 Renewable Energy Development by the Department of the Interior in responding to the GSEP application.

The Final EIS evaluates the potential impacts of the proposed GSEP on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources.

A Notice of Availability of the Draft EIS/Staff Assessment for the proposed GSEP and Possible Plan Amendment to the CDCA Plan was published in the Federal Register on April 9, 2010 (75 FR 18204).

Comments on the Draft RMP Amendment/Draft EIS/Staff Assessment received from the public and internal BLM review were considered and incorporated as appropriate into the Proposed CDCA Plan Amendment/Final EIS. Public comments resulted in the addition of clarifying text and the change in the preferred alternative from wet cooling to dry cooling technology, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the Proposed CDCA Plan Amendment may be found in the "Dear Reader" Letter of the Proposed CDCA Plan Amendment/Final EIS and at 43 CFR 1610.5-2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 912-7212, and e-mails to Brenda_Hudgens-Williams@blm.gov. All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the ADDRESSES section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest--including your personal identifying information--may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10 and 43 CFR 1610.2 and 1610.5.

Thomas Pogacnik,
Deputy State Director.
[FR Doc. 2010-21570 Filed 8-27-10; 8:45 am]
BILLING CODE 4310-40-P