

Organizations

BLM Las Vegas Field Office,
Attn: Gregory Helseth
4701 North Torrey Pines Drive
Las Vegas, NV 89130-2301

April 18, 2012

Via E-mail: BLM_NV_SNDO_SearchlightWindEnergyEIS@blm.gov

Subject: Comments on the DEIS for the Searchlight Wind Energy Project

Dear Mr. Helseth:

On behalf of The Center for Biological Diversity (“Center”), please accept the following comments on the DEIS for the Searchlight Wind Energy Project. We appreciate the notification of this opportunity to comment.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 350,000 members and on-line activists throughout Nevada and the United States.

We submit these comments on behalf of our members, activists, staff, and members of the general public who are interested in protecting native species and their habitats, quiet recreation activities, and wilderness experiences on BLM public lands, particularly those lands impacted by this project.

The development of renewable energy is a critical component of efforts to reduce carbon pollution and climate-warming gases, avoid the worst consequences of global warming, and to assist in meeting needed emission reductions. The Center strongly supports the development of renewable energy production. However, like any project, proposed wind power projects should be thoughtfully planned to minimize impacts to the environment. In particular, renewable energy projects should avoid impacts to sensitive species and habitat, and should be sited in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors and the efficiency loss associated with extended energy transmission. Only by maintaining the highest environmental standards with regard to local impacts, and effects on species and habitat, can renewable energy production be truly sustainable.

The Center offers the following scoping comments for your consideration:

1. The DEIS fails to adequately disclose and evaluate the likely impacts of the project on natural resources.

The DEIS’s discussion of likely impacts to wildlife, both birds and mammals, is cursory, omits discussion of significant scientific information, and fails to evaluate adequately the significant

Potential impacts to wildlife species are addressed throughout Sections 4.4-Biological Resources Impacts. Pursuant to Section 7 of the Endangered Species Act, BLM has complete consultation with the USFWS resulting in a Biological Opinion. Appendix B-2: USFWS Biological Opinion contains the required desert tortoise mitigation measures and a discussion of how such mitigation would be effective. A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution) on birds.

harm which the generation and transmission project is likely to cause to wildlife. The DEIS's discussion of impacts to desert tortoise that will result if BLM grants the requested ROWs is inadequate because it provides no information about mitigation. The DEIS similarly understates likely impacts to golden eagles, other avian species and bats.

BLM must collect, evaluate, and disclose to the public accurate and complete information about the likely impacts to wildlife from the project. The DEIS in its current form does not meet the level of adequacy and completeness required by law.

Of particular concern are the potential impacts to the desert tortoise, a threatened species protected by the Endangered Species Act ("ESA"), Golden and Bald Eagles, protected under the Bald and Golden Eagle Protection Act ("BGEPA"), as well as other raptors and birds protected under the Migratory Bird Treaty Act ("MBTA"), and bats, several of which are BLM and/or state sensitive species.

Desert tortoise

The DEIS discloses that during surveys conducted on the project site, 122 tortoises were located on the project site within the narrow survey belts, indicating a population of 8.2 tortoises per square kilometer. This is a very high density considering the average density of tortoises found by the U.S. Fish and Wildlife Service in its 2010 population monitoring for the Piute-Eldorado Area of Critical Environmental Concern, which encircles the project site was 3.2 tortoises per kilometer.¹ The entire East Mojave Recovery Unit had only an average density of 3.6 tortoises per kilometer.²

While technically the project area lies in "donut-hole" of undesignated tortoise habitat, it provides excellent tortoise habitat and is none-the-less critically important for the effort of recovering the Eastern Mojave population. In addition, the proposed project would fragment tortoise habitat and serve as a barrier to migration and gene-flow between the Eastern and Northeastern Mojave Recovery Units.

The DEIS is inadequate in that the public literally has no information on which to base comments regarding the specific impacts of this specific project on the tortoise or how BLM proposes to avoid or mitigate those impacts. There is no information about what mitigation is proposed, only a listing of possible measures that "may" be included. This failure to disclose is a serious flaw and the BLM should prepare a supplemental EIS to fill in the informational gaps for reviewers.

The ESA was enacted, in part, to provide a "means whereby the ecosystems upon which endangered species and threatened species depend may be conserved...[and] a program for the conservation of such endangered species and threatened species..." 16 U.S.C. § 1531(b). The

Effects to desert tortoise are discussed in Section 4.4.5.2-Desert Tortoise – Direct and Indirect Impacts by Alternatives. Pursuant to Section 7 of the Endangered Species Act, BLM has complete consultation with the USFWS resulting in a Biological Opinion, which includes the required mitigation (Appendix B-2: USFWS Biological Opinion).

¹ U.S. Fish and Wildlife Service. 2010. Range-wide Monitoring of the Mojave Population of the Desert Tortoise – 2010 Annual Report. Table 6. Available at: http://www.fws.gov/nevada/desert_tortoise/documents/reports/2010/2010_DRAFT_Rangewide_Desert_Tortoise_Population_Monitoring.pdf.

² Ibid.

ESA “is the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978). The Supreme Court’s review of the ESA’s “language, history, and structure” convinced the Court “beyond a doubt” that “Congress intended endangered species to be afforded the highest of priorities.” *Id.* at 174. As the Court found, “the plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost.” *Id.* at 184.

Section 2(c) of the ESA establishes that it is “...the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “...the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.” 16 U.S.C. § 1532(3). Similarly, Section 7(a)(1) of the ESA directs that federal agencies to “utilize their authorities in furtherance of the purposes” of the ESA. 16 U.S.C. § 1536(a)(1)..

In order to fulfill the substantive purposes of the ESA, Federal agencies, such as BLM in this instance, are required to engage in consultation with the Fish and Wildlife Service to “insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species... determined...to be critical...” 16 U.S.C. § 1536(a)(2) (Section 7 consultation). Section 7 consultation is required for “any action [that] may affect listed species or critical habitat.” 50 C.F.R. § 402.14. As part of the consultation, the action agency must first prepare a biological assessment. 16 U.S.C. § 1536(c)(1). Although procedural, consultation is the backbone of the ESA. As the Ninth Circuit recognized, “[o]nly by requiring substantial compliance with the act’s procedures can we effectuate” Congressional intent to protect species. *Sierra Club v. Marsh*, 816 F.2d at 1384 (9th Cir. 1987).

As part of the proposed project BLM has initiated consultation with the Fish & Wildlife Service (“Service”) regarding impacts to the threatened desert tortoise and its habitat in order to ensure against jeopardy and provide for the conservation of the species. *See Nat’l Wildlife Fed’n v. NMFS*, 524 F.3d 917, 933 (9th Cir. 2008) (holding that the ESA requires consideration of impacts to species’ prospects for recovery in jeopardy analysis). In order to engage in meaningful consultation the agencies must have adequate information regarding the baseline status of the species in the area of the proposed project as well as adequate identification and analysis of the likely impacts of the project on the species and its habitat and the long-term conservation of the species including direct, indirect and cumulative impacts. In this instance, the Service must be provided with sufficient information to determine the impacts of the proposed project on the tortoise including the degree to which the proposed project could undermine the species’ ability to recover in light of direct, indirect and cumulative impacts of the proposed project as well as other threats (including climate change and the need to preserve healthy tortoise populations that will well suited and positioned to adapt to rapid changes.).

Protocol level surveys for desert tortoise on the proposed project site, as previously noted, estimate the number of tortoises to be affected by this project at 122 animals. The actual number of desert tortoises on site is likely much higher, based on the effectiveness of protocol level

surveys on finding all onsite tortoises³, especially given the vast number of acres of the proposed project site, and the undercounting of juvenile animals. The survey data confirms that this area is at least moderate to high quality desert tortoise habitat with a population that is at least as robust as those within the neighboring Piute-Eldorado ACEC and should be protected as such.

Nowhere in the DEIS was protection from predators, particularly ravens, discussed. As ravens are a primary predator of juvenile tortoises and as they seek perches such as transmission poles from which to spot their prey, the BLM must address this threat to the tortoise. Additionally, the creation of new service roads poses an increased threat to tortoise from dirt bikes and off-highway vehicles. In a supplemental DEIS, the BLM must analyze this threat and disclose its impacts on tortoises and other creatures as well as how the impacts will be avoided, minimized and mitigated.

A primary concern is the possibility of any plan to relocate or translocate desert tortoises from the site.⁴ No information is provided about the need for translocation or about possible recipient sites, most importantly, their location, ability to absorb more animals and the permanency of the protection.

To date, translocation of desert tortoise always results in “take” of tortoises and certainly does not aide in the recovery of the threatened species. Even “successful” translocation has been documented to have a 15-21% mortality⁵. Significant losses of tortoises through a recent translocation effort in 2008 - the Fort Irwin translocation - resulted in over 20% mortality within the first year. Further monitoring has documented as of August 2009, over 250 desert tortoise (38%) have died in the translocation areas of Fort Irwin⁶. This translocation has resulted in further declines in the west Mojave recovery unit to the detriment of recovery of the species as a whole.

The Scientific Advisory Committee of the U.S. Fish and Wildlife Service’s Desert Tortoise Recovery Office has recently concluded that “translocation is fraught with long-term uncertainties, notwithstanding recent research showing short-term successes, and should not be considered lightly as a management option. When considered, translocation should be part of a strategic population augmentation program, targeted toward depleted populations in areas containing “good” habitat. The SAC recognizes that quantitative measures of habitat quality relative to desert tortoise demographics or population status currently do not exist, and a specific measure of “depleted” (e.g., ratio of dead to live tortoises in surveys of the potential translocation

Refer to Section 4.4.5.2-Desert Tortoise – Direct and Indirect Impacts by Alternatives, which discusses increased perching opportunities for ravens and impacts from the introduction of new roads and associated increased traffic.

Mitigation measures proposed in the DEIS and issued in the Biological Opinion did not include translocation of tortoise, rather it was proposed that tortoises would be moved out of harm’s way during construction activities (Appendix B-2: USFWS Biological Opinion).

³ Anderson, D.R., K.P. Burnham, B.C. Lubow, L. Thomas, P.S. Corn, P.A. Medica and R.W. Marlow 2001. Field Trials of Line Transect Methods Applied to Estimation of Desert Tortoise Abundance. *Journal of Wildlife Management* 65(3): 583-597.

⁴ There is no currently agreed upon definition of relocation or how it differs from translocation, other than a sense it involves a shorter distance of movement of the animal. For these comments the two terms will be combined into the term, “translocation”.

⁵ Field, K.J., C. R. Tracy, P.A. Medica, R.W. Marlow, P.S. Corn 2007. Return to the Wild: Translocation as a Tool in Conservation of the Desert Tortoise (*Gopherus agassizii*). *Biological Conservation* 136: 232-245; and, Nussear, K.E. 2004. Mechanistic investigation of the distributional limits of the desert tortoise *Gopherus agassizii*. PhD dissertation. University of Nevada, Reno. Pgs. 213.

⁶ USFWS. 2009. Draft Biological Opinion for the Proposed Addition of Maneuver Training Lands at Fort Irwin, California (8-8-09-F-43R). Page 48.

area) was not identified.⁷ The proposed project can hardly be considered a “strategic augmentation program”.

These data and conclusions by desert tortoise experts negate any logical basis for presenting translocation as aiding in recovering the species. The risks associated with translocation in general are now well established and quite high⁸. Because of this, the agencies need to take seriously a full and honest evaluation of the need, if any, to site projects within essential, occupied desert tortoise habitat. Siting projects in areas that lack desert tortoise would preclude the need for translocation and the inevitable mortality that translocation causes.

If translocation must occur as part of the project implementation, the translocation plan needs to be thoroughly developed and vetted by knowledgeable tortoise science and management experts and provided for public review.

Any plan must thoroughly address a number of essential desert tortoise issues:

Disease issues

The health of the desert tortoises that are on the site and proposed for translocation as well as the “host” tortoises in areas into which the translocated tortoises will be moved must be evaluated and addressed. Regardless of the proximity of the translocated and host tortoises, data still needs to be collected on the state of the population at a minimum to help inform the results of the translocation. If disease is present in either the translocated tortoises or “host” tortoises, concentrating tortoises into off-site areas may exacerbate disease transmission and outbreaks especially coupled with the stresses of translocation, competition for scarce resources, defense of existing territories (host population), establishment of new territories (relocated population), etc.

Carrying Capacity

The carrying capacity of the translocation sites, and their ability to support greater tortoise densities over the long-term must be assessed. While a die-off of tortoises is known from the Ivanpah Valley in the 1990’s, there is no evidence presented in any of the documents that the habitat has the capacity to provide resources to sustain over the long-term a higher density population. In light of global climate change and its effects currently occurring on the desert⁹, the habitat may simply not be able to support a more concentrated population now or into the future.

⁷ USFWS, 2009. Scientific Advisory Committee (SAC), Desert Tortoise Recovery Office. Meeting Summary, March 13, 2009, San Diego Wild Animal Park, Escondido, CA. pgs 4.

http://www.fws.gov/Nevada/desert_tortoise/documents/sac/20090313_SAC_meeting_summary.pdf

⁸ Dodd, C.K. and R.A. Seigel 1991. Relocation, repatriation and translocation of amphibians and reptiles: are they conservation strategies that work? *Herpetologica* 47(3): 336-350.

⁹ Kelly, A. E. and M.L. Goulden 2008. Rapid shifts in plant distribution with recent climate change. *Proc Natl Acad Sci USA* 105:11823–11826.

Monitoring

Not only should the translocated tortoises be monitored but it is essential that the “host” tortoises also be monitored, to truly evaluate the status of the translocation. Rigorous monitoring needs to be included in the plan.

Objectives and Analyses

Criteria of success must be identified in the translocation plan. Monitoring must be tied to triggers for action, adaptive management, or success criteria. Benchmarks for success need to be identified and additional requirements put in place to mitigate failures of this experimental proposal.

Timing

Translocation of desert tortoise should be done in spring when possible. Translocation in the fall is not optimal especially if summer/fall rains do not occur. If translocation must occur, flexibility in timing is essential to help to assure successful translocation to help meet the minimization standard.

Long-term assurances

Measures must be put in place to assure the long-term protection of the desert tortoises that are moved and the habitat into which they are moved. As the BLM is well aware, multiple projects are proposed for this same area, and other areas in the Mojave Desert. Assurances must be included so that the desert tortoise affected by this project are not impacted again by a subsequent project. We remain concerned however, that lacking a comprehensive strategy for tortoise conservation. Tortoises could be translocated multiple times, which clearly will be detrimental to the species and its recovery.

Golden and bald eagles

These two species are among the species considered by the BLM to being sensitive species in Nevada.

Management of special status species (and indeed all rare species) on BLM lands should focus on ensuring long term survival and recovery in order to prevent the need for future listings. Little in the DEIS shows that the BLM took into consideration these critical management concerns. See BLM Manual 6840.2.C (Implementation) (“BLM shall manage Bureau sensitive species and their habitats to minimize or eliminate threats affecting the status of the species or to improve the condition of the species habitat, by . . . [e]nsuring that BLM activities affecting Bureau sensitive species are carried out in a way that is consistent with its objectives for managing those species and their habitats at the appropriate spatial scale . . . [and] [c]onsidering ecosystem management and the conservation of native biodiversity to reduce the likelihood that any native species will

require Bureau sensitive species status”).

The DEIS notes that golden eagles are potentially nesting in the nearby mountain regions encircling the project and through surveys identified at least three eagle nests within 4-miles of the project. The DEIS fails to present exactly how it will mitigate the loss of a substantial amount of foraging habitat for the golden eagle, either as a result of this project, or cumulatively as a result of projects within the Piute-Eldorado Valleys. The fact still remains that significant amounts of foraging habitat will decrease carrying capacity of the landscape and could result in a potential loss of habitat needed to support a nesting pair, which would impact reproductive capacity.

The DEIS fails to disclose the number of pairs of golden eagles that could be affected by the proposed project. Scientific literature on this subject is clear - the presence of humans detected by a raptor in its nesting or hunting habitat can be a significant habitat-altering disturbance even if the human is far from an active nest¹⁰. Regardless of distance, a straight line view of disturbance affects raptors, and an effective approach to mitigate impacts of disturbance for golden eagles involves calculation of view sheds using a three-dimensional GIS tool and development of buffers based on the modeling¹¹. Also, since golden eagles use only a small subset of their home territories during nesting for foraging, these essential areas may include the proposed project site, however the DEIS does not analyze this important factor of nesting success.

While bald eagles are unlikely to utilize the project area for long-term habitat, they do utilize nearby Lakes Mead and Mojave during the winter. Nowhere does the BLM examine the likely or possible impacts on migrating or over-wintering bald eagles in this DEIS.

Because environmental review does not adequately identify or analyze impacts to eagles from the proposed project it is impossible for the BLM to ensure that the project is consistent with the Migratory Bird Treaty Act (16 U.S.C. § 701 *et seq.*) or the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), both of which prohibit take.

To address this data and analysis disclosure deficiency, the BLM must prepare a supplemental EIS containing said analysis. Further, the BLM should require that the proponent pursue an incidental take permit under the BGEPA as part of the terms and conditions of receiving a ROW Permit.

Other BLM sensitive species and migratory birds

While surveys were conducted for birds and bats, there was little to no disclosure of how the BLM intended to avoid, minimize or mitigate the potential impacts. Instead, it was inferred that the details would be worked out later in an avian and bat protection plan. This approach affords

¹⁰ Richardson and Miller. 1997. Recommendations for protecting raptors from human disturbance: a review. Wildlife Society Bulletin 25(3): 634-638.

¹¹ Camp, R.J., D.T. Sinton and R.L. Knight 1997. Viewsheds: a Complementary Management Approach to Buffer Zones. Wildlife Society Bulletin 25(3): 612-615; and Richardson and Miller. 1997. Richardson and Miller 1997

As discussed in the EIS, the Proposed Project would result in the loss of some foraging habitat for the golden eagle; however, the proportion of foraging habitat that would be lost due to the Proposed Project is small compared to the total amount of available foraging habitat within the Piute and Eldorado Valleys.

A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution) on birds. The intention is not to predict the number of fatalities due to turbine collision as pre-construction data poorly predicts fatalities for birds (Ferrer et al. 2012), but to determine if any species is at high risk to inform post-construction fatality monitoring.

the stakeholders little to no opportunity to review, analyze and comment on the effectiveness of the proposed measures and how they will affect the environmental impacts.

It must also be noted that the project area borders and engulfs an Audubon Important Bird Area (“IBA”), the Catclaw Washes IBA, which has formally recognized status at the state level.¹²

The unique vegetation of the washes supports a suite of bird species that is distinct from the surrounding desert. The washes were nominated and recognized for the critical resources they offer to Phainopepla, a species of concern in Nevada. Phainopepla rely heavily on the mistletoe seed crop produced in these areas, the mistletoe in turn is dependent on the catclaw acacia and mesquite as hosts. The Phainopepla also nest in the acacia and mesquite. The densities of Phainopeplas at this site are consistently among the highest in the state (only two other sites have comparable densities), and in some years, breeding success in Piute Valley is higher than anywhere else known. Moreover, the milder temperatures at this complex of sites may help Phainopeplas persist when they cannot occupy other sites in the state (sub-freezing temperatures cause mistletoe berries to freeze, leaving the birds nothing to eat). Many other species of concern in Southern Nevada utilize the tall shrubs and trees found in these washes. Many species of birds utilize these washes as stopover sites for migration gain opportunities for foraging, resting, and accessing surface water where it is available.¹³

Comment noted.

Comment noted.

2. The DEIS fails to Adequately Identify Appropriate Mitigation

Because the DEIS largely fails to provide adequate identification and analysis of impacts, inevitably, it also fails to identify adequate mitigation measures for the project’s environmental impacts. “Implicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ 42 U.S.C. § 4332(C)(ii), is an understanding that an EIS will discuss the extent to which adverse effects can be avoided.” *Methow Valley*, 490 U.S. at 351-52. Because the DEIS does not adequately assess the project’s direct, indirect, and cumulative impacts, its analysis of mitigation measures for those impacts is necessarily flawed. The DEIS must discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Methow Valley*, 490 U.S. at 352; *see also Idaho Sporting Congress*, 137 F.3d at 1151 (“[w]ithout analytical detail to support the proposed mitigation measures, we are not persuaded that they amount to anything more than a ‘mere listing’ of good management practices”). As the Supreme Court clarified in *Robertson*, 490 U.S. at 352, the “requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of [NEPA] and, more expressly, from CEQ’s implementing regulations” and the “omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA.”

Although NEPA does not require that the harms identified actually be mitigated, NEPA does require that an EIS discuss mitigation measures, with “sufficient detail to ensure that

BLM requires that mitigation measures are identified as a stipulation of the ROW Grant. Development of mitigation plans often requires input, review, and approval by other regulating agencies such as USFWS, NDEP, DAQ, and NDOT and are not typically completed prior to a Final EIS. However, all the elements and basic requirements of the mitigation plans are discussed throughout the EIS.

¹² For more information on IBA status and other terms, refer to:

http://web4.audubon.org/bird/iba/IBA_Status_Terms.html

¹³ See: <http://iba.audubon.org/iba/profileReport.do?siteId=981>

environmental consequences have been fairly evaluated” and the purpose of the mitigation discussion is to evaluate whether anticipated environmental impacts *can be avoided*. *Methow Valley*, 490 U.S. at 351-52. As the Ninth Circuit recently noted: “[a] mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.” *South Fork Band Council of Western Shoshone v. DOI*, 588 F.3d 718, 727 (9th Cir. 2009) (emphasis in original).

Here, the DEIS mostly relies on the preparation of future plans, with no specificity provided as to what the plans will do, and does not provide a full analysis of possible mitigation measures to avoid or lessen the impacts of the proposed project and therefore the BLM cannot properly assess the likelihood that such measures would actually avoid the impacts of the proposed project.

A supplemental DEIS must be prepared to provide the lacking specificity and details so that a meaningful evaluation of the proposal and its impacts can be achieved.

3. Selection of Alternative and Adequacy of the DEIS

NEPA’s disclosure goals are two-fold: (1) to insure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to insure that the public has sufficient information to challenge the agency’s action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 322, 349 (1989); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1151 (9th Cir. 1998). NEPA’s “sweeping commitment [is] to prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action.” *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321). The Council on Environmental Quality (“CEQ”) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 *et seq.*

NEPA requires agencies to prepare an EIS for any “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS must analyze the direct, indirect, and cumulative environmental impacts of the proposed action. Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. *Id.* at § 1508.8(b). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” *Id.* at § 1508. Cumulative impact results when the “incremental impact of the action [is] added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* at § 1508.7.

A major purpose of NEPA is to ensure that federal agencies conduct fully informed environmental decision-making. NEPA promotes its sweeping commitment to “prevent or eliminate damage to the environment and biosphere” by focusing the attention of federal decision makers and the public on the environmental and other impacts of proposed agency action. 42 U.S.C. § 4321. By focusing agency attention on the environmental and socioeconomic

All mitigation plans will be disclosed in the FEIS or as a stipulation of the ROW grant with the exception of the Site Rehabilitation and Facility Decommissioning Plan, which will be completed 6 months prior to project closure.

impacts of a proposed action, NEPA ensures that the agency will not act on incomplete information, only to regret its decision once finalized. See *Methow Valley Citizens Council*, 490 U.S. at 349. To that end, “[t]he sweep of NEPA is extraordinarily broad, compelling consideration of any and all types of environmental impacts of federal action.” *Calvert Cliffs’ Coordinating Comm. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971). An agency must “take the initiative of considering environmental values at every distinctive and comprehensive stage of the process.” *Id.* at 1111. Federal agencies must consider all reasonably foreseeable environmental impacts at the earliest possible stage of a project’s development and fully such impacts before making a decision to proceed with the project.

Under the NEPA regulations, a draft EIS “must fulfill and satisfy to the fullest extent possible the requirements established for final statements.” 40 C.F.R. § 1502.9(a). When a draft EIS “is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” *Id.* Substantial changes in the proposed action, or significant new circumstances or information relevant to environmental concerns, trigger a mandatory obligation to prepare a supplemental draft EIS. *Id.* § 1502.9(c)(1).

“NEPA’s public comment procedures are at the heart of the NEPA review process” and reflect “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.” *Cal. v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982). It is only at the stage when the draft EIS is circulated that the public and outside agencies have the opportunity to evaluate and comment on the proposal. *Id.* at 771. “No such right exists upon issuance of a final EIS.” *Id.* Consequently, an agency’s failure to disclose the impacts of a proposed action before the issuance of a final EIS defeats NEPA’s goal of encouraging public participation in the development of information during the decision making process. *Half Moon Bay Fishermans’ Marketing Ass’n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988).

BLM is required to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 CFR § 1502.15. The establishment of the baseline conditions of the affected environment is a practical requirement of the NEPA process. In *Half Moon Bay*, the Ninth Circuit states that “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” 857 F.3d at 510. Similarly, without a clear understanding of the current status of these public lands BLM cannot make a rational decision regarding proposed project. See *Ctr. for Biol. Diversity v. BLM*, 422 F. Supp. 2d 1115, 1166-68 (N.D. Cal. 2006) (holding that it was arbitrary and capricious for BLM to approve a project based on outdated and inaccurate information regarding biological resources found on public lands). As described throughout these comments, BLM has failed to provide accurate baseline information about a wide variety of resources at and surrounding the project site, including the status of the desert tortoise and other sensitive and rare plant and animal communities.

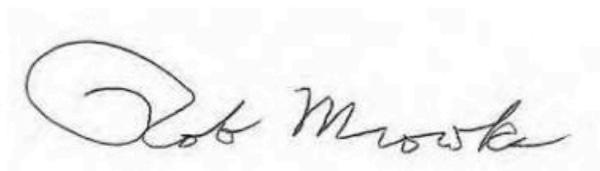
A draft Environmental Impact Statement must provide the public with sufficient information to permit meaningful consideration of the action under agency review. *Cal. v. Block*, 690 F.2d at 772. The DEIS here fails to provide sufficient information in several regards and requires supplementation and further opportunity for public review and comment.

Refer to Chapter 3-Affected Environment, which discusses in detail the baseline of the proposed project area.

Contributing to the deficiencies in the DEIS, the BLM fails to adequately disclose its reasoning for their preference of the 87 wind turbine alternative, other to state that because it disturbs marginally less land it results in the least environmental impacts. Only with respect to air quality and meeting state implementation plans is any specific rationale offered. The BLM must prepare a supplemental DEIS to disclose not only its rationale for the 87 turbine alternative, but also it should evaluate other configurations and designs that minimize the adverse impacts, particularly on birds and bats.

The Center appreciates the opportunity to comment on this project and hopes to be able to review the much needed supplemental DEIS prepared to address these and other comments.

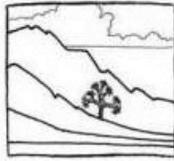
Sincerely yours in conservation,

A handwritten signature in black ink that reads "Rob Mrowka". The signature is written in a cursive, flowing style.

Rob Mrowka
Ecologist/Conservation Advocate

The provisions for preparation of a Supplemental EIS are described in 40 CFR 1502.9, (c) (1) (i), "The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

Preparation of a Supplemental EIS is not warranted because neither of these conditions apply, the proposed action has not been substantively changed since publication of the DEIS and no significant new information was provided or developed during the public comment period.



Basin and Range Watch

April 18, 2012

BLM, Las Vegas Field Office
Attn: Greg Helseth, Renewable Energy Project Manager
4701 N. Torrey Pines Drive
Las Vegas, NV 89130

ghelseth@blm.gov

BLM_NV_SNDO_SearchlightWindEnergyEIS@blm.gov

Dear Greg,

We would like to submit this supplement letter to the comment letter we signed on to for the Draft Environmental Impact Statement (DEIS) for the Searchlight Wind Energy Project (NVN-084626)

Basin and Range Watch signed on to the letter with Judy Bundorf and Friends of Searchlight Deserts and Mountains. While most of our ideas were represented in that letter, we would like to add this additional comment on Cultural Resources that was not covered in the original letter.

On Wednesday, April 10th, we traveled to Needles, California to interview Phillip Smith who is a Chemehuevi Elder. We wanted to ask him his opinion of how cultural artifacts and values would be impacted by the development of the proposed Searchlight Wind Energy Facility. Mr. Smith told us he does not represent the Chemehuevi Tribal Council, but is a concerned elder.

In order to keep this as accurate as possible, we have included the original notes from the conversation. Due to the sensitive nature of cultural resources, we would also like to request that this letter not be placed in the public comment viewing section of the Final Environmental Impact Statement.

Mr. Smith informed us that the Bureau of Land Management did meet with members of the local tribes, but very little specific information about what is actually out there was discussed.

In general, many of us are concerned that the BLM and Duke Energy failed to do a complete survey and inventory of the cultural resources located on the Searchlight Wind Energy site. Many of the prioritized renewable energy projects (formerly referred to as Fast Track Projects) have been approved with unsatisfactory biological or cultural surveys. The Genesis Solar Power Project just west of Blythe, California was approved by the Interior Department before adequate

The overall Project area has previously been disturbed from a century of mining activities. Tailings piles, adits, dirt roads, and prospects dot the landscape. The Class III cultural resources survey was conducted within the Project's linear Area of Potential Effect (APE), currently defined as any area to be disturbed plus a 200-ft. buffer around all project roads and facilities. The proponent would be required to stay within the Project's linear corridor and would not disturb non-inventoried lands if the Right-of-Way is granted.

cultural resource surveys could be conducted. As a result, federal and state agency officials caught off guard when large Earth movers-uncovered evidence of a human settlement that was possibly an ancient cremation site. <http://articles.latimes.com/2012/feb/11/local/la-me-solar-foxes-20120211>

The same deferred mitigation tactics are being used to review the Searchlight Wind Project. In order to prevent a repeat of the Genesis problem, we believe that BLM and Duke Energy will need to conduct more complete cultural resource surveys on the project site before a decision can be made about impacts to cultural resources.

Thank you,

Submitted by:

Basin and Range Watch

Kevin Emmerich

Laura Cunningham

P.O. Box 70

Beatty, Nevada, 89003

Interview with Phil Smith, Chemehuevi Elder, Needles, California. April 10, 2012.

Mr. Smith gave us his verbal permission to write down his statements and submit them on his behalf as comments to the Draft Environmental Impact Statement for the Searchlight Wind Energy Project in Clark County, Nevada. Notes taken by Laura Cunningham.

Phil Smith: Cottonwood Island is where Chemehuevi and Mojaves lived together on the island and intermarried, and they also came up through the Searchlight Hills. There is a woman who lives in Searchlight, she is a historian. She is in her nineties. She says there are some burial sites south of Cottonwood Road in the project site.

I looked around there, I found an old heavily used trail in the hills of the southern part of the project site. Maybe it goes through to Spirit Mountain or the River, and to Ivanpah. I just looked, I want to go back.

The bones at Searchlight, they would be Chemehuevi. If it was a cremation would be Mojave.

NHPA Law 106 means consultation. We had one visit with BLM (to the Searchlight Wind project site). Also Shoshone, Hualapai. One visit to look at tower sites. This is unfinished, we need more study, we need to come back on more visits, but we have not heard back from BLM. On our visit with BLM it was getting too hot so we stopped. But this is unfinished. They think they can get us

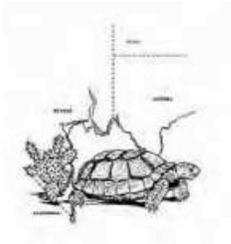
out there one time and that's it. For the coal burning plant in Ivanpah Valley SCE met with all the Tribes, in their tribal offices. But the solar companies, BLM, don't do this now.

There are many turtles there. Wildlife is returning there, we need to protect them.

The turbine view from Spirit Mountain is a concern.

This project needs to have a Cultural Monitor.

There were stories there before there were projects.



DESERT TORTOISE COUNCIL
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April 13, 2012

Via Email and U.S. Mail

Mr. Gregory Helseth
Bureau of Land Management
Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, NV 89130-2301
BLM_NV_SNDO_SearchlightWindEnergyEIS@blm.gov

Re: Draft Environmental Impact Statement for the Searchlight Wind Energy Project (NVN – 084626)

Dear Mr. Helseth:

The Desert Tortoise Council welcomes the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the proposed Searchlight Wind Energy Project (Searchlight WEP).

The Council is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range. Accordingly, our comments will focus on the potential impacts of the Searchlight Wind Energy Project to the Mojave desert tortoise and the tortoise populations on the proposed site.

The Council believes the potential impacts of Searchlight WEP on biological resources cannot be reduced to less than significant levels because the acreage provides especially valuable habitat for the conservation and recovery of the Federal listed Mojave desert tortoise. While the proposed site is not within a Desert Wildlife Management Area (DWMA), the *Desert Tortoise Recovery Plan* states: "Habitat outside DWMA's may

Comment noted.

provide corridors for genetic exchange and dispersal of desert tortoises among DWMAs” (1994, 60). The Mojave desert tortoise was listed as a “threatened species” under the Federal Endangered Species Act in 1990 because of the precipitous decline in desert tortoise numbers due to human-caused mortality and the destruction and fragmentation of desert tortoise habitat. Siting Searchlight WEP on occupied desert tortoise habitat would contribute directly to the continued decline of the Mojave desert tortoise. Given that desert tortoise populations have been extirpated or almost extirpated from large portions of their geographical range in Nevada, it is reasonable that this valuable habitat be protected for desert tortoise conservation rather than for energy generation.

Tortoise populations within the project area appear to be greater than populations within the adjacent DWMA. According to the *Range-Wide Monitoring of the Mojave Population of the Desert Tortoise: 2010 Annual Report* (USFWS 2010, Table 6) and *Range-Wide Monitoring of the Mojave Population of the Desert Tortoise: 2008 and 2009 Annual Report* (USFWS 2010, Table 11 & 12) populations in the Piute-Eldorado DWMA have ranged from 3.1 -3.7 tortoises per square kilometer. According to the Desert Tortoise Survey of the proposed Duke Wind Searchlight Wind Energy Farm (SNEI 2011) the tortoise density within the project area was approximately 8.2 tortoise per square kilometer. This density is more than two times higher than in the DWMA. The importance of the desert tortoise population at the proposed site and the necessity of protecting it is further supported by scientific evidence that the population density there is comparatively higher than other areas in Nevada. Protecting this tortoise population - part of the Eastern Desert Tortoise Recovery Unit - will contribute to ensuring the genetic diversity of the Mojave desert tortoise.

Of particular concern is the area north of Highway 164 where it appears from Figure 1 SNEI Desert Tortoise Survey the density could be around 16 tortoises per square kilometer. If the project is approved, wind turbine generators (WTG) 1-28 need to be removed from the project to protect this high population of tortoises.

According to the DEIS, the 96 WTG Alternative will permanently impact 160 acres and temporarily impact 249 acres of desert tortoise habitat. Because habitat recovers very slowly in the desert, all impacts should be considered permanent. Robert Webb explains that - depending on the assumptions of the model -“the extrapolated amount of time for complete or 90% recovery of compacted [desert] soils ranges from 80 to 120 years for course-grained soils...” He adds that severely disturbed sites “may require as little as a century or as long as several thousand years for full recovery of species composition” (2009). By way of illustration, Wilshire, Nielson and Hazlett report that “severely compacted soils at 29 of 31 abandoned military bases and mining town sites have not recovered even after 91 years without human occupation” and recovery of plants and animal species “is likely to take much longer, on the order of a millennium” (2008, 305).

The Cumulative Effects section in Chapter 4 only addresses known BLM projects that could be developed in the area. Are there other large-scale projects proposed for the area not on BLM land? If so, these also need to be addressed here.

Comment noted. BLM has completed consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (For details refer to Section 5.2.2-U.S. Fish and Wildlife Service Section 7 Consultation and Appendix B-2: USFWS Biological Opinion).

Comment noted.

Section 4.17.4-Reasonable Foreseeable Actions has been updated to include methodology on how non-federal projects and federal project near the Searchlight Wind Energy Project were identified for the cumulative analysis.

Direct and indirect impacts from the project will be long lasting. It will mean not only maintenance vehicles within the area, but, as mentioned in the document, increased traffic from OHV recreationalists which will further increase the potential of tortoise being struck by vehicles. Not only because of the increased roads in the areas, but because of the width and smoothness of the roads which will enable vehicles to travel at a higher rate of speed. It could also mean additional habitat disturbance within the area as vehicles travel off the main roads. Since there is likely to be more use in the area, there is also likely to be additional trash, bringing more ravens, which feed on juvenile tortoises.

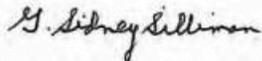
Mitigation provided in the DEIS does nothing to mitigate for the residual impacts to desert tortoises or other species on site.

The current rate of \$786/acre for loss of habitat seems low in light of the current market for land to use for alternative energy development and mitigation for other projects. In addition, due to the density of tortoise on the site, the mitigation ratio should be at least 3:1 for habitat compensation.

In sum, based on our assessment of the proposed project's location, configuration, minimal mitigation, residual and other potential impacts to desert tortoise, the Desert Tortoise Council believes there will be significant impacts to tortoises and recommends the No Project/No Action Alternative with respect to Searchlight Wind Energy Project.

Thank you for the opportunity to comment on the DEIS. Please contact me by telephone at (909) 946-5027, by e-mail at gssilliman@csupomona.edu, or by U.S. mail at the address below if you wish clarification of these comments.

Sincerely,



Sidney Silliman, Ph.D.
Desert Tortoise Council
1225 Adriana Way
Upland, CA 91784

References

Desert Tortoise Recovery Team, U.S. Fish and Wildlife Service. *Desert Tortoise (Mojave Population) Recovery Plan*. Portland: U.S. Fish and Wildlife Service, 1994.

SNEI Tortoise Survey of the proposed Duke Wind Searchlight Wind Energy Farm. 2011

U.S. Fish and Wildlife Service. *Draft Revised Recovery Plan for the Mojave Population of the Desert Tortoise (Gopherus agassizii)*. U.S. Fish and Wildlife Service, California and Nevada Region, Sacramento, California. 2008.

Comment is consistent with information already presented throughout Section 4.4-Biological Resources Impacts.

Residual impacts are defined as impacts that remain after mitigation measures have been implemented.

The rate is determined by USFWS and adjusted annually for inflation. At the time the DEIS was published \$786/acre was the rate; however, the rate is currently \$810/acres and this is reflected in the Biological Opinion.

Comment noted.

U. S. Fish and Wildlife Service. *Range-Wide Monitoring of the Mojave Population of the Desert Tortoise: 2008 and 2009 Annual Report*. Reno, Nevada: Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service. 2010.

U. S. Fish and Wildlife Service. *Range-Wide Monitoring of the Mojave Population of the Desert Tortoise: 2010*. Reno, Nevada: Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service. 2010.

Webb, Robert H. "Disturbance, Vulnerability, and Recoverability of Soils and Vegetation in the Mojave Desert." Presentation at the Southern California Botanists 35th Annual Symposium "Desert Botany: Bounty or Bust," California State University, Fullerton. October 17, 2009.

Wilshire, Howard G., Jane E. Nielson, and Richard W. Hazlett. *The American West At Risk: Science, Myths, and Politics of Land Abuse and Recovery*. New York: Oxford University Press, 2008.

April 18, 2012

RE: Comments on the Searchlight Wind Energy Draft EIS (NVN-084626 & NVN-086777)

Dear Mr. Helseth:

Please accept the following comments on behalf of our organization, the Nevada Wilderness Project (NWP). The NWP is a membership-based organization involving over 2,000 people. We serve as a catalyst for wildlife habitat conservation, wilderness preservation, and smart development of renewable energy. We have work on conservation issues affecting public lands and since our inception in 1999, we have successfully led statewide campaigns to protect more than 3 million acres as Wilderness and National Conservation Areas and have proffered advice, influence and commentary toward carefully-crafted land use policies and decisions. We acknowledge this nation's objective to reduce its emissions of greenhouse gases into the atmosphere and support the wise development of renewable energy pursuant to the Energy Policy Act of 2005 as one effort to achieve that objective.

We thank the Bureau of Land Management (BLM) for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) and Notice of Segregation addressing Duke Energy's (Applicant) request for a public lands right-of-way (ROW) grant for its proposed Searchlight Wind Energy Project (Project) near the town of Searchlight, Nevada. The DEIS also addresses the Western Area Power Administration's (Western) proposal (ROW application NVN-086777) to construct and operate its new switching station to interconnect electricity produced by the Project into its electrical grid. We also address this element of the development within our comments.

We support the Applicant's Project Alternative involving the placing of 87 wind turbine generators (WTGs), also identified as BLM's Preferred Alternative. As a conservation-minded organization NWP is not inclined to investigate the Applicant's business considerations, so we must assume that the preferred alternative represents the lowest footprint allowed while maintaining the Applicant's commitment to meet their power purchase agreement with Western. Given the choices, our support is principally founded on the fact that preferred alternative results in a reduced sum of disturbed acreage. We acknowledge the "fast-track" designation applied to the Project and the resultant determination that a No-Action Alternative is not considered within the DEIS.

Off Highway Vehicle (OHV) Traffic – The NWP recognizes that presently there are unimproved roads and trails within the Project area that now support limited vehicular use. Most of these roads were created many years ago to access mine sites. Others were used to access locations where artificial water developments, commonly called "guzzlers", were built for the benefit of area wildlife, specifically Gambel's quail. Transmission line maintenance roads were also established in the area. Accordingly, there has been and continues to be significant vehicular

A no action alternative is considered in the DEIS (Refer to Section 2.1.2.1-No Action Alternative).

access to the landscape of the Project area and beyond. However, given the nature of the habitat and the fact that these were and are not operationally maintained routes, many of the roads and trails have fallen into disrepair either because of natural effects or because of indiscriminate use by vehicle operators, most recently by OHVs classified as all-terrain vehicles – ATVs, or quads.

Because of the rough condition of these roads and trails, vehicles had to negotiate them at comparatively low rates of speed. We are concerned vehicle speeds will increase with the improvement of existing routes and the construction of new roads for the Project. The Applicant has addressed this for the construction phase of the Project by invoking a 15MPH speed limit by construction vehicles during period of high tortoise activity (see Applicant's Proposed Measures [APM] *MM BIO-3: Biological Opinion*). We can only speculate how much additional traffic will be encouraged by the improved roads and the speeds at which these vehicles will travel. Any increase in either traffic volume or rate of speed should be considered a hazard to ground-dwelling animals, particularly the slow-moving desert tortoise, Gila monster and a number of other reptiles.

The Applicant has offered the APM of a Traffic Management Plan (*MM TRAN-1*) for the Project's construction phase. We advise that a post-development traffic plan is necessary to monitor these concerns and to act on them if the monitoring data indicates that actions to ameliorate impacts are necessary. This plan would extend beyond the APM for mitigation described within *MM BIO-1: Interim Reclamation*. Actions described within the plan could involve fencing and gating to deny access just within the Project area and construction of an access road for recreationists that circumvents the Project area. At a minimum we believe that signage should be erected that cautions vehicle operators to be mindful of animals on these roads and trails during critical time periods, these being agreed upon by biological experts.

Desert Tortoise – The Project area exists within habitat designated as “moderate” for tortoise population occurrence. This is habitat that tends to have a greater slope and is often characterized by rocky terrain. We are concerned that the criteria used for this designation may overlook tortoise observation biases within the landscape in this zone; the ability for an observer to see a tortoise relative to the clutter (rocks, scree, plants) within the view area. Simply, tortoises are easier to see in washes than they are amidst ground littered with rocks, vegetation and other physical masses.

We assume that the Applicant, having received considerable comment regarding the impacts to this threatened species, exercised diligence in the final configurations of the 96 and 87 WTG layout alternatives. One would assume that the clustering of the towers could mitigate land disturbance, particularly in avoidance of tortoise impacts. However, it is also apparent that the disciplined search protocols employed by the Applicant's biological contractors resulted in the location of a surprising number of tortoises within the Project area and that the locations were well-distributed therein. We believe that construction of WTG cluster 53-86 will be particularly problematic in creating direct tortoise mortality.

Post-construction traffic would be limited to maintenance vehicles and is not expected to affect the current level of service of the existing recreational and local traffic; therefore an additional Traffic Management Plan would not be warranted.

Comment noted.