Organizations

18,949 acres. Which is correct? Has applicant gotten permission from Southwest Gas to build a road on/adjacent to the high pressure gas pipelines? DEIS at 3-48. As stated earlier, building roads and transporting heavy construction equipment over a shallow buried high-pressure gas pipeline will present a major safety hazard, as will excavation for underground collection lines.

The DEIS presents inaccurate information about the effects on private property of the development project, stating that "the 5.5% of the project area that includes privately owned parcels would not be affected by the construction, O&M, or decommissioning of the Proposed Project, as it has been sited to specifically avoid privately owned parcels." DEIS 4-56. This ignores not only the effect on property values within the project site, but also the effect on private property values in the surrounding area that is affected by the visual and noise impacts from the project, which can extend for miles from the industrial wind facility. Studies elsewhere have shown that property values near wind turbines drop up to 30% to 40%. Exhibits 31 and 32. How the DEIS can state that these parcels would not be affected defies believability. Applicant should be required to purchase all private property, both residential and open land, within two miles of the project area at current market value (that is, pre-wind turbine value). Regarding future roadway improvements, the DEIS states again that the project will increase access for motorized traffic. DEIS at 4-58. By whom and to where? Whose destination would be a lovely day having a picnic at a site 886 feet from an operating wind turbine?

P. The DEIS fails to give adequate consideration to cumulative effects.

The consideration of cumulative effects in the DEIS is inadequate. In its EIS, an agency must also consider the proposed action along with other actions, "which when viewed with other proposed actions have cumulatively significant impacts." 40 C.F.R. § 1508.25(a)(2). A cumulative impact is defined as "the impact on the environment which results from the incremental impact of the actions when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions." 40 C.F.R. § 1508.7. Under NEPA, cumulative impacts include direct as well as indirect effects, "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(a).

In analyzing the cumulative effects of a proposed action, an agency must do more than just catalogue "relevant past projects in the area." *City of Carmel-by-the-Sea*, 123 F.3d at 1160. The EIS "must also include a 'useful analysis of the cumulative impacts of past, present and future projects.'" *Id*. This means a discussion and an analysis in sufficient detail to be "useful to a decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts." *Id*. The cumulative impacts analysis for a proposed project must examine past, present, and proposed/reasonably foreseeable actions that have cumulatively significant impacts or are similar in timing or geography. 40 C.F.R. §§ 1508.7, 1508.25, 1508.27(b)(7); *Tomac v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006). Agencies may not avoid NEPA compliance by excessively segmenting projects into smaller parts. Instead, they must consider "connected actions" and "cumulative actions" within the same analysis. 40 C.F.R. § 1508.25. Actions are "connected" if they cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a large action and depend on the larger action for their justification.

Southwest Gas Corporation holds a ROW grant from BLM for an existing gas line within the project area. BLM ROW grants are non-exclusive. BLM Reserves the right to grant other actions within a ROW area. Searchlight Wind Energy LLC would be required to coordinate its construction and operational activities with existing adjacent ROW holders to facilitate their continued safe operations.

The updated Socio analysis presented in Section 4.12-Socioeconomic Impacts, indicates there would be no effect on property values. Refer to Appendix F: Literature Review of Socioeconomic Effects of Wind Project and Transmission Lines for a more information.

Section 4.17.5-Potential Cumulative Impacts describes the consideration of indirect and direct cumulative effects in situations where relevant information is either incomplete or unavailable.

The EIS identifies two potential wind energy projects (e.g. Castle Mountain Searchlight Project and Piute-Eldordo Valley Energy), one solar project (Searchlight Solar Project),and the Mead-Searchlight 230-kV Transmission Line as projects with potential cumulative impacts to the Project. Table 4.20-1-Cummulative Effects Summary, contains a summary of the potential cumulative effects of the 87 WTG Alternative and the 96 WTG Alternative when considered with other reasonably foreseeable projects The EIS contains a "useful analysis of an analysis of the cumulative impacts of past, present and future projects." City of Carmel-by-the-Sea v. U.S. DOT, 123 F.2d 1142, 1160 (9th Cir. 1997).

The analysis of the cumulative impacts of the four other potential projects is an analysis of all past, present, and reasonably foreseeable actions. Tomac v. Norton, 433 F.3d 852, 864 (D.C. Cir. 2006). The cumulative impacts analysis in the EIS has been updated and identifies: (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in the from the proposed project; (3) other actions - past, present, and proposed, and reasonably foreseeable - that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate". Id. The Project is not segmented, but rather, is analyzed in its entirety in the DEIS.

40 C.F.R. § 1508.25(a)(1). Cumulative actions are those "which when viewed with other proposed actions have cumulatively significant impacts." 40 C.F.R. § 1508.25(a)(2).

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7. "To consider cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing [an action agency's] decisions, can be assured that the [agency] provided the hard look that it is required to provide." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998). The cumulative effects of the proposed action, combined with the cumulative effects of other proposed actions, must be described in detail. *Muckleshoot Indian Tribe*, 177 F.3d at 810. Broad and general statements "devoid of specific, reasoned conclusions" are not sufficient; neither are one-sided cumulative impact statements. *Id.* at 811. NEPA requires informed decisionmaking—and BLM has not undertaken any meaningful analysis of the cumulative effects to desert tortoise populations, other avian species, other wildlife, scenic resouces and other resources in conjunction with existing, pending, or planned projects and actions that also may impact these resources—for example, other energy projects currently under development or planned in desert tortoise habitat or the industrialization of the unspoiled landscapes of the southwestern deserts.

The DEIS's discussion of cumulative effects is inadequate in a variety of ways. It improperly restricts the spatial scale for the consideration of its effects. DEIS at 4-129. The chosen "project area and an immediately adjacent buffer sized 25% larger than the project area" ignores that the project has impacts on a desert tortoise species which is in decline and under pressure from energy development throughout its range. At an absolute minimum, given the serious impacts to this species, the DEIS should evaluate the Eastern Mojave Recovery Unit as the relevant cumulative impacts area. The rationale provided for selecting a smaller area is arbitrary and designed to avoid BLM's duty under NEPA.

Consequently, the DEIS fails to evaluate adequately the cumulative effects of the project site and transmission lines on the surrounding ACEC, and particularly on the desert tortoise for which the ACEC has been designated as critical habitat. The DEIS fails to provide any concrete analysis of cumulative impacts, instead providing largely generic descriptions devoid of any cumulative impact analysis specific to the proposed project. For example, the DEIS fails, for example, to study cumulative impacts to desert tortoise and their habitat with respect to impacts from energy development, habitat fragmentation, irretrievable loss of finite availability of land with unindustrialized viewsheds, and so forth, on a landscape level. As described above, the DEIS includes no adequate discussion about direct and indirect impacts to desert tortoise, bighorn sheep, and bald and golden eagles and other avian and sensitive species and their habitat—let alone an analysis of cumulative impact. Thus, there is no discussion of the direct impacts of the project on tortoise and other species and nor of how tortoise populations are doing in the immediate surrounding areas. There is no discussion of how other agency actions within BLM's jurisdiction, including permitting of utility-scale energy generation and transmission projects, cumulatively impact the resources affected by this generation and transmission project.

Furthermore, the DEIS cannot rely on mere cursory descriptions of past actions to satisfy

Table 4.17-1. Cumulative Effects Summary contains quantified and detailed information on the potential cumulative impacts of the four identified reasonably foreseeable future projects. The analysis contains details regarding air quality and climate, noise, geology and minerals, soils, water resources, biological resources, cultural resources, paleontological resources, land use, recreation, visual resources, transportation, hazardous materials, social and economic conditions and environmental justice. Table 4.17-1. Cumulative Effects Summary contains specific, detailed information and conclusions regarding each of these resources. It also contains a discussion of the cumulative impact on the tortoise population and bird and bat populations and visual resources.

The geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making. In many cases, the analysis should use an ecological region boundary that focuses on the natural units that constitute the resources of concern.

The USFWS has evaluated the project effect on desert tortoise population in the Biological Opinion (Appendix B-2: USFWS Biological Opinion).

The proposed project area is not currently designated as an ACEC. Areas immediately surrounding the project area plus a 25% buffer were evaluated in Section 4.17-Cumulative Impacts Analysis. The ACEC is discussed in Section 1.4.1-Public Scoping Process, Section 4.8-Land Use Impacts, and Section 4.10-Noise Impacts.

its responsibilities under NEPA. DEIS at 4-130 to 4-132. This represents a lack of an honest cumulative impact analysis in this DEIS. Combined with the other deficiencies identified in these comments, including the inadequate set of "alternatives" identified, suggests that the DEIS's cumulative impacts analysis, may be a *pro-forma* exercise designed to justify a previously-made decision. This is impermissible under NEPA. *See, e.g., IlioUlaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1101–02 (9th Cir. 2006). Courts have made clear that the presentation of information on present effects of past actions must be "quantified and detailed." *Or. Natural Res. Council v. BLM*, 470 F.3d 818, 822 (9th Cir. 2006). Failure to quantify or detail the degree to which each factor is currently being impacted by past actions violates NEPA. *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 995 (9th Cir. 2004). Similarly, providing only "general statements about possible effects and some risk" is insufficient to constitute the "hard look" required by NEPA. *Id.*

The cumulative impacts regulation unambiguously provides that the agency must consider all "other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions," including actions that are "individually minor." 40 C.F.R. § 1508.7. In many instances, particularly with respect to impacts to desert tortoise and golden eagles and other avian species, the DEIS states that information simply is not available or that quantification of impacts is impossible. The courts clearly have required that an agency provide a justification in its environmental analysis for why more definitive information cannot be provided. *See Neighbors of Cuddy Mountain*, 137 F.3d at 1379-80. It is BLM's obligation to collect this information, evaluate it, and present it for public review and comment.

In addition to presenting insufficient evidence of cumulative effects, the DEIS makes false statements about the unavoidable adverse impacts and irreversible and irretrievable commitments of resources. For example, BLM states, with respect to impacts to visual resources, that, because the project is expected to be decommissioned, "visual impacts would disappear." DEIS at 4-125. This is false, because the DEIS recognized on the previous page that there will remain longer-term effects of removal of vegetation which will may not grow back, leaving residual visual effects. But it is also false because, if the life of the project is at least 30 years (DEIS at 4-41), but could be extended to 50 years or more (DEIS at 4-104), the visual resources are essentially gone for 30 to 50 years … that is a lifetime for many people. To say that there is not anticipated to be any irretrievable commitments of recreational resources is false. The resource is lost for at least two generations. This cannot be considered a short-term impact.

BLM's statement is analogous to saying that there is no irreversible and irretrievable commitment of resources from logging because trees will, eventually, grow back. Courts have repeatedly rejected such interpretations the concept of "irreversible and irretrievable commitments of resources." *See, e.g., Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1054 (9th Cir. 1994) ("timber sales constitute *per se* irreversible and irretrievable commitments of resources under § 7(d)").

The BLM is not required to list or analyze the effects of individual past actions unless such information is necessary to describe the cumulative effect of all past actions combined. Under NEPA, agencies retain substantial discretion as to the extent of such inquiry and the appropriate level of explanation. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 376-77 (1989). "Generally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions." CEQ Guidance on the Consideration of Past Actions in Cumulative Effects Analysis, June 24, 2005.

Section 4.17.5-Potential Cumulative Impacts evaluates the cumulative impacts of both the current setting, which includes past projects as well as all reasonably foreseeable future actions. In addition, past projects with a potentially cumulative impact to the proposed project are encompassed in the entire document, in particular, Chapter 3-Affected Environment, which discusses in detail the "Affected Environment."

NEPA regulations require that cumulative impacts be "considered" (Neighbors of Cuddy Mountain vs. USFS, 137 F.3d 1372, 1379 (9th Cir. 1998)). Section 4.17.5-Potential Cumulative Impacts evaluates the cumulative impacts of both the current setting, which includes past projects as well as all reasonably foreseeable future actions, and the impacts to the present setting by past actions are carried through the entire EIS, in particular, Chapter 3-Affected Environment. The cumulative impacts analysis need not consider the impacts of past or reasonably foreseeable development that is unrelated to the impacts of the proposed action (Don't Ruin Our Park v. Stone, 802 F. Supp. 1239 (M.D. Pa. 1992))).

NEPA Section 101 2(c)(iv) requires a detailed statement on any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. The "commitment of resources" refers primarily to the use of nonrenewable resources such as fossil fuels, water, labor, and electricity. A commitment of resources is "irreversible" when its impacts limit the future option for a resource and an "irretrievable" commitment refers to the use or consumption of resources that is neither renewable nor recoverable for later use by future generations. The long term impacts to resources resulting from the proposed project will be both renewable and recoverable for use by future generations at the termination of the proposed project.

Irreversible and irretrievable resource commitments are related to the use of non-renewable resources and the effects that the use of those resources have on future generations. The long term impacts to resources resulting from the proposed project will be both renewable and recoverable for use by future generations at the termination of the proposed project.

1. The DEIS does not disclose the cumulative effects of the project on desert tortoise.

The DEIS does not disclose the existence of the May 2011 Recovery Plan for the tortoise and provides no information about what effect the take of (at least) the 122 tortoises discovered during the limited site inventory will have on the species' survival and recovery, either in the Eastern Mojave Recovery Unit or throughout its range. BLM ignores the most recent scientific evidence that demonstrate the existential threat to tortoises from unbridled energy development throughout its range, and ignores the question of whether the extirpation of tortoises from the construction and operation of the Searchlight Wind Project, including from critical habitat surrounding the project site, will—cumulatively with other impacts to tortoise—hasten the extinction of the species. There is no quantification of how many tortoises are likely to be affected, or how that total compares to the local population in the ACEC, or on the population of tortoises in the Eastern Mojave Recovery Unit and elsewhere through their remaining range. There is no explanation of how the amount of adversely-affected habitat compares to the tortoise's remaining habitat. The DEIS offers no justification of why this information cannot be provided in this environmental analysis. *See Neighbors of Cuddy Mountain*, 137 F.3d at 1379-80.

Nowhere in the DEIS is there any information quantifying the impacts of other current and proposed energy development projects on desert tortoise. DEIS at 4-131. The DEIS improperly limits even the narrative, qualitative discussion it provides to a few actions taking place in the immediate vicinity of the project site. This is an improperly narrow definition of the cumulative effects analysis necessary to satisfy NEPA. What are the cumulative effects of habitat loss for tortoises from energy projects and other disruptions to and fragmentations of its habitat? How many tortoises are being displaced in Nevada and surrounding states by other energy projects? How would reasonably foreseeable developments of solar and wind energy on public lands within tortoise habitat affect the regional and local populations? If other past, present and future actions are already having an unacceptable impact on tortoise, what is the incremental effect that displacing a population with higher density that almost any other surveyed population have on the potential of desert tortoises to avoid extinction? BLM must answer all of these questions in a supplemental DEIS because they should have been answered in this DEIS.

Without any quantification or detail of the likely cumulative effects, there is no way for the public to understand the magnitude of the effects predicted—just a laundry-list of effects that might occur. NEPA requires BLM to do more than this. A recurring deficiency in the DEIS is BLM's generic statements about possible effects, of unknown extent, followed by a statement that information is not available. Nowhere in the cumulative effects section does the DEIS explain why more definitive information cannot be provided. This violates NEPA and must be addressed by BLM by gathering the requisite information to make *informed* decisions about the tortoise that would be affected by the project.

BLM's "lack of knowledge does not excuse the preparation of an EIS; rather it requires the [agency] to do the necessary work to obtain it." *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 733 (9th Cir. 2001); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998) ("'general statements about "possible" effects and "some risk" do not

The BLM's responsibility to address potential cumulative impacts is established in 40 CFR 1502.22(b), which states that "If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include with the environmental impact statement: (1) A statement that such information is incomplete or unavailable. . . " Section 4.17.4-Reasonable Foreseeble Actions has been updated to include the statement that such information is incomplete or unavailable. Accordingly, the discussion of the impacts of those projects is, therefore, adequate.

The geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making. In many cases, the analysis should use an ecological region boundary that focuses on the natural units that constitute the resources of concern.

The USFWS has evaluated the project effect on desert tortoise population in the Biological Opinion (Appendix B-2: USFWS Biological Opinion).

constitute a "hard look" absent a justification regarding why more definitive information could not be provided'") (citing *Neighbors of Cuddy Mountain,* 137 F.3d at 1380). BLM must identify all places where the DEIS refers to unavailable information or insufficient information and "do the necessary work to obtain" this information to form a basis of reasoned decisionmaking on any ROW grants.

This area of southern Nevada has experienced below-normal rainfall levels in the last two years. Please provide information about the current climatic conditions in the project area and evaluate how this will affect the tortoises when combined with the effects of construction and operation of the project.

2. The DEIS fails to quantify the likely cumulative impact of the project on other wildlife, including birds, bats and desert bighorn sheep.

Nowhere in the DEIS is there data quantifying the likely cumulative effect of past, present and future actions involving transmission lines on wildlife. It is well known that wind energy turbines and transmission lines kill birds. For example, in addition to the deadly Altamont site, the USFWS has documented 54 golden eagle kills by industrial-scale wind energy facilities. Exhibit 12 at 1. Yet the DEIS makes no quantitative estimate of the likely adverse impacts to golden eagles, bald eagles, burrowing owls, and other avian species from the construction of the project, when combined with all past, present and reasonably foreseeable future projects affecting golden eagles and other bird species which use the project site, nearby Lake Mohave , or which pass through the Piute Valley along the Pacific Flyway. DEIS at 4-131.Without a quantitative estimate of likely impacts, the cumulative effects analysis violates NEPA.

The DEIS's cumulative impacts analysis of avian species is similarly deficient. DEIS at 4-131. A total of seven species of raptor and 57 species of other birds were recorded on the project site in 2007–2009. DEIS at 3-31. BLM should prepare an independent analysis (in conjunction with the federal expert wildlife agency, USFWS) regarding the baseline populations of birds present or migrating through the project site and disclose this information in a supplement to the DEIS along with information about the impacts of various alternatives on these other bird species. Even if only a few red-tailed hawks or turkey vultures are killed or displaced it is significant from a conservation perspective. The Migratory Bird Treaty Act does not allow for incidental take, and *any* bird kill by wind turbines is a violation of the Act. As windpower projects expand, it is reasonable to expect that the overall number of mortalities will increase significantly—especially if the expansion is done in a manner that fails to consider impacts to wildlife.

Similarly, BLM has an obligation to ensure that activities affecting BLM sensitive species be consistent with management of those species *at the appropriate spatial scale*. BLM Manual 6840.2.C. For bighorn sheep, this means an evaluation of the cumulative impacts on the sheep that range through the Newberry and Eldorado mountains and for whom the project site is an important movement corridor and winter habitat. BLM has failed to provide any cumulative analysis of effects on bighorn sheep at the proper spatial scale. DEIS at 4-131. Nor has BLM provided any cumulative effects analysis on other BLM sensitive species, including bats, Gila

Effects of rainfall were taken into consideration relative to desert tortoise in preparation of the Biological Assessment and the findings were presented in the EIS in Section 3.4.4.2-Existing Environment. The USFWS desert tortoise survey protocol provides survey methodology to determine presence/absence and abundance of desert tortoises for projects. Their model is based on the probability that a desert tortoise is above ground and includes required input relative to the previous winter's rainfall (October through March). The source of weather information was specifically provided by USFWS, namely; http://www.wrcc.dri.edu/cgi-bin/cliMAIN.pl?nv7369.

For a variety of reasons Altamont fatality numbers may be an outlier with regard to golden eagle fatalities at wind energy facilities. In addition to the dense configuration of older-generation turbines, high prey densities and lack of breeding eagles possibly attract sub-adults and floaters to the Altamont, contributing to the high activity and high fatality rates. In addition, the limited amount of repowering that has occurred at Altamont suggests that eagle (and raptor) fatality rates will decline as the older turbines are replaced by fewer, taller, and higher power-rated turbines. Initial results of the repowering suggest that golden eagle fatality rates could decline by more than 80% with complete turbine replacement and comparable power output (Insignia 2009; Smallwood and Karas 2009; ICF 2011).

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 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.

At the time baseline surveys were completed for the project, Nevada had no official policy or protocols for avian pre-project surveys so protocols were developed between BLM and NDOW. In summary, two years of point count surveys, two seasons of raptor nest surveys, two years of bald eagle winter use surveys, and an aerial survey to assess the use of raptor nests were conducted.

No permitting framework exists that allows a company to protect itself from liability resulting from take at wind facilities; however, the USFWS does not usually take action under the MBTA if good faith efforts have been made to minimize impacts. 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).

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3. The DEIS fails to discuss the cumulative effects of other energy projects and transmission lines.

The DEIS also fails to consider the cumulative effects of other energy projects currently being developed in desert tortoise habitat and which would affect other resources, such as golden eagles, impacted by the turbines at the Searchlight Wind Project site and the associated transmission line. The Searchlight Wind Project is not an isolated development projects, but rather part of a concerted BLM effort to reach the goal of producing 10,000 MW of energy from renewable sources on public lands by 2015. This goal is defined explicitly as a "need" for this project. BLM must provide an evaluation of the cumulative effects of this project when combined with all other past, current, and reasonably forseeable future projects that are being developed to meet the 10,000 MW goal, so that the public and the Secretary in deciding whether to approve the ROWs for this project can understand the context of the project in the overall impact of the push to industrialize federal public lands, and whether in that context this project should, or should not be, approved.

Refer to Section 4.17-Cumulative Impacts analysis for a discussion of cumulative impacts.

In southern Nevada alone, BLM currently has approved or pending 31 renewable energy generation and transmission projects, with a total of 5,585 MW of generation capacity project. *See* SNDO Renewable Energy Map, on enclosed CD-ROM and available at http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/southern_nevada_renewable.html. These projects will have extensive cumulative effects on the residents and tourists in this region, on the wildlife species that live and migrate through there, and on the scenic and spiritual resources there. BLM must evaluate the impacts of these projects together as part of the cumulative effects analysis because the affect the same resources that the Searchlight project would affect.

The projects identified within the area of cumulative effect were evaluated in Section 4.17.5-Potential Cumulative Impacts.

The DEIS's designation of the project site plus a 25% "buffer" as the cumulative impacts evaluation area ("project vicinity") is arbitrary. DEIS at 4-129. Several resources that would be impacted directly by the Searchlight project are also under threat from other energy development projects. For example, the Piute-Eldorado Valley ACEC will be affected visually and by the sound from Searchlight on the south, but also is being affected by development of solar energy near Boulder City on the north edge. The Techren Solar Project, intended to generate 300 MW of power, recently submitted an application to the Public Utilities Commission that would allow construction on 2,200 acres within the Boulder City limits. Exhibit 35 (April 4, 2012 Legal Notice). The Boulder City limit adjoins the ACEC its north side, and the resource for which the ACEC was established—the desert tortoise—will suffer from loss of habitat and habitat connectivity within this critical habitat. BLM must evaluate the foreseeable impact of the Techren Solar Project along with other nearby energy projects that, cumulatively with the Searchlight project, will affect the ACEC and the imperiled tortoise.

The geographic boundaries of the cumulative impacts analysis identified in the comment are described in the EIS in Section 4.17.5-Potential Cumulative Impacts. The geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making. In many cases, the analysis should use an ecological region boundary that focuses on the natural units that constitute the resources of concern.

Furthermore, BLM has not evaluated at least one renewable energy development project that is reasonably foreseeable to be developed within the 25% "buffer" around the project site. American Capital Energy is planning to construct a 20 MW solar array on a site in close

Section 4.17.4-Reasonable Foreseeble Actions has been updated to include the Searchlight Solar Project (e.g. American Capital Energy).

proximity to the northwestern border of the Searchlight project site. Exhibit 36. In 2009, American Capital Energy entered into a long-term Power Purchase Agreement with Nevada Energy for the power to be generated from the Searchlight Solar Project, which is scheduled for completion in 2012. *See id.* Yet the DEIS does not mention or evaluate this reasonably foreseeable project almost adjacent to the Searchlight Wind project site, and which will have similar impacts to visual and aesthetic resources and desert tortoises. Similarly, the DEIS claims that three wind projects slated for development in the vicinity of the Searchlight project "were considered," but the DEIS cumulative effects analysis table provides no details about what impacts those projects would have on resources—tortoises, golden eagles, visual and scenic resources, cultural and spiritual resources, tourism, and the local communities—that Searchlight Wind also would adversely affect. DEIS at 4-128 to 4-132.

In addition, USFWS's The May 2011 desert tortoise Revised Recovery Plan discloses that over 6,350 MW of renewable power has been permitted or is pending permission on the public lands in desert tortoise habitat. Recovery Plan at 16. According to the Recovery Plan, USFWS has not evaluated the long-term effects of large-scale energy development fragmenting or isolating desert tortoise conservation areas and cutting off gene flow between areas of critical habitat and in high-quality tortoise habitat that is not designated as critical habitat. *Id.* BLM must coordinate with USFWS and produce that information for public review as part of an overall evaluation of the cumulative impact of this project and other renewable energy development projects on the tortoise. There are several nearby solar and wind energy development projects approved and proposed that will impact tortoises, and impacts may be far greater than anticipated at the approval stage. *See, e.g.* Exhibit 9 (describing that 166 tortoises have been removed from the BrightSource project in Ivanpah Valley, despite a pre-construction survey that found only 16 tortoises); *id.* at 5 (map showing solar projects affecting tortoises in the area surrounding the Searchlight project site.

The USFWS has evaluated the project effect on desert tortoise population in the Biological Opinion (Appendix B-2: USFWS Biological Opinion).

In particular, BLM should disclose the ongoing efforts of the agency in cooperation with the State of California to develop and bring federal land use planning into conformance with the Desert Renewable Energy Conservation Program ("DRECP"). On April 4, 2012, BLM announced its intention to prepare an environmental impact statement for amendments to BLM land use plans in California to accommodate the DRECP. 77 Fed. Reg. 20,409 (Apr. 4, 2012). These amendments will be intended to advance state and federal conservation goals in the California desert adjacent to southern Nevada—including protection of the threatened desert tortoise—while identifying "the most appropriate locations" for utility-scale renewable energy resource projects. BLM must evaluate whether it should "call a time out" on approval and development of projects in Nevada while there is a comprehensive planning process currently going on that will more sensibly protect the same resources in the same desert where Searchlight Wind would be built.

Comment noted.

The impacts of this transmission development have dramatically changed landscapes throughout thousands of acres of rural Nevada and adjoining states along with countless scenic vistas. This development is also killing or displacing an unknown number of birds and ongoing damage to cultural resources is occurring from the excessive ground disturbance and road building. The rapid expansion in industrial-scale solar and wind energy has occurred without any

programmatic review of the impacts of the generating sources, the existing transmission system, or the demands for new transmission lines. This has also occurred without an adequate understanding of how much renewable energy development the grid can accommodate and how projects could be prioritized for grid access based on environmental impacts. These significant changes warrant preparation of a comprehensive cumulative impacts analysis. The DEIS must be substantially revised to reflect the project's contributions to the impacts of wind and solar energy development in the Mojave Desert southern California and Nevada as part of a proper cumulative effects analysis.

CONCLUSION

The DEIS barely scratches the surface of the analysis which BLM is legally obligated to perform under NEPA, and provides no information whatsoever about options that BLM is considering for complying with its substantive obligations under FLPMA, the Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and other statutory, regulatory and policy obligations. It is inadequate to understand, much less evaluate, the likely impacts of the project on desert tortoise, golden eagles, and the residents and tourists who depend on the current character of the surrounding lands which would be changed to their detriment for the foreseeable future.

As a result, the DEIS has failed to take a "hard look" at the issue before BLM, and cannot support any decisions by BLM other than to adopt the "no action" alternative and deny the ROWs requested on public lands the agency administers. The inadequacy of the DEIS, at a minimum, requires the preparation and issuance for public review of a supplemental DEIS addressing the deficiencies in the current document. However, the unacceptable impacts of the project on desert tortoises, golden eagles and other wildlife, the obliteration of scenic and spiritually-significant viewsheds, and the destruction of the current character and economy of the area are evident even from the limited information currently disclosed. As a result, we urge the BLM to adopt the "No Action" alternative (Alternative A) and deny ROWs for this project.

Sincerely,

s/ Judy Bundorf
Friends of Searchlight Desert and Mountains
Henderson, Nevada &
Grandpa's Road, Searchlight, Nevada

s/ Kevin Emmerich
s/ Laura Cunningham
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Enclosures

Comment noted. For compliance details for these issues refer to Section 5.0-Consultation and Coordination, Appendix B-2: USFWS Biological Opinion, and Appendix B-4: Bird and Bat Conservation Strategy.

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.