

California Desert and Solar Working Group

c/o Resources Legacy Fund
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September 14, 2009

Solar Energy PEIS – Solar Energy Study Areas
Argonne National Laboratory
9700 S. Cass Avenue
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Please accept and fully consider these comments on behalf of the California Desert and Solar Working Group. We are an informal working group formed earlier this year to examine ways to balance the need for timely development of utility-scale solar energy sources with the need to protect desert ecosystems, landscapes and species. Our group, which is currently focused on desert ecosystems and potential solar energy projects in California, includes representatives of solar energy companies, the electric utility sector, desert conservation groups, environmental groups and philanthropies. On a number of previous occasions, we have told the Administration, including officials at the Department of the Interior (DOI), that we are very supportive of the Bureau of Land Management's focus on potential study zones for the solar programmatic environmental impact statement (PEIS). We appreciate the opportunity now, as part of this process, to identify solutions to renewable energy siting issues that can meet the Administration's climate goals while safeguarding the nation's valuable natural and cultural resources. In particular, we appreciate this opportunity to work together and with the Administration to produce a plan that promotes environmentally-responsible renewable energy development and transmission.

In our view, this PEIS should lead to the establishment of a comprehensive program for managing solar development on federal public lands (i.e., lands managed by the Department of Defense (DOD) and Bureau of Reclamation (BuRec) as well as the Department of Energy (DOE) and the Bureau of Land Management (BLM)) that includes designation of appropriate lands for solar development in the short term and a process for identifying lands for such development in the long term, based on environmental and technical analyses (including insolation levels) as well as transmission and other infrastructure considerations. The PEIS and the resulting program should also serve as the basis upon which others, including the State of California, can come together with DOI and other federal land managers to formulate a comprehensive program that addresses development of renewables, i.e., wind and geothermal as well as solar, across multiple jurisdictions, private and public alike, in California.

According to the BLM, this PEIS is "one of several on-going DOI initiatives in support of the President's New Energy for America Plan that sets a target of ensuring that 10 percent of U.S. electricity is generated from renewable sources by 2010, rising to 25 percent by 2025."¹ In addition to examining the "environmental effects of all solar energy technologies that are ready for deployment at utility-scale," the PEIS will study in-depth 24 tracts of land, referred to as Solar Energy Study Areas (SESAs), in six western states.² The draft version of the PEIS is not

¹ BLM, Qs & As: BLM Solar Programmatic Environmental Impact Statement (PEIS), June 29, 2009, p.1.

² Id.

expected to be made public before late fall 2009.³ Accordingly the likely completion date will not be before spring 2010.

At the same time that the BLM and DOE are preparing the PEIS,⁴ the Bureau will also “continue to process all existing applications”⁵ – which total 225⁶ – beginning with the so-called “fast track” projects.

Clearly, a great deal is being asked of BLM staff in connection with the overall effort – which we support – to get more renewable energy generated and on line to consumers. Equally clearly, these related responsibilities will strain the agency’s existing staff. Given the staffing needs involved in both processing the fast track applications and preparing the PEIS including analyzing the SESAs, we urge the Bureau to ensure that it has sufficient staff to ensure that both of these efforts can move forward in a timely and efficient manner with adequate resources to ensure robust environmental review.

The remainder of our comments is organized in five sections. The first section consists of comments on the SESAs, the criteria that were used for their selection and the need for the PEIS to consider alternative areas. The second section focuses on the Solar Energy Zones (SEZs). The third section addresses the need for federal-state cooperation and coordination while the fourth section discusses other topics that need to be addressed in the PEIS including the need to provide a clear process for going forward to identify more or enlarged study areas and zones as well as coordination with other ongoing related process. The final section discusses longer term planning for renewables development on the public lands.

Comments on the SESAs

The process used to select the SESAs needs to be clarified. The BLM’s success in generating public support for its new solar program and the designated SEZs depends in large measure on the degree to which the PEIS reflects a commitment to transparency. To date, the approach to the SESAs has been anything but transparent.

In its “Qs and As” document, the BLM purported to identify the criteria that were used to identify and select SESAs.⁷ A number of these criteria are vague or hard to document. These include “areas where the BLM has made a commitment to take certain actions with respect to sensitive species habitat” and “areas designated ... for right of way avoidance or exclusion.”⁸ As a result, it is difficult to understand how they were applied. Equally importantly, the list provided is incomplete.

Different states used different criteria as was made clear in connection with a teleconference held on August 24, 2009 by BLM officials with environmental advocates. For example, California included lands in SESAs that had solar applications filed on them while other states excluded all lands with applications from SESAs. The actual criteria that were used by the

³ Id., p. 2.

⁴ Id., p. 1.

⁵ Id., p. 9.

⁶ Id., p. 8. Of these, about 158 are considered ‘active’ applications. Id.

⁷ *Qs & As: BLM Solar Programmatic Environmental Impact Statement (PEIS)*, available on-line at: http://www.doi.gov/news/09_News_Releases/SolarEnergyQA.pdf

⁸ Id., p. 3.

states/field offices have not been made available to the general public.⁹ No explanation has been provided for these differences, let alone why a single uniform list of criteria was not used by all.

We recognize that there may be important regional differences, such that one single set of criteria might not be sufficient for all states identifying SESAs. Nonetheless, there must be a single, core set of criteria used in each state and that set must be provided to the public along with an explanation of why each of those criteria was included. These core criteria should include at least the following: 1) proximity to existing transmission infrastructure¹⁰ or BLM-designated corridors; 2) high quality of solar insolation; 3) slope appropriate to different technologies; 4) preference for disturbed lands; 4) low probability of conflicts involving adjacent land uses and 5) no known significant resource conflicts.

To reflect a commitment to transparency, the PEIS needs to clarify the SESA selection process. Specifically, the PEIS needs to document for each state what criteria were used and how they were applied to the SESAs that have been proposed, including maps and links to GIS data.¹¹ In addition, explanations for inclusion of any other state-specific criteria must be supplied. Documentation of the actual application of the criteria in the Draft PEIS is essential because, as it stands now, it appears that some lands were included in SESAs even though they do not meet the criteria set out in the Qs and As while others that did meet the criteria were excluded. For example, while Arizona excluded areas with wildlife corridors per the published criteria, California did not.

The PEIS must consider additional SESAs. To comply with the National Environmental Policy Act (NEPA) and specifically its alternatives requirement,¹² the PEIS must consider additional SESAs. In addition, alternative SESAs should be considered in order to address the possibility that not all lands within the SESAs identified to date will be suitable as well as the likelihood that some SESAs will be dropped.

Because one of the goals of NEPA's alternatives analysis is to identify more environmentally benign options, the additional SESA options that BLM should consider include smaller areas that would accommodate solar development – no other state has SESAs as large as California. The BLM should also consider areas on military lands and other lands managed by DOE and BuRec that are potentially appropriate for solar development and mitigation, given the long term possibility of conversion. The fact that DOE is a co-preparer of the PEIS and that BuRec is a sister agency within the Department of the Interior will hopefully make this task easier.

In identifying alternative SESAs, BLM should also give consideration to areas suggested by environmental and industry stakeholders. Although our group is not now in a position to endorse any particular additional areas, we know that suggestions will be forthcoming from various stakeholder groups and believe that they will be helpful to the BLM in its efforts to identify additional alternative areas. In addition, BLM should consider BLM-managed lands that are adjacent to already disturbed private lands, where the combination of these two types of land could sustain solar development. We understand that some such areas have already been suggested by California environmentalists and desert activists.

⁹ Participants in the referenced teleconference were provided with lists of criteria used by three states.

¹⁰ For purposes of this comment letter, "transmission" is defined as exclusive of "gen-ties."

¹¹ The teleconference referred to above revealed that different field offices used different data sets in identifying SESAs and the PEIS should also address these differences.

¹² 43 U.S.C. §§ 4332(2)(C)(iii), (E).

Lastly, we encourage the BLM to continue to look for other high insolation environmentally appropriate lands that should be considered for solar development. Our group pledges to continue to work with the agency to identify these areas. We understand that existing resource management plans may have to be amended to accommodate the results of these efforts in the future.

The PEIS should include comparative analyses of the proposed SESAs and alternatives within each state. These analyses are necessary to ensure that the areas selected to become SEZs do in fact provide the most energy with the fewest resource conflicts, environmental impacts and development hurdles. The core criteria that we have urged above be developed and applied consistently to all lands in current and potential SESAs will be very useful in carrying out these analyses.

As part of its consideration of SESAs, the BLM should undertake a programmatic Section 7(a)(2) consultation with the U.S. Fish and Wildlife Service (USFWS). To the extent possible, this Section 7 consultation should also seek to provide project-level take coverage under the federal Endangered Species Act.

We believe that such a consultation is legally required,¹³ and are concerned that the failure to consult could make the entire process legally vulnerable with potential attendant delays. We are also concerned that, if a Section 7 consultation is not commenced now, it will have to be carried out at a later date, and accordingly, will delay the timeline for implementation of actual near-term projects.

We have been given to understand that USFWS and BLM instead intend to undertake Section 7 consultations in connection with specific project proposals for which right of way applications have been filed.¹⁴ While some of these project-specific consultations will be pursued in parallel with the Solar PEIS effort, reducing the timeline to completion for those *particular* projects, complete reliance on project-specific consultations alone has several disadvantages in comparison to consolidated consultation. First, project-level consultation biases siting decisions toward those sites for which applications have been filed, erasing some of the planning benefits of the Solar PEIS effort. A programmatic consultation will help BLM guide developers toward the optimum sites with the least impacts to listed species and habitats. Second, a single, consolidated Section 7 consultation is likely to be more efficient than multiple project-level processes. Third, such consolidation is likely to result in greater consistency across projects. Fourth, a programmatic consultation could provide landscape level analysis of direct and indirect impacts, a robust analysis of cumulative impacts to species and habitats, and a basis for developing large scale coordinated mitigation measures. Finally, a completed Section 7 consultation with incidental take coverage for particular SEZs, as appropriate, will enhance the value of those sites for potential developers and thus the likelihood of speedier development. As the BLM, USFWS and the California Energy Commission (CEC) and Department of Fish and Game (DFG) have all recognized, in general a programmatic consultation with a project-level component for near-term projects will best serve the goal of developing BMPs “and other appropriate . . . guidelines to assist solar . . . developers with siting projects in environmentally suitable locations”¹⁵

¹³ Notably, a Section 7 consultation was done for the Wind PEIS.

¹⁴ This information was provided by a USFWS employee at a public meeting on California’s Desert Renewable Energy Conservation Plan in Victorville, CA on June 18, 2009.

¹⁵ Memorandum of Understanding Between the California Department of Fish and Game, the California energy Commission, the Bureau of Land Management, and the U.S. Fish and Wildlife Service Regarding the

Comments on the SEZs

The fate of projects outside SEZs must be clarified. As indicated above, all of the group participants understand that BLM intends to continue to process applications for projects outside of the proposed zones during this planning process. As a result, there may be several so-called “fast track projects” which will be processed before zones are designated. Once the planning process is completed and the BLM identifies SEZs, the environmental stakeholders want BLM to limit solar development to projects in the SEZs in order to encourage projects to be located only in designated zones. Solar companies would like the BLM to preserve the flexibility to approve solar development and additional projects outside of the SEZs if the projects meet an appropriate set of environmental and development criteria.

If the BLM does not agree to limit development to the SEZs, however, all of the group participants are agreed that BLM must, at minimum, adopt a set of clear criteria upon which field offices can reject projects outside of the SEZs in order to prevent sprawl of energy infrastructure on public lands, both generation and transmission, and to avoid wasting agency resources.

These criteria would ensure that projects outside of the SEZs that were in areas of high environmental conflict or that required new transmission or significant upgrades to transmission lines outside of existing or designated corridors on BLM lands would be rejected by BLM at the beginning of the permitting process. Conversely, projects outside of zones that might be environmentally appropriate include projects sited on brownfields, abandoned mine sites, or other disturbed lands.

The PEIS should outline the process for determining which new projects will be accepted in SEZs. The PEIS must clearly explain how the BLM will treat both existing applications in SESAs that are not identified “fast track” projects and new applications in SESAs. We all agree that we want to deter speculation, ensure that the most suitable lands for renewable development are well-utilized for this purpose, and that there needs to be a fair return for use of public lands.

Further, we agree that the BLM must develop appropriate mechanisms that create opportunities for legitimate project proponents and for appropriate technologies, while recognizing that some technologies may be better or less well-suited for some lands, and that it may be desirable to co-locate combinations of solar technology types to prevent shading in order to maximize electrical output, for example.

As part of this process, the BLM should create standards for rejecting existing and new project applications for lack of technical and financial feasibility. Significant controversy has been created around solar development particularly in the California Desert because the BLM has not said “no” to *any* proposed projects due to technological infeasibility or lack of adequate financing. To identify projects that are likely to be financial viable, BLM should adopt guidance providing for initial screening and increased scrutiny as each project moves forward toward approval. For example, final approval of projects should be conditioned, for financial

Establishment of the California Renewable Energy Action Team, November 17, 2008, p. 2 (hereinafter “2008 MOU”). Accessible at <http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/pa/energy.Par.76169.File.dat/RenewableEnergyMOU-CDFG-CEC-BLM-USFWS-Nov08.pdf>

feasibility, on having a power purchase agreement, independent financing or demonstrable evidence of qualifications for a DOE loan guarantee. Submission of an interconnection request to the appropriate transmission service provider, such as California Independent System Operator (CAISO), and a queue position should also be required.

Technical feasibility should require that each project proponent has identified land, in terms of qualities and quantities, that is reasonably suitable to their technology, taking into consideration the size of the intended project, applicable technical criteria as well as water availability and compatibility with other prevailing environmental factors. By the time of project approval, the applicant should be required to show that its technology has been successfully demonstrated, or that it has qualified for a federal, state or local emerging technologies program.

As part of the process of weeding out unlikely projects, BLM should also consider requiring project applicants to adhere to specific timetables, including timetables for submitting complete plans of development and for curing deficient submissions.

BLM should further ensure that each SEZ is utilized to its maximum capability, contributing clean, reliable and sustainable power to the grid while minimizing overall greenhouse gas and other emissions. To achieve this goal, BLM should work in cooperation with DOE, the CEC, and grid reliability entities (including CAISO, NERC and WECC) to evaluate whether promoting a diversity of solar and other renewable energy technologies with complementary power characteristics within each SEZ would allow it to provide energy that is more easily and reliably integrated into the grid, lessening greenhouse gas and other emissions that would otherwise result from additional use of conventional resources. For example, photovoltaic plants continue to provide power from indirect insolation during cloudy days, when insolation is insufficient for solar thermal facilities; solar thermal's smoother output curves and potential storage could in turn fill in the more step-like output expected from photovoltaic plants or intermittencies from other renewables. Working together, differing solar technologies could provide stable and reliable power, reduce grid operators' need for conventional plants to make up for intermittent availability, and lessen the likelihood that solar and other renewable resources would have to be curtailed when conventional resources are committed to address intermittencies. BLM's SEZ planning and policies should take these factors into consideration to ensure that the SEZs fully achieve their environmental and energy goals.

Cooperation between Other Federal and California State Agencies is Essential

The PEIS needs to be closely coordinated with the other federal and California state agencies that are currently undertaking overlapping planning efforts and/or have regulatory jurisdiction over renewable energy siting and development. The goal of this coordination should be the greatest degree of consistency that reasonably can be achieved. Consistency is particularly important regarding the broad-scale aspects of the program, in particular the location of the SESAs and the SEZs, the siting and project approval criteria, and the mitigation for impacts to State and/or federally listed species and habitats and other potentially significant impacts.

Coordination is particularly important with the other signatories to the 2008 MOU with BLM - the CEC, the DFG, and USFWS. We urge you to fully implement the goal of the 2008 MOU to facilitate coordination "to reduce the timelines for siting, development, permitting and construction of qualifying RPS projects in the Mojave and Colorado Desert regions while enhancing and maximizing environmental protections." Coordination is also needed with other

key state and federal entities, including the California Public Utilities Commission (PUC), CAISO, DOD, and U.S. Forest Service.

It is important to note that transmission still remains a constraint to new renewable resource development in California, and it is important for the BLM to work actively with the CAISO, the PUC and other relevant agencies toward timely and environmentally sound transmission development to access zones.

Key processes currently underway that will require particular attention include the Renewable Energy Transportation Initiative (RETI), the Desert Renewable Energy Conservation Plan (DRECP), and the project-level reviews of the “fast track” projects seeking to commence construction by the end of 2010. BLM’s PEIS work and specifically the information that it generates need to inform these other related processes and the information those processes generate needs to be taken into account by the BLM as timetables allow.

Failure to coordinate would risk inconsistent approaches, second-guessing, uncertainty and potential delay in the implementation of appropriate projects. In contrast, effective coordination can – and should – lead to improved administrative efficiencies, through unified data gathering, analysis and compiling processes, and the assignment of tasks to minimize duplication and to allocate them to achieve effective and efficient results that meet all requirements. To the extent possible, BLM’s efforts should be undertaken in ways that will provide documents that can be used directly in the processes of other agencies such as the CEC and CDFG, which is particularly important given the resource constraints currently faced by certain state agencies.

BLM should utilize all of the available tools for working with these other agencies, including the Renewable Energy Action Team (REAT) established in the 2008 MOU, the scoping and comment process on the PEIS, and ongoing staff-to-staff contacts. As indicated above, we also recommend that a formal Section 7(a)(2) consultation be undertaken with the USFWS.

Desert Renewable Energy Conservation Plan. We request that the Bureau of Land Management actively participate as one of the key agencies in the State of California’s DRECP. We would like to see the Solar PEIS effort coordinated as closely as possible with the DRECP and vice versa. For example, any biological information from the Solar PEIS, such as information on listed species and BLM special status species, should be shared with the California DFG and the CEC, which are the state lead agencies on the DRECP. And, any conservation planning or biological information generated by the DRECP should be included in the BLM Solar PEIS. We believe that, while the timing of the Solar PEIS and DRECP may not mesh together perfectly, both efforts should be coordinated to the maximum extent possible in order to achieve the best possible conservation planning outcome.

RETI. BLM has been a participant in RETI since its inception and RETI’s CREZ – Competitive Renewable Energy Zones – have clearly been considered by the BLM in developing the proposed SESAs for California. It is essential that BLM officials make sure that RETI participants understand the PEIS process, including its timeline and the options under consideration, and that they are kept fully up to date as to progress and results so that their assumptions, planning and recommendations are based on full and accurate information.

Other topics need to be addressed in the PEIS

The PEIS needs to address what happens after SEZ designation. The PEIS should delineate a clear process for identifying and selecting additional study areas and zones in the years to come, as needed.

The PEIS must present a thoughtful and simple process for mitigation for projects within zones that yields comprehensive, positive environmental benefits, including species, habitat and wildlife corridor protection. The PEIS must assess and present the scientific basis for the proposed mitigation measures in order to show they will be effective. Given the limited availability of private land available for acquisition in the vicinity of many of the proposed projects, BLM should consider other off-site mitigation measures as well.

The PEIS should also provide a similar comprehensive and effective mitigation plan for any projects outside zones if the BLM decides to move forward with processing some projects outside of designated zones, for example, on disturbed lands, brownfields or abandoned mine sites.

Looking forward

To guide longer term planning for renewable energy development on public land, the Obama Administration should develop a planning process with the states, the utilities, transmission planners and all relevant federal agencies to establish national and state targets for renewable production on public lands. The targets would create a common set of expectations about the scope of renewable energy development envisioned for each state that would help the BLM manage stakeholder expectations and concerns. As we envision them, these targets would not be an RPS requirement nor another directive for utilities. They would be expressed as megawatt goals (probably ranges) that could and should be revisited and adjusted at regular intervals to reflect new policies and guidelines at both state and national levels as well as on-the-ground experience with, for example, SEZ energy production and private land development

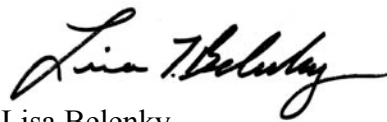
Conclusion

In conclusion, we thank you again for your commitment to developing an environmentally responsible solar development program on our public lands and for considering our comments. If you have any questions about these comments or think we can help you in any way, please do not hesitate to contact us.

Sincerely,



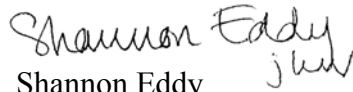
Rainer Aringhoff, President
Solar Millenium



Lisa Belenky
Center for Biological Diversity



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Defenders of Wildlife



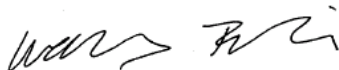
Shannon Eddy
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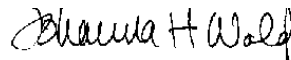
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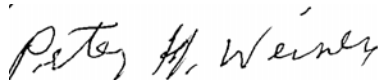
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