



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331

www.defenders.org

August 27, 2012

Mike Pool
Acting Director, U.S. Bureau of Land Management
1849 C Street, NW Room 5665
Washington, D.C. 20240

Submitted via Overnight Mail and electronic mail

Re: Protest of the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States and Proposed Bureau of Land Management Resource Management Plan Amendments (77 Fed. Reg. 44267, July 27, 2012)

Dear Acting Director Pool:

By this letter **Defenders of Wildlife** (Defenders) formally protests the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Final EIS) and associated Proposed Resource Management Plan Amendments (RMP Amendments). This protest is being filed in accordance with 43 C.F.R. § 1601.5-2. Defenders reserves the right to supplement this protest.

This protest stems from our belief that BLM has failed to adequately fulfill its planning and management responsibilities for the affected public lands and their associated biological resources and values, issues described in detail in our comments on the Draft Programmatic Environmental Impact Statement (DEIS) and Supplement to the DEIS.

(i) Protesting Party: Contact Information and Interests

This Protest is filed on behalf of Defenders of Wildlife, its board, staff, and members by:

Erin Lieberman
Acting CA Program Director
Defenders of Wildlife
1303 J Street, Suite 270
Sacramento, CA 95814
916-313-5800x109
Elieberman@defenders.org

Defenders interests in the final EIS and associated RMP amendments are detailed in our comments which include: scoping comments on the Solar Energy Programmatic Environmental Impact Statement on July 15, 2008; scoping comments on maps and additional information on September 14, 2009; comments on the Draft Programmatic Environmental Impact Statement (DEIS) on May 1, 2011; and comments on the Supplement to the Draft Programmatic Environmental Impact Statement on January 27, 2012. All of the comments and references submitted by Defenders are incorporated herein by reference.

Defenders is a non-profit environmental organization with more than 1,000,000 members and activists nationally. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities. We work with local communities, land owners and government leaders to encourage common-sense solutions that protect the interests of wildlife and wild places.

(ii) A statement of the issue or issues of the FEIS and Proposed Amendments being Protested

As we transition toward a clean energy future, it is imperative for our future and the future of our wildlife and wild places that we strike the proper balance between addressing the near-term impact of large scale solar development with the long-term impacts of climate change on our biological diversity, fish and wildlife habitat, and natural landscapes. We believe the Final PEIS has failed to provide the balance we are seeking with regard to the desert tortoise and various BLM-designated Sensitive Species and their habitats.

We protest the decision in the FEIS not to exclude 1,216,689 acres of “variance lands” identified by the U. S. Fish and Wildlife Service (FWS) as Priority 1 and Priority 2 connectivity habitat as a violation of BLM Manual 6840 and 6500 and the Endangered Species Act (ESA) section 7(a)(1).

We protest the inclusion of BLM-designated Wildlife Habitat Management Plan Areas in certain Solar Energy Zones in California and as variance lands.

(iii) Concise Statement Explaining the Various Ways the Bureau of Land Management Acted Unlawfully or in Error

I. The FEIS Does Not Comply with BLM Manual 6840: Special Status Species Management and BLM Manual 6500: Wildlife and Fisheries Management

The FEIS does not comply with BLM Manual 6840: Special Status Species Management and BLM Manual 6500: Wildlife and Fisheries Management, for the following reasons:

The proposed action is inconsistent with the BLM's obligation to conserve and/or recover listed species and the ecosystems on which they depend so that ESA protections are no longer needed as well as its obligation to "restore, maintain, and *improve* wildlife habitat conditions." In order to be consistent with agency policy, the Solar Energy Program should exclude connectivity habitat to both facilitate species recovery and maintain wildlife habitat conditions necessary for recovery. In our comments on the Supplement, Defenders recommended that BLM exclude from development all lands identified as Priority 1 and Priority 2 (P1 and P2) as determined by the FWS. FWS had identified a total of 1,648,314 acres of P1 and P2 lands in the Supplement (not including overlaps of these designations). Unfortunately, the Final PEIS excluded only 431,625 acres of Desert tortoise priority habitat, leaving 1,216,689 acres -- nearly 75% -- of P1 or P2 lands potentially available for development.

The decision to leave lands identified as priority habitat by the FWS in the final program is inconsistent with the agency's own guidance to "conserve" listed species and maintain wildlife habitat conditions.

II. The FEIS Does Not Comply with the Endangered Species Act Section 7(a)(1)

Under section 7(a)(1) of the ESA, BLM is explicitly obligated to use its existing authorities to affirmatively conserve ESA listed species. Section 7(a)(1) is designed to ensure that federal agencies "conserve" listed species. Given that impacts of renewable energy development on Desert tortoises and their habitat could include "...habitat fragmentation, isolation of desert tortoise conservation areas, and the subsequent possibility of restricted gene flow between these areas" (Revised Recovery Plan, Preamble, p. iii), the Bureau has a responsibility to take actions consistent with the conservation of the species when it plans for renewable energy development and otherwise.

BLM's failure to exclude P1 and P2 lands from variance lands is inconsistent with the Revised Recovery Plan for the Mojave Population of the Desert Tortoise, which calls for:

- 1) ***Recovery Action 2.9, Secure lands/habitat for conservation*** - conserving sensitive areas that would connect functional habitat or improve management capability of surrounding areas, such as inholdings within tortoise conservation areas that may be open to renewable energy development; and

- 2) **Recovery Action 2.11, Connect functional habitat** - connecting blocks of desert tortoise habitat, such as tortoise conservation areas, in order to maintain gene flow between populations.

BLM's failure to exclude from development all Desert tortoise connectivity or linkage habitats identified by the USFWS is a violation of the Sec. 7(a)(1) mandate to affirmatively conserve the species. As we noted in our comments on the Supplement, successful recovery of the desert tortoise requires that existing populations and their higher rated habitats are protected from deleterious human impacts. If recovery actions are to be successful to the point of promoting population increases, BLM must manage its lands to allow for continued use and potential population increases in response to successful recovery efforts. By keeping those lands must suitable for tortoises potentially available for development, this effort will likely never be realized in contrast to the direction of Sec. 7(a)(1).

III. The FEIS Does Not Exclude Public Lands Designated for Sensitive Species Habitat Conservation in Cooperation with the California Department of Fish and Game under Sikes Act Authority

Although BLM stated in the FEIS that certain public lands intended to be managed for sensitive species conservation in cooperation with the State wildlife agencies were excluded from development (i.e., Exclusion #7, Table 2.2-2), in some cases these lands are in fact included in developable areas in the maps and data layers published with the FEIS.

As raised in our comments on both the DEIS and the Supplement to the DEIS, the California Desert Conservation Area Plan of 1980 (CDCA Plan) and the Northern and Eastern Colorado Plan amendments of 2002 (NECO Amendments) established certain Wildlife Habitat Management Areas (WHMAs) for sensitive species habitat management in cooperation with the California Department of Fish and Game under authority of the Sikes Act.

1. **NECO Amendments.** NECO Amendments designated Multi-species WHMAs and Bighorn sheep WHMAs (See NECO Amendments, Map 2-21, Map 2-18). Lands proposed for solar energy development in the Riverside East SEZ include these designated WHMAs, which is contrary to the solar development exclusion areas in the FEIS.
2. **CDCA Plan.** The CDCA Plan established numerous WHMAs for management of sensitive species which were identified for cooperative management with the California Department of Fish and Game under provisions of the Sikes Act. According to the wildlife element of the CDCA Plan, WHMAs and their associated site-specific plans are one of two primary management tools designed to achieve the objective of the CDCA to protect wildlife habitat important to a suite of species. The Imperial East SEZ overlaps with the designated East Mesa WHMA for the Flat-

tailed horned lizard, a BLM sensitive species, and is proposed for solar energy development in the FEIS. The CDCA Plan indicates the East Mesa WHMA is to be managed cooperatively with the California Department of Fish and Game under provisions of the Sikes Act. This is contrary to the solar energy exclusion areas in the FEIS. See CDCA Plan, Wildlife Element, Table 2 and Map No. 3 (WHMA #70 East Mesa Flat-tailed Horned Lizard Habitat)

In order to avoid significant impacts to important desert resources, the above types of lands in the Riverside East SEZ and Imperial East SEZ should be excluded from development.

In addition, certain variance lands also overlap with WHMAs designated in the CDCA Plan and NECO Amendments. Inclusion of variance lands available for solar development with these conflicts is contrary to the exclusions described in the FEIS; the CDCA Plan WHMAs were established for cooperative management with the California Department of Fish and Game under Sikes Act authorities.

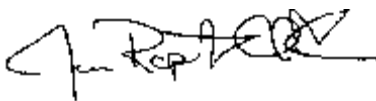
Failure to exclude WHMAs from solar energy development is a violation of the Federal Land Policy and Management Act (FLPMA) with regard to management of public lands and resources in the California Desert Conservation Area. Specifically, failure to exclude these areas is a violation of Section 601 of the FLPMA because the CDCA Plan was prepared by BLM "to establish guidance for the management of the public lands of the California Desert ...in clear accordance with the intent of the Congress and the people of the United States, as expressed in the law." (CDCA Plan, as amended, Concepts of the Plan, page 5).

CONCLUSION

We respectfully request that the BLM Director provide an opportunity for Defenders to discuss and negotiate resolution to the issues identified above through a protest resolution meeting as promptly as possible.

Thank you for consideration of this protest.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Rappaport Clark". The signature is stylized and somewhat cursive.

Jamie Rappaport Clark
President and CEO
Defenders of Wildlife