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DESERT TORTOISE COUNCIL
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February 10, 2010

Via Email at CA690@ca.blm.gov and U.S. Mail

Bureau of Land Management
Needles Field Office
Attention: George R. Meckfessel,
Planning and Environmental Coordinator
1303 South U.S. Highway 95
Needles, CA 92363

Re: Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment, Ivanpah Solar Electric Generating System (07-AFC-5)

Dear Mr. Meckfessel:

The Desert Tortoise Council is a private, non-profit organization made up of hundreds of professionals and lay-persons who share a common fascination with wild desert tortoises and a common commitment to advancing the public's understanding of the desert tortoise. Established in 1976 to promote conservation of the tortoise in the deserts of the southwestern United States and Mexico, the goal of the Desert Tortoise Council is to assure the perpetual survival of viable populations of desert tortoise within suitable areas of its historical range.

It is our considered recommendation that the Bureau of Land Management (BLM) should reject BrightSource Energy's applications for four ROW grants to construct its Solar Electric Generating System (ISEGS) on 4,073 acres of public land in the Ivanpah Valley. While we recognize that solar power facilities are an allowable use of Multiple Use-Class L lands as classified in the California Desert Conservation Area (CDCA) Plan of 1980, as amended, the BLM should select the "No Project/No Action Alternative" analyzed in the *Final Staff Assessment/Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment for the Ivanpah Solar Electric Generating System* (FSA/DEIS) for the sufficient reason that the ROW applications fail to satisfy the fourth Decision Criterion in the Energy Production and Utility Corridors Element in Chapter 3 of the CDCA Plan to "avoid sensitive resources wherever possible" (1999, 93). Specifically, the Proposed Action Alternative fails to avoid significant and adverse impacts to the Northeastern Mojave Desert Tortoise Recovery Unit of the Federally-listed Mojave desert tortoise.

The U.S. Fish and Wildlife Service (USFWS) ruled on April 2, 1990, that the survival of the Mojave population of the desert tortoise was threatened under the Federal Endangered Species Act and deserving of special protection. As you well know, the Endangered Species Act requires that agencies consult with USFWS is to ensure that proposed actions do not jeopardize the survival of listed species or adversely modify critical habitat. Whether ISEGS jeopardizes the survival of the Mojave desert tortoise or one of its distinct population segments must, therefore, be an primary consideration of the BLM's in its decision on the BrightSource Energy ROW applications.

We further assert that, with respect to the potential impacts of ISEGS on the Mojave desert tortoise, the essential decision framework for the BLM is that ISEGS is proposed for construction within the Northeastern Mojave Desert Tortoise Recovery Unit. The Biological Assessment emphasizes that the proposed site is located within the southeastern portion of the planning area boundary of the *Northern and Eastern Mojave Desert Management Plan* (Biological Assessment 2009, p. 3-1). While an accurate statement geographically, the key consideration for the BLM must be that the construction of ISEGS will directly, indirectly and cumulatively impact the Northeastern Mojave Desert Tortoise Recovery Unit.

The Northeastern Recovery Unit is one of the six Desert Tortoise Recovery Units designated in the *Desert Tortoise (Mojave Population) Recovery Plan* (1994). These populations were previously and appropriately identified based on genetics, behavior, ecology, geographic isolation, and morphology. Since the Recovery Plan was published, a number of studies have compared tortoises between different Recovery Units and confirmed biological differences among the populations. Most recently, "*A Genetic Assessment of the Recovery Units for the Mojave Population of the Desert Tortoise...*" (Murphy, et al. 2007) presents new evidence that tortoises in the Recovery Units constitute distinct populations, confirming the validity of the 1994 Plan's six Recovery Units. Given that the Northeastern Recovery Unit is a distinct and evolutionary significant population of the threatened Mojave desert tortoise, the BLM is legally obligated, as Chapter 3 of the CDCA Plan asserts, to "avoid sensitive resources" in granting any ROW.

The importance of avoiding impacts to the Northeastern Desert Tortoise Recovery Unit is underscored by our conviction that the cumulative impacts of ISEGS and the other energy projects proposed for the vicinity could result in the loss of the Northeastern Mojave Desert Tortoise Recovery Unit as a viable population in the northern Ivanpah Valley. The recent history of the desert tortoise is that entire populations have been extirpated in numerous areas of the Mojave Desert due to the cumulative impacts of human activities, and we fear that this will be repeated in the Ivanpah Valley. Indeed, the potential cumulative impacts to the desert tortoises and supporting habitat within the Northeastern Mojave Recovery Unit are alarming. Direct, indirect and cumulative impacts of the proposed ISEGS project on the desert tortoise include destruction and loss of high quality habitat, take of the population, population fragmentation, and compromised viability. Should the ISEGS project, the DesertXpress High-Speed Passenger Train, the upgrade of the 35-mile Eldorado-Ivanpah Transmission line, and the proposed OptiSolar (First Solar) power project all become a reality, impacts to the habitat supporting tortoises in this recovery unit may be insurmountable and could endanger this distinct

tortoise population. These cumulative impacts are even more staggering when the facilities proposed by Nextlight Renewable Power on 7,840 acres of high quality tortoise habitat in the eastern side of the Valley are factored in.

BLM and Energy Commission staffs "have concluded that without mitigation the ISEGS project would be a substantial contributor to the cumulatively significant loss of Ivanpah Valley's biological resources, including the desert tortoise..." (FSA/DEIS 2009, 6.2-2). As specified in BIO 18, staff proposes to mitigate the impacts of the project by acquiring habitat and implementing recovery actions in the area of the Eastern Mojave Recovery Unit (FSA/DEIS 2009, 120-125). However, acquisition of habitat in the Eastern Mojave Unit will not mitigate impacts to the Northeastern Desert Tortoise Recovery Unit, the specific segment of the Mojave desert tortoise population that will be adversely affected by ISEGS. Acquiring mitigation lands "as close to the ISEGS site as possible..." (FSA/DEIS 2009, 6.2-56) is not scientifically justifiable and would not meet the goals of the Desert Tortoise Recovery Plan. The only acceptable compensatory mitigation for the cumulatively significant loss of the Ivanpah Valley's biological resources would be the acquisition of lands that can be improved, protected and maintained to support a healthy Northeastern desert tortoise population. The Eastern and Northeastern Recovery Units are distinct and equally significant evolutionary segments. The loss of habitat and the loss of one population cannot be mitigated through actions with respect to another Recovery Unit. In the absence of sufficient habitat within the Northeastern Desert Tortoise Recovery Unit within California to achieve compensatory mitigation - the situation with respect to ISEGS - the only option for the BLM is to select the No Project/No Action Alternative.

The No Project/No Action Alternative should be selected because the Applicant's proposed relocation/translocation plan, if implemented as specified in Attachment D of the Biological Assessment (2009), will jeopardize both the relocated/translocated and the host populations of desert tortoise. There has been no study of the host populations nor will the applicant be required to complete a study of the host populations at the relocation/translocation sites to establish population densities and the health of the host desert tortoises. There is no requirement in the relocation/translocation plan that the desert tortoises be fully inspected for disease, raising the possibility that the relocation/translocation of tortoises from the ISEGS site could spread disease into a healthy host population. Further, the FSA/DEIS seriously underestimates the probable desert tortoise mortalities as a result of relocation/translocation. We know from experience that at least 38 percent of the monitored tortoises in the 2008 Fort Irwin translocation expired. The relocation/translocation of desert tortoises – even if done well - will contribute little to the long-term survival of the desert tortoises in the northern Ivanpah Valley because the habitat surrounding the ISEGS site and the relocation/translocation sites will be severely fragmented as a consequence of ISEGS. Finally, the relocation/translocation plan does not require long-term monitoring and study of the relocated/translocated desert tortoises. BrightSource Energy will simply dump the tortoises under the current plan.

In sum, we recommend that the Bureau of Land Management reject BrightSource Energy's applications for four ROW grants to construct its Solar Electric Generating System on public land in the northern Ivanpah Valley.

Sincerely,

Glenn R. Stewart GRS

Glenn R. Stewart, Ph.D.
DTC Board of Directors

References

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U.S. Bureau of Land Management and California Energy Commission. *Final Staff Assessment and Draft Environmental Impact Statement and California Desert Conservation Area Plan Amendment. Ivanpah Solar Electric Generating System Application for Certification (07-AFC-5)*. October 2009.

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Re: Ivanpah
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