NATURAL RESOURCES DEFENSE COUNCIL
THE WILDERNESS SOCIETY

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Via email: ca690@ca.blm.gov
Via fax: 760.326.7099 Attn: George Meckfessel

Re: Final Staff Assessment and Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment – Ivanpah Solar Electric Generating System

Dear Mr. Meckfessel:

This letter constitutes the comments of the Natural Resources Defense Council (NRDC) and The Wilderness Society (TWS) on the above-captioned document hereinafter referred to as the DEIS.

As you may already know, NRDC and TWS are national environmental membership organizations with a combined total of almost 2 million members, supporters and online activists nationwide. Both organizations have a long history of advocacy efforts to protect the publicly-owned lands and resources under the jurisdiction of the Bureau of Land Management (BLM) as well as to ensure the BLM's compliance with all applicable laws including the National Environmental Policy Act of 1969 (NEPA) in carrying out its management responsibilities. In addition, NRDC has promoted pursuit of all cost-effective energy efficiency measures and sustainable energy development for many years.

Clearly the nation's ongoing addiction to fossil fuels, together with the unprecedented threats posed by global warming, imperil the integrity of our wildlands as never before. To sustain both our wildlands and our human communities, The Wilderness Society and NRDC believe that the nation must transition away from fossil fuels as quickly as possible. To carry out this transition, we must eliminate energy waste, moderate demand through energy efficiency, conservation, and demand-side management practices, and rapidly develop and deploy clean, renewable energy technologies, including at the utility-scale.

Our organizations are working closely with regulators and project proponents to move needed renewable energy projects forward. That said, renewable development is not appropriate everywhere on the public lands, and thorough review under the National Environmental Policy Act of 1969 (NEPA) is essential to the process of determining which of the many proposed utility-scale projects involving those lands should be permitted to go forward. In this letter, we outline our concerns about how BLM has conducted the NEPA analysis for the Ivanpah project. We have raised these concerns with the project proponent, the BLM and officials within the

Department of the Interior on numerous occasions over the last year. We urge you to address them now by supplementing the DEIS for this project for the reasons below.

The Ivanpah project is the very first large-scale solar project proposed for the public's lands in more than two decades and the first project of its kind to be subjected to NEPA review by the BLM. Moreover, its technology is very new and its scale is unprecedented. Additionally, this project is the first to be processed under a joint, coordinated review by the BLM and the California Energy Commission, DEIS at 6.2-53, a process our two organizations very much support. Thus the Ivanpah project is both a pilot project and a precedent-setting project for how decisions will be made in siting utility-scale solar projects on public lands.

Our organizations recognize that much will be learned by the BLM, the Energy Commission and others about how to improve this process and from the early projects in terms of their environmental impacts. At the same time, however, as these comments are being written, the 40th anniversary of NEPA is approaching and it is critical that the important requirements of the nation's fundamental environmental law be complied with in the review of this – and all other – large scale renewable projects.

Because many of our sister organizations have been deeply involved in the permitting process for this project, NRDC and The Wilderness Society will focus these comments on two of NEPA's most crucial requirements – the alternatives review and the analysis of cumulative impacts. As we demonstrate below, the DEIS's treatment of these two key criteria is deeply – and fatally – flawed. If not corrected, it will set a bad precedent for future projects *and* make this decision vulnerable to litigation.

Alternatives

Consideration of alternatives is crucial to ensuring that any renewable projects permitted by the BLM on public lands are not only on appropriate sites, but also that they are configured in appropriate ways. NEPA's alternatives analysis is "the heart of the environmental impact statement." 40 CFR § 1502.14. Under NEPA, BLM is required to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. See id. §§ 1502.14(a) and 1508.25(c).

It is well-established that an agency must look at all reasonable alternatives to the proposed action, Northwest Envtl Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997), including more environmentally protective ones, as well as that an actual range of options must be considered, *see e.g.*, City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). While this range is dictated by the nature and scope of the proposed action, NEPA precludes an agency from "defin[ing] the objectives of its action in terms so unreasonably narrow that only one alternative … would accomplish the goals of the agency's action," rendering the EIS "a foreordained formality." Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1066 (9th Cir. 1998). Regrettably, that is exactly what the BLM has done here.

TWS and NRDC urged careful consideration of alternative configurations of the proposed projects in addition to alternative sites in our comments on the Preliminary Staff Assessment prepared by California Energy Commission (CEC) staff as did others. *See, e.g.*, DEIS at 4-53. The Sierra Club submitted its own alternative, the "I-15 Alternative" that was rejected, in an effort to avoid some of the projects worst impacts. *See, e.g.*, id. at 4-49. But, rather than

analyzing a range of reasonable alternatives, the BLM considered **none**: not a smaller project,[1] not a phased project, not a project at a different site or different area of the ROW application.

The BLM considered only the "no action alternative" and approval of the project as proposed by the proponent. *See, e. g.*, at 4-1 ("the only alternatives that are within the agency's [BLM's] jurisdiction, and that meet the purpose and need for the proposed project, are approval of the right of way ... and denial of the right of way...."). The proffered rationale for this patent disregard for NEPA's most important mandate is, as indicated, the unreasonably narrow purpose that the BLM has adopted – i.e., "to approve, approve with modifications, or disapprove ROW applications filed by" Ivanpah's proponents. Id. at 2-7. Numerous alternatives that were "potentially feasible technically and economically," were developed, id. at 4-1, and are described in the DEIS, but they were all "eliminated from further consideration by BLM" because none "would meet the purpose and need for the proposed action, id. at 4-3. This purpose and need is focused almost entirely on the proponent's purpose without consideration of "the BLM's purpose and need" – even though such consideration is required by the BLM's own NEPA Handbook. Department of the Interior, Bureau of Land Management, National Environmental Policy Act Handbook at 35.

While we submit that the unreasonableness of BLM's actions here should have been obvious to many agency officials and staff, including the agency lawyers who presumably reviewed at least one administrative draft, it was made crystal clear when, less than a week after the draft's release, the Ninth Circuit handed down its opinion in National Parks Conservation Assn v. BLM, 586 F.3d 735 (9th Cir. Nov. 10, 2009). In this case, the Ninth Circuit found that BLM's purpose and need was unacceptably narrowly drawn where the announced need was broader than in the Ivanpah DEIS, including "meet[ing] long-term landfill demand," and the agency considered five alternatives in addition to no action. Id., 586 F.3d at 735.

Since release of the DEIS more than three months ago, our groups, and especially NRDC, have repeatedly urged BLM as well as the project proponent to remedy this fatal flaw through release of a supplemental EIS. We have repeatedly pointed out that the failure to even acknowledge this flaw undermines public participation in this process as well as public confidence in its eventual outcome. We remain extremely distressed that the BLM apparently intends to proceed on the basis of this unacceptable rejection of NEPA's plain language.

Cumulative Impacts

Cumulative impacts are defined as those which result from the incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes them. 40 CFR § 1508.7. Particularly because "[t]he diverse plant communities and landscape features in and around the ISEGS site support a correspondingly high diversity of wildlife," DEIS at 6.2-15, and because numerous energy projects, including other renewable projects, have been proposed for the affected area in California and on adjacent public lands in Nevada, cumulative impacts are a particular concern in connection with the proposed project. The additional projects include a utility scale solar project adjacent to Ivanpah originally proposed by OptiSolar, which is now First Solar, two utility scale solar projects just over the border near Primm, NV, and the upgrade of the Eldorado-Ivanpah transmission line which will be needed to carry the electrical energy generated at

[1] A "Reduced Acreage alternative was developed as a means of reducing biological impacts, while still achieving a viable, though smaller project," but "in place of [it], mitigation has been included ...." DEIS at 4-53. Inclusion of mitigation measures is independent of and not a substitute for the required alternatives analysis.

Ivanpah as well as a new natural gas distribution pipeline which will provide natural gas to each of the project powerplants. *See* id. at 6.5-5. *See also* id., Table 3 at 5-15 – 5-17.

The DEIS concludes that the cumulative impacts of this project, when combined with these other projects would be significant. *See, e.g.*, id. at 6.5-21. *See also* id. at 6.5-1 ("Impacts of the ISEGS project would combine with impacts of present and reasonably foreseeable projects to result in a contribution to cumulative impacts in the Ivanpah Valley area related to land use which would be significant…."). It does not, however, acknowledge that the net effect of approval of these proposed projects will be the creation of a de facto solar energy zone in the Ivanpah Valley and across the border with Nevada. We note with concern that the BLM did not propose all or even the California part of this area as a solar energy study area (SESAs). It did not do so even though California's Renewable Energy Transmission Initiative (RETI) had designed a competitive renewable energy zone (CREZ) in the area and even though other RETI CREZs served as the basis for a number of BLM SESAs in California. While our organizations strongly support the concept of zoning public lands for solar (and other renewable energy) development, zones that are created by accident will realize few if any of the benefits of those that are the result of a careful deliberative process. The cumulative effects of the creation of a de facto energy zone should have been analyzed. Instead and at best they were summarized very briefly.

The lands subject to the NextLight right of way applications in Nevada, *see* id., Table 3 at 5-17 ("Q" and "Q") are high quality desert tortoise habitat as are those subject to the Ivanpah right of way application, *see, e.g.*, id. at 6.2-29. Both are occupied by intact populations of tortoises. *See, e.g.*, id. at 6.2-51. The analysis of cumulative impacts of to this species is inadequate.

Although the DEIS acknowledges that the project will cause significant impacts to wildlife, including loss of occupied tortoise habitat and fragmentation and disturbance to adjacent tortoise habitat, id. at 6.2-51, as well as the very problematic history of tortoise translocation efforts, id. at 6.2-49, it does not contain a thorough analysis of the likely cumulative impacts of these various activities. Instead it contains simple generalizations about the impacts of past and current actions on wildlife habitat, including tortoise habitat, within the Ivanpah Valley. For example, it states that "past and current actions have significantly reduced and degraded" wildlife habitat in the area and that this project, combined with future proposed projects would also significantly affect a genetically distinct subpopulation of desert tortoise." Id. at 6.2-71. It further states that "[w]hile no precise estimate can be made of the future habitat loss associated with the proposed projects listed above, collectively these projects would remove and fragment tens of thousands of acres of additional habitat" and that "[a]ll of these past, present and future proposed activities contribute to the significant loss of Ivanpah Valley vegetation communities, wildlife habitat, and species-status species." Id. These statements constitute virtually the entirety of the DEIS' treatment of cumulative impacts. While they are undoubtedly true, they do not constitute an analysis of the cumulative impacts of the Ivanpah project when combined with the many other projects proposed for this area.

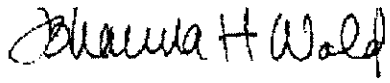
Conclusion

Despite its flaws, the DEIS reveals that this project will "have major impacts to the biological resources of the Ivanpah Valley, substantially affecting many sensitive plant and wildlife species" including the federally listed desert tortoise and a number of rare plants, as well as "eliminating a broad expanse of relatively undisturbed Mojave Desert habitat." DEIS at 1-17. NRDC and The Wilderness Society raised concerns about the propriety of this site in our comments on the CEC's Preliminary Staff Assessment as did many other organizations and

individuals. As the result of its failure to consider any alternatives to the proposed project, the Ivanpah DEIS has only exacerbated those concerns. The BLM should issue a supplement without further delay that analyzes a reasonable range of alternatives and that corrects the DEIS' inadequate analysis of cumulative impacts.

Thank you in advance for considering our views.

Sincerely,



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