



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, CA 94105

July 17, 2009

Diane Noda, Field Supervisor,
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Subject: Notice of Intent to Prepare an Environmental Assessment or Environmental Impact Statement Related to a Habitat Conservation Plan for the Proposed Beacon Solar Energy Project, Kern County, California

Dear Ms Noda:

The U.S. Environmental Protection Agency (EPA) has reviewed the June 17, 2009 Notice of Intent (NOI) to prepare an Environmental Assessment (EA)/Environmental Impact Statement (EIS) for the Habitat Conservation Plan (HCP) for the proposed Beacon Solar Energy Project (Project) in Kern County, California. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA supports increasing the development of renewable energy resources, as recommended in the National Energy Policy Act. Using renewable energy resources such as solar power can help the nation meet its energy requirements without generating greenhouse gas emissions. To assist in the scoping process for the project, we have identified several issues for your attention in the preparation of the EA/EIS. We are most concerned about the following issues: impacts to water resources, biological resources, and habitat as well as cumulative impacts associated with multiple large-scale solar installations in the desert region.

We appreciate the opportunity to review this NOI and are available to discuss our comments. Please send one hard copy of the Draft EA or EIS and two CD ROM copies to this office at the same time it is officially filed with our Washington D.C. Office. If you have any questions, please contact me at (415) 972-3545 or at mcpherson.ann@epa.gov.

Sincerely,

/s/

Ann McPherson
Environmental Review Office

Enclosures: EPA's Detailed Comments

US EPA DETAILED COMMENTS ON THE SCOPING NOTICE FOR THE ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT RELATED TO A HABITAT CONSERVATION PLAN FOR THE PROPOSED BEACON SOLAR ENERGY PROJECT, KERN COUNTY, CALIFORNIA, JULY 17, 2009

Project Description

Beacon Solar, LLC, is proposing to construct, operate, and maintain a 250-megawatt (MW) renewable-energy solar thermal power plant to be located on approximately 2,030 acres of retired agricultural land and Mojave Desert scrub land. The solar power plant will use an array of solar collectors to track the sun's movement and collect solar energy. Energy collected from the solar collectors would heat transfer fluid in a linear receiver to generate steam, which would then be used to drive a turbine and generate electrical power. A wet cooling tower would be constructed to provide cooling for the power generating equipment. A lined 10-to-40-acre evaporation pond would be used to collect the waste stream from the project's cooling water system. The concentrated dewatered solid waste would be transported off site for disposal. Power would be carried from the 2,030-acre project site to an existing Los Angeles Department of Water and Power (LADWP) high-voltage transmission line by an interconnecting transmission line.

The Beacon Solar Energy Project would include deep trenching, grading, and filling; construction of power generating equipment, cooling towers, evaporation ponds, administrative buildings, an interconnecting transmission line, an underground natural gas pipeline (or propane tanks on site), and access roads; rechanneling a wash from the project site to the perimeter of the site; and construction of a fence around most of the 2,030 acre project site. Construction is expected to take up to 36 months; facility operation is proposed for approximately 30 years. The facility decommissioning and habitat rehabilitation is expected to be completed before the end of the proposed 45-year permit term.

The U.S. Fish and Wildlife Service (Service) intends to develop a National Environmental Policy Act (NEPA) document in connection with a proposed Habitat Conservation Plan (HCP) for the proposed project. The HCP forms part of an Incidental Take Permit application. The Service will determine if an Environmental Assessment (EA) or Environmental Impacts Statement (EIS) will be prepared based on the complexity of issues identified during the scoping phase of the NEPA process.

Statement of Purpose and Need

The Draft Environmental Assessment/Environmental Impact Statement (DEA/EIS) should clearly identify the underlying purpose and need to which the Service is responding in proposing the alternatives (40 CFR 1502.13). The *purpose* of the proposed action is typically the specific objectives of the activity, while the *need* for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.

Recommendation:

The purpose and need should be a clear, objective statement of the rationale for the proposed project. The DEA/EIS should discuss the proposed project in the context of the larger energy market that this project would serve; identify potential purchasers of the power produced; and discuss how the project will assist the state in meeting its renewable energy portfolio standards and goals.

Alternatives Analysis

NEPA requires evaluation of reasonable alternatives, including those that may not be within the jurisdiction of the lead agency (40 CFR Section 1502.14(c)). A robust range of alternatives will include options for avoiding significant environmental impacts. The DEA/EIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail. Reasonable alternatives should include, but are not necessarily limited to, alternative sites, capacities, and technologies as well as alternatives that identify environmentally sensitive areas or areas with potential use conflicts. The alternatives analysis should describe the approach used to identify environmentally sensitive areas and describe the process that was used to designate them in terms of sensitivity (low, medium, and high).

The environmental impacts of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of wetlands impacted, tons per year of emissions produced, etc.).

Recommendations:

The DEA/EIS should describe how each alternative was developed, how it addresses each project objective, and how it will be implemented. The alternatives analysis should include a discussion of alternative sites, capacities, and generating technologies including other renewable energy technologies, as well as solar technologies.

The DEA/EIS should clearly describe the rationale used to determine whether impacts of an alternative are significant or not. Thresholds of significance should be determined by considering the context and intensity of an action and its effects (40 CFR 1508.27).

The DEA/EIS should discuss the feasibility of using residential and wholesale distributed generation, in conjunction with increased energy efficiency, as a viable alternative in the alternatives analysis.

Water Resources

Water Supply and Water Quality

Large-scale solar installations that utilize wet-cooling may require significant ground water resources in the HCP area. The DEA/EIS should clearly describe existing groundwater conditions, potential cumulative impacts to groundwater quantity and quality, and avoidance measures to prevent impacts. The DEA/EIS should estimate the quantity of water the project will require and describe the source of this water and potential effects on other water users and natural resources in the project's area of influence. The DEA/EIS should clearly depict reasonably foreseeable direct, indirect, and cumulative impacts to this resource. Specifically, the potentially-affected groundwater basin should be identified and any potential for subsidence and impacts to springs or other open water bodies and biologic resources should be analyzed. The DEA/EIS should include:

- A discussion of the amount of water needed for the proposed solar thermal power plant and where this water will be obtained;
- A discussion of availability of groundwater within the basin and annual recharge rates;
- A description of the water right permitting process and the status of water rights within that basin, including an analysis of whether water rights have been over-allocated;
- A description of any water right permits that contain special conditions; measures to mitigate direct, indirect, and cumulative impacts; and provisions for monitoring and adaptive management;
- A detailed discussion of cumulative impacts to groundwater supply within the hydrographic basins that would support the alternatives, including impacts from other large-scale solar installations that have also been proposed;
- An analysis of different types of technology that can be used to minimize water use for the solar thermal power plant;
- A discussion of whether it would be feasible to use other sources of water, including wastewater or deep-aquifer water, as cooling water for the proposed solar thermal power plant;
- A discussion of whether it is possible to recycle the water that would be sent to the evaporation pond and lost to evaporation and re-inject or reuse this water; and
- An analysis of the potential for alternatives to cause adverse aquatic impacts such as impacts to water quality and aquatic habitats.

The DEA/EIS should address the potential effects of project discharges, if any, on surface water quality. The specific discharges should be identified and potential effects of discharges on designated beneficial uses of affected waters should be analyzed. If the facility is a zero discharge facility, the DEA/EIS should disclose the amount of process water that would be disposed of onsite and explain methods of onsite containment.

EPA strongly encourages the Service to include in the DEA/EIS a description of all water conservation measures that will be implemented to reduce water demands. Project designs should maximize conservation measures such as appropriate use or recycled water for landscaping and industry, xeric landscaping, a water pricing structure that accurately reflects the

economic and environmental costs of water use, and water conservation education. Water saving strategies can be found in the EPA's publications *Protecting Water Resources with Smart Growth* at www.epa.gov/piedpage/pdf/waterresources_with_sg.pdf, and *USEPA Water Conservation Guidelines* at www.epa.gov/watersense/docs/app_a508.pdf.

In addition, the EIS should describe water reliability for the proposed project and clarify how existing and/or proposed sources will be affected by climate change. At a minimum, EPA expects a qualitative discussion of impacts to water supply and the adaptability of the project to these changes.

Clean Water Act Section 404

The project applicant should coordinate with the U.S. Army Corps of Engineers (Corps) to determine if the proposed project requires a Section 404 permit under the Clean Water Act. Section 404 regulates the discharge of dredged or fill material into waters of the United States (WOUS), including wetlands and other *special aquatic sites*. The DEA/EIS should describe all WOUS that could be affected by the project alternatives, and include maps that clearly identify all waters within the project area. The discussion should include acreages and channel lengths, habitat types, values, and functions of these waters. In addition, EPA suggests that the Service include a jurisdictional delineation for all WOUS, including ephemeral drainages, in accordance with the 1987 *Corps of Engineers Wetlands Delineation Manual* and the December 2006 *Arid West Region Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region*. A jurisdictional delineation will confirm the presence of WOUS in the project area and help determine impact avoidance or if state and federal permits would be required for activities that affect WOUS.

If a permit is required, EPA will review the project for compliance with *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA ("404(b)(1) Guidelines"). Pursuant to 40 CFR 230, any permitted discharge into WOUS must be the least environmentally damaging practicable alternative (LEDPA) available to achieve the project purpose. The DEA/EIS should include an evaluation of the project alternatives in this context in order to demonstrate the project's compliance with the 404(b)(1) Guidelines. If, under the proposed project, dredged or fill material would be discharged into WOUS, the DEA/EIS should discuss alternatives to avoid those discharges.

The DEA/EIS should describe the original (natural) drainage patterns in the project locale, as well as the drainage patterns of the area during project operations, and identify whether any components of the proposed project are within a 50 or 100-year floodplain. We also recommend the DEA/EIS include information on the functions and locations of WOUS, as well as ephemeral washes in the project area, because of the important hydrologic and biogeochemical role these washes play in direct relationship to higher-order waters downstream.

Clean Water Act Section 303(d)

The CWA requires States to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans, called Total Maximum Daily Loads (TMDLs), to improve water quality.

Recommendation:

The DEA/EIS should provide information on CWA Section 303(d) impaired waters in the project area, if any, and efforts to develop and revise TMDLs. The DEA/EIS should describe existing restoration and enhancement efforts for those waters, how the proposed project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Biological Resources and Habitat

The DEA/EIS should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. The document should identify and quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species. Emphasis should be placed on the protection and recovery of species due to their status or potential status under the Endangered Species Act (ESA). We recommend that the DEA/EIS include a biological assessment under Section 7 of the ESA and provide a recent status update of this report. Analysis of impacts and mitigation on covered species should include:

- Baseline conditions of habitats and populations of the covered species;
- A clear description of how avoidance, mitigation and conservation measures will protect and encourage the recovery of the covered species and their habitats in the project area;
- Monitoring, reporting and adaptive management efforts to ensure species and habitat conservation effectiveness.

The NOI states that covered activities will include deep trenching, grading, and filling to prepare the site for installation of an array of solar collectors and other ancillary equipment. EPA is concerned about the potential impact of these activities on habitat. We encourage habitat conservation alternatives that avoid and protect high value habitat and create or preserve linkages between habitat areas to better conserve the covered species.

Recommendations:

The DEA/EIS should indicate what measures will be taken to protect important wildlife habitat areas from potential adverse effects of proposed covered activities and to ensure that desert areas are minimally impacted.

The DEA/EIS should discuss the impacts associated with constructing a fence around most of the project site, and consider whether there are options that could facilitate better protection of covered species.

Invasive Species

Executive Order 13112, *Invasive Species* (February 3, 1999), mandates that federal agencies take actions to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. Executive Order 13112 also calls for the restoration of native plants and tree species. If the proposed project will entail new landscaping, the DEA/EIS should describe how the project will meet the requirements of Executive Order 13112.

Recommendation:

The DEA/EIS should include an invasive plant management plan to monitor and control noxious weeds.

Indirect and Cumulative Impacts

The cumulative impacts analysis should provide the context for understanding the magnitude of the impacts of the alternatives by analyzing the impacts of other past, present, and reasonably foreseeable projects or actions and then considering those cumulative impacts in their entirety (CEQ's Forty Questions, #18). The DEA/EIS should clearly identify the resources that may be cumulatively impacted, the time over which impacts are going to occur, and the geographic area that will be impacted by the proposed project. The DEA/EIS should focus on resources of concern – those resources that are “at risk” and/or are significantly impacted by the proposed project, before mitigation. In the introduction to the *Cumulative Impacts Section*, identify which resources are analyzed, which ones are not, and why. For each resource analyzed, the DEA/EIS should:

- Identify the current condition of the resource as a measure of past impacts. For example, the percentage of species habitat lost to date.
- Identify the trend in the condition of the resource as a measure of present impacts. For example, the health of the resource is improving, declining, or in stasis.
- Identify all on-going, planned, and reasonably foreseeable projects in the study area that may contribute to cumulative impacts.
- Identify the future condition of the resource based on an analysis of impacts from reasonably foreseeable projects or actions added to existing conditions and current trends.
- Assess the cumulative impacts contribution of the proposed alternatives to the long-term health of the resource, and provide a specific measure for the projected impact from the proposed alternatives.
- Disclose the parties that would be responsible for avoiding, minimizing, and mitigating those adverse impacts.

- Identify opportunities to avoid and minimize impacts, including working with other entities.

The BLM has received more than 200 applications for solar projects in the desert southwest. The BLM and Department of Energy (DOE) are preparing a Programmatic EIS to explain how they will address existing and future solar energy development applications on BLM-administered lands in six Western states. EPA is concerned about the potential cumulative impacts associated with multiple large-scale solar projects proposed in this region.

Recommendation:

The DEA/EIS should consider the cumulative impacts associated with multiple large-scale solar projects proposed in the desert southwest and the potential impacts on various resources including: water supply, endangered species, and habitat.

As an indirect result of providing additional power, it can be anticipated that this project will allow for development and population growth to occur in those areas that receive the generated electricity.

Recommendations:

The DEA/EIS should describe the reasonably foreseeable future land use and associated impacts that will result from the additional power supply. The document should provide an estimate of the amount of growth, its likely location, and the biological and environmental resources at risk.

The DEA/EIS should consider the direct and indirect effects of the inter-connecting transmission line for the proposed project, as well as the cumulative effects associated the transmission needs of other reasonably foreseeable projects.

Climate Change

Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities will contribute to climate change. Global warming is caused by emissions of carbon dioxide and other heat-trapping gases. Global warming can affect weather patterns, sea level, ocean acidification, chemical reaction rates, and precipitation rates, resulting in climate change. Reports also indicate that deserts may store as much carbon as temperate forests.

Recommendations:

The DEA/EIS should consider how climate change could potentially influence the proposed project, specifically within sensitive areas.

The DEA/EIS should consider the cumulative impacts associated with multiple large-scale solar projects proposed in the desert southwest and clarify how existing and/or proposed resources will be affected by climate change.

The DEA/EIS should quantify and disclose the anticipated climate change *benefits* of solar energy. We suggest quantifying greenhouse gas emissions from different types of generating facilities including solar, geothermal, natural gas, coal-burning, and nuclear and compiling and comparing these values.

The DEA/EIS should discuss whether the trenching, grading, and filling associated with the construction of this project and the installation of the solar arrays, will affect the deserts' ability to store carbon, and to what degree this may occur.

Air Quality

The DEA/EIS should provide a detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS), criteria pollutant nonattainment areas, and potential air quality impacts of the proposed project (including cumulative and indirect impacts). Such an evaluation is necessary to assure compliance with State and Federal air quality regulations, and to disclose the potential impacts from temporary or cumulative degradation of air quality.

The DEA/EIS should describe and estimate air emissions from potential construction and maintenance activities, as well as proposed mitigation measures to minimize those emissions. EPA recommends an evaluation of the following measures to reduce emissions of criteria air pollutants and hazardous air pollutants (air toxics).

Recommendations:

- *Existing Conditions* – The DEA/EIS should provide a detailed discussion of ambient air conditions, NAAQS, and criteria pollutant nonattainment areas in all areas considered for solar development.
- *Quantify Emissions* – The DEA/EIS should estimate emissions of criteria pollutants from the proposed project and discuss the timeframe for release of these emissions over the lifespan of the project. The DEA/EIS should describe and estimate emissions from potential construction activities, as well as proposed mitigation measures to minimize these emissions.
- *Specify Emission Sources* – The DEA/EIS should specify the emission sources by pollutant from mobile sources, stationary sources, and ground disturbance. This source specific information should be used to identify appropriate mitigation measures and areas in need of the greatest attention.
- *Equipment Emissions Mitigation Plan* – The DEA/EIS should identify the need for an *Equipment Emissions Mitigation Plan* (EEMP). An EEMP will identify actions to reduce diesel particulate, carbon monoxide, hydrocarbons, and NO_x associated with

construction activities. We recommend that the EEMP require that all construction-related engines:

- are tuned to the engine manufacturer's specification in accordance with an appropriate time frame;
 - do not idle for more than five minutes (unless, in the case of certain drilling engines, it is necessary for the operating scope);
 - are not tampered with in order to increase engine horsepower;
 - include particulate traps, oxidation catalysts and other suitable control devices on all construction equipment used at the project site;
 - use diesel fuel having a sulfur content of 15 parts per million or less, or other suitable alternative diesel fuel, unless such fuel cannot be reasonably procured in the market area; and
 - include control devices to reduce air emissions. The determination of which equipment is suitable for control devices should be made by an independent Licensed Mechanical Engineer. Equipment suitable for control devices may include drilling equipment, generators, compressors, graders, bulldozers, and dump trucks.
- *Fugitive Dust Control Plan* - The DEA/EIS should identify the need for *Fugitive Dust Control Plan*. We recommend that it include these general recommendations:
 - Stabilize open storage piles and by covering and/or applying water or chemical/organic dust palliative where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
 - Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions; and
 - When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

Coordination with Tribal Governments

Executive Order 13175

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes.

Recommendation:

The DEA/EIS should describe the process and outcome of government-to-government consultation between the Service and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

National Historic Preservation Act and Executive Order 13007

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act (NHPA). Historic properties under the National Historic Preservation Act (NHPA) are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO). Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed and mitigated. Section 106 of the NHPA requires that Federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800.

Executive Order 13007, *Indian Sacred Sites* (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site.

Recommendation:

The DEA/EIS should address the existence of Indian sacred sites in the project area. It should address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how the Service will avoid adversely affecting the physical integrity of sacred sites, if they exist. The DEA/EIS should provide a summary of all coordination with Tribes and with the SHPO/THPO, including identification of NRHP eligible sites, and development of a Cultural Resource Management Plan.

Environmental Justice

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity

to participate in the decision-making process. Guidance¹ by CEQ clarifies the terms low-income and minority population (which includes American Indians) and describes the factors to consider when evaluating disproportionately high and adverse human health effects.

Recommendation:

The DEA/EIS should include an evaluation of environmental justice populations within the geographic scope of the project. If such populations exist, the DEA/EIS should address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation by these populations. Assessment of the project's impact on minority and low-income populations should reflect coordination with those affected populations.

Hazardous Materials/Hazardous Waste/Solid Waste

The DEA/EIS should address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation. The document should identify projected hazardous waste types and volumes, and expected storage, disposal, and management plans. It should address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to minimize the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation. This potentially reduces the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste.

The DEA/EIS should describe the concentrated, dewatered solid waste associated with the evaporation pond and describe whether this waste product will be transported off site for disposal.

Coordination with Land Use Planning Activities

The DEA/EIS should discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the project area. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed if they have been formally proposed by the appropriate government body in a written form (CEQ's Forty Questions, #23b).

¹Environmental Justice Guidance under the National Environmental Policy Act, Appendix A (Guidance for Federal Agencies on Key Terms in Executive Order 12898), CEQ, December 10, 1997.