

Thank you for your comment, Mike Lipsitz.

The comment tracking number that has been assigned to your comment is SEDDSupp20136.

Comment Date: January 27, 2012 15:53:32PM
Supplement to the Draft Solar PEIS
Comment ID: SEDDSupp20136

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Comment Submitted:

The Solar PEIS Supplement with its extensive scientific data and regulatory information requires additional time for stakeholders to make informed comments.

A 3 month extension of the public comment period is necessary to have sufficient time to adequately analyze the effects of 20 million additional acres of public lands and to ensure a meaningful democratic process.

I hope you will give strong consideration to this extension request.

Thank you for your comment, Douglas Clark.

The comment tracking number that has been assigned to your comment is SEDDSupp20137.

Comment Date: January 27, 2012 15:54:52PM
Supplement to the Draft Solar PEIS
Comment ID: SEDDSupp20137

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1. If the Solar arrays are placed on the proposed public lands, make sure the leases are profitable for the American Citizens (i.e. high lease costs).
2. Place Solar Arrays where there are small isolated BLM properties surrounded by private land. This could be a win win situation for the Federal Government and Private Land Owners - this is called Collaboration.
3. There are lots of private farms that have limited water use and would be good candidates for such Solar Array proposals.
4. Place Solar Arrays on already disturbed ground (i.e. irrigated farmland, cities, along highways.)
5. Keep the scale of solar arrays small so that more people can benefit (i.e. no greater than 50 MW solar array).
6. The proposed solar sites will impact the visual quality and wide open feeling enjoyed by thousands of people.

Thank you for your comment, Alex Daue.

The comment tracking number that has been assigned to your comment is SEDDSupp20138.

Comment Date: January 27, 2012 16:17:30PM

Supplement to the Draft Solar PEIS

Comment ID: SEDDSupp20138

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Attachment: Supplement to Solar DPEIS Comments - Nevada (TWS and partners 1-27-12).pdf

Comment Submitted:

TWS et. al Nevada comments.

January 27, 2012

Delivered via electronic submission to the BLM Solar PEIS website and U.S. mail (with attachments).

Shannon Stewart, BLM Solar PEIS Project Lead
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Re: Comments on the Supplement to the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Nevada portion)

Dear Ms. Stewart:

Please accept and fully consider these comments on the Nevada portion of the Supplement to the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Supplement) on behalf of The Wilderness Society, Nevada Wilderness Project, Defenders of Wildlife and Sierra Club. Please note that these comments are specific to the Nevada portion of the Supplement – some of the signatory groups are also submitting separate comment letters addressing the other states included in the PEIS as well as overarching policy issues. Our April 18, 2011 comments on the Draft PEIS are incorporated by reference.

Overview

We appreciate the overall direction of the Supplement with its additional focus on guiding solar projects to low-conflict Solar Energy Zones (SEZs) in the Modified Solar Energy Development Alternative. The Department of Interior (DOI) and the Bureau of Land Management (BLM) have shown a strong commitment to zone-based development in both the Supplement and in public statements since the publication of the Supplement. We believe that this focus is critical for both the protection of wildlands and wildlife habitat and for meeting our climate and clean energy goals through the success of responsible solar development on public lands. **The BLM should continue to refine the Programmatic Environmental Impact Statement (PEIS) through the Final PEIS and Record of Decision (ROD), carrying forward the zone-based focus and most other elements of the Supplement, and sign the ROD by fall 2012.**

We also appreciate that the BLM has addressed many of the specific recommendations we made on the Draft PEIS regarding the Nevada SEZs in the SEZ action plans in the Supplement. Completing the proposed additional analyses, pre-construction surveys, mapping and other reviews identified in the SEZ action plans will be very important for the success of low-impact solar development in the SEZs, and the BLM should ensure that these efforts are completed prior to development.

Our comment letter addresses several issues, including the following key issues:

- **Exclusion areas:** The Supplement should be strengthened by adding Citizen Inventoried Wilderness lands, BLM-identified lands with wilderness characteristics that are not managed to protect those characteristics, desert tortoise connectivity corridors and the other key areas listed below to the exclusion list.
- **Variance process and desert tortoise:** The BLM should ensure protection of desert tortoise by employing special variance application requirements and strengthening those requirements beyond Option 2 set out in the Supplement, as detailed in this letter.
- **Changes to SEZs and proposed SEZ action plans:** We support most of the changes to the SEZs and the SEZ action plans included in the Supplement. Key recommendations from our comments on the Draft PEIS that still need to be addressed are highlighted in this letter.
- **Visual Resource Management in SEZs:** Given the rapidly evolving nature of solar technologies, the BLM should address visual resource impacts on a project-by-project basis in the SEZs, rather than using the proscriptive height and technology restrictions proposed in the Supplement.

I. The BLM should strengthen the exclusion areas in the Final PEIS.

We appreciate the set of exclusion areas included in the Draft PEIS and the Supplement to limit impacts to sensitive natural and cultural resources. The additional exclusion areas added in the Supplement will also help limit impacts and facilitate responsible solar development. **We advise the BLM to coordinate with appropriate staff at the state office of the Nevada Department of Wildlife to make certain that the best available wildlife data are fully incorporated into the analysis of areas potentially open to variance applications prior to publication of the Final PEIS. In addition, BLM should also exclude the following areas from development:**¹

- BLM-identified lands with wilderness characteristics not managed to protect those characteristics;
- 165,000 acres of Citizens' Proposed Wilderness lands;²
- 6,211 acres of 75% core sage-grouse habitat (75% core should be the minimum standard for sage-grouse habitat). We also note that a more comprehensive and scientifically derived analysis is nearing completion and should be used to update the variance application areas prior to publication of the Final PEIS in lieu of the core maps;
- Over 400,000 acres of occupied bighorn sheep habitat or crucial winter habitat for mule deer and pronghorn: the Supplement includes "Big Game Winter Ranges identified in applicable land use plans" amongst the exclusion areas, and these additional 400,000 acres should also be excluded (Supplement at p. 2-16);

¹ Detailed rationales for excluding these areas from solar development were included in our April 18, 2011 comment letter on the Draft PEIS, and are incorporated here by reference.

² GIS data for these areas are included as Attachment 1.

- Over 1.1 million acres of identified wildlife movement habitats, or corridors, for big game mammals: the Supplement includes “Big Game Migratory Corridors identified in applicable land use plans” amongst the exclusion areas, and these additional 1.1 million acres should also be excluded (Supplement at p. 2-16);
- 83 different Nevada Heritage species within variance lands;
- 1 Candidate, 4 Threatened, and 5 Endangered Species impacted by variance lands according to the NDOW diversity dataset;
- Desert tortoise connectivity areas: as detailed beginning on page four of these comments, the BLM should exclude desert tortoise connectivity areas from solar development. The BLM should also continue to incorporate additional information regarding protection of this species as it becomes available, and adjust management based on the best available science;³
- The Seven Significant Spring Landscapes identified in the Nevada Springs Conservation Plan prepared by the Nature Conservancy, the Desert Research Institute and the Nevada Natural Heritage Program⁴ including: Amargosa Desert, Railroad Valley, White River Valley, Pahrnagat Valley, Upper Muddy River, Steptoe Valley and Soldier Meadow;
- Ivanpah Valley public lands:⁵ The Ivanpah Valley is a unique valley spanning the state line between California and Nevada. Because of this biologically arbitrary boundary, impacts to biological resources from renewable energy developments in different parts of the same valley are evaluated by different states. The Ivanpah Valley is important because it is home to a dense population of the federally threatened desert tortoise as well as rare plant communities. A small portion of the valley in California is designated as a desert tortoise Area of Critical Environmental Concern (ACEC) under the Northern and Eastern Mojave Plan. A portion of federally designated critical habitat is also identified in the southeastern part of the valley.

Surveys on both sides of the state line indicate an extant, robust population of desert tortoise. In fact, the U.S. Fish and Wildlife Service’s (FWS) October 10, 2010 Biological Opinion on the Ivanpah Solar Electric Generating Station (ISEGS), which is located in the southwestern part of the valley, states at p. 63: “We recommend that the Bureau amend the California Desert Conservation Area Plan to prohibit large-scale development (e.g., solar energy facilities, wind development, etc.) within the area bounded by Interstate 15, the State line, and Clark Mountains.” This recommendation was limited to the land on the California side of the border, because the local office of the consulting agencies’ jurisdiction was in California.

³ Ecological genetics of the Mojave Desert tortoise, 2008, B. E. Hagerty. University of Nevada, Reno. Ecology, Evolution and Conservation Biology.

⁴ <http://heritage.nv.gov/reports/springcons.pdf>

⁵ Please note that the Silver State II project application is not a variance application and therefore our comments regarding the Ivanpah Valley as a recommended exclusion area would not apply to that specific project.

As the BLM is well aware, the ISEGS project quickly reached its “take” limit of desert tortoises and had to re-initiate consultation with the Service, which resulted in a new Biological Opinion on June 10, 2011. In the new Biological Opinion, the FWS expanded its recommendation to include the whole of the Ivanpah Valley, stating “We recommend that the Bureau amend the necessary land use plans to prohibit large-scale development (e.g., solar energy facilities, wind development, etc.) within all remaining portions of the Ivanpah Valley to reduce fragmentation within the critical linkage between the Ivanpah Critical Habitat Unit and the Eldorado Critical Habitat Unit.” (at pg. 92-93). This new recommendation recognizes that the whole valley is important to the survival of this population of desert tortoise, and that the linkage between the Ivanpah Critical Habitat Unit, which is in California, and the Eldorado Critical Habitat Unit, which is in Nevada, must be kept intact. In line with the direction already identified by the FWS, BLM-administered lands within the Ivanpah Valley should be included as an exclusion area for variance applications.

Although BLM is undertaking a new cumulative effects analysis for a portion of the Ivanpah Valley (and which does not include much of the valley in Nevada), it has not finished the analysis. Nor has the BLM developed either a comprehensive bi-state assessment or a long-term management plan for this important valley. Meanwhile, the entire Ivanpah Valley has been nominated as an ACEC, in order to provide further safeguards for the desert tortoise in this important valley as well as a suite of very rare plants and significant cultural values present there. To avoid further degradation of the valley, we urge that it be excluded from variance applications.

II. The BLM should ensure that the variance process protects desert tortoise.

The desert tortoise is a bellwether species for the Mojave and Sonoran desert ecosystems. Listed as a federal threatened species by the FWS in 1990, desert tortoise numbers remain low in spite of ongoing recovery efforts, and this animal remains in an imperiled state. Since renewable energy development has the potential to significantly and irreversibly affect desert tortoise populations and the ability of this iconic species to recover, it is essential that the DOI adopt standards for solar energy development in the Final PEIS that will provide for the recovery of desert tortoise populations and the species as a whole. These standards should include: 1) the protection of key habitat for the desert tortoise, including occupied and unoccupied but suitable habitat, and 2) the protection of key connectivity habitats and linkages for the desert tortoise.

We recommend that the United States Geological Survey (USGS) desert tortoise habitat suitability model⁶ and desert tortoise density be used to provide interim criteria for areas

⁶ Nussear, K.E., T.C. Esque, R.D. Inman, L. Gass, K.A. Thomas, C.S.A. Wallace, J.B. Blainey, D.M. Miller, and R.H. Webb. 2009. Modeling habitat of the desert tortoise (*Gopherus agassizii*) in the Mojave and parts of the Sonoran Deserts of California, Nevada, Utah, and Arizona: U.S. Geological Survey Open-File Report 2009-1102, 18 p.

where variance applications will be accepted but also recognize that development of a more detailed model is needed to guide conservation of the species at the appropriate scale required for solar project siting. The USGS desert tortoise habitat suitability model was intended to provide guidance for conservation planning at the range-wide scale, and represents the most comprehensive effort to define suitable habitat for the species to date. The one kilometer cell size used for this analysis and the emphasis on topographical, soil, and meteorological data as predictors make the model useful for predicting at the landscape-scale, but they do not provide the needed precision for analyses at the sub-regional scale or at the solar project sitting level.

Until additional refinement of a habitat model is completed by FWS, the following criteria should be met:

For applications in variance application areas that are within the range of desert tortoise but outside of proposed connectivity areas, (as modified by our recommendations in these comments), the applicant must provide documentation of the following:

- Project area has less than or equal to 2 tortoises (>160 mm Midline Carapace Length) per square mile; and
- Where Habitat Potential Index Value is 0.7 or greater, verification that the habitat condition is “highly converted.”⁷ This verification should be provided through application of science-based models of land conditions through field inspection.

Our recommended criterion of two adult desert tortoises per square mile is based on current range-wide density estimates within recovery units that range from three to 36 per square mile.⁸

The predicted habitat suitability rating of 0.7 and above (on a scale of 0 to 1.0) is significant because 95% of the lands with a rating of greater than 0.7 in the USGS habitat suitability model also had confirmed presence of desert tortoises based on field survey data. This habitat model, based on 10 environmental factors that included soils, vegetation, precipitation, elevation, and topography, is a sufficiently robust, science-based model, for interim land use planning and conservation planning for the Desert tortoise and its habitat, but further refinements are needed to make habitat suitability predictions more accurate and precise, both to protect important habitat as well as to ensure that areas not important for the species are not mis-identified.

Pursuing a model at finer scales would require the use of variables that directly or indirectly assess the resources used by tortoises when selecting habitat, such as the presence of plants used for forage, vegetation diversity, density of annuals vs. perennials, and so on. In addition, habitat connectivity analyses must be integrated with habitat

⁷ “Highly converted” refers to urban, suburban and agricultural lands that are heavily altered. While some can support conservation targets, their ecological context is highly compromised.

⁸ U.S. Fish and Wildlife Service. 2010. DRAFT Range-wide Monitoring of the Mojave Population of the Desert Tortoise: 2010 Annual Report. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. 49 pp.

suitability analyses in order to ensure that the focus is on preserving suitable and occupied habitat that is connected with other population areas as well as to ensure these connectivity areas themselves are preserved to provide meta-population persistence.

The USGS desert tortoise habitat suitability model does not account for urban development, habitat destruction/fragmentation, or natural disturbances that have lowered habitat quality in recent years. Thus, we recommend using The Nature Conservancy's (TNC's) Mojave Desert Ecoregional Assessment⁹ and the Conservation Biology Institute's Framework for Effective Conservation Management of the Sonoran Desert in California¹⁰ to exclude these lands as having little or no habitat or conservation value. We recognize that it may be necessary to verify the habitat condition through field inspection and to accurately assess the adult desert tortoise density. We also recognize that modeling of suitable desert tortoise habitat needs to be refined through further field study and analysis, and that updated models should be developed soon and applied to our recommended criteria in variance application areas as they become available.

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 successful to the point of promoting population increases, lands included in our recommended Modified Option 2 where solar energy development would be inappropriate could be the very areas into which newly recruited tortoises would need to move in response to climate change or simply expand their population in response to successful recovery efforts.

Preserving connectivity between desert tortoise conservation areas is vital to promoting gene flow and maintaining and enhancing desert tortoise populations. Connectivity can only be preserved by maintaining intact landscape-level habitat, so it is critical that connectivity areas be conserved and protected.

We therefore strongly recommend that connectivity areas be excluded from development. We also recommend that the BLM's proposed connectivity habitats shown on Figure 2.2-2 (SPEIS at p. 2-36) be replaced with the connectivity (or "linkage") habitats recommended by the FWS in its comments on the Draft PEIS. See comments of U.S. Fish and Wildlife Service, Draft PEIS, May 6, 2011, Figure B-2. It is important to understand that agency's recommendations identified lands to be included in a "*...minimum linkage design necessary for the conservation and recovery of the Mojave population of the desert tortoise...*" FWS DPEIS comments, Figure B-2. (emphasis added)

III. Changes to SEZs and SEZ action plans.

⁹ Randall, J. M., S.S. Parker, J. Moore, B. Cohen, L. Crane, B. Christian, D. Cameron, J. MacKenzie, K. Klausmeyer and S. Morrison. 2010. Mojave Desert Ecoregional Assessment. Unpublished Report. The Nature Conservancy, San Francisco, California. 106 pages + appendices. Available at: <http://conserveonline.org/workspaces/mojave/documents/mojave-desert-ecoregional-2010/@@view.html>.

¹⁰ Conservation Biology Institute. 2009. A Framework for Effective Conservation Management of the Sonoran Desert in California. Prepared for The Nature Conservancy. 78 pp. + appendices.

In addition to the specific recommendations relating to individual SEZs below, we recommend that the BLM include in the Final PEIS a chart for each of the SEZs that identifies not only the additional data that is needed but who is responsible for compiling the data and completing each item listed, as well as a timetable for completion of the individual tasks.¹¹

General recommendation regarding golden eagle habitat: the BLM should identify areas around SEZs with dense Golden eagle territories with surveys following USFWS wind guidelines. Nest surveys should be done (helicopter and pedestrian) as well as observations at points on the ground for juvenile eagles and non-breeding adults. If areas have dense territories, the BLM should add additional protective design features for development in these areas to ensure impacts to this species are avoided, minimized and mitigated.

Amargosa Valley SEZ

We are generally supportive of the proposed action plan for the Amargosa Valley SEZ, including the boundary adjustments to make the Amargosa River channel and floodplain, dune/sand transport areas in the southwest part of the SEZ as well as the area on the eastern side of highway 95 non-development areas, the restriction to solar technologies with low water use, and the commitment to monitor direct and indirect impacts on Special Status Species. The proposed mapping and survey efforts will be particularly important for supporting responsible development within the SEZ. **Provided that BLM completes the proposed action plan prior to development and incorporates our recommendations below and on the Draft PEIS, we support designation of the proposed Amargosa Valley SEZ as a SEZ in the Final PEIS.**

- The BLM should create an adaptive monitoring and mitigation plan which addresses the over-allocation of groundwater resources in the Amargosa Valley through:
 - Water mitigation and monitoring measures such as installing groundwater monitoring wells both within the SEZ and within a larger area where the estimated cone of depression may affect resources, with the information from such monitoring used to curtail groundwater use; and
 - Measures to avoid impacts from groundwater depletion to Special Status Species and aquatic and riparian communities.

Dry Lake SEZ

We are generally supportive of the changes to and proposed action plan for the Dry Lake SEZ, including the boundary adjustment to make Dry Lake playa and the associated wetland and floodplain non-development areas, removal of northern areas that support sensitive lizard species and bighorn sheep movements from the SEZ, and restriction to solar technologies with low water use. In addition, the proposed mapping and survey

¹¹ Detailed rationales for all SEZ-related recommendations were included in our April 18, 2011 comment letter on the Draft PEIS, and are incorporated here by reference.

efforts will be particularly important for supporting responsible development within the SEZ. **Provided that BLM completes the proposed action plan prior to development and incorporates our recommendations on the Draft PEIS, we support designation of the proposed Dry Lake SEZ as a SEZ in the Final PEIS.**

Dry Lake Valley North SEZ

We are generally supportive of the changes to and proposed action plan for the Dry Lake Valley North SEZ, including the removal of the northern part of the SEZ that provides important wildlife habitat and designation of the playa in the southwest corner as a non-development area. The proposed mapping and survey efforts will be particularly important for supporting responsible development within the SEZ. **Provided that BLM completes the proposed action plan prior to development and incorporates our recommendations below and on the Draft PEIS, we support designation of the proposed Dry Lake Valley North SEZ as a SEZ in the Final PEIS.**

- Desert Valley kangaroo mouse: The biologically distinct Desert Valley kangaroo mouse occurs in the vicinity of the SEZ and appears to have suitable habitat in the core of the SEZ. We recommend that a thorough survey for this species be conducted in the lands that have suitable habitat characteristics to refine the developable portion of this SEZ so that direct impacts to the species are excluded.

Gold Point SEZ

We are generally supportive of the changes to and proposed action plan for the Gold Point SEZ, including the removal of the intermittent stream corridor that passes partially through the SEZ. The proposed mapping and survey efforts will be particularly important for supporting responsible development within the SEZ. **Provided that BLM completes the proposed action plan prior to development and incorporates our recommendations on the Draft PEIS, we support designation of the proposed Gold Point SEZ as a SEZ in the Final PEIS.**

Millers SEZ

We are generally supportive of the changes to and proposed action plan for Millers SEZ, including the removal of the intermittent stream corridor that passes partially through the SEZ. The proposed mapping and survey efforts will be particularly important for supporting responsible development within the SEZ. Key recommendations from our comments on the Draft PEIS that are not addressed in the Supplement are included below. **Provided that BLM completes the proposed action plan prior to development and incorporates our recommendations below and on the Draft PEIS, we support designation of the proposed Millers SEZ as a SEZ in the Final PEIS.**

- The action plan for the SEZ should include surveys for Tecopa bird's beak, an alkali flat obligate plant that could occur in the southern part of the SEZ or further south, and could be affected by development.

- The action plan for the SEZ should include surveys for Wong's pyrig, a springsnail that could occur south of the SEZ and be indirectly affected by groundwater modification.
- We highlight the importance of Miller's Rest Stop as a stopover point for migratory birds. The BLM should include in the action plan and final design features additional protections to limit impacts to avian resources for Millers SEZ and lands open to variance application near Miller's Rest Stop. Additional analysis completed through the SEZ action plan and resulting additional protective measures may determine that certain technologies are inappropriate for this area because of their particular impacts on avian resources.

IV. Visual resource management in the SEZs.

The Supplement includes restrictions on a number of the Nevada SEZs to protect visual resources or military training routes. We support the BLM addressing these impacts from solar development. However, given the rapidly evolving nature of solar technologies, the BLM should not put in place proscriptive height and technology restrictions for applications in the SEZs. Instead, visual resource impacts should be addressed on a project-by-project basis.

V. Cumulative impacts analysis.

The Supplement states that the cumulative impacts analyses included in the Draft PEIS are currently being updated based on changes in the Supplement, and that updated analyses will be included in the Final PEIS. In order to fully support designation of the SEZs in Nevada, the BLM should ensure completion of robust cumulative impacts analyses and include them in the Final PEIS.

VI. The BLM should closely coordinate the PEIS with other BLM planning efforts including the Las Vegas-Pahrump Resource Management Plan revision.

As noted in the Supplement, in addition to the PEIS, the BLM is also undertaking efforts to identify renewable energy priority areas such as new SEZs in other ongoing planning efforts, including the Las Vegas-Pahrump RMP revision currently underway. (Supplement at p. 2-32) The BLM should take advantage of these opportunities to use more localized planning efforts to identify low-conflict priority areas for solar development, and the agency should ensure that these efforts are closely coordinated with the PEIS.

VII. The BLM should provide a 60 day public comment period on the Final PEIS.

There will be a significant amount of new information in the Final PEIS, including updated SEZ-specific design features, SEZ action plans, cumulative impacts analysis and monitoring and adaptive management protocols. For this reason, the BLM should

provide a 60 day public comment period on the Final PEIS. While we continue to encourage the BLM to complete the PEIS in a thorough and timely manner, it is very important that the public be given the opportunity to provide meaningful input on this new information in order to satisfy the requirements of the National Environmental Policy Act. Further, this comment period should not substantially delay the timeline for completion of the PEIS, because BLM's regulations obligate the BLM to provide a 30-day protest period and a concurrent 60-day governor consistency review of land use plan amendments. 40 C.F.R. §§ 1610.5-2; 1610.5-3. The proposed 60-day public comment period will run during these same timeframes.

Conclusion

We thank DOI and the BLM for proposing an approach to solar energy development on public lands in Nevada that will focus appropriate large-scale solar energy development needed to help alleviate the effects of climate change in low-conflict zones. This approach will help ensure that the natural and cultural resources of Nevada are protected for future generations. We look forward to working with the BLM as the agency finalizes the PEIS over the coming months.

Thank you for your thorough consideration of these comments.

Sincerely,

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Attachments

- Attachment1 – GIS data for Citizens' Proposed Wilderness Areas

Thank you for your comment, Eric Shepard.

The comment tracking number that has been assigned to your comment is SEDDSupp20139.

Comment Date: January 27, 2012 16:28:09PM
Supplement to the Draft Solar PEIS
Comment ID: SEDDSupp20139

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Comment Submitted:



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January 27, 2012

*Submitted online
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Re: Comments of the Colorado River Indian Tribes on the Supplement to the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwest States

Dear BLM Solar PEIS Project Manager:

The Colorado River Indian Tribes ("CRIT" or "Tribes"), submits the following comments on the Supplement to the Draft Programmatic Environmental Impact Statement ("PEIS") for Solar Energy Development in Six Southwest States ("Solar Energy Development Program"). After reviewing the Supplement, CRIT remains concerned that the PEIS lacks sufficient information about the cultural resources that could be impacted by the alternatives analyzed, and impermissibly defers necessary cultural resource studies and analysis until after project approval. Far from streamlining the permitting process, this cart-before-the-horse approach is sure to create more conflict and discord down the road, when project applications have already been submitted and money invested, and analysis reveals that the selected site within designated Solar Energy Zones ("SEZ") contains significant cultural resources.

As a result, CRIT urges the Bureau not to approve the Solar Energy Development Program and PEIS at this time. A related process is currently underway, by which the Bureau and various Indian tribes in the region, including CRIT, have begun working on a map of the California desert area that could be used to divert projects away from culturally sensitive lands. At the very least, the Bureau should await

the results of that process before designating any federal land in California as suitable for utility-scale solar development.

Finally, while CRIT is not prepared to endorse any of the alternatives analyzed in the PEIS at this time, CRIT joins in the remainder of the comments submitted by the Quechan Tribe. *See* January 27, 2012 letter from Frank R. Jozwiak to BLM Solar PEIS Project Manager re: Comments of the Quechan Indian Tribe.

I. The Solar Energy Development Program and PEIS Should Not Be Finalized Until “Off-Limit” Areas Are Designated under the Desert Renewable Energy Conservation Plan.

In Fall 2011, CRIT participated in two meetings, referred to as “Tribal-Federal Leadership Conference Renewable Energy and Desert Planning Meetings” or “Tribal-Federal Leadership Meetings,” to discuss the Desert Renewable Energy Conservation Plan (“DRECP”) currently under consideration by the Department of Interior. As we understand it, the area to be governed by the DRECP is also entirely within the area governed by the Solar Energy Development Program analyzed in the PEIS and Supplement. At these meetings, officials from the Department of Interior represented to CRIT and other attendees that the DRECP process would use Tribal input to identify areas in the California desert that are “off-limits” to solar development due to significant cultural resource concerns. *See* Statement of Bob Laidlaw, Senior Policy Analyst Office of the Secretary of the Interior, *Tribal–Federal Leadership Conference, Renewable Energy and Desert Planning Meeting, Plenary Session Notes*, pg. 6, (“This cooperative approach to regional planning can . . . provide a means for tribes to help identify areas for future development which avoid sensitive resources.”); Supplement at C-77 (referencing a cultural sensitivity map to be developed as part of the DRECP). According to these officials, Tribal participation in this planning effort would help agencies direct project development to areas with minimum cultural and natural resource conflicts.

Interestingly, the PEIS process was neither incorporated by reference, nor even mentioned at these meetings. Moreover, the Supplement contains a very different explanation of the purpose of the DRECP, asserting that the DRECP process will be used to identify *new* SEZ—i.e., to expand areas open to solar development in California. Page 2-30 to 32. This is decidedly not the message conveyed to Tribes at the Tribal-Federal Leadership Meetings. *See* Statement of Tom Pogacnik, California Deputy State Director, Bureau of Land Management, *Tribal–Federal Leadership Conference, Renewable Energy and Desert Planning Meeting, Plenary Session Notes*, pg. 8, (“[t]he purpose of the DRECP [is] to provide for the renewable energy development in the California Desert in a manner which conserves wildlife habitat and tribal cultural sites.”). Thus CRIT requests that the

Bureau clarify the relationship between the DRECP and the PEIS in its response to these comments.

Despite this conflicting information, it is clear that the DRECP process and the PEIS process overlap in California. Given the important resources involved, CRIT believes that the Bureau should not approve the Solar Energy Development Program and PEIS—at least those portions intended to govern development in California—until the portion of the DRECP related to cultural resources has been fully developed and, through that process, more information is provided to the Bureau about the cultural resources at stake. This information is critical for the Bureau to make good decisions about where to encourage utility-scale solar development and where to exclude it. There is no need to defer this analysis until after project approval as the PEIS purports to do. *See* Supplement at C-77 (outlining the numerous steps BLM will take *after* the document is finalized to “reduce the uncertainty about potential impacts on cultural resources” in the Riverside East SEZ). A primary purpose of the PEIS is to identify those areas where utility-scale solar projects can be developed without significant resource conflict. Thus, it is wholly improper to defer identification of sensitive cultural resource areas and sites until after the PEIS is approved and SEZs are selected.

Moreover, designating areas for solar energy development within CRIT’s ancestral homelands now, while telling CRIT that the Bureau will consider its input on the very same issues later, severely undermines CRIT’s enthusiasm for the DRECP process, and therefore the likelihood that it will be successful. Because CRIT is supportive of BLM’s efforts to include Tribes in the DRECP process and to avoid impacts to cultural resources, it does not wish to see the process undermined in this way.

In sum, CRIT believes that the Bureau should defer approval of the Solar Development Energy Program and the PEIS—at least for those areas that will also be governed by the DRECP—until after the DRECP process identifies the “off-limit” areas. At that time, with substantially more information about the nature and likely location of sensitive cultural resources in the area, the Bureau will be better equipped to designate areas that are truly suitable for this type of intense, industrial development.

II. The BLM’s Preferred Alternative Does Not Provide Adequate Protections for Cultural Resources or Time for Tribal Consultation.

To date, CRIT has been frustrated with the process used by the Bureau to process individual solar project applications on federal lands near its Reservation. In a rush to approve “green energy solutions” to global warming, the Bureau has fast-tracked projects, deferring cultural resource analysis, mitigation, and, in some cases, meaningful consultation until after project approval. The comment and

consultation periods imposed by the Bureau have not afforded CRIT sufficient time to obtain its own experts to review the technical material accompanying these projects, and the sheer number of projects processed by the Bureau has been overwhelming. The existing process has also been dramatically unsuccessful at avoiding locations with sensitive cultural resources, as demonstrated by the recent discoveries at the Genesis Solar Energy Project. *See* January 19, 2012 letter from Chairman Eldred Enas to John Kalish, Field Office Manager re: Comments on the Proposed (Draft) Geoarcheological Trenching and Controlled Grading Evaluation Plan, Genesis Solar Energy Project, Riverside County, California.

Thus, any new approach to reviewing these solar utility projects must take into consideration the limited resources of the affected tribes, the importance of the cultural resources jeopardized by ill-sited projects, and the time necessary to thoroughly review a project for potential impacts.

Unfortunately, the BLM's preferred alternative, the Modified Solar Energy Development Program Alternative ("Modified Alternative"), incorporates even more fast-paced permitting schedules. According to the Supplement, if an applicant seeks to locate utility-scale solar projects within the SEZs: "the BLM will adhere internally to strict schedules for the completion of environmental reviews for applications in SEZs, with a target for completion of 12 to 18 months." Supplement at 2-23.

This short timeline cannot accommodate the necessary analysis of cultural resource impacts the Supplement itself acknowledges are necessary at a project-specific level (*see* Supplement at 2-18), much less the required government-to-government consultation under Section 106 of the National Historic Preservation Act ("NHPA"). If BLM intends to promise quick review of applications, more studies must be conducted before the agency defines the SEZ boundaries and exclusion areas.

Moreover, the Bureau cannot use these self-imposed timelines to short-circuit the consultation process required by the NHPA. "The consultation requirement is not an empty formality; rather, it 'must recognize the government-to-government relationship between the Federal Government and Indian tribes' and is to be 'conducted in a manner sensitive to the concerns and needs of the Indian tribe.' [36 C.F.R.] § 800.2(c)(2)(ii)(C)." *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 755 F.Supp.2d 1104, 1108-09 (S.D. Cal. 2010). Given BLM's recent practice of deferring cultural resource identification and evaluation until after project approval, through improper reliance on Programmatic Agreements, CRIT is concerned that project-specific approvals might occur prior to adequate cultural resource evaluations.

CRIT is skeptical that adequate and meaningful consultation can occur for all projects within the proposed SEZs within this 12-to-18-month timeline. Given the current hold on projects submitted after June 30, 2009, BLM already has a backlog of proposed projects. Once the PEIS is finalized, additional proposals are likely. With limited time and resources, CRIT is unlikely to be able to offer meaningful consultation on many concurrent applications in such a short time period.

The final PEIS should reflect this reality. In addition, BLM should require all project applicants to pay a cultural resources mitigation fee for use by Tribes to offset the costs necessarily incurred in reviewing proposals and potentially hiring experts to review the technical cultural resource analysis provided. Numerous Tribal representatives requested funding to allow for meaningful participation in this process at the Tribal-Federal Leadership Meetings on the DRECP. A mitigation fee would provide a non-governmental source for that funding.

In addition to unrealistic fast-tracking, the Modified Alternative also offers insufficient protections against development outside the SEZs. While providing incentives for utility-scale solar development in certain areas identified as SEZs, this alternative continues to allow development on up to 20 million acres across the six state area through both the variance procedure and the approval of existing applications. Supplement at 2-43. The proposed variance procedure, which varies only slightly from the current project-by-project approach, is not stringent enough to discourage an onslaught of applications for projects outside of SEZs, with corresponding consultation and review requirements. This problem will be exacerbated by allowing Projects proposed prior to 2009 to move forward without meeting the requirements of any final PEIS. The variance procedure is also inconsistent with a primary purpose of the PEIS, which is to identify those areas appropriate for solar development now – not on a case-by-case basis in the future.

III. The Programmatic Agreement Should Require Avoidance of Cultural Resources and Ongoing Consultation.

On Thursday, January 26, 2012, CRIT was in contact with BLM John Kalish, Field Office Manager, South Coast Field Office, to obtain a copy of the Programmatic Agreement, but was unable to obtain a copy of the document prior to completing this comment letter. As such, the following comments are based on information contained in the PEIS and the Tribes' experience with previous project-level programmatic agreements. CRIT therefore requests an extension of time to provide its comments on the Programmatic Agreement.

Any programmatic agreement proposed by the Bureau must place the strongest possible priority on avoidance of cultural resources and be fully consistent with Section 106 of the NHPA and its implementing regulations. Proposed projects should be designed to avoid all cultural resources, through siting decisions and

choice of technology. Further, if unanticipated discoveries are made during development of the proposed project, project development should halt until all potentially interested tribes are consulted. Before developing a plan to excavate and record these discoveries, the Bureau must attempt to avoid them, and should explicitly retain authority in any approval documents to require post-approval changes to projects to do so.

To be clear, CRIT does not believe that “excavation” and “data recovery” mitigate the disturbance of their ancestors remains, funerary objects, or other sacred and important artifacts. Thus, every possible effort must be made to avoid such resources. Proper investigation upfront, combined with modifications of project design or location, should be considered prior to a default “mitigation” strategy of data recovery. This approach is also more consistent with the California Environmental Quality Act, which will likely apply to all projects developed in California and which requires resource impacts to be mitigated below the level of significance.

The Supplement also states that “the BLM will invite Tribes to participate in site-specific proposals within SEZs.” Supplement at 2-23. Participation, however, is not the same thing as consultation. The Programmatic Agreement must explain how the BLM is going to engage in consultation with Tribes under Section 106 of the NHPA for all individual proposals within the SEZs.

IV. Ethnographic Studies Should Be Completed For Arizona and California.

The Supplement notes that ethnographic overviews have been completed for the six tribes in the Great Basin. Supplement at 2-23. The Supplement continues that:

“BLM will contact all other Tribes with cultural and/or historical ties to the SEZs and lands available for development to explore if they share similar concerns or issues to those revealed in the study. Field offices in California and Nevada will consult with those Tribes who provided written comments on the Draft Solar PEIS to explain how their concerns will be taken into account and how Tribal consultation will continue under project-specific applications. A written explanation for how the BLM utilized Tribal input in determining Final Solar PEIS decisions will be mailed to all Tribes with the signing of the ROD.”

Id. Ethnographic studies should be completed for tribes in the remaining areas analyzed in the PEIS in order to adequately understand the potential cultural resources impacts created by the proposed project. In addition, the consultation

referenced for the CA and NV field offices should not, and legally cannot, be limited to only those Tribes that provided written comments on the Draft Solar PEIS.

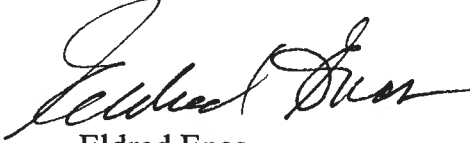
V. The Identification of New SEZs Must Include Early Consultation with Tribes.

The Supplement states that “The BLM welcomes . . . Tribes . . . to participate in [] efforts to identify new SEZs.” Supplement at 2-28. Given that inclusion of land within an SEZ amounts to an affirmative statement by BLM that these areas are well-suited for development (including as to cultural resources), the development of new SEZs must include meaningful consultation with Tribes. While Appendix D recognizes that consultation must take place prior to issuing the record of decision (Supplement at D-7), consultation must actually occur much earlier in the process to be meaningful. *See Quechan Tribe of Fort Yuma Indian Reservation*, 755 F.Supp.2d at 1119; *see also* Department of the Interior Policy on Consultation with Indian Tribes (Dec. 1, 2011) (requiring BLM to consult with affected Indian tribes in the “Initial Planning Stage” and “as early as possible.”).

Moreover, CRIT does not believe that the Bureau engaged in adequate consultation for the Solar Energy Development Program analyzed in the PEIS. As documented in Appendix K to the PEIS, CRIT received two letters regarding preparation of the PEIS. The first, sent June 24, 2008, invites CRIT to participate as a “cooperating agency.” PEIS at K-52 to 54. While the letter mentions that “government-to-government consultation will continue” (*id.* at K-53), the letter does not provide any specifics about that process. The second letter, sent July 1, 2009, offers only a brief invitation: “Please contact us . . . if you would like to enter into government-to-government consultation.” PEIS at K-58. For a project with such far-reaching consequences and potential impacts to cultural resources, more than simply notifying the Tribes of the proposed program’s existence was required.

Very truly yours,

COLORADO RIVER INDIAN TRIBES



Eldred Enas
Tribal Council Chairman

cc: Tribal Council
Ken Salazar, Secretary of the Interior
Bob Abbey, Director, Bureau of Land Management

Larry Echo Hawk, Assistant Secretary for Indian Affairs
James G. Kenna, California State Director, Bureau of Land Management
John Kalish, Field Office Manager, Bureau of Land Management
Janice Staudte, Superintendent, Bureau of Indian Affairs
Eric Shepard, Attorney General
Lisa Swick, Acting Museum Director
Ron Escobar, Tribal Secretary/Treasurer, Chemehuevi Tribe
Linda Otero, Tribal Council, Fort Mojave Indian Tribe
John Bathke, Historic Preservation Officer, Quechan Indian Nation
H. Jill McCormick, Cultural Resources Manager, Cocopah Indian Tribe
Winter King, Shute, Mihaly & Weinberger, LLP

Renewable Energy & Desert Planning Meeting

Spa Hotel and Conference Center

Palm Springs, California

September 21-22, 2011

PLENARY SESSION NOTES

Prepared

By

Dr. Stephanie Damadio, Senior Program Analyst

Tribal Federal Leadership Conference Coordinator

Bureau of Land Management

October 12, 2011

Introduction

California desert area tribal leaders expressed a desire to meet with senior management of Department of the Interior (DOI) agencies to discuss their concerns and interests in the California Desert Conservation Area Plan (CDCAP), currently being amended, and the Desert Renewable Energy Conservation Plan (DRECP), currently being developed. Tribal leaders asked to be provided an opportunity to have input into these and other efforts to guide land management priorities for the coming years. In response to these requests, DOI invited 40 desert area federally recognized tribes to an initial meeting, the *Tribal-Federal Leadership Conference, Renewable Energy and Desert Planning Meeting (Meeting)*, September 21-22, 2011 in Palm Springs, California. This meeting was the first step in establishing a more effective and efficient process for tribes to participate and inform land use planning, resource protection and future renewable energy development.

The *Meeting* was not a “Listening Session” or “Consultation” on a federal project or program but rather, provided an initial forum for tribal representatives to have discussions with federal executives regarding a comprehensive planning effort by DOI in the California Desert. Tribal participation at this and subsequent meetings over the next year and a half will inform land and natural resource management, protection and the development of renewable energy in cooperation and coordination with the region’s tribal governments. The goal of this planning effort is NOT to review/approve specific renewable energy projects but to produce a tool to guide the planning of resource management in the desert.

The *Meeting* consisted of a description of proposed planning efforts by senior federal executives from the Bureau of Land Management, Fish and Wildlife Service, Pacific Regional Solicitor’s Office, Department of the Interior’s Office of Policy Analysis, Department of Interiors Office of Indian Affairs and the Counselor to the Secretary of the Interior. The federal executives presented a discussion of opportunities for tribal participation which were followed by tribal presentations addressing top tribal priorities and issues such as reservation development, resource concerns and priorities for federal/tribal coordination. A breakout session was conducted on the morning of September 22, 2011, providing an opportunity for more focused discussion by federal and tribal participants of the issues raised in the previous day’s meeting.

At the conclusion of the *Meeting*, numerous commitments were made to California Desert Tribes by DOI leadership. Those commitments included:

1. A letter to California desert region's federally recognized tribes outlining commitments (Sent September 27, 2011);
2. Copies of the proceedings from the September 21, 2011 Plenary Session;
3. Bureau of Land Management (BLM) will schedule a November follow-up meeting with tribal leaders to discuss progress and a path forward;
4. BLM management, not consultants, to meet with individual tribes in the next 30-45 days; and,
5. BLM DRECP Project Manager Vicki Campbell meeting with tribal technical staff and planners.

This document, *Tribal-Federal Leadership Conference, Renewable Energy and Desert Planning Meeting, Plenary Session Notes*, fulfills commitment 2 and is being distributed to the concerned federally recognized California Desert area tribes.

Tribal-Federal Leadership Conference

Plenary Session Notes

Renewable Energy & Desert Planning Meeting at the Spa Hotel and Conference Center Palm Springs, CA

Wednesday, September 21, 2011

9:00 - 9:30 A.M. Sign In and Continental Breakfast

9:30 A.M. Plenary Session Convened

Welcoming statements and a prayer were made by meeting Facilitator **Joseph Myers, Director, National Indian Justice Center**. Mr. Myers reminded all in attendance this was not a Listening Conference but an effort to seek advice from tribes collectively to create a participatory planning process. He reiterated that consulting with tribal governments should be done on an individual basis.

Chairman Richard Milanovich, Agua Caliente Band of Cahuilla Indians welcomed everyone to this two day conference. He reminded the participants to speak up to the federal agencies present. **Bob Laidlaw, Senior Policy Analyst, Office of the Secretary of the Interior** was thanked for facilitating this opportunity for federal agency leaders to listen to tribes and their priorities for resource management. Mr. Milanovich urged all parties to give this cooperative process time to work, since the federal participants were showing a strong willingness to listen to tribes and their positions. He asked everyone to think outside the box and to prioritize tribal needs. He recalled the numerous historic times that Federal, State and the Agua Caliente Tribal government partnered to create laws such as the one that created the Santa Rosa and San Jacinto Mountains National Monument in Palm Springs. Mr. Milanovich voiced his concern regarding the federal tax policy (Tax Code 26 USC 168) which negatively affects tribes.

Facilitator Myers asked **Counselor to the Secretary of the Interior, Steven Black**, and Mr. Laidlaw to introduce the attendees from the various federal agencies.

Mr. Laidlaw noted that there has never before been a landscape level planning effort with tribes that has included as many federal agencies. The federal participants present included:

Department of the Interior (DOI)

Steven Black, Councilor to the Secretary

Joel Clement, Director, Office of Policy Analysis

Bob Laidlaw, Senior Policy Analyst

Anthony Walters, External Affairs Director, Assistant Secretary for Indian Affairs

Office of the Solicitor, (SOL) Pacific Southwest Region

Daniel Shillito, Regional Solicitor
Clementine Josephson, Deputy Regional Solicitor
Erica Niebauer, Attorney

Bureau of Land Management-California (BLM)

James Kenna, State Director,
Thomas Pogacnik, Deputy State Director
Vicki Campbell, Project Director, Desert Renewable Energy Conservation Plan (DRECP)
Stephanie Damadio, Senior Program Analyst
Teri Raml, California Desert District (CDD) Manager
Mark Purdy, CDD Tribal Coordinator

Fish and Wildlife Service (FWS)

Alexandra Pitts, Regional Deputy Director, Sacramento
Michael Fris, Assistant Regional Director
Ken Corey,

Bureau of Indian Affairs (BIA)

Mike Smith, Deputy Director, Tribal Operations
Roger Knight, Office of Indian Energy and Economic Development
Kevin Bearquiver, Deputy Pacific Regional Director

Mr. Black pointed out the senior level of leadership that was present from BLM, FWS and BIA, that they are committed to this effort, and thanked them for starting this dialogue on economic development opportunities, the protection of endangered species and other natural and cultural resources. He noted the Desert Renewal Energy Conservation Plan (DRECP) is a comprehensive desert plan that will affect the entire California desert region over the next century. He remarked that it is important to participate now, given that the land use and conservation area plans were last substantially amended in the 1980s. Mr. Black urged those present to voice their concerns related to water, cultural resources or other issues they want federal agencies to be aware of in renewable energy planning. Mr. Black spoke on behalf of the Secretary of Interior, Ken Salazar, who he said is a champion of tribal concerns and who takes his obligation to tribes seriously. Given that Secretary Salazar comes from a rural community in the San Luis Valley, he understands most tribal situations and tries to fulfill his obligations with appropriate staff appointments. Mr. Black reminded all that the agencies present want to meet on a government-to-government basis and are committed to a dialogue. He added that, even though renewable energy was a catalyst for this dialog with tribes, the current site planning maps do not depict renewable energy development on tribal lands.

Mr. James Kenna, State Director, BLM voiced his honor to be present at this meeting and added that the relationships in this initiative would be both on the leadership level in addition to working individually tribe by tribe.

Mr. Laidlaw added that the input received would guide renewable energy planning, land use and protection in the desert for the next 20 years and would include the issues and priorities of the different tribes and their reservations. Mr. Laidlaw emphasized that this large regional planning effort was a significant departure from traditional project-by-project coordination and consultation with Tribes. Mr. Laidlaw further emphasized that participation in this planning effort could help agencies to direct project development to areas with a minimum of cultural and natural resource conflicts and provide the tribes an opportunity to shape future energy and desert land management planning. Comparing the current effort to the original California Desert Plan, Mr. Laidlaw pointed out that the guidelines of the current 1980 Land Use Plan (Plan) anticipate, and provide for, revisions and amendments if priorities or management conditions change: renewable energy development represents such a change. This conference is to introduce the agencies and the process by which planning outreach to the Tribes is being undertaken. Tribal consultation in this planning effort represents a far more affirmative and comprehensive paradigm for government-to-government collaboration than the project-by-project approach, and introduces a mechanism for working with tribes on a broad landscape (regional) level. This cooperative approach to regional planning can reduce the coordination and consultation burden on tribes associated with project-by-project consultation and provide a means for tribes to help identify areas for future development which avoid sensitive resources. Tribal input in this process also offers a means to identify tribal interest in development of renewable energy on their lands.

Facilitator Myers asked the tribal representatives that were present to introduce themselves. Tribal representatives present included:

Agua Caliente Band of Cahuilla Indians

Savana Saubel, Council Member

Tom Davis, Chief Planning and Development Officer

Todd Hooks, Economic Development Director

Margaret Park, Director of Planning and Natural Resources

Mark Dansby, Economic Development Project Manager

Cahuilla Band of Mission Indians of the Cahuilla Reservation

Brian Bahorie, Environmental Director

Colorado River Indian Tribes of the Colorado River Indian Reservation

Eric Shepard, Attorney General

Mervig Scott, Tribal Council Secretary

Doug Bonamici, Legal Counsel

Cocopah Tribe

Alan Hatcher, Tribal Member

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation

Jeremiah Joseph, Water Quality Manager

Fort Mojave Indian Tribe

Linda Otero, Council Member

Colleen Garcia, Council Member

Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation

Jeff Riolo, Representative

Quechan Tribe of the Fort Yuma Indian Reservation

Lorey Cachora, Consultant

San Manuel Band of Serrano Mission Indians of the San Manuel Reservation

Anthony Madrigal, Cultural Resources

Torres-Martinez Desert Cahuilla Indians

Raymond Torres, Vice Chairman

Ben Scoville, Planning/GIS

Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation

Kimberly Metter, General Counsel

Mr. Pogacnik, Deputy State Director, BLM, introduced the DRECP which involves the creation of a landscape level conservation plan to protect resources in the California Desert and facilitate the development of renewable energy projects. He explained he had both an opportunity and a challenge in conserving desert resources for the long term while advancing renewable energy resources on a project-by-project basis. Mr. Pogacnik added that the main question was how to illustrate the juxtaposition of resource values, opportunities and sensitivity on one map.

He said that five years ago the energy industry was asked for input and applications where they thought the best locations were for renewable energy projects. The federal government received over 100 responses. Now, with this new beginning of direct dialogue with tribes, the intent is for tribal leaders to provide information to the federal agencies regarding the best areas to place projects as well as what areas should be avoided. Mr. Pogacnik added that there was the potential of a large commitment of land in Southern California for renewable energy development. These lands could include areas that are sacred to tribal peoples, therefore, tribal input was extremely important if this process was to be able to identify and protect such values. For these reasons, federal/tribal planning partnerships needed to be created. With this goal in

mind, government-to-government consultations for planning and resource identification will be scheduled in the next 45 days or so to assure the DRECP is informed by tribal participation.

Mr. Pogacnik mentioned the challenges that renewable energy projects have had on a project-by-project basis and added that the desire through this planning process was to avoid future conflicts wherever possible. He listed a number of questions that the different agencies had for tribes such as; what is the right approach, what are your tribe's specific needs, do you need Geographic Information System (GIS) assistance, etc. He asked tribal leaders to identify the necessary tools and resources they need to successfully participate in the planning process. Mr. Pogacnik added that the purpose of the DRECP was to provide for the renewable energy development in the California Desert in a manner which conserves wildlife habitat and tribal cultural sites.

Facilitator Myers asked the panel and Mr. Pogacnik their opinion of the Bill (proposed legislation) introduced by Senator Dianne Feinstein calling for a monument that affects Southern California tribes.

Mr. Pogacnik said the Bill was in its initial procedural stages and deals with resource conservation. He noted, as we move forward in dealing with issues it will be important to obtain input from tribes to advance the conversation. He reminded the audience of the Agency's commitment to government-to-government meetings that will be scheduled in approximately 45 days. He added that Tribal Administration offices would be contacted to coordinate scheduling of these meetings in a formal and confidential forum with each individual Tribe.

Vicki Campbell, BLM Project Director, DRECP presented a power point on DRECP. She explained that this planning effort is unprecedented in its scale and commitment to outreach and collaboration. The Plan includes six counties or an approximately 22.5 million acre study area of which about 10 million acres are managed by BLM. This cooperative effort is mainly being conducted by the BLM, FWS, California Energy Commission and the California Department of Fish and Game. The DRECP's purpose is to advance state and federal natural resource protection goals in the Southern California desert regions while also facilitating the timely and streamlined permitting of renewable energy projects under applicable State and Federal laws.

The following handouts were made available: Map of the DRECP Planning Area, Map of Federal Lands Overview in the DRECP Planning Area, List of Key Timelines, and Contact and Internet Information Sources.

Maps were provided depicting the currently-proposed area of the DRECP. Ms. Campbell explained that some areas, such as the Coachella Valley located in Riverside County, were removed at the request of specific local authorities in this case, the Coachella Valley Association of Governments, to avoid conflicts and duplication in areas with existing local planning efforts. Among the important potential effects and consequences of the DRECP are amendments to agency policies and management practices such as the BLM California Desert Conservation

Area Plan (CDCA), the BLM Caliente/Bakersfield, Bishop, and Eastern San Diego County Resource Management Plans, Endangered Species Act, Natural Communities Conservation Planning Act Compliance, National Environmental Protection Act (NEPA) and California Environmental Quality Act (CEQA), to name a few. The DRECP will also help streamline more effective permitting for renewable energy projects by the federal and state government.

The DRECP area will address proposed energy activities which include solar (photovoltaic and thermal), wind, geothermal, and transmission. The proposed area is habitat to plants and animals and could potentially affect 650 species. Ms. Campbell added that biological reserves can be enhanced by adding information on tribal-cultural values in the desert. As a planning effort, NEPA and CEQA will also be addressed and satisfied as a component of the process.

It was pointed out that in developing the preliminary conservation strategy of the DRECP the focus has been on important biological areas and federal and non-federal land ownership. The different areas of resource sensitivity in the preliminary map were pointed out. Animal/plant and resource use/protection characteristics, such as the desert tortoise, desert bighorn sheep, condor policy and off road vehicle/recreational areas, were discussed. It was explained that emphasis was given to these areas but these areas may change or expand with input from tribes on other cultural and biological areas and tribal cultural concerns. This information from tribes, once it is received, can be employed to create a “biological, ecosystem, and cultural reserve system map.”

A proposed timeline was presented. It called for drafts of the Environmental Impact Statement/Environmental Impact Report alternatives for late November 2011, with a Record of Decision and permit decisions by January 2013.

Those present were reminded of the importance tribal input would have on the DRECP. The various websites available for information such as www.drecp.org were presented.

Mr. Todd Hooks, Economic Development Director, Agua Caliente Band of Cahuilla Indians asked if there were a preliminary number of acres of land needed for renewable energy projects.

Mr. Pogacnik's response was, yes, approximately 500,000 acres, but given that this figure is an estimate from the latest information available, additional analysis needs to be completed.

Mr. Tom Davis, Chief of Planning, Agua Caliente Band of Cahuilla Indians asked if wildlife compliance would be affected. Mr. Pogacnik responded that most likely there would be various land use plan amendments.

Mr. Anthony Madrigal, San Manuel Band of Serrano Mission Indians of the San Manuel Reservation voiced his concerns about providing information on specific traditional and sacred sites. Mr. Madrigal felt the timeline presented was very aggressive and the deadlines were shortly approaching. His concern was that some tribes do not have the resources (budget, people, time) for an initiative like this and a special workgroup could be useful. In addition, it is

important to note that the gathering and sharing of the information will take time. Unfortunately, the information is required rapidly because of the deadlines imposed. The areas the agencies would like to know about for the DRECP are the special areas tribal people value because these are part of tribal culture. He suggested the first priority should be to set up a process to have a real dialogue with tribes, even if that means federal agency leaders need to sit down with each Tribe.

Mr. Pogacnik assured Mr. Madrigal that one of the first follow-ups from this meeting will be the scheduling of government-to-government meetings with individual tribes and agency managers.

Ms. Campbell clarified that the information provided to the DRECP group should be very broad and general - just enough to point out the areas to be able to consolidate the information into a document that can be shared with the public. Additionally, if tribes request, agencies will work with them to provide GIS and planning assistance.

Mr. Riolo, Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation asked what culturally sensitive areas were included in the DRECP map presented.

Ms. Campbell said it was only minimal since Mr. Madrigal, who had some input as a public member of the DRECP group, could only speak to his, the San Manuel Tribe's, culturally sensitive areas. Ms. Campbell added that most of the information mapped is biological, but the purpose of this meeting was to request tribal input to integrate the ecosystems already in data systems with general information from tribes on tribal culturally sensitive areas. The goal of this outreach effort was to significantly increase the opportunity for tribes to participate in this regional planning effort.

Mr. Kenna asked for thoughts on the work group that was suggested by Mr. Madrigal.

Mr. Madrigal answered that it should be a group committed to the project in addition to government-to-government consultations. He added that each Tribe has to be asked how they wish to be involved in this process, since each Tribe might want to have/be capable of different levels of participation. He also noted tribes do not all have resources and for the most part, do not have large tribal cultural resources departments. Overall, it should be an assembled working-group to help tribes participate in the DRECP so they can bring information to the table. It should be a working group that continues throughout the process.

Mr. Scott, Tribal Council Secretary, Colorado River Indian Tribes of the Colorado River Indian Reservation asked if there was a plan covering when a company goes out of business or leaves the project halfway. Is there a clean-up plan, for example?

Mr. Pogacnik described the performance bonding process, clarifying that under this requirement the taxpayers do not have to pay for the clean-up.

Ms. Campbell added that in public lands there is also a bonding process that requires the company to clean up and restore a site and added that this concept could be added to any project.

Mr. Black emphasized that the natural and cultural resource information for California Desert planning ultimately needs to be in GIS format so it can be mapped and considered. He asked if Mr. Madrigal would like to help create the suggested workgroup. Mr. Black's understanding was this group would be made up of tribal and federal individuals working together to a common goal.

There was a general discussion by the group at large in which it was emphasized that this dialog between agencies and tribes in the desert was expected to cover a wide range of issues and potential resource impacts. Some of the issues intersect and articulate with habitat, traditional values, reservation renewable energy development opportunities and groundwater issues. The DRECP was emphasized as offering a unique opportunity for coordinating these discussions as tribal input to the DRECP could serve as a starting point for subsequent discussions between BLM and individual tribes.

Meeting Break for Lunch 12:30 – 1:30 P.M.

Reconvened: 1:32 P.M.

Mr. Daniel Shillito, Regional Solicitor, as follow up to Chairman Milanovich's concerns regarding Tax Code 26 USC 168, that will end this year will negatively affect tribes if it is not extended in Congress. There are current provisions where in one can have property with 30 or 60 year accelerated depreciation. Tribes can ask for parity by requesting the same treatment under law as utilities with regards to tax credits.

Mr. Anthony Walters, External Affairs Director for Assistant Secretary for Indian Affairs returned the conversation to the DRECP, noting the advantage of tribes being involved early before the Plan is completed as DRECP project members do not have to react to the input once the document is published. It is important for tribes to get involved early in this process to have more input.

Mr. Laidlaw reiterated that the federal representatives needed to hear from tribes as to how best to engage them in DRECP and related planning discussions over the next year and a half to assure tribal concerns are identified and addressed. He pointed out the federal representatives present provided the opportunity for open communication with the different agencies of the government. He noted that breakout rooms were reserved to continue specific discussion as needed.

Ms. Linda Otero, Council Member, Fort Mojave Indian Tribe thanked Chairman Milanovich and the Agua Caliente Tribe for hosting this meeting. She added that she is the Director of the Ahamakav Cultural Society in Arizona and it is a driving force of what she does. She wants to have in the record that:

Tribal input is important in the DRECP and should be strongly considered in the decision making process.

Tribes have worked many hours and weeks on the topic of solar energy because they too believe it is important.

Tribal concerns should be taken to the highest levels and should be heard in Washington, DC.

Her "River People" Tribe presented an official letter to President Obama stating their concerns of the fast-track projects. The Tribe is making a proactive effort; it does not want to be reactive.

The area included in the map shows the ancestral lands of tribal people. Many of the people of the lower Colorado River are included in this area. She noted that the River People thrived throughout time and future generations will move into the future integrated with the environment.

The land has layers of sites of people who have been here centuries. What today looks like a stream used to be a river that flourishes; this is a connection to the Tribal River People.

Tribal people teach the young ones so they will carry on the ways of their culture.

Every act of Congress affects tribes. Historically, tribal input has been missing but times are changing. She added that she has stood in the record on Washington, DC and her Tribe will take every opportunity to be heard. The intent today is to move forward.

Tribes are working with the Western Regional Partnership to take back the management responsibility; heritage resources are limited so it is managed to the best of the Tribe's abilities.

Information has to move up the Agency's chain of command to make resources necessary available to those staff members at bottom.

The government needs to acknowledge that the environment needs to recover from the damage. Policy will affect tribes into the years beyond. Efforts should be stepped up so wilderness zones are reviewed and protected.

The Fort Mojave Indian Tribe at one point in time was a Nation; the Tribe is both water and land. Actions by the US Government and the Tribe should be done with respect.

There are layers of actions that need to be reviewed to be able to show on a map. Some of the wilderness zones are mountainous regions.

There have been meetings before and information has been shared; therefore, the federal agencies do not need to start at "square one." They can draw information from what was said before.

She keeps hearing of the renewable energy projects moving fast but, "thriving is moving in balance with nature." Her people are for renewable energy and they understand that this is moving fast because of the economics and the funding behind it. She asked that those present be open minded to see that not just a large land base is being disrupted. She presented a picture of one project showing disruption. She asked how the historical

damage will be addressed, it is not just about monitoring it is about safeguarding the environment.

Of critical interest is to have the protection of places that are non-renewable.

Water is another important aspect. It needs to be understood that during construction water is needed. Water is being siphoned out by projects with water wells. Water is a heavy topic for Southern Tribes and it needs to be acknowledged. There is water that is being siphoned out from the springs that feed into the Colorado River.

Projects that involve both state and federal agencies do not always work smoothly, but hopefully, tribes have more input so what is important to them gets included in the implementation.

Ms. Otero ended her statements by voicing her disappointment that Secretary Salazar toured her tribal area by air, but she did not receive answers to her letters. It seemed, to her, that her tribal concerns were not taken seriously.

Mr. Laidlaw acknowledged the difficulty of communicating with the federal, state, and local agencies and suggested that this effort led by BLM could help tribes be included in broader conversations involving desert resources.

Mr. Pogacnik, emphasized that in this process, the next step would be to have government-to-government consultations and asked those present for their partnership and help in getting guidance from their tribes as how to best accomplish these and subsequent meetings.

Erika Niebauer, Associate Attorney, Regional Solicitor's Office, pointed out that there are tools that could be used by the Bureau and there are areas that could be identified by the sharing of information process.

Ms. Otero reminded the group that, historically, information shared with government agencies has been used against tribes and tribal resources continue to be erased.

Ms. Campbell added that the agencies want to hear from tribes. Now, knowing the tribal interest of restoring damaged areas, it could lead to work to have money focused on a reserve system.

Ms. Otero added that some areas have elements that simply cannot be restored because some things are gone.

Mr. Madrigal voiced his concerns of long-term issues that should be addressed with long-term planning and asked for the agencies' commitment to this. Tribes can provide information on trails, etc., but tribes need to be taught the planning procedures in order to be of better assistance. He reiterated that a strong commitment with resources will be necessary for a long lasting relationship to be created.

Mr. Lorey Cachora, Consultant and Government Member, Quechan Tribe of the Fort Yuma Indian Reservation made a statement that included the following main points:

His Tribe practices its own culture, administration, elections, etc., but wants to have a dialogue. The local area tribes have been separated by differences such as fishing, planting and harvesting, but all the people produced horticulture because they grow from the sand.

Spirit Mountain in Laughlin, NV is a sacred place. How do tribes comply with the request for information?

He is concerned with the sudden urge with renewable energy and the fact that rules and regulations that have been around and asked be obeyed for years are now being overruled.

He was saddened by the fast pace of “going green” (renewable resource projects) because it was “disturbing to see.” Given his personal and historical experience, there is some guidance that should be followed.

The concern is that when rules are changed, he expects the federal and state agencies to follow these rules just as the tribal people follow them.

The fast approaching deadline of the DRECP is of great concern, given that there is so much about the River Corridor that needs to be explained from rock alignments, cliffs, pictographs, etc. All are of great importance. The ancestors went all the way to South America and back.

Elders keep hidden what they know so it will take time to gather the information, especially with an area that goes North, South, East, and West of the River Corridor. Science and scientists have been a danger with their desire to collect artifacts; they have cleared the desert.

It will be hard to map sacred places because artifacts are no longer there.

Mr. Frank Brown, Tribal Member of Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation thanked all for letting him speak. He made a statement that included the following main points:

In San Diego County the Tribe is experiencing miscommunication with the local BLM and it seems they are not cooperative.

Mr. Brown is the Chairman of the *Inter-Tribal Cultural Council*, of the 13 Kumeyaay Nations. He represents the majority with respect to culture. The Kumeyaay have been around for 10,000 years. It is impossible to present a report in this short notice.

Mr. Brown asked if the report with the information requested is presented, will the lands be protected.

Ms. Campbell informed that the stakeholder’s group started a meeting one and half years ago and added that this is an ongoing plan of the overview of DRECP. The cultural aspects of the area are unknown; therefore, the general information is being requested.

Mr. Brown continued his remarks, including the following main points:

At a project in his area, the BLM representative was concerned about dinosaur bones and biology more than tribal ancestors. Mr. Brown is a monitor for the Ocotillo Express Wind Project but archeologists working on the site never listened to him nor were his words in the official record. It is disrespectful for workers on the site to mainly talk about dinosaurs and birds, but not care about culture. In one particular project there were six sites with pictographs and hieroglyphs, but the focus was on animals.

He asked if the information given for the DRECP would be implemented and if it would affect current/on-going projects.

Mr. Black explained that everyone is trying to take advantage of the near-term opportunities and also move the President's agenda forward. With respect to specific projects' application and compliance under Section 106, all of the federal agencies are committed to doing better under each specific circumstance. The desire is to have a foundation as soon as possible to direct industry to correct locations that preserve the integrated system.

Mr. Pogacnik explained that for the most part everyone has been on this project-by-project application-driven world and now the agencies are trying to create some capacity for individual communication with tribes that will stay open over time.

Mr. Brown asked if the timeline could be pushed back given the tribal concerns of disturbance of cultural sites.

Ms. Campbell, replied that the DRECP timeline was what she had presented but the commitment of agencies to work with Tribes was on-going.

Mr. Laidlaw talked about the opportunity of working as cooperating governments and asked tribes to consider this a starting point which has the opportunity to change the relationship with these agencies. He added that agencies need to talk more broadly with tribes about their programs so tribes can share their concerns as well as identify opportunities. He and others hope the outcome is a change in the way business is done. The agencies wish to find out what works best for each individual Tribe.

A question was again raised about the Monument Bill that Senator Feinstein is working on.

Mr. Black responded that the Department has worked with the Senator as related to boundaries, but it is important to focus on the purposes of the Bill which is to identify areas of conservation.

Mr. Brown asked those federal agencies present to contact the local tribes to identify the cultural landscapes and territory which is the most important to them.

Ben Scoville, Planning/GIS for the Torres-Martinez Desert Cahuilla Indians made a statement that included the following main points:

The Tribes' cultural resources are very important as well as renewable energy.

The Tribe is lacking information and resources to do surveys with cultural monitors to identify the land. It is best to identify sites early so projects work smoothly.

The Tribe has tremendous potential for solar and geothermal projects; but the resources are the difficult issue.

Mr. Scoville asked if there was a way for tribes to obtain resources for strategic development. Is there a possibility to have preference on developing projects in a culturally sensitive and correct way and can tribes be participants in the renewable action team as a stakeholder? Mr. Scoville also asked if there is any way to ensure that renewable energy projects will not negatively affect the opportunities on tribal lands.

On a separate issue, Mr. Scoville pointed out that Torres-Martinez has not been able to benefit from their Settlement Act. One third of the reservation is underwater in the Salton Sea and fee-to-trust and land exchanges are something the Tribe would like to look into and have the broader planning process consider.

Mr. Walters directed Mr. Scoville to the Office of Indian Energy and Economic Development with the BIA which works with tribes on issues of competitive grants and does studies on possible projects. He urged tribes to also provide input as to where they would like to have future possible renewable energy projects in their area.

Mr. Black emphasized the need for all of the agencies to follow up with those present and added that meetings are held monthly with a large group of interested parties called Renewable Energy Action Teams. An invitation was extended for tribal representatives to attend those meetings. Additional information was provided indicating some meetings are posted online and others have conference lines for participants to call in.

Facilitator Myers, spoke of a Bill that defines tribes to be as public entities and inquired how that might affect tribal outreach and coordination. .

Ms. Campbell indicated she would discuss that issue and also noted there are various meetings, some weekly, some monthly, and asked that those who wanted to participate contact her for information. She added that DRECP's title has a focus on conservation, but it is equally important to hear where tribes would like to see development occur.

Mr. Shillito voiced an idea to get money for tribes that need resources by earmarking money for particular areas so the funds could be made available to assist tribes in more effective planning participation.

Mr. Cachora made a statement that included the following main points:

If agencies have DRECP meetings "all the time," why is it that the tribes are just now learning about them even though three or four months ago there was an energy project moving forward without tribal input or tribal consultation? The Tribe was told that survey was completed, but without tribal input. How much can be known of the Tribe.

Mr. Cachora presented the example of one solar project in which culturally significant vegetation was cut down without tribal input; even though “artifacts grow within it”. The land of this project was also “arbitrarily fenced”. All this was done just to move the project forward at the California Energy Commission’s request. This is just an example of government-to-government misunderstanding.

The words “government-to-government,” communication are not always understood the same way by the government and the tribes. Working with consultants or sending letters that ask for a signature at the bottom is not tribal consultation.

There is mistrust for federal agency requests for communication.

Looking at some maps, it seems like a renewable energy land-grab. How many of the projects will serve California’s interest and how many are just for money to sell electricity elsewhere?

This fast-paced stimulus program is not a way to deal with employment issues.

Mr. Kenna answered that the map (of existing projects) is random or may look like a “land-grab” because industry told us where they wanted to go. Now, with the DRECP, the government will tell them where they can go. The information gathered will help decision making in the application process. There were over 100 applications, most were from speculators who were rejected; this too frustrated the federal government.

Ms. Campbell spoke of the difficulty in knowing how many projects were needed because of the many aspects and the speculations of energy needs for the next 50 years. Some educated guesses are that 65% of the need of electricity production will come from the desert or about 1.5 million acres.

Mr. Black directed those present to the BIA with regards to the eligibility for loans and reminded the group that there might also be tax credits or other opportunities for tribes. It is also important for those tribes interested in participating in renewable energy development share that interest with the planning team. For this reason, as well as sensitive resource identification, tribal input was essential to moving the DRECP forward.

Mr. Cachora asked if there was some tool to know what was included in the tentative map. Mr. Kenna responded that information could be posted on the project’s webpage.

Mr. Merving Scott, Tribal Council Secretary, Colorado River Indian Tribes (CRIT) made a statement that included the following main points:

Tribes need to know how the information provided by tribes will be protected since these are sacred locations.

He is concerned with the government’s lack of ability in protecting sites. He added that some people steal, deface, and break artifacts.

The timeline is also of concern since elders are afraid of sharing the information. It is not as simple as saying “give me your history.”

Mr. Laidlaw mentioned that while oral-form copyright agreements have been executed in the past to protect specific conversations, the information being requested for the DRECP is at a very general “landscape” level and should be able to avoid many confidentiality issues. The initial goal of this planning dialog is to assure information that tribes are comfortable sharing is included in the planning and GIS effort. This should also be viewed as an opportunity to establish deeper cooperative efforts between agencies and each Tribe. At the planning level, tribes can tell us the value of desert regions without sharing specifics.

Mr. Kenna added that the maps shared today by Ms. Campbell were tools to show a starting point so tribes could judge what the need is. He recommended creating a mechanism so federal and tribal folks can communicate on a regular basis and be part of the working group.

Ms. Campbell noted the draft DRECP report would be coming out soon, but the best time to obtain input was now.

Mr. Jeremiah Joseph, Water Quality Manager, Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, asked if tribes would benefit from renewable projects being close to them.

Mr. Walters answered that there will be some benefits, especially if tribal preferences can be worked into the projects with the BIA.

Mr. Joseph voiced his concerns regarding companies walking away from projects and structures. “If anything negative were to happen, would natural resources be available for the Tribe to be able to survive?”

Alan Hatcher, Tribal Member, Cocopah Tribe, AZ, made a statement that included the following main points:

There are communication inconsistencies with tribes that are in place. These are “process-focused” in nature and a failure.

The timeline presented is almost irreparable; it seems reactive going back to legislation.

What is GIS and what is required for the DRECP.

It seems like the government wants tribes to support this historical process, but the anomalies push tribes to oppose the project, such as a project public hearing without public comment allowed.

Is a recent lawsuit the catalyst for this dialogue?

Meaningful consultation cannot take place while the reports are being completed. The dialogue should be simple communication so tribes are empowered and the communication is meaningful.

The burden is being put on tribes given that the deadline is just a few weeks away.

The renewable energy projects are here and the way things are done have changed.

Mr. Black thanked Mr. Hatcher for his feedback and encouraged all tribal representatives to also share their views for improving this dialog as the federal agencies need tribal guidance and participation.

Break 3:20- 3:30 P.M.

Reconvened 3:33 P.M.

Facilitator Myers voiced his support for effective communication and remarked that form letters do not always do a good job.

Mr. Pogacnik reiterated there was agency interest in arranging multiple meetings with those present, noting this was the beginning of the process. Mr. Pogacnik also emphasized that it is understood that tribal information is very sensitive, but the lines that are drawn in the map do not have to be defended or justified. Tribes are, themselves being asked to identify areas of cultural concern, resource conflict, development interest and natural resource issues. For this reason, ethnological studies are not needed.

Mr. Joel Clement, Director, Office of Policy Analysis noted that a landscape-level process such as the DRECP is meant to even the playing field so all of the competing interests have some input on planning and development, rather than favoring whoever puts in an application for development.

Ms. Campbell added that from a wildlife biologist perspective, she wants lines on a map, but she reminded the group that justifications are not needed.

Mr. Doug Bonamici, Legal Counsel, Colorado River Indian Tribes of the Colorado River Indian Reservation asked if the federal government was going to take the Tribe's word.

Ms. Campbell responded "yes we are."

Ms. Otero said that her people had trusted tribal leaders with the responsibility of taking care of the land. She was glad to hear the Government's new approach. She noted it was difficult to work with agencies or project applicants who hire contractors to talk to the tribes and that this approach goes against most laws. Even though BIA is starved for money and resources, there are a few people out there that she and tribal leaders would be comfortable with. She asked if there was a way to know when a corporation was moving a project forward so that true government-to-government meetings can take place with sufficient time and opportunity for tribal input.

Mr. Pogacnik stated that everyone will trust the data that is going to be provided by tribes in the planning process. Asking tribes to identify their issues and concerns is consistent with the way biologists are being treated when asked to identify habitat concerns. With the use of the

information in the DRECP, if an application for renewable energy development is submitted seeking to work in a protected area, the answer would be no.

Mr. Kenna added that the application-driven world is different than the planning-based approach to future project siting which will result from the DRECP. While there are difficult issues, it is necessary to move forward to create a map. The idea is to have a dialogue before an alternative analysis process is created.

Ms. Campbell stated that the DRECP was California Desert focused, but if lands in close proximity were of interest, the information should be shared in this process so that it may be possible to move the boundaries.

Facilitator Myers excused himself due to a prior commitment and reminded all that consultation should be done with the Tribal Leaders and Government Leaders. He wished the group good luck for the second day of meetings.

It was announced that there were breakout rooms reserved for more in-depth conversations should anyone wish them. The majority of those present said they would attend for the second day of meetings.

A general discussion occurred focusing on the different aspects of laws that could be used in informing the planning process such as NEPA and CEQA. It was noted that FWS was rewriting guidelines that could affect some areas due to the presence of eagles.

Mr. Black urged all to stay when the plenary session ended and reach out to the 15 senior government employees that were present. He then reminded everyone data was needed to populate the DRECP map.

Questions were raised over individual renewable energy projects and it was decided that roundtables would be conducted on day two of the meeting.

Ms. Otero asked who would be meeting with each Tribe.

Mr. Laidlaw and others answered that Field Managers or District Managers or GIS mapping specialists of the BLM would be the main points of contact. The tribal representatives present voiced their concerns that meetings be with agency representatives who have the authority to make decisions.

Mr. Black stated Field Managers do have limited authority and added that the projects that get to the federal government do so because the Field Managers are involved. He noted level of activity in the federal agencies had increased significantly in response to many new project applications.

A discussion was held that focused on the difference in power structure of the federal government, where there is distributed authority and balance between agencies with many

different missions. This was contrasted with tribal governments where a single body or person makes decisions. The difficulties of representative tribal input were discussed.

Questions over commitment issues were raised. It was stated that Tribes could count on the commitment from the current department and agency leadership. These federal agencies want a process including specific strategies which work for each individual Tribe and create true communication.

Ms. Otero remarked how her tribe's government-to-government protocol was redlined by the Solicitor's Office when her Tribe tried to create it.

Mr. Black asked Ms. Otero who would she like to see consult with her Tribe.

Ms. Otero replied, the Secretary of the Interior in a face-to-face meeting.

Mr. Black said he would take the information back to Washington, DC and said that the BLM was in the best position to have the first meetings with tribes due to the way the federal government is organized and since this would be the most efficient way.

Mr. Kenna added that as the new State Director, he would like to visit field offices and check in with tribes that would like to meet with him.

Comments were made by several tribal representatives that consultation regarding an area of Tribal concern or tribal development programs could be complicated by the lack of communication among BLM and other agencies across agency and jurisdictional boundaries (e.g. California and Arizona).

Mr. Laidlaw summed up the federal commitment and next steps to be taken.

Mr. Pogacnik emphasized the commitment of BLM to bring tribes into the planning process and asked that each Tribe make their specific issues, concerns and interests known

Meeting Adjourned 5:00 P.M.



COLORADO RIVER INDIAN TRIBES

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January 19, 2012

Via E-Mail and U.S. Mail

John Kalish, Field Office Manager
Bureau of Land Management - South Coast Field Office
1202 Bird Center Drive,
Palm Springs, CA, 92262-8001

Re: Comments on the proposed (Draft) GEOARCHAEOLOGICAL TRENCHING AND CONTROLLED GRADING EVALUATION PLAN, GENESIS SOLAR ENERGY PROJECT, RIVERSIDE COUNTY, CALIFORNIA

Dear Mr. Kalish:

The Colorado River Indian Tribes ("CRIT" or "Tribes") welcomes the opportunity to comment on the Geoarchaeological Trenching and Controlled Grading Evaluation Plan ("Trenching Plan") for the Genesis Solar Energy Project "GSEP" or "Project"), as proposed in the December 2011 draft, and now under consideration by your office.

The Colorado River Indian Tribes wish to express significant concerns it has with respect to treatment of cultural materials discovered at the site of the Genesis Solar Energy Project. As a concurring signatory to the GSEP Project Programmatic Agreement ("PA"), on December 6, 2011, CRIT representatives participated telephonically in a meeting with representatives of the Bureau of Land Management ("BLM" or "Bureau"), the Project applicant ("NextEra"), the California Energy Commission ("CEC"), and other Indian tribes in the region. At this meeting, the participants discussed what was described as the "unprecedented" discovery of significant cultural resources at the Project site during grading operations. (Statement of Holly L. Roberts, Associate Field Manager, BLM, South Coast Field Office, regarding nature of discoveries at GSEP, during telephonic conference, December 6, 2011). At that time, a preliminary Trenching Plan had been proffered as a treatment response to the many discoveries then taking place at the GSEP site.

After reflecting on this new information, and engaging in discussions with other area Tribes and BLM – a discussion wherein Bureau personnel also described the discoveries as unprecedented - CRIT agrees with Ms. Roberts – the discoveries at GSEP are indeed unprecedented.

The CRIT Reservation is very close to the site at Dry Ford Lake. CRIT members feel a strong kinship with the people who are represented by the "artifacts" now being churned up at the Project site. CRIT also feels a strong sense of responsibility to honor and protect those people who left the cultural items there long ago. CRIT is pleased that BLM has taken steps to protect cultural values at GSEP, but we remain

concerned that the cultural values assessment itself may be undertaken primarily by archaeologists working for the Project developers (through AECOM), the California Energy Commission (CEC), and the BLM. While we do not doubt the integrity of these entities, we believe that their interests naturally, and necessarily align with the Project’s continued development and completion. Tribal interests may lie elsewhere. Certainly, CRIT’s interest is in preserving its cultural history. However, without a clear-eyed assessment of the Genesis site, one undertaken by all concerned parties together, Tribal interests may go underrepresented. Thus, CRIT has a number of serious concerns about the Project’s impacts on cultural resources, NextEra’s compliance with their obligations under the PA, Historic Properties Treatment Plan (“HPTP”), and California Energy Commission Conditions, and BLM’s consultation with CRIT. BLM must address these issues before determining whether, and under what conditions, NextEra may be allowed to proceed with construction in the area of these, and future discoveries.

1. Initial Notifications/Consultation Failed to Adhere to Project Requirements:

The GSEP Programmatic Agreement contains a notification and consultation process intended to address treatment of discoveries of cultural materials during construction of the facility. According to representations made at the December 6 meeting, BLM was aware as early as November 14, 2011, that grading activities associated with Project development had revealed and possibly destroyed numerous cultural items associated with a prehistoric human settlement. Yet, CRIT was not notified of this unanticipated find by either NextEra, or BLM until November 29, 2011, more than two weeks later. This delay clearly violated the National Historic Preservation Act and its implementing regulations, which require BLM to notify affected Indian tribes of such discoveries within 48 hours. See 36 C.F.R. § 800.13(b)(3); see also GSEP Programmatic Agreement (PA), § VI(b) (incorporating requirements of 36 C.F.R. § 800.13(b)(3)).

Further, the California Energy Commission’s Licensing Condition CUL-9 also requires notice to affected Tribes within 48 Hours. (See below: *Historic Properties Treatment Plan*, Table 8, pg 6-4.)

Table 8. Schedule of Pre-construction, Construction, and Post-construction Tasks

Ongoing during construction	Within 48 hours of the discovery of a resource of interest to Native Americans, the project owner shall ensure that the CRS notifies all Native American groups that have expressed a desire to be notified of such finds (CUL-9)
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CRIT reasonably assumed that its signatory status on the PA adequately communicated, and established its “desire to be notified” of these discoveries.

Subsequent communication between BLM and CRIT Tribal Council and staff has improved. However, the early failure to notify CRIT in a timely manner put the Tribes in a disadvantageous position. Research and response to these issues is time-consuming for all involved. In the interim, more discoveries occurred; more cultural items were destroyed, and more spiritual harm was done. There are only two signatory Tribes on the GSEP Programmatic Agreement. This is a very short list. If, as here, only 50% of the affected signatory Tribes are notified and consulted in a timely manner upon discovery of “unprecedented” cultural resources, it raises profound concerns whether Tribes can ever reasonably be confident that their cultural resources are safe in the hands of BLM or project Developers.

2. BLM must Consider Avoidance as the Preferred Treatment Option for Recent Discoveries at GSEP.

i. BLM Response to Discovery of Artifacts.

According to meeting minutes from a November 29, 2011 conference call between BLM, CEC, AECOM and NextEra, it appears that BLM had already committed to allow Project construction to continue on the newly discovered historical site before notifying CRIT of the discovery. For example, these minutes reflect that the conference call participants—which did not include any tribal representatives—were already in the process of preparing a plan to continue grading, so that artifacts would be unearthed and collected as construction continues, rather than avoided. This pre-existing commitment failed to meet the BLM’s obligation to consult with Indian tribes before committing to such a course of action. CRIT is very concerned that such a commitment renders any future “consultation” with CRIT or any other tribe, perfunctory.

Moreover, it appeared from these minutes—as well as from the tenor of the December 6 meeting—that neither NextEra nor BLM had considered avoidance of the discovered site as a method of mitigating significant, adverse impacts to cultural resources, even though the Programmatic Agreement expressly identifies avoidance as the preferred method of mitigation. *See, e.g.*, Programmatic Agreement, App. B, § III(a)(ii) (“For cultural resources, the preferred method of mitigation is avoidance of all cultural resources to the maximum extent practicable.”); *id.*, App. J, § 2.0 (“Avoidance of all cultural resources is preferred and is the goal of BLM.”). Only if avoidance is infeasible should BLM consider allowing adverse impacts to be mitigated by “data recovery” and excavation. *See id.* Programmatic Agreement, App. B, § III(a)(iii)(1); *id.* App. J § 2.0. Avoidance is recognized as the preferred mitigation method by the California Energy Commission in its decision approving the Project. *See* CEC Decision, § VI(C), Findings of Fact #9.

The HTPT is replete with promises – some more specific than others - that avoidance will be considered as a treatment option. Examples from the May, 2011 version of the HTPT include the statement “[t]he avoidance of all cultural items and sites should be considered where feasible.” (Chapter 9.0, Mitigation Plan / Plan For Discovery Of Cultural Resources.) This same statement, though somewhat vague as to its intended application, appears several times throughout the Chapter.

The title of Chapter 9.2, “Definition Of Unanticipated Discoveries Where Avoidance Is Not Required— Prescribed Treatment” suggests that there are corresponding discoveries where avoidance *will* be required.

A more specific promise appears in Chapter 9.4.2, entitled Site Evaluation Methods, which contains the following passage;

“Site avoidance will be the preferred method of dealing with cultural resources during construction of the GSEP. However, if a newly discovered resource is potentially significant and if avoiding the resource proves infeasible (as determined through consultation between the CRS, the project owner, the CEC CPM, BLM, PTNCL and DTCCT specialist (if applicable), and SHPO), then site evaluation will proceed.

Avoidance is also CRIT’s preferred treatment alternative. The same preference was expressed by several Tribes attending the December 6, 2011 planning meeting referenced above. Though NextEra’s Project representatives asserted that avoidance of the area where recent discoveries occurred would be infeasible, and would result in there being “no project,” neither NextEra, its technical contractor, AECOM, nor BLM has provided CRIT with evidence indicating that avoidance is not feasible. Indeed,

when the Bureau analyzed a "Reduced Size Alternative" in the Draft EIS for the project, it specifically noted that "no evidence has been provided to demonstrate" that "a 250 MW size project is an optimal size," as the developer urged, and that "solar thermal facilities as small as 20 MW are currently proposed in California." DEIS at 2-33.

ii. Halting Construction Activities in Vicinity.

On approximately December 12, 2011, BLM notified CRIT that it had ordered NextEra to stop all construction activities on the Project site in the vicinity of the newly discovered cultural resources. BLM also indicated that it would continue to enforce this stop-work order until formal consultation had occurred. CRIT applauds these actions. However, a short-term work stoppage is only the beginning of the process. Subsequently, BLM engaged in consultation with CRIT Tribal Council, and indicated that consultation will continue, as the treatment alternatives and decisions are considered. CRIT likewise appreciates BLM's stated commitment to these goals.

iii. Review by Independent Expert.

CRIT believes that, for consultation to be meaningful, BLM and NextEra must allow CRIT to bring an expert to the site to investigate and analyze its significance. BLM must not allow NextEra to undertake any construction activities that could further disturb or degrade the site until CRIT's expert has had an opportunity to investigate the site. Please provide CRIT with a schedule of dates available for such a site visit, recognizing that CRIT's expert may need more than one day to conduct his/her research.

iv. The draft Trenching Plan Should be Revised, or Augmented to Include a Detailed Discussion of Avoidance Feasibility.

At the Dec. 6, 2011 meeting, and again during the January 12, 2012 meeting between the Bureau and its Tribal Council, CRIT made it clear to NextEra and to BLM that their first choice for treatment of the newly discovered cultural materials was through avoidance. Even though the proposed Trenching Plan states that it was "prepared . . . in consultation with . . . Native American tribal representatives," Plan at 1, the Plan fails to address what CRIT and other Tribes clearly and unanimously expressed was their preferred treatment option. Given that the PA, the HPTP, and the CEC conditions all state avoidance is the preferred method of handling unanticipated discoveries like those at the site, the Bureau must at the very least analyze the feasibility of avoiding these "unprecedented" finds.

v. Area of Critical Environmental Concern: "Land Swapping" Is Not a Viable Option

During the January 12, 2012 meeting between the Bureau and CRIT Tribal Council, the Bureau suggested that the Trenching Plan might yield information that could support a subsequent designation of lands around the GSEP site as an Area of Critical Environmental Concern ("ACEC"). Thus, while the Trenching and Grading would disturb the GSEP site, it may result in the future protection of neighboring BLM lands.

In response, CRIT Tribal Council members described the disturbance of cultural resources at the Genesis Solar Energy Project site as physically painful to them. One Tribal Council member, immediately grasping the implications of the Bureau's hypothesis, stated flatly, "We don't want to see lands swapped – the items being discovered there are too sacred to disturb."

Thus, the Colorado River Indian Tribes cannot, in good conscience, support trading the destruction of one cultural site for the possible protection of others. In addition, CRIT will be consulting with its own cultural resources expert/archaeologist about how, from a technical perspective, the Bureau can protect the resources at the site from disturbance while providing the information needed to support of a ACEC designation.

3. NAGPRA Does Not Require Excavation or Curation of Human Remains and Funerary Objects.

The discoveries at GSEP include a pair of nested metates lying upon a bed of charcoal. This is universally presumed to be a cremation site by members of the Colorado River Indian Tribes. They need not be shown a charred bone fragment, nor DNA analysis of ash samples to reach that conclusion. Avoidance of the site is CRIT's preferred treatment.

CRIT notes that nothing in the HPTP, or the Native American Graves Protection and Repatriation Act *requires* that the site be further disturbed by excavation, data-recovery or curation. No one at CRIT needs to know anything more than they already do to make this determination. Excavation, and curation are the last alternative that should be considered for protection of the gravesite elements – not the first.

Even if this *is* merely a chance grouping of elements, a coincidence of time, weather, and geologic processes, placing the two stone metates in a nested position atop the remnants of a domestic cooking or heating fire, there is still no compelling reason of which CRIT is aware, to unearth the site. Unless additional information establishing some compelling need to further disturb this site is provided, CRIT's treatment preference continues to be avoidance.

4. Supplemental EIS is Required.

At a minimum, given the extraordinary nature of the archaeological find at the Project site, BLM must prepare a Supplemental EIS for the Project, per 40 C.F.R. § 1502.9(c)(1)(ii), to address the "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. As previously noted in communications with BLM, CRIT disagrees with the statement, contained in the minutes from the November 29 conference call, that: "George Kline indicated he talked to the tribes and they are ok with him keeping them informed regarding the plan and *no separate review would be required.*" Given that BLM did not contact CRIT until after this conference call—a fact acknowledged later in the same minutes—this statement is obviously inaccurate, at least as regards CRIT.

The HPTP itself supports such a review. Section 10.2 of the HPTP, entitled *Prehistoric Sites Associated With The PTNCL*, identifies Early Holocene discoveries at known sites in the same area as "exceedingly rare . . . making these discoveries quite significant." Section 10.2 goes on to state that the previous discoveries were made at CA-RIV-9047, CA-RIV-9072, and CA-RIV-9212., and that, like the current location of discoveries at GSEP, "[t]hese sites are all located along the north shoreline of Ford Dry Lake in sites that contain no ceramics or other diagnostic artifacts dating to periods later than the Archaic. This could possibly indicate a site complex . . ." With such clear indication of the potential significance of these discoveries, the Tribes must demand that BLM consider avoidance of the area as its preferred treatment alternative. The Trenching Plan fails to address the avoidance option.

CRIT firmly believes that a Supplemental EIS, and not a Trenching Plan, is warranted here. The Trenching Plan assumes further disturbance is inevitable. CRIT does not support this assumption.

5. NextEra's Compliance with ROW Lease and CEC Conditions of Certification. Pursuant to its Right-of-Way Lease/Grant, NextEra was required to "immediately report[] to the Authorized Officer [at BLM]" "[a]ny cultural and/or paleontological resource (historic or prehistoric site or object) discovered by [NextEra], or any person working on its behalf." Right-of-Way Lease/Grant Serial Number CACA-048880, Exh. B, ¶ 4. NextEra was also required to "suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer." *Id.* CRIT is unaware whether NextEra complied with this condition, and whether BLM issued written authorization for NextEra to continue grading the site after such cultural resources were discovered. Please also provide us with any documentation related to NextEra's compliance with this provision (or lack thereof).

The Conditions of Certification imposed by the California Energy Commission also provide that, upon discovery of a cultural resource more than 50 years old, "ground disturbance shall be halted or redirected in the immediate vicinity of the discovery sufficient to ensure that the resource is protected from further impacts." CEC, Genesis Solar Energy Project, Commission Decision (September 2010) ("CEC Decision"), CUL-9. Ground disturbing activities cannot resume in the area unless and until a recommendation has been made on CRHR eligibility, all interested Tribes have been notified, and other steps have been taken—including the development of mitigation. Please advise us whether NextEra is in full compliance with this condition, and whether a CRHR eligibility determination has been made.

6. Security Measures

With the already large number of discovered cultural items increasing daily, CRIT is concerned that security measures to protect and preserve these irreplaceable items may be inadequate. The Tribes therefore request that NextEra be required to provide to each interested Tribe, a brief, but complete, confidential description of the cultural items located to date, whether these items have been removed from the site, where any removed items are presently located, and how those items, and the worksite are being secured.

7. Observations Regarding "Fast-Tracking" of Project Applications

The Tribe recognizes that modern public policy favors the development of renewable energy resources, deeming such development a benefit to society as a whole. Consequently, pursuant to federal policy, numerous project proposals have been, or are currently being "fast-tracked" through the regulatory approval process, toward ultimate development.

The fast-tracking approach has resulted in short reviews, poor consultation practice, and needless conflict, causing all concerned undue hardship, and failing to adequately protect invaluable, irreplaceable resources of many varieties. With so many project proposals to monitor, and the flood of new project applications overwhelming the staff of BLM Field Offices all over the region, CRIT feels it must be proactive in the protection and oversight of cultural resources in the area.

In principle, CRIT, like many Tribes, favors renewable energy development.¹ However, the problems sought to be remedied by large-scale renewable energy projects largely are an outgrowth of human activities in concentrated urban-industrial population centers coupled with our current dependence on fossil fuels. Historically, isolated and often remote Tribal communities contribute only minimally to these problems. CRIT appreciates the potential value of a streamlined project approval process – increased economic efficiency for both federal agencies and developers, increased energy resources, reduced greenhouse gas emissions, enhanced energy independence – yet, the recent flood of GSEP discoveries makes a strong counterargument for amending the process to better protect cultural resources that are “non-renewable and irreplaceable, a part of our national heritage.”² The Tribe believes that needless disturbance of significant cultural resources has occurred at the Genesis site, and that these unfortunate outcomes are likely to occur again and again if the “fast-track” protocols remain in effect. CRIT’s concerns are aptly characterized in testimony given by Dr. Elizabeth Bagwell, CEC’s staff Project Archaeologist, at the Evidentiary Hearing Before The California Energy Resources Conservation And Development Commission, during the Application for Certification Proceedings. Dr. Bagwell stated as follows:

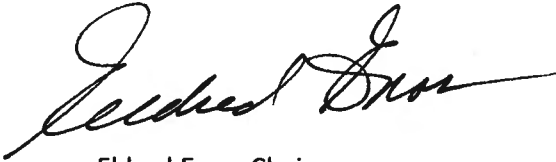
[C]ultural resources are a non-renewable resource. Unlike biology, where you can repair the environment to a certain degree and encourage plants and animals to return. Once you've destroyed cultural resources, they're gone forever.

Bagwell, Elizabeth, Ph.D. Transcript, CEC, Pg. 147

CRIT shares Dr. Bagwell’s concerns. The potential for adverse impacts to this “non-renewable resource” is clear, and “[o]nce you’ve destroyed cultural resources, they’re gone forever.”

Thank you for this opportunity to comment on the proposed Trenching Plan. CRIT remains ready to discuss these issues with the Bureau, NextEra and other affected parties so that we may reach agreement on an acceptable and respectful way to handle this new discovery.

Very truly yours,
COLORADO RIVER INDIAN TRIBES



Eldred Enas, Chairman

cc: Tribal Council
Ken Salazar, Secretary of the Interior
Larry Echo Hawk, Assistant Secretary of Indian Affairs, DOI

¹ Letter from Mike Jackson, Sr., President, Quechan Indian Tribe, to John Kalish, Field Manager, BLM Palm Springs Field Office. (February 16, 2010) (Retrieved from: http://www.energy.ca.gov/sitingcases/genesis_solar/documents/others/2010-02-16_Section_106_Consultation_Process_Letter_TN-55835.pdf. (January 20, 2012)

² Electronic Mail from Greg Glassco, Yavapai-Prescott Indian Tribes, Cultural Resources Manager to Douglas F. Bonamici. Law Clerk, Colorado River Indian Tribes (January 19, 2012, 4:02 pm MST) (on file with author).

cc: Tribal Council
Ken Salazar, Secretary of the Interior
Larry Echo Hawk, Assistant Secretary of Indian Affairs, DOI
Bob Abbey, Director, Bureau of Land Management
James G. Kenna, California State Director, BLM
Teri Raml, District Manager- California Desert District, BLM
Janice Staudte, Superintendent, Colorado River Agency, BIA
George Klein, Archaeologist, South Coast Field Office, BLM
↳ Eric N. Shepard, Attorney General
Lisa Swick, Acting Museum Director
Ron Escobar, Tribal Secretary/ Treasurer, Chemehuevi Tribe
Linda Otero, Tribal Council, Fort Mojave Indian Tribe
Patricia Garcia-Tuck, Director, THPO Agua Caliente Band of Cahuilla Indians
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