August 21, 2009

Delivered via electronic mail (lucernesolar@blm.gov***) and U.S. mail.***

Greg Thomsen, Project Manager
CA Desert District Office
Bureau of Land Management
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553-9046

Re: Scoping comments on the Lucerne Valley Solar Project

Dear Mr. Thomsen,

Please accept and fully consider these comments on the Lucerne Valley Solar Project on behalf of The Wilderness Society.

The mission of The Wilderness Society is to protect wilderness and inspire Americans to care for our wild places. We have worked for more than 70 years to maintain the integrity of America's wilderness and public lands and ensure that land management practices are sustainable and based on sound science to ensure that the ecological integrity of the land is maintained. With more than half a million members and supporters nation-wide, TWS represents a diverse range of citizens.

It is clear that the nation's growing addiction to fossil fuels, coupled with the unprecedented threats brought about by global warming, imperil the integrity of our wildlands as never before. To sustain both our wildlands and our human communities, The Wilderness Society believes the nation must transition away from fossil fuels as quickly as possible. To do this, we must eliminate energy waste, moderate demand through energy efficiency, conservation, and demand-side management practices, and rapidly develop and deploy clean, renewable energy technologies, including at the utility-scale.

Our public lands harbor substantial wind, solar, and geothermal resources. Developing some of these resources will be important to creating a sustainable energy economy and combating climate change, and The Wilderness Society supports such responsible development of renewable energy. Renewable resource development is not appropriate everywhere on the public lands, however, and development that does occur on the public lands must take place in a responsible manner.

Continue to Improve the Process

In general, as your agency, the Bureau of Land Management (BLM), processes applications for solar development on public lands, we urge you to continue to improve the process. Among the areas where additional guidance is needed are: incorporating additional Best Management Practices (BMPs), refining the Right of Way (ROW) application process to properly address the differences between solar development and

other uses of ROWs, and incorporating recommendations from ongoing transmission planning. In general, BLM should prioritize and help guide renewable energy development toward land that has already been developed for industrial, agricultural, or other intensive human uses which are close to existing transmission over ecologically-intact public lands.

Our organization supports and is actively engaged in a number of multi-stakeholder processes aimed at identifying environmentally appropriate areas for solar energy development in California and the West, including the California Renewable Energy Transmission Initiative (RETI), the Western Governors' Association's Western Renewable Energy Zone process, and the BLM's plan to develop a Programmatic Environmental Impact Statement on Solar Energy. We urge you to incorporate the work of these processes as you move forward with permitting solar energy projects in the desert.

In addition, our organizations have worked with other members of the environmental community in California to develop criteria for use in identifying appropriate areas for development in the CDCA as well as a vision for both the kind of planning and the kind of plan needed to protect the desert's remarkable resources while addressing the climate challenge effectively. Fundamentally, success in selecting appropriate areas and achieving the over-arching objective which we all share will require an unprecedented degree of state and federal cooperation as well as close collaboration with our community. This Environmental Impact Statement prepared in cooperation with tribal, state and local governments is a key step in the kind of cooperation we envision, but it is not sufficient alone. Given what is at stake, such cooperation is unquestionably warranted and it is our hope that the identification and application of these criteria will contribute to that result.

The criteria, which are attached, are designed to help guide renewable development, principally solar development, to appropriate locations. More specifically, the criteria are intended to inform current and future planning processes and to provide ecosystem level protection to the CDCA (including public, private and military lands) by giving preference for development to disturbed lands, steering development away from lands with high environmental values, and protecting the desert's undeveloped cores. Developed with input from field scientists, land managers and conservation professionals, the criteria in essence seek to steer renewable energy projects to areas with comparatively low potential for conflict and controversy in order to facilitate their timely development. In other words, the "message" the criteria are intended to deliver is that to expedite development, avoid areas that will generate significant controversy.

The environmental community will be employing the criteria in reviewing "fast-track" energy projects such as the Lucerne Valley Solar Project, as well as in reviewing proposed solar energy study areas and we encourage your agencies to do so as well. "Fast-track" projects are those which may be able to qualify for stimulus funding through the American Recovery and Reinvestment Act of 2009 by breaking round by December, 2010. Because of the significant timing challenges facing projects seeking permits under

such a short timeframe, it is especially important that these projects be screened for characteristics conducive to solar development and potentially difficult or controversial issues. Use of the attached criteria, as well as other screens, will allow your agencies to realistically assess the feasibility of getting projects permitted and "shovel ready" by December, 2010. A realistic assessment of "shovel ready" viability will allow for better allocation of limited agency resources to those projects with the highest likelihood for success.

At the same time, however, we believe it is urgent that BLM work together with stakeholders to develop as quickly as possible a comprehensive approach to evaluating future projects that will ensure that the most appropriate sites for development are utilized while more sensitive sites are protected and preserved. Rather than proceed on a project by project basis in the future, we support a more comprehensive approach to the siting of these projects, the identification of areas appropriate for development, and the prioritization of already disturbed areas. We urge that you begin developing this approach as promptly as possible and would be pleased to help in any way we could.

I. RELATIVE SUITABILITY OF PROJECT PROPOSAL SITE

The Lucerne Valley Solar Project proposal site has both elements conducive to the proposed solar development and issues which will need to be addressed in the agencies' analysis. The sections below outline those characteristics and make recommendations for addressing them.

California Solar Energy Siting Criteria

As indicated above, Lucerne Valley Solar Project has been identified by BLM as a "fast track" project. In reviewing this project, conservation groups will be applying the criteria they developed in addition to considering the issues identified by the agencies and through review of the applicant's documents. Some groups may submit results of this analysis during scoping; we and others may submit results at later date. The agencies would do well to apply these criteria themselves, as well as incorporating the analyses of the groups when they are made available. This is particularly important considering the tight timetable applicable to this project.

Characteristics Conducive to Utility-Scale Solar Development

Like other environmental and conservation groups and as stated above, we believe that solar (and other renewable) development in the CDCA should be steered away from unique and sensitive areas, from the region's undeveloped core, and from lands that are not adjacent to transmission and other needed infrastructure.

The site does not contain designated sensitive and protected areas such as Areas of Critical Environmental Concern, nor has been it been proposed by citizens for designation as wilderness.

The site does have high value solar resources and is close to major infrastructure, private land, and other developments, as well as existing transmission and existing roads.

All of these attributes contribute to the possibility that development of a commercial scale solar facility on this site could result in an overall benefit in limiting the negative impacts of climate change on public lands by decreasing the amount of greenhouse gas emissions from electricity production.

Resource Concerns

There are number of resources on the site that require an in-depth analysis of the impacts of the proposed project and development of a comprehensive impacts minimization and mitigation strategy.

The project site is relatively undisturbed and includes a wash coming down from the San Bernardino Mountains. In addition, the area provides opportunities for horseback riding, hiking, wash walking, and wildflower viewing. Development of such a site requires further study to ensure that other values will not be unacceptably impacted, as well as careful consideration of alternative configurations and alternative sites in the forthcoming federal/state environmental review.

Through the permitting process, BLM and Chevron Energy Solutions may be able to develop this project in a way that supports climate change goals while adequately minimizing and mitigating impacts.

A. <u>Biological Resources</u>

"The DEIS should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. The document should identify and quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species. Emphasis should be placed on the protection and recovery of species due to their status or potential status under the Endangered Species Act (ESA). The DEIS should include a biological assessment, as well as a description of the outcome of consultation with the U.S. Fish and Wildlife Service under Section 7 of the ESA. Analysis of impacts and mitigation on covered species should include:

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

The DEIS should indicate what measures will be taken to protect important wildlife habitat areas from potential adverse effects of proposed covered activities. We encourage

habitat conservation alternatives that avoid and protect high value habitat and create or preserve linkages between habitat areas to better conserve the covered species."[1]

Desert Tortoise

The desert tortoise (*Gopherus agassizii*) is protected under federal and state Endangered Species Acts as "threatened" (USFWS 2006). Despite the listing and attention the species receives for recovery and conservation efforts, populations continue to experience decline due to the cumulative impact of human-based stressors.

There are documented occurrences of desert tortoise in the project area. The applicant would be required to relocate any desert tortoise found in the area of potential effect. Identifying relocation habitat can be a complex task, and relocation can impact individual tortoises or entire recovery units. In addition, the applicant would be required to provide mitigation in the form of habitat protection through acquisition and permanent conservation of those lands.

Recommendation: The BLM should prioritize protection of species in the project proposal area by further analyzing potential impacts and developing Best Management Practices and steps to minimize and mitigate any unavoidable impacts.

B. Cultural Resources

The BLM must adequately evaluate the environmental consequences of the proposed project on historic resources. They must address cultural resource issues in the DEIS. The NEPA regulations recognize that impacts to cultural resources such as historic properties and "scientific resources" can comprise a significant impact on the environment. 40 CFR 1508.27(b)(3),(8). Additionally, BLM must analyze the direct, indirect, and cumulative impact of each alternative on areas of importance to local Tribes and areas of high cultural site density.

Additionally, we urge BLM to begin the Section 106 process under the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, because the project may impact historic properties. The requirements of NHPA are separate from NEPA's requirements, although the Section 106 regulations encourage federal agencies to coordinate the two processes. See 36 C.F.R. § 800.2(a)(4). Proper coordination of the NHPA and NEPA compliance actions is necessary to ensure that adverse effects to historic properties are adequately considered pursuant to the Section 106 regulations, 36 C.F.R. § 800, *et seq.* Proper coordination with Native American tribes will be a central component of the consultation process.

[1] July 7, 2009 letter from the EPA to the BLM and CEC on the: Notice of Intent to Prepare an Environmental Impact Statement/Staff Assessment and Proposed Land Use Plan Amendment for the Proposed SES Solar One Project, San Bernardino County, California (here in after referred to as "July 7, 2009 letter"). Found at http://www.energy.ca.gov/sitingcases/solarone/documents/others/2009-07-07_Scoping_Comments_from_US_EPA_TN-52483.pdf.

Recommendation: BLM should prioritize protection of the area's cultural resources, including study of the area's resources, development of strategies to minimize and mitigate impacts, and ongoing engagement in consultation with local Native American tribes.

C. Soil Resources

Impacts to soil resources are one of the most challenging issues for solar projects proposed in the desert. As seen in the ongoing permitting process for the proposed Ivanpah Solar Energy Generating System, development of adequate drainage, erosion and sediment control plans is a complicated, time consuming and challenging task. To ensure robust environmental protections and timely completion of permitting documents and steps, it is critical that both the project applicant and the agency dedicate adequate time and resources early in the process to addressing these issues thoroughly.

Recommendation: Chevron Energy Solutions and BLM should dedicate adequate time and resources early in the process to addressing soil resources issues adequately, including through the preparation of a detailed drainage, erosion and sediment control plan that addresses these potential impacts and provides mitigation measures that will render these hazards to a level less than significant.

D. Water Resources

Water is a limited resource in the desert southwest, and any project proposal should fully analyze the water needs and identify sources to meet those needs. However water use for the project will be much less than for other solar technologies, minimizing its impact to water resources compared to alternative technologies.

Recommendation: BLM should gather additional information to confirm that the water needed for the Lucerne Valley Solar Project will be available as well as that the source of the needed water will conform to all laws, ordinances, regulations and standards (LORS).

E. Visual Resources

There will be visual impacts from the construction of the Lucerne Valley Solar Project. Although the visual impacts for this project will be much less than for other solar technologies, the construction of an industrial development anywhere on public lands will entail some visual impacts. Yet, the benefits which the Lucerne Valley Solar Project will provide may well outweigh the costs of the visual impacts from this development.

However, there are a significant number of projects proposed for the California Desert. Accordingly, we urge the BLM to assess not just the visual impacts from this project, but also the likely cumulative visual impacts from proposed renewable energy and transmission development in the Desert and begin now to develop comprehensive mitigation strategies to address these impacts in connection with future projects.

Recommendation: The BLM and Chevron Energy Solutions should continue to collaborate on a visual analysis conforming to BLM regulations to address concerns identified in during the scoping period.

G. Land Use

The Lucerne Valley Solar Project will require a CDCA Plan Amendment, as will all new solar projects. We assume that the environmental review of the proposal and the necessary plan amendment will occur simultaneously. See 43 CFR § 1601.6-3(b).

In addition, the site is adjacent to private parcels. While the private parcels are not part of the project, resources on these parcels and the county's ability to manage these resources could be impacted by construction and operation of the Lucerne Valley Solar Project.

Recommendation: "The DEIS should discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the project area. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed it they have been formally proposed by the appropriate government body in a written form (CEQ's Forty Questions, #23b)."[2]

The plan amendment must fully analyze the impacts of industrial development on public lands of an undisturbed nature.

II. OTHER ISSUES RAISED BY THE LUCERNE VALLEY PROJECT PROPOSAL

A. Public Benefits (GhG reduction)

Renewable energy development can have multiple public benefits, most importantly combating climate change by reducing greenhouse gas (GhG) emissions from energy production, and including reduced local and regional air and public health impacts, increased energy resource diversity and decreased price volatility. A reduction in GhG emissions from developing renewable energy is based on comparative emissions from fossil fuel-based energy production.

Because a reduction in GhG emissions is a primary public benefit of renewable energy development, it is critical that the agencies quantify this reduction to the extent possible. The agencies' analysis of GhG reductions should also include a comprehensive look at the project's impacts, including GhG emissions during manufacture, construction, operation, decommissioning, and reclamation of the project site.

The results of this analysis should then be compared to similar analyses for fossil-fuel based energy production, including combined-cycle natural gas fired and coal fired power plants.

[2] July 7, 2009 letter.

Such an analysis will provide the public a clear indication of the costs and benefits of the proposed project and allow stakeholders to make decisions regarding the project based on the best available science and data.

Recommendation: The BLM should comprehensively analyze the Lucerne Valley Solar Project's net reductions to GhG emissions, including GhG emissions during manufacture, construction, operation, decommissioning, and reclamation of the project site. The analysis should consider both the potential for the project to reduce GhG emissions as well as potential for the project to increase GhG emissions, for example, by disturbing undisturbed land currently useful for carbon sequestration. The results of this analysis should then be compared to the same type of analysis for fossil-fuel based energy production, including combined-cycle natural gas fired and coal fired power plants.

C. Bonding

Based on communications with the BLM, we understand bonding will be required of the applicant for the purpose of decommissioning the project. We fully support the effort of the BLM in creating these bonding requirements, and encourage the Bureau to develop a robust set of guidelines for establishing appropriate bonding figures.

Recommendation: The BLM should do a thorough analysis of the anticipated costs of decommissioning and restoring the project site. The BLM should also require bonds be purchased prior to development.

D. Alternative Sites

Consideration of alternative sites is critical to ensuring the Lucerne Valley Solar Project site chosen is the best possible location for the project. This consideration should be based on solar resource, proximity to existing transmission and infrastructure, and conflicts with other resources and values on the project site. BLM's policy requires consideration of alternatives. The National Environmental Policy Act (NEPA) requires that BLM consider a range of management alternatives, and this analysis is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. NEPA requires BLM to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. See id. §§ 1502.14(a) and 1508.25(c). "An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action."[3] An agency violates NEPA by failing to "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action.[4] This evaluation extends to considering more environmentally protective alternatives and mitigation measures.[5]

[3] Northwest Envtl Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997).
[4] City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14).
[5] *See, e.g.*, Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094,1122-1123 (9th Cir. 2002) (and cases cited therein).

NEPA requires that an actual "range" of alternatives is considered, such that the Act will "preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant's proposed project)."[6] This requirement prevents the EIS from becoming "a foreordained formality."[7] "Note that NEPA requires evaluation of reasonable alternatives, including those that may not be within the jurisdiction of the lead agency (40 CFR Section 1S02.14(c))."[8]

It is the BLM's responsibility to identify alternative sites to be analyzed and it may be that options rejected previously should be re-evaluated. Without thorough consideration of multiple alternative sites, the BLM will have reduced the EIS to a "foreordained formality" and improperly limited the alternatives under consideration.

"The environmental impacts of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of wetlands impacted, tons per year of emissions produced, etc.)."[9]

As previously expressed in these comments, we strongly encourage the BLM to engage in a broader landscape level assessment of solar development in the desert. While a comprehensive desert plan balancing multiple land uses including solar will be a long term process, in the interim we urge the agencies to compare the Lucerne Valley Solar Project, and all other fast track projects, to each other in order to identify which of these first phase of projects is likely to have the least environmental impacts.

Recommendation: The BLM must thoroughly consider and present the public with a true range of alternative sites. "Reasonable alternatives should include, but are not necessarily limited to, alternative sites, capacities, and technologies as well as alternatives that identify environmentally sensitive areas or areas with potential use conflicts."[10] We encourage the BLM to analyze an alternative project site on previously disturbed lands.

In addition the agencies should compare the Lucerne Valley Solar Project and its impacts with all other identified "fast-track" projects on BLM land in order to identify the least environmentally harmful projects among the applications that have been selected for expedited permitting.

Thank you for your consideration of these comments.

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[6] Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999), citing Simmons v. United States Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997).
[7] City of New York v. Department of Transp., 715 F.2d 732, 743 (2nd Cir. 1983). *See also*, Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002).
[8] July 7, 2009 letter.
[9] July 7, 2009 letter.
[10] July 7, 2009 letter.

Sincerely,

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