



August 27, 2012

Sent via Mail and Email

BLM Director (210)
Attn: Brenda Hudgens-Williams
20 M St SE, Rm 2134LM
Washington, DC 20003
Email: bhudgens@blm.gov

Re: Protest of the Proposed Resource Management Plans and Final Solar Energy Development Programmatic Environmental Impact Statement

Dear Ms. Hudgens-Williams:

This correspondence represents a formal protest of the Proposed Resource Management Plans ("RMP") and Final Solar Energy Development Programmatic Environmental Impact Statement ("Final PEIS"). We protest for the reasons set forth below by the Solar Energy Industries Association ("SEIA") and the Large-scale Solar Association ("LSA") on behalf of their members.¹

The Department of the Interior and the Bureau of Land Management ("BLM") have, in the past three and a half years, devoted tremendous effort to the permitting of projects on public lands and continue to do so. BLM's accomplishments regarding solar development on public lands have been historic. It has issued the agency's first seventeen permits for utility-scale solar power plants or associated transmission lines on public lands. SEIA and LSA are deeply appreciative of BLM's efforts and are filing this very narrow protest to secure our mutual goal of continued solar development on public lands.

This protest is filed in accordance with 43 C.F.R. § 610.5-2 and contains: (1) a description of the interests of the protesting parties; (2) a statement of the issue and parts of the plan being protested; and (3) a concise statement explaining the various ways that the Bureau of Land Management acted in error.

¹ The comments contained in this filing represent the position of SEIA and LSA as organizations, but do not necessarily reflect the views of any particular member with respect to any issue.

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Interests of the Parties

The interests of the undersigned groups in the Proposed RMP and Final PEIS relate to proper compliance by the BLM with the National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.*, the Federal Land Policy Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*, and BLM policy, including Executive Order (E.O.) 13212, “Actions to Expedite Energy-Related Projects” (*Federal Register*, Volume 66, page 28357, May 22, 2001), and DOI Secretarial Order 3285SA1 (Secretary of the Interior 2010), as well as the negative impacts of these policies on solar energy development on public lands. Members of SEIA and LSA use public lands within the planning areas to develop utility-scale solar energy projects to generate clean, reliable energy for Americans in the southwestern United States.

Established in 1974, SEIA is the national trade association of the U.S. solar energy industry. Through advocacy and education, SEIA is working to build a strong solar industry to power America. As the voice of the industry, SEIA works with its 1,000 member companies to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy.

LSA is the trade association for the utility-scale solar industry and represents the nation’s largest developers and providers of utility-scale solar generation resources. Collectively, LSA’s members have contracted to provide more than 7 gigawatts of clean, sustainable solar power to California’s load-serving entities. LSA members develop, own and operate various types of utility-scale solar technologies, including photovoltaic and solar thermal system designs. LSA companies are leaders in the utility-scale solar industry and share a common understanding of, and concern about, the issues facing development of the solar industry. They are actively developing technology and strengthening markets to facilitate significant penetration of renewable energy into the western United States power sector, as well as other states, and regional and federal venues, when appropriate.

Issue and Parts of Plan Being Protested

SEIA and LSA have raised the issue of solar insolation numerous times² throughout the process of preparing this Final PEIS and expected that the issue would be resolved in the Final PEIS in a reasonable manner. Instead, BLM has arbitrarily and capriciously determined that all public lands with insolation levels below 6.5 kWh/m²/day are to be excluded from solar development, even though the facts starkly indicate that solar projects are economically viable in many areas with insolation below this level. Indeed, the vast majority of installed and proposed solar projects in the United States are located in areas with lower insolation.

BLM's decision to use an inaccurate economic/ technical criterion in place of environmental factors when determining exclusion areas is inappropriate and inconsistent with the purpose of the National Environmental Policy Act ("NEPA"). In addition, the specific criterion of 6.5 kWh/m²/day is not supported by the record. BLM should remove insolation from the list of exclusion criteria when it finalizes its Record of Decision (ROD) based upon the Final PEIS.

The Final PEIS discusses this issue at the following places:

- Table ES.2-2, Item 2: Exclusions under BLM's Solar Energy Development Program Alternative
- Section 1.2: Overview of Solar Energy Technologies and Resources Considered in the PEIS
- Figure 1.2-2: Solar Direct Normal Insolation Levels in the Southwestern United States
- Table 2.2-2: Exclusions under BLM's Solar Energy Development Program Alternative
- Section 2.5.8: Analysis of Development on the Maximum Amount of Public Lands Allowable
- Section 6.1.2: Minimize Environmental Impacts
- Section 6.1.4: Provide Flexibility to Solar Industry
- Appendix A.2.6.2.2: Solar Insolation Level

² See Comments of LSA, SEIA, and CEERT on Solar Energy Study Areas and Solar Energy Zones, September 14, 2009, pp. 1-2; Comments of LSA, CEERT and SEIA on Draft Solar PEIS, May 2, 2011, pp.26-27; and Comments of the Solar Energy Industries Association and the Large-scale Solar Association on the Supplemental Draft Solar PEIS, January 27, 2012, pp.3-4 and pp. 11-13.

Concise Statement Explaining the Various Ways the Bureau of Land Management Acted in Error

This protest focuses on one area in which the Proposed RMP/Final PEIS fail to comply with BLM's legal mandates, policies and overall responsibilities to manage our public lands. Specific inadequacies in the Proposed RMP and the action required to remedy them are set out below.

SEIA, LSA, and their members disagree with many aspects of the PEIS.³ However, in the spirit of comity SEIA and LSA do not seek to protest these issues at this time. Conversely, the adverse impacts of the exclusion of lands with solar insolation levels of less than 6.5 kWh/m²/day from development are so severe that SEIA and LSA are compelled to file this narrowly crafted protest. As recognized in the Draft PEIS, BLM imposed this threshold based on *assumptions* about where utility-scale development is most economically viable.⁴ As explained below, these assumptions are not supported by the facts regarding what level of insolation is necessary for a project to be economically viable. In other words, the facts regarding insolation and project viability have changed, but BLM's position has not.

BLM provides no basis for its decision to use an insolation technical criterion to determine exclusion areas in the Final PEIS. Establishing an exclusion for lands with solar insolation less than 6.5 kWh/m²/day is arbitrary and capricious. The level of insolation has no bearing on the environmental impacts of the development of a solar project on a particular plot of land being considered for solar development. The level of insolation also has no direct correlation with any of the objectives of the Solar PEIS; lands with lower insolation may, in fact, be more desirable for solar development and less likely to pose conflicts in some circumstances than some lands with higher insolation. BLM is exceeding its authority in applying this insolation as an exclusion criterion.

Solar development on lands with insolation less than 6.5 kWh/m²/day is not inherently more or less harmful to the environment than on lands that meet such a criteria. While we appreciate BLM's concern that utility-scale solar development occur where it is most economically viable, it is solar market conditions and the evolution of solar technology that determine what level of solar insolation is needed to make a solar project economically viable. It is an abuse of discretion to exclude otherwise-appropriate lands in this indirect way.

³ Comments on the Final PEIS by SEIA and LSA are being filed concurrently with this document.

⁴ Draft PEIS at p. 2-7 ("That criterion was established on the basis of the *assumption* that at insolation levels below 6.5 kWh/m²/day, utility-scale development would be less economically viable given current technologies." (emphasis added)).

In addition, BLM's willingness to establish future Solar Energy Zones in areas with insolation of less than 6.5 kWh/m²/day but refusal to entertain individual project proposals on similarly-situated lands⁵ merely underscores the extent to which this criterion is inappropriate, and being applied in an arbitrary and capricious manner.

Direct Normal Irradiation ("DNI") measurements (represented as kWh/m²/day) only assess the amount of solar radiation delivered to a particular area directly from the sun. For technologies that use mirrors or lenses for reflection/refraction (concentrating solar power, or "CSP"), DNI is the appropriate measure of the solar resource. These technologies require direct sunlight for efficient operation. In contrast, conventional PV technologies use direct, diffuse, and even ground-reflected solar radiation (collectively, Global Horizontal Irradiation or "GHI"). DNI measurements consequently provide an inaccurate and incomplete assessment of the solar resource in a particular area being considered for PV development. Additionally, some CSP developers have determined that they can economically develop projects in areas with insolation levels as low as 5.5 kWh/m²/day (*e.g.*, in the San Joaquin Valley). Hybrid CSP applications may utilize lower insolation levels and PV developers are successfully completing utility-scale projects around the country at insolation levels below 6.5 kWh/m²/day.

In addition, although the Final PEIS includes maps intended to depict the extent of the areas excluded based on insolation levels, the measurements for a given plot of land cannot be known without a site-specific study. The National Renewable Energy Laboratory ("NREL") solar resource estimates relied upon to plot potentially appropriate development are regularly off by as much as 30%. Therefore, these estimates cannot be relied upon by BLM because they are so imprecise. Unlike previously designated Areas of Critical Environmental Concern, Desert Wildlife Management Areas, National Landmarks, etc., BLM cannot plot insolation on a map with certainty. Its usefulness as a screening tool on a programmatic level is consequently very limited and it clearly should not be used as an exclusion criteria.

BLM's decision to exclude lands based on insolation levels alone is arbitrary and capricious and in violation of FLPMA and BLM policy.

Some may argue that there is no record establishing the appropriateness of lands with insolation below 6.5 kWh/m²/day or that BLM cannot simply drop insolation as an exclusion

⁵ The Final PEIS, p. A-123 states, "Under BLM's proposed Solar Energy Program, areas with direct normal solar insolation levels less than 6.5 kWh/m²/day would not be available for individual applications (*i.e.*, they would be excluded). However, in light of expected technological advances, shifting market conditions, and evolving state and Federal policies, the BLM will allow new SEZs in areas with insolation levels lower than 6.5 kWh/m²/day as appropriate."

criterion without amending the Final PEIS. These concerns are misplaced because a project in the variance area will require a site-specific environmental impact statement and land use plan amendment as part of the ROW grant process. As part of that review, BLM will assess the suitability of those lands for solar development on a case-by-case basis. In addition, BLM could establish in the Record of Decision on the Final PEIS that further study of variance areas with insolation less than 6.5 kWh/m²/day will be conducted. However, SEIA and LSA prefer that BLM exercise its legal authority and simply remove insolation from the list of exclusion criteria.⁶

Requested Remedy: BLM should remove insolation from the list of exclusion criteria when it adopts its ROD based upon the Final PEIS.

Conclusion and Relief Sought

The management decision to exclude from solar energy development lands with solar insolation levels less than 6.5 kWh/m²/day is in error for the reasons stated in this protest. Because of these flaws, the protested portions are contrary to applicable law, as well as agency policy and guidance, and cannot be adopted.

To correct this problem, the protesting parties request that BLM remove insolation from the list of exclusion criteria when it adopts its ROD based upon the Final PEIS.

Sincerely,



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⁶ If BLM were to determine that it could not grant our requested relief without conducting an environmental assessment, we request that BLM proceed to finalize the ROD in a prompt manner, but make clear that the additional review of the insolation issue is occurring under an environmental assessment.