UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

August 22, 2014

Mr. Mike Thomas
Chief
Conservation Planning Division
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

Subject: Draft Environmental Impact Statement for the Maricopa Sun Solar Complex Multi-Species Habitat Conservation Plan, Kern County, California (CEQ # 20140155)

Dear Mr. Thomas:

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the Maricopa Sun Solar Complex Multi-Species Habitat Conservation Plan (HCP or Plan) pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The EPA appreciates the consideration given to the letter we submitted to the U.S. Fish and Wildlife Service (Service) during the scoping period for this proposed Plan. The DEIS addresses most of the questions or concerns, and incorporates many of the recommendations, included in our letter. The proposed Plan includes many elements—including the utilization of previously disturbed land, avoidance of sensitive waters, and commitment to maintain existing on-site drainage patterns—that EPA Region 9 has long espoused in our comment letters for EISs prepared for renewable energy projects.

Based on our review of the subject DEIS, we have rated the Preferred Alternative and the document as (LO-1) Lack of Objections – Adequate (see the enclosed "Summary of EPA Rating Definitions"). The EPA commends the Service for working with the project proponent to craft a Plan that includes a project footprint entirely comprised of fallowed agricultural land (land with currently low habitat value and lacking a sufficient water supply for agricultural production), wildlife corridors that will include provisions to improve habitat important to Covered Species, and a novel commitment to ultimately conserve all Covered Lands in perpetuity. These measures, along with the other avoidance and mitigation measures identified in the DEIS, should result in a solar facility with minimized impacts and enhanced habitat crucial to sustaining the Covered Species.

We recommend that the Final EIS more thoroughly discuss two topics that receive minimal attention in the DEIS. The first concerns the potential effects of climate change on the proposed Plan. The DEIS includes a laudable estimation of construction and operation emissions that would be associated with this project, as well as a qualitative discussion of the projected greenhouse gas effects from Covered Activities. It does not, however, include a discussion of how climate change may affect the Covered Species and the habitats on which they depend. The proposed period of incidental take coverage (35 years) will likely be a time of considerable change in the planning area. Consequently, we recommend that the HCP include, and the FEIS detail, provisions to monitor and reassess climate change effects on a

range of issues, including: the status of Covered Species, including the distribution of species throughout the planning area; the success of restoration efforts; and the need for new or expanded conservation lands. We recommend that the Service develop a robust monitoring and adaptive management plan to account for, mitigate, and adapt to, the effects of climate change on the Covered Species (and the habitats that sustain these populations) throughout the period of ITP coverage.

The second issue that we would like to see explored further in the Final EIS is the potential for Covered Activities, particularly the siting and operation of the solar panels, to lead to the deaths of avian species. The DEIS states that "limited anecdotal evidence suggests that large expanses of solar panels may contribute to migratory bird deaths," and that "reflections from panels may attract birds in flight that mistake the broad reflective surfaces for water bodies." The section of the DEIS devoted to this issue, however, merely concludes that the occurrence of avian mortality at utility scale solar sites is still being studied, and no reliable methods or actions have been identified that would avoid or minimize these occurrences. The EPA acknowledges that occurrences of avian mortality at utility scale solar sites was still emerging as an issue during scoping and preparation of the DEIS for this project. Since then, however, the number of solar sites (both solar thermal facilities, as well as photovoltaic, as is proposed for the Maricopa Sun Solar Complex) reporting deaths of avian species has increased dramatically. The Service's recognition of the severity of this problem is evidenced by recent efforts by the Service and its state and federal partners to research design features and best practices to minimize and, ideally, prevent, occurrences of avian mortality at utility scale solar sites, as well as to develop a standard monitoring protocol to identify and assess these occurrences. The sheer size of the proposed project, however, portends avian mortality as a concern throughout its operational life, while the extended construction timeline warrants strong on-site monitoring. We recommend that the Final EIS include an updated discussion devoted to the occurrence of avian mortality at utility scale solar sites, informed with the best available scientific research conducted for the topic; and that the HCP include a comprehensive monitoring protocol to catalog and analyze occurrences of avian mortality, and the flexibility to adapt siting or operation of the solar panels, throughout the life of the project, in response to said research and monitoring.

We appreciate the opportunity to review this DEIS, and are available to discuss our comments. When the FEIS is released, please send one CD copy to this office (specify Mail Code ENF-4-2). If you have any questions, please contact me at 415-972-3521, or contact Jason Gerdes, the lead reviewer for this project. Mr. Gerdes can be reached at 415-947-4221 or gerdes.jason@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment