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

September 27, 2010

John Kalish
Field Manager
Palm Springs South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, California 92262

Subject: Final Environmental Impact Statement for the NextEra Energy Resources Genesis Solar Energy Project, Riverside County, California (CEQ #20100339)

Dear Mr. Kalish:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Land Management (BLM) on July 12, 2010. We rated the DEIS as *Environmental Objections – Insufficient Information* (EO-2) because the proposed action included wet cooling and the extraction of over 500 million gallons of groundwater, while similar proposed projects within the vicinity (e.g. the Blythe and Palen Solar Power Projects) would employ less-water-consumptive dry cooling technology. We also expressed concerns regarding impacts to habitats and ephemeral drainages, and requested additional information regarding project purpose, need, and alternatives; tribal consultation; and impacts to and from climate change.

The FEIS indicates that BLM has selected the Dry Cooling Alternative as the agency's Preferred Alternative (p. 2-38). EPA commends BLM for this selection, which would reduce project water use by 1,426 acre-feet per year (afy) during the operational phase, representing an 87% reduction in water use. This is a significant improvement and addresses our concerns regarding impacts to groundwater resources. The need for an entitlement of water from the Colorado River was not addressed in the Response to Comments. We recommend that BLM ensure that the necessary water entitlements are secured prior to project construction. Regarding impacts to habitats, we understand that BLM is working with the U.S. Fish and Wildlife Service and a Biological Opinion is expected before the Record of Decision (ROD) is signed.

EPA appreciates the reduction in impacts to 21 acres of State jurisdictional waters/ephemeral drainages (Table 4.17-3). We remained concerned, however, regarding the direct and indirect impacts to 90 acres of ephemeral drainages and the loss of associated hydrological and biological functions. The FEIS concludes that impacts from water and wind erosion as a result of site grading would be mitigated to less than significant levels; however, this

is not supported because the drainage report and channel erosion and maintenance plans are deferred to a later time, and their viability and potential effectiveness are not known. We remain concerned because the FEIS identifies obstacles to achieving effective mitigation for these impacts, including the incompatibility of the erosion control structures with wildlife traversability requirements (p. 4.19-9). Because this mitigation development is being deferred until after the ROD is signed, the ROD should identify the specific mitigation goals, specified in terms of measurable performance standards, to the greatest extent possible (Council on Environmental Quality (CEQ) Draft Guidance on NEPA Mitigation and Monitoring, February 18, 2010). Mitigation commitments should be structured to include adaptive management in order to minimize the possibility of mitigation failure. The ROD should also include the response to be taken by BLM if a substantial mitigation failure is detected. This could include conditioning the right-of-way approval to require the applicant to restore any severely impacted watersheds that may result from mitigation failure.

BLM dismissed many of EPA's comments on the DEIS by responding that they were not considered substantive as defined in BLM's NEPA Handbook, Section 6.9.2.1, or were beyond the scope of the FEIS. We disagree, and request that BLM reconsider some of these comments, since we believe they are relevant and appropriate. For example, our recommendation to explore the availability of reclaimed water in the project area is supported by 40 CFR 1502.14 (f), which directs agencies to include appropriate mitigation measures not already included in the proposed action or alternatives. Our recommendations to discuss the details and effectiveness of the mitigation for site drainage alternation and to discuss the availability of mitigation compensation lands in the Chuckwalla Valley watershed are appropriate. BLM responded to our request that the findings of the Army Corps of Engineers' Jurisdictional Delineation be included and discussed in the FEIS by stating that this process is independent and separate from NEPA and that it will be completed in accordance with relevant statutory and regulatory requirements (p. 5-60). EPA strongly encourages the integration of NEPA with the Clean Water Act (CWA) Section 404 process, to streamline permitting and to align the alternatives analyses of these processes. In the interest of avoiding unnecessary delays in renewable energy development and facilitating the development of the most environmentally sound renewable energy projects, we encourage BLM to view these other regulatory requirements as an essential part of the NEPA process.

EPA appreciates the opportunity to review this FEIS. If you have any questions, please contact me at (415) 972-3843, or contact Kathleen Goforth, Manager of the Environmental Review Office, at 415-972-3521 or goforth.kathleen@epa.gov.

Sincerely,

Enrique Manzanilla, Director
Communities and Ecosystems Division

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