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

MAR 18 2013

Jeffrey Childers, Project Manager
California Desert District Office
Bureau of Land Management
22835 Calle San Juan de Los Lagos
Moreno Valley, California 92553

Subject: Final Environmental Impact Statement for the Proposed Alta East Wind Project, Kern County, California (CEQ #20130032)

Dear Mr. Childers:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the Proposed Alta East Wind Project. Our review and comments are provided pursuant to the National Environmental Policy Act, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft EIS and provided comments to the Bureau of Land Management on September 27, 2012. We rated the Draft EIS as *Environmental Concerns– Insufficient Information* (EC-2), primarily due to the project's potential direct and indirect impacts to air quality and site hydrology, and we had concerns regarding cumulative impacts to resources resulting from the 21 existing or proposed large-scale wind energy projects in the Tehachapi Wind Resource Area. We also raised concerns about potential impacts to avian species, particularly the golden eagle and California condor. Previously, on August 15, 2011, EPA also provided extensive formal scoping comments for the proposed project.

We appreciate the efforts of BLM, the applicant, and its consultants to respond to our Draft EIS comments, and we were pleased to note additional mitigations that support environmentally preferable outcomes. We were also pleased to see: Alternative C identified as the preferred alternative, which would avoid the northern 318 acre parcel containing Joshua tree woodland habitat adjacent to the Pacific Crest Trail and the portion of the project site nearest active golden eagle nests; added drainage impact avoidance and flood control measures; added requirements to ensure compensatory mitigation lands are acquired prior to issuance of construction permits, and commitments to ensure that lands remain in conservation in perpetuity; added provisions that would require the final Drainage Design Plan to address temporary and permanent fencing impacts to ensure fencing will not entrain debris/sediment or interfere with natural flow patterns; and, updated information on tribal consultation, including consultation with additional federally recognized tribes.

While recognizing these improvements in the Final EIS, we have continuing concerns regarding direct, indirect and cumulative impacts to air quality, site hydrology, avian species and tribal resources, as well as the availability of adequate compensatory mitigation lands. In light of the area's nonattainment status, the proposed project's modeled exceedances of the Eastern Kern Air Pollution Control District's thresholds of significance for oxides of nitrogen and particulate matter, and the construction of ten reasonably foreseeable wind and transmission projects in the area, all feasible measures should be implemented to reduce and mitigate air quality impacts to the greatest extent possible. The Final EIS indicates that "it is not considered reasonable to require that the project's construction off-road equipment meet Tier 4 engine standards" (p. 7.4-22), and that MM 4.2-2 does not preclude the project proponent

from using Tier 4 equipment. It is our understanding that various non-road engines less than 750 horsepower are certified and available. We also note that BLM has incorporated the use of Tier 4 equipment, when available, as part of construction of other renewable energy projects, such as Desert Harvest Solar. At a minimum, we recommend that the Record of Decision include the commitment in MM 4.2-2 to use non-road construction equipment that meets Tier 4 emission standards, when available, and best available emission control technology, for construction that occurs prior to Tier 4 standards availability. The use of Tier 4 engines would result in an approximately 90% reduction in NO_x and PM emissions as compared to Tier 3. All air quality mitigation measures should be included as conditions in construction contracts and any other approvals, as appropriate.

The Final EIS indicates that property owners within 1,000 feet of the project site boundary would be given a copy of the construction schedule 30 days prior to construction (p. 7.4-24). Despite the project's dispersion modeling analysis identifying 'significant and unavoidable' impacts to residents living in close proximity to the project site, the Final EIS did not add a detailed discussion of the potential health effects nor a commitment to inform sensitive receptors or residents of the potential risks in advance of construction. We reiterate our recommendation that the ROD include a commitment in MM 4.6-2 to advanced notification to sensitive receptors of the potential health effects of PM and toxic air contaminants, and any exposure avoidance measures they should consider during construction periods.

Further, given the proximity of several schools to the project site, we had recommended that the Final EIS consider whether the pollutants and sources of concern pose a particular hazard to children's health (from dust, heavy metals, or air pollution from near construction or roadway exposures). The ROD should discuss potential impacts to children's health in the context of Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (April 21, 1997), and incorporate any additional measures necessary to address these risks. Finally, we reiterate our recommendation for phased construction and early coordination among multiple project construction schedules in the vicinity of the project to minimize adverse air quality impacts in the region.

Regarding aquatic resources, we were pleased to note that a number of our drainage avoidance recommendations were incorporated into MM 4.17-4 (BMPs for Activities In or Near Ephemeral Drainages), including avoiding placement of turbine structures in aquatic features, using natural washes for flood control, minimizing road crossings over water, and, as necessary, providing adequate flow-through at road crossings during large storm events. We remain concerned that the Final EIS does not demonstrate that downstream flows will not be adversely impacted due to impacts to natural washes, excavation of sediment, mass grading and contouring, or increased sedimentation due to vegetation clearing. Additionally, the Drainage Design Plan, which would identify the location of key discharge points and retention basins, is deferred to a later time, and, therefore, its viability and potential effectiveness is not known (p. 7.4-26). Because development of design plans and project-specific mitigation 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).

We note the considerable coordination to date between the applicant, BLM and US Fish and Wildlife Service on the project's avian issues, and we understand that a Biological Opinion is close to completion for the project. The Final EIS acknowledges that the risk of golden eagle mortality due to collision with the proposed project's wind turbines is high and that a wind resource facility at this location is considered to pose a high risk of collision to the California condor (p. 4.21-26&27). We recommend that the ROD include the final Biological Opinion and an update on consultation with USFWS to protect sensitive biological resources, including golden eagles and California condors. Mitigation and monitoring measures that result from consultation with USFWS should also be included in the ROD. In addition, we recommend including the final Eagle Conservation Plan in the ROD as a mitigation measure for the

protection of resources. Alternatively, the ROD should explain how the results of any subsequent NEPA analysis of the ECP, including any project modifications, would be incorporated into BLM's decision making regarding the proposed project. Finally, the ROD should discuss the limitations of the avian monitoring system to be used to minimize bird strikes for the life of the project, and discuss the implications for project operations if any of the systems used, or proposed for use in the future, prove unsuccessful.

In light of the numerous renewable energy projects in the Tehachapi Wind Resource Area, we recommend that BLM ensure the availability of sufficient land to adequately compensate for environmental impacts to resources such as state jurisdictional waters, Joshua tree woodlands, desert tortoise and avian species. As discussed in the Final EIS, selection of compensatory mitigation lands is deferred to a later date to maintain 'flexibility' to best target species and resources. We recommend that the ROD quantify available lands for compensatory mitigation for resources identified to demonstrate sufficient availability for the proposed project and reasonably foreseeable projects. The ROD should also describe the implications for project construction if the added requirements added to MM 4.17-1 (Habitat Restoration and Revegetation Plan) are not met.

Finally, we note the additional tribal outreach and consultation that the BLM and applicant have accomplished since the Draft EIS and the update to the Cultural Resources chapter. We encourage BLM to ensure, through continued consultation, that the tribal issues raised to date are addressed and summarized in the ROD.

We appreciate the opportunity to review the Final EIS for this project. Please send a copy of the ROD to this office when it is signed.

Please note that, as of October 1, 2012, EPA Headquarters no longer accepts paper copies or CDs of EISs for official filing purposes. Submissions must now be made through the EPA's new electronic EIS submittal tool: *e-NEPA*. To begin using *e-NEPA*, you must first register with the EPA's electronic reporting site - https://cdx.epa.gov/epa_home.asp. Electronic submission does not change requirements for distribution of EISs for public review and comment, and lead agencies should still provide one hard copy of each Draft and Final EIS released for public circulation to the EPA Region 9 office in San Francisco (Mail Code: CED-2). If you have any questions, please contact me at (415) 972-3843 or contact Tom Plenys, the lead reviewer for this project. Tom can be reached at (415) 972-3238 or plenys.thomas@epa.gov.

Sincerely,

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