



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

JUL 06 2016

Mr. Chip Lewis
Bureau of Indian Affairs
Western Regional Office
2600 North Central Avenue, 4th floor
Phoenix, Arizona 85004-3008

Subject: Final Environmental Impact Statement for the Proposed Aiya Solar Project, Clark County, Nevada (CEQ #20160125)

Dear Mr. Lewis:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the Proposed Aiya Solar 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 continues to support tribal government interests in renewable energy as a means to help meet tribal economic development goals and help the nation's transition to cleaner energy. We are a cooperating agency for this 100-megawatt photovoltaic solar project and provided comments throughout the development of the EIS. EPA reviewed the Draft EIS and provided comments to the Bureau of Indian Affairs on June 29, 2015, rating the document *Environmental Concerns – Insufficient Information (EC-2)*. Our concerns regarded the project's potential impacts to site hydrology, waters of the US, air quality, and threatened species. Our recommendations following our review of the Draft EIS included protecting on-site drainages, reducing erosion, confirming the extent of waters of the US in the project area and mitigating impacts to air quality and biological resources.

We commend BIA for extensive interagency coordination on this project and appreciate the additional information and mitigation measures in the Final EIS in response to our comments. The Final EIS includes commitments to minimize grading and implement construction-phase air quality mitigation measures, additional details on how climate change may affect the project, and an updated water resources analysis.

We were particularly pleased to note, in the Responses to Comments and Figure 2-2, that the proposed 50-foot wide gabion-lined drainage channel along M06 has been eliminated from the site design and that M06 will be fully avoided. To avoid confusion, the text in Section 4.5 of the Final EIS, as well as the Record of Decision, should reflect this commitment.

In our previous comments, we raised the concern that potential waters of the US on the project site may have been prematurely characterized as non-jurisdictional. Appendix F of the Final EIS – Jurisdictional Waters Report - includes a category of "geographic features that are generally not considered jurisdictional waters" that were identified but excluded from consideration as potentially jurisdictional WUS (pg. 4). Included in this category were "small washes characterized by low volume, infrequent, and short duration flow". Such aquatic resources may be jurisdictional and should not be excluded from the Preliminary Jurisdictional Determination. As a result, we remain concerned that WUS on the project site have been underestimated. We have relayed our concerns to the US Army Corps of Engineers' St. George Office to ensure they are aware of our interpretation ahead of a permit request, and encouraged the Corps

to conduct a site visit to verify the delineation. Additionally, in review of the associated aerial photos, we noticed a few instances where the extent of jurisdiction appears to abruptly end at the project boundary (e.g., M01 and M04). We recommend that the ROD clarify that waters outside of the project area are not subject to the Preliminary JD.

Based on our experience, we anticipate that fencing for desert tortoise will reduce or impair the flow or circulation of WUS. Regular inspections and maintenance, as proposed, may not sufficiently prevent impacts to waters from the buildup of debris and sediment at the fence line. According to the Responses to Comments, break-away fencing is not proposed because of the potential conflict it poses with the need to maintain desert tortoise exclusion fencing. Other solar facilities in California have proposed addressing this issue by utilizing a bottom portion of collapsible tortoise fence to allow collapse if too much ponding or debris buildup occurs.¹ We recommend that BIA and the applicant consider such a design to maximize unimpeded flows during storm events where existing, stable drainages are located. Such a design would also facilitate adaptation to the anticipated increase in storm flows due to climate change, a future impact that is noted in the Final EIS.

EPA recommends that all mitigation measures, including those recommended in this letter, be included in both the ROD and as conditions in construction contracts and other approvals, as appropriate.

We appreciate the opportunity to review this Final EIS. If you have any questions, please contact me at 415-972-3521 or Goforth.kathleen@epa.gov, or contact Tom Plenys, the lead reviewer for this project, at 415-972-3238 or Plenys.thomas@epa.gov.

Sincerely,



Kathleen Martyn Goforth
Manager
Environmental Review Section

cc: Darren Daboda, Chairman, Moapa Band of Paiutes
Craig Brown, U.S. Army Corps of Engineers
Susan Cooper, U.S. Fish and Wildlife Service
Gregory Helseth, Bureau of Land Management

¹ For example, see the Bureau of Land Management's Soda Mountain Solar Project Final Environmental Impact Statement dated June 2015 (page ES-43). This mitigation measure was included in the Record of Decision.