



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

Greg Thompsen, Project Manager
BLM California Desert District
Office, 22835 Calle San Juan de Los Lagos
Moreno Valley, California 92553-9046

Subject: Joint Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS)
East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects, San Diego County,
California (CEQ #20110347)

Dear Mr. Thompsen:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects. 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 Environmental Impact Statement and provided comments to the Bureau of Land Management on March 4, 2011. We rated the DEIS as *Environmental Concerns—Insufficient Information* (EC-2), primarily due to potential impacts to aquatic resources, as well as biological and cultural resources, and issues regarding technical and financial assurance. We also expressed concern about the adequacy of the water supply analysis, potential impacts to groundwater resources, cumulative impacts, climate change, and air resources. We asked for a final determination of the geographic extent of jurisdictional waters and demonstration of compliance with Clean Water Act Section 404. We also recommended that the Applicants work closely with the U.S. Fish and Wildlife Service in the development of the Avian and Bat Protection Plan and that recently completed surveys and plans, as well as the Biological Opinion, be discussed in the FEIS. Furthermore, we recommended additions and corrections to the air resources section.

We appreciate the efforts of BLM, the Applicant, and consultants to discuss and respond to our DEIS comments, and we commend the Applicant, State, and federal agencies for developing alternatives and additional, substantial mitigations that support environmentally preferable outcomes. In particular, we are pleased to note that the FEIS contains additional information on water supply, including a comprehensive discussion of groundwater that confirms that water may be obtained from several sources. The FEIS also includes the results of recent biological surveys, the FWS Biological Opinion, and information on the development and finalization of the Avian Bat and Protection Plan. Furthermore, the FEIS includes an updated analysis of cumulative impacts, corrections to the air resources sections, and a Fire Protection Plan.

While recognizing these improvements, EPA has continuing concerns regarding impacts to aquatic and biological resources. Specifically, the FEIS states that the proposed Project would result in 6.2 acres of direct permanent impact to U.S. Army Corps of Engineers jurisdictional resources and 3.2 acres of direct permanent impact to California Department of Fish and Game jurisdictional resources. We understand, however, that the USACE has not verified the preliminary jurisdictional delineations and issued a final jurisdictional determination. The Record of Decision should include a final determination of the geographic extent of jurisdictional waters, based on the approved JD.

According to the FEIS, unavoidable impacts to jurisdictional resources will be compensated through a combination of habitat creation, enhancement, preservation, and/or restoration – at a minimum of a 1:1 ratio – or, as required by the permitting agencies. The EPA believes that a 1:1 ratio is inadequate. We encourage the BLM to work with the USACE to determine appropriate mitigation ratios that adequately address the impacts to the jurisdictional waters and that meet the no-net-loss functions thresholds. The ROD should also include a robust discussion of all avoidance and mitigation measures that will be required for the project, an outline of the requirements of a compensatory mitigation plan for unavoidable impacts to waters of the United States, and a commitment to timely implementation of a mitigation plan to ensure no temporal loss of the affected habitat.

EPA is concerned that sufficient compensatory lands have not yet been identified for the proposed project. The ability to acquire suitable lands that adequately compensate for environmental impacts to aquatic resources may serve as a limiting factor for development, especially in light of the numerous projects proposed or underway in the San Diego County area. If the Applicant must acquire compensatory lands, the location(s) and management plans for these lands should be fully disclosed in the ROD.

EPA concurs with BLM's selection of the preferred alternative, Alternative 5, to construct and operate 65 wind turbines. We note, however, that the Avian Bat and Protection Plan is based on the proposed action (modified Tule Wind Project layout) which proposes construction of 128 wind turbines in two phases. The ROD should clarify how the ABPP will be modified and implemented if Alternative 5 is selected. In addition, mitigation measure BIO-10f authorizes construction of portions of the project subject to the results of behavioral and population studies of local golden eagles; however, Alternative 5 does not describe whether the turbines will be developed in phases. The ROD should clarify if a phased approach will be utilized under Alternative 5, if selected, and ensure the requirements of BIO-10f are adopted in the ROD as necessary.

We appreciate the additional information on the California condor and understand that the current population of condors is not likely to occur in the proposed Project area. Nevertheless, we reiterate our recommendation that BLM monitor the condor re-population efforts of the San Diego Zoo. Their goals include establishing 20 breeding pairs, in hopes that the Baja population will in time, link to the central California populations. Given the requested 30-year ROW for operation of the proposed Project, the potential exists for condors to fly into this area during the Project's operations as the nearby condor population expands.

We note that there is an inconsistency regarding speed limits in the FEIS. Mitigation measure BIO-7b states that vehicles shall not exceed 15 miles per hour on any unpaved gravel roads and the ROW accessing the construction site or 10 mph during the night on the construction site (D.2-146). In contrast, TULE AIR-4 and the Avian Bat and Protection Plan restrict vehicle speeds on unpaved roads to 20 and 25 miles per hour, respectively. The BLM should adopt a consistent speed limit requirement for both the construction and operation phases of the proposed Project.

We recommend that BLM address the above issues prior to making a final decision on the proposed Project. We also recommend that all mitigation measures, including specific criteria for successful mitigation, be adopted in the ROD and be included as conditions in construction contracts and any other approvals, as appropriate, to minimize adverse environmental impacts to the extent possible. If any mitigation measures in the FEIS are not adopted, the ROD should provide justification for the decision not to adopt them. Lastly, we encourage the BLM to continue to consult with Tribes and address any unresolved issues prior to issuance of the ROD.

We are available to discuss all recommendations provided. Please send one hard copy and one CD ROM copy of the ROD to us when they are filed with our Washington D.C. office. If you have any questions, please contact me at 415-972-3521, or contact Anne Ardillo, the lead reviewer for this project. Anne can be reached at 415-947-4257 or ardillo.anne@epa.gov.

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office

cc: Ian Fisher, California Public Utilities Commission
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