

**DESERT TORTOISE COUNCIL**

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**Via email only**

Date: 25 May 2014

Ms. Joan Patrovsky, Realty Specialists/Project Manager  
Ms. Katrina Symons, BLM Barstow Field Manager  
2601 Barstow Road, Barstow, California 92311  
[BLM\\_CA\\_Silurian\\_Valley\\_Solar@BLM.gov](mailto:BLM_CA_Silurian_Valley_Solar@BLM.gov)

RE: Formal comments on the proposed Silurian Valley Solar Project

Dear Ms. Symons and Ms. Patrovsky,

The Desert Tortoise Council is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

I was able to attend the Bureau of Land Management's (BLM) open house on the proposed Silurian Valley Solar Project in Barstow, California on 27 March 2014 on behalf of the Council, and herein provide formal comments that have been reviewed by the full Board of Directors prior to submittal. I would like to thank you, Mr. Mickey Quillman, and several other BLM personnel for a very informative and revealing public meeting. Although the deadline for public comments was then given as 28 April 2014, I received your email of 17 April 2014 indicating that the deadline has been extended to 28 May 2014, so thank you for that notice.

I understand that public notice must be given to nearby residents, those who submitted comments on the BLM's Solar Programmatic Environmental Impact Statement (Solar PEIS), those who have submitted comments on other solar projects, or asked the BLM to be considered an affected interest for such meetings. Although the Council satisfies three out of four of these criteria (i.e., none of our board members lives near Silurian Valley), we were not contacted. In fact, we heard about this project through the California Wilderness Coalition. We also discovered at the public meeting in March that there is a proposed wind farm immediately north of the proposed solar facilities, of which the Council has also not been informed. We'd like to take this opportunity to ask that the BLM contact us for all future projects on public lands administered by the BLM that are likely to affect desert tortoise habitats.

## **Background**

The following background information is reiterated herein for the benefit of several hundred active members of the Council and other concerned members of the public who will have an opportunity to read these formal comments on our website, [www.deserttortoise.org](http://www.deserttortoise.org). We understand that the applicant for this project is Aurora Solar, LLC from Portland, Oregon, subsidiary of Iberdrola Renewables, and that the project, if approved to be considered in a formal Environmental Impact Statement by the BLM, could affect 7,218 acres of pristine habitat.

Thank you for providing comment letters from California Department of Fish and Wildlife (CDFW), dated 28 February 2014, U.S. Fish and Wildlife Service (USFWS), dated 6 February 2014, and National Park Service (NPS), dated 16 August 2013. CDFW's Ms. Heidi Sickler, Senior Environmental Scientist, concluded, "[B]ecause the proposed project has the potential to have significant adverse impacts on biological resources, and because there is not sufficient evidence supporting the applicant's ability to document the above mentioned variance factors, CDFW does not recommend allowing variance for Aurora Solar, LLC's proposed Silurian Valley Solar Project and proceeding with environmental review of the project."

USFWS in their letter concluded, "Based on our review, we have significant concerns with the proposed project in its proposed location. Any renewable energy development in the Silurian Valley will have substantial adverse effects on trust resources; for example, the proposed project area is being considered an area of critical environmental concern within the current draft preferred alternative of the Desert Renewable Energy Conservation Plan. As such, we recommend the Bureau reject the variance application and not proceed with environmental review of the proposed project."

Finally, in its letter to the BLM, NPS concluded, "At this time, NPS strongly recommends that both applications for the Silurian Valley and Wind Silurian Valley Solar projects, as they are proposed, be rejected by BLM."

The Council appreciates that all three federal and state agencies responsible for the public trust to manage desert tortoises and their habitats have strongly opposed the further consideration of this project by recommending that it be rejected at this time, and not be formally reviewed under a site-specific Environmental Impact Statement. The Council fully supports these determinations.

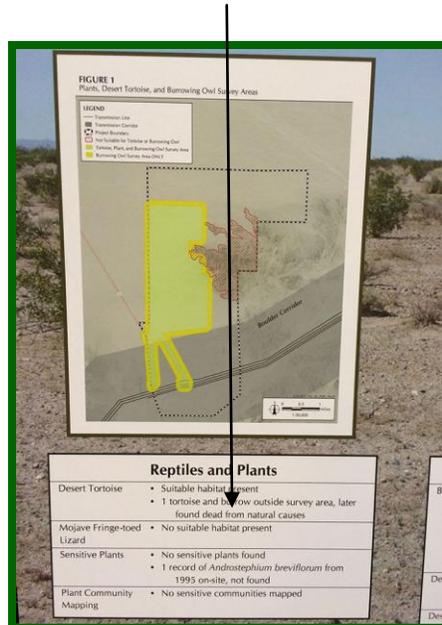
We did not realize until the public meeting that, whereas a dozen or more solar projects have been proposed under the Solar PEIS in variance areas in Nevada, this is the first project that has been proposed on variance lands in California. Whereas the Solar PEIS identified Solar Energy Zones (SEZs) where development is encouraged, this proponent has opted to locate this particular development outside those preferred development zones, in a variance area.

The BLM is now collecting information to see if this variance area is suitable for solar development. If the BLM decides through internal and external input, including public meetings, that this is a suitable site, the BLM would then accept it as a potential development site and begin the process with formal EIS scoping meetings. If not, the BLM would reject it from further environmental review at the end of this prescreening process and not pursue a formal EIS. We understand that BLM personnel indicated during the public meeting this is a low priority project, requires additional information, would not be finalized before this summer, and the determination to pursue the project or not would definitely be publicized.

## Specific Concerns and Questions

1. What are the alternatives that were considered by the proponent in addition to this site? How many of the alternatives were within Solar Energy Zones? The proponent's spokesperson indicated that many of the SEZs are not available because of other proposals, although not all of these are actively being pursued, and that this site best suits their needs. The Council would like to see a list of specific parcels within SEZs that were considered but rejected. How many of these other potential sites have received preliminary reconnaissance-level surveys?
2. We understand that the PEIS encourages proponents to select lands that are either contaminated or disturbed. Although the proponent indicated there have been impacts associated with off-highway vehicles, several films, and a nearby transmission line, they failed to demonstrate during the public meeting that the proposed site is either disturbed or contaminated. When we asked the BLM for a copy of the biological report, we were informed that the report was considered sensitive because it could reveal the locations of tortoises, even though Figure 1 on the next page reports no tortoise sign was found. In the absence of the report, we ask that the BLM specifically consider the disturbance data included in the report. In typical tortoise surveys, disturbances are tallied along each transect. Did the biological consulting firm, Sapphos Environmental, perform a disturbance analysis? If so, what did it reveal? If not, the BLM must insist that such an analysis be performed as part of this preliminary analysis, particularly since the PEIS encourages development on impaired lands.
3. Given that the site is neither contaminated nor disturbed (based on photographs provided by a member of the public during the public meeting), we ask that the BLM consider the other criteria given in Appendix B, Section B.5.3 of the PEIS that would judge the appropriateness of this site for development in a variance area. Since this is a milestone project for California, we strongly encourage the BLM to develop a checklist of the "Variance Areas – Factors to be Considered" to show at a glance those factors that are either met or violated by this proposed location. For example, given the proposed location, it would appear that project development would seriously impair connectivity between Death Valley National Park and Mojave National Preserve, which we believe would constitute only one of the many reasons this project would violate most of the factors supporting development of variance lands.
4. We understand that the survey area and action area were about the same size, with only a 200-foot buffer around the impact area footprint. Was the USFWS contacted in determining this very small action area? In the absence of good data from other projects that reveal impacts of solar development in adjacent areas, it seems prudent that a much larger buffer area should have been considered.
5. During the public meeting, BLM personnel indicated that the administrative draft of the Desert Renewable Energy Conservation Plan (DRECP), which was available to them but not the public, identifies the Silurian Valley as a conservation area (see comment in USFWS letter above). Although the proponent told us that they cannot wait for the DRECP to be issued, in fact, the latest estimate is that the draft DRECP is due to be publicized this summer. Therefore, we ask that the BLM put further consideration of this project on hold until the draft DRECP is public, and to dismiss it if Silurian Valley is designated as an area of critical environmental concern (ACEC) as a result of implementing the DRECP.

6. We note on Figure 1 (see below) that “1 tortoise and burrow [were found] outside survey area, later found dead from natural causes,” which was the only reported tortoise sign found during protocol surveys in 2013.



During the break when I spoke with Dr. Pauline Roberts of Sapphos, I was alarmed and felt misled when she indicated that, in fact, five tortoise burrows had actually been found **on the site**. There are several red flags associated with this revelation. First, if tortoise sign had been found onsite, why did Figure 1 divulge that only the one animal had been found in adjacent areas? It would certainly have been more appropriate and less misleading, to indicate on the figure that five burrows were found onsite, without necessarily revealing their exact locations, to protect tortoises.

Secondly, in my own studies in the Morongo Basin over a 24-year period between 1989 and 2013, I've found that the burrow:scat ratio on surveys is about 1:6; for every burrow I've found, there have been six scat. It is highly suspicious, and puts the results of the survey in question, that surveyors found only five burrows and no other tortoise sign, particularly scat. Either the surveyors were not able to identify tortoise burrows and misidentified the five burrows as belonging to tortoise(s), or they were unable to find other evidences of tortoise, particularly scat, which are much more common and should have been found if tortoise burrows were present.

Given that the biological report cannot be made public, we'd like to ask the BLM the following questions: Is this site considered occupied habitat, as the presence of five tortoise burrows would indicate? Or, are only adjacent areas occupied, as implied by Figure 1 that shows a single animal (now dead) was observed in adjacent areas only? Since the results of this 2013 survey remain valid for only one year per USFWS survey protocol and are therefore already outdated, the site must be surveyed again prior to development. As such, we strongly encourage the BLM to review the experience levels of future surveyors to ensure they have the ability to identify and differentiate tortoise sign from sign of other animals.

7. We also question the consultant's conclusion that the red-highlighted area in Figure 1 is not suitable for either tortoises or burrowing owls. Was this area deemed unsuitable as a result of surveys? Or, as it would appear, did the biologists not survey it because it appeared unsuitable? We note in Figure 1 that the red-highlighted area is outside the survey area for tortoises and burrowing owls, so how can the presence of these two species be dismissed in the absence of protocol surveys? In April 2014, I surveyed a similarly mountainous area south of Barstow that was occupied by both tortoises and burrowing owls (which were using tortoise burrows, kit fox dens, and badger digs in very rocky areas). Given its proximity to the proposed development and likelihood of supporting both tortoises and burrowing owls, the BLM (if this project is to proceed) must ensure that the red-highlighted area is actually surveyed to substantiate the consultant's apparently site-unseen conclusion.

## **Conclusion**

We concur with the recommendations of the CDFW, USFWS, and NPS that development of this site would violate the public trust and should be withdrawn from further consideration. We ask that the BLM consider each of the criteria given in Appendix B, Section B.5.3 of the Solar PEIS. We also ask that the BLM provide a checklist and determine if variance factors would be violated by development of this site. There is no evidence that any alternative sites in PEIS-preferred Solar Energy Zones were considered, or that the proponent is aware that they have selected a site that is being proposed for ACEC status, both of which render this site unacceptable for solar development. We are also concerned with the lack of full disclosure that the site is occupied by tortoises or that the biologists performing the surveys were sufficiently experienced to differentiate tortoise signs from those of other animals. If this site is not rejected as a result of these preliminary evaluations, which we believe it should be, then we strongly recommend that only experienced tortoise biologists be involved in future surveys.

Thank you for your time and consideration of our concerns,

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed L. LaRue, Jr.", is written over a light blue rectangular background.

Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson