

Thank you for your comment, Teresa Motley.

The comment tracking number that has been assigned to your comment is SolarM60237.

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Solar Energy Development PEIS  
Comment ID: SolarM60237

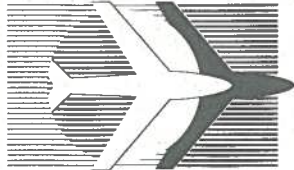
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Attachment: CCDOA Comments to Solar Energy PEIS (Sept 14 2009).pdf

Comment Submitted:

Attached are comments filed by Teresa R. Motley, AICP, Airport Planning Manager, Clark County Department of Aviation (CCDOA).

Please note that CCDOA is filing relevant documents as exhibits for the convenience of the BLM Staff at the Argonne National Laboratory. As indicated in the attached comments, those exhibits are being sent today via U.S. Mail.

LAS VEGAS



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September 14, 2009

**VIA ELECTRONIC FILING  
EXHIBITS FORWARDED VIA U.S. MAIL**

Solar Energy PEIS Scoping  
Argonne National Laboratory  
9700 S. Cass Avenue – EVS/900  
Argonne, IL 60439

**RE: Comments on Additional Public Scoping for the BLM Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development**

Dear Staff:

Clark County Department of Aviation (CCDOA) previously filed scoping comments on behalf of Clark County, Nevada (Clark County or County) in response to the May 29, 2008 Notice of Intent (NOI) for the Programmatic Environmental Impact Statement (PEIS) related to solar energy development on Bureau of Land Management (BLM) administered land in six western states. On June 30, 2009, BLM published a Notice of Availability (NOA) of Maps and Additional Public Scoping for the Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development (Solar Energy PEIS or PEIS). The County has reviewed the NOA and submits the following additional comments for BLM's consideration as it prepares the PEIS.

**BACKGROUND**

In its 2008 NOI, BLM announced that it is:

“... considering whether to establish a Bureau-wide solar energy development program to supplement or replace existing BLM solar development policy, and to amend land use plans in the six-state study area to adopt the new program. In addition, the BLM expects to identify BLM-administered land in the six state study area that may be environmentally suitable for solar energy development *and land that would be excluded from such development.*”<sup>1</sup>

<sup>1</sup> 73 Fed. Reg. 30908, 30909 (Notice of Intent) (May 29, 2008) (emphasis added).



Clark County Board of Commissioners

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In response to that notice, the County filed comments regarding its concerns about the interaction between the Solar Energy PEIS and the County's planned new commercial service airport in the Ivanpah Valley, in Clark County, Nevada (the Southern Nevada Supplemental Airport, or SNSA).

By way of background, in 2004, at the direction of Congress, the United States sold 6,000 acres of public land approximately 20 miles south of Las Vegas in the Ivanpah Valley (the Airport Site) to Clark County for the purpose of developing the SNSA and related infrastructure.<sup>2</sup> (A map of the relevant lands is provided as **Exhibit A**). Subsequently, in 2002, Congress directed BLM to convey to Clark County an additional 17,000 acres surrounding the Airport Site (the Airport Environs Overlay District) upon final federal approval of the SNSA.<sup>3</sup> In that same law, Congress also directed BLM to establish a transportation and utility corridor (the Transportation and Utility Corridor) between Las Vegas and the Airport Site.<sup>4</sup> In July 2007, BLM withdrew the land to establish the Transportation and Utility Corridor.<sup>5</sup> At the direction of Congress,<sup>6</sup> the BLM and the Federal Aviation Administration (FAA) are currently preparing an environmental impact statement (EIS) for the SNSA Project.

Both FAA and Congress have recognized the compelling public interest in developing a new airport in the region.<sup>7</sup> Moreover, Congress has recognized that because of restricted military airspace, topography, existing development, and constraints at the existing McCarran International Airport, the location in the Ivanpah Valley, Nevada, is likely the only available site in the vicinity of Las Vegas with sufficient available airspace to ensure safe and efficient operation of a new airport that can serve the regional demand.<sup>8</sup> To that end, in response to BLM's initial NOI, Clark County filed comments recommending against including property that is subject to the pending EIS for the SNSA Project (*e.g.*, the Airport Site, the Airport Environs Overlay District, and the Transportation and Utility Corridor) within the scope of the Solar Energy PEIS.<sup>9</sup>

## NEW COMMENTS

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<sup>2</sup> See Ivanpah Valley Airport Public Lands Transfer Act, PUB. L. 106-362 (2000); *see also* **Exhibit A** (area map).

<sup>3</sup> See Clark County Conservation of Public Land and Natural Resources Act, PUB. L. 107-282 (2002) at § 501; *see also* **Exhibit A** (area map).

<sup>4</sup> *Id.*; *see also* **Exhibit A** (area map).

<sup>5</sup> Letter from M. Chatterton (BLM) to R. Walker (CCDOA), July 2, 2007 (attached as **Exhibit B**).

<sup>6</sup> See PUB. L. 106-362 at § 5.

<sup>7</sup> See *Miscellaneous Public Lands and National Forests Bills*, S. HRG. 107-846 (July 30, 2002) at 13 ("One of the most important infrastructure issues facing Southern Nevada is siting a new international airport."); 71 Fed. Reg. 52, 367 (Sept. 5, 2006) (FAA Notice of Intent to prepare an EIS for the SNSA) (identifying a need for a new airport in order to satisfy future commercial aviation demand in the region).

<sup>8</sup> See, *e.g.*, S. REP. NO. 106-394 at 2 (2000) (recognizing that CCDOA's extensive review concluded that the Ivanpah Valley is "the only option that can accommodate the growing air traffic needs of the region"); *see also* H.R. REP. NO. 106-471 at 3 (1999) ("the Ivanpah Valley is an ideal place to build a new airport").

<sup>9</sup> See Letter from R. Walker (CCDOA) to Solar Energy PEIS Staff, July 8, 2008 (attached as **Exhibit C**).

In its June 30, 2009 NOA, BLM announced the designation of 24 specific solar energy study areas, which would undergo in-depth environmental analysis.<sup>10</sup> As described in the NOA, none of the 24 study areas is near the SNSA or is likely to create any impacts to any CCDOA aviation facilities. However, the maps published in conjunction with the June 2009 NOA indicate that the *entire* Ivanpah Valley and some portions of the Transportation and Utility Corridor are still being analyzed for solar development in the PEIS.

Clark County continues to have concerns regarding coordination between BLM's Solar Energy PEIS and the pending SNSA project. To that end, the County provides the following comments regarding the scope of the PEIS, and, in particular, the limits on BLM's authority to permit solar development in the Ivanpah Valley.

**1. BLM does not own the Airport Site.**

The map referenced in the June 2009 NOA identifies the entire Airport Site as being included within the "BLM Lands Being Analyzed for Solar Development in the PEIS." The Airport Site, however, was patented to Clark County in 2004<sup>11</sup> and is therefore no longer public land over which BLM has the authority to issue land use authorizations. As a result, BLM must eliminate the Airport Site from the scope of the PEIS.

**2. BLM must manage the Transportation and Utility Corridor for the placement of transportation and utilities.**

In the 2002 Clark County Conservation of Public Land and Natural Resources Act (Clark County Conservation Act), Congress required BLM to identify the location of the Transportation and Utility Corridor and withdraw the relevant lands from location and entry under the mineral leasing and geothermal leasing laws.<sup>12</sup> The purpose of this provision was to preserve critical rights-of-way for the SNSA. As Congress noted: "This corridor is important, because in order for the new airport to remain economical, it will require significant utility development to come from the north."<sup>13</sup>

BLM is currently obligated to manage the Transportation and Utility Corridor for the placement, on a non-exclusive basis, of utilities and transportation.<sup>14</sup> In this regard, the Transportation and Utility Corridor is exactly the type of special management area that BLM announced in its initial Notice of Intent is "inappropriate for or inconsistent with extensive, surface-disturbing uses" consistent with solar energy development.<sup>15</sup> While BLM may permit compatible rights-of-way within the Transportation and Utilities Corridor, large-scale solar energy development is inappropriate in these lands because it

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<sup>10</sup> 74 Fed. Reg. 31307, 31308 (Notice of Availability) (June 30, 2009).

<sup>11</sup> See Patent No. 27-2004-0104 (attached as **Exhibit D**).

<sup>12</sup> See PUB. L. 107-282, § 501(b).

<sup>13</sup> See e.g., *Miscellaneous Public Lands and National Forests Bills*, S. Hrg. 107-846 (July 30, 2002) at 13.

<sup>14</sup> Letter from M. Chatterton to R. Walker, July 2, 2007 (**Exhibit B**).

<sup>15</sup> Compare 73 Fed. Reg. at 30910.

is incompatible with the type of linear transportation and utility infrastructure contemplated by the Clark County Conservation Act to exist within the corridor.

For these reasons, BLM should eliminate the Transportation and Utility Corridor from the scope of the PEIS.

### **3. Congress directed specific terms for the future use and management of the 17,000 acres surrounding the Airport Site.**

By statutory mandate, upon final approval of the SNSA project, title to the 17,000 acres surrounding the Airport Site shall be transferred without consideration to Clark County as an Airport Environs Overlay District. For BLM to now include the Overlay District in a programmatic-level study, *the sole purpose of which is to expedite utility-scale development of solar energy projects*, would be entirely inappropriate. First of all, there are many airport facilities that are planned to be constructed in the Overlay District, including, but not limited to:

- Construction of a flood control facility (the “North Modified Retention Facility” or North MRF);<sup>16</sup>
- Road improvements to/from the North MRF;<sup>17</sup>
- Change in base flood elevation on the Roach Lake Playa;
- Construction of drainage channels from the Airport Site, underneath the Union Pacific Railroad (UPRR) and into North MRF;<sup>18</sup>
- Construction of a pipeline to transport potable water;<sup>19</sup>
- Extension/tie-in to the existing Kern River gas transmission line and construction of a natural gas metering and odorant station;<sup>20</sup>
- Extension/tie-in to the existing Higgins Substation to provide for backup power;<sup>21</sup>
- Extension/tie-in to the existing Embarq fiber optic line;<sup>22</sup>
- Construction of evaporation/disposal ponds for treated wastewater;<sup>23</sup>
- Construction and use of temporary conveyor belts from the Goodsprings MRF to the Airport Site, from the North MRF to the Airport Site, and from the Primm Quarry to the Airport Site;<sup>24</sup>
- Burial of the UPRR communication line;<sup>25</sup>
- Relocation of transmission line(s) as needed to eliminate aviation hazards; and

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<sup>16</sup> See Conceptual Planning Report (Dec. 2008) Exhibit III-6 (attached as **Exhibit E**). Note that, per Section 8 of the Addendum to the Conceptual Planning Report, CCDOA no longer intends to construct the initially proposed Jean Basin.

<sup>17</sup> See Conceptual Planning Report (Dec. 2008) Exhibit III-6 (attached as **Exhibit E**).

<sup>18</sup> See Conceptual Planning Report (Dec. 2008) Exhibit III-7 (attached as **Exhibit E**).

<sup>19</sup> See Conceptual Planning Report (Dec. 2008) Exhibit IX-3 (attached as **Exhibit E**).

<sup>20</sup> See Conceptual Planning Report (Dec. 2008) Exhibits IX-8 and IX-9 (attached as **Exhibit E**).

<sup>21</sup> See Conceptual Planning Report (Dec. 2008) Exhibit IX-15 (attached as **Exhibit E**).

<sup>22</sup> See Conceptual Planning Report (Dec. 2008) Exhibit IX-20 (attached as **Exhibit E**).

<sup>23</sup> See Conceptual Planning Report (Dec. 2008) Exhibit IX-23 (attached as **Exhibit E**).

<sup>24</sup> See Conceptual Planning Report Addendum 1 (June 2009) Exhibit IX-1 (attached as **Exhibit E**).

<sup>25</sup> See Conceptual Planning Report Addendum 1 (June 2009) Exhibit XII-1 (attached as **Exhibit E**).

- Construction of access roads to the Airport.

Preserving space for this infrastructure is critical, because without it, the airport project will not be viable. Second, as noted above, Congress has clearly identified a contrary public use for those lands, and where a tract of public land has been dedicated to a specific use according to any other provision of federal law, BLM is obligated to manage that tract of land in accordance with that law.<sup>26</sup> Moreover, when developing and revising land use plans, as is proposed in the Solar Energy PEIS,<sup>27</sup> BLM must:

“... consider present and potential uses of the public lands ... and ... coordinate the land use ... planning and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies ...”<sup>28</sup>

And finally, the United States (including BLM itself) and Clark County have already spent considerable funds and energy pursuing the SNSA project. While the SNSA project cannot proceed until the environmental approvals are in place, it would be imprudent and impractical for BLM to expend agency time and resources to now also examine the merits of using the Overlay District for entirely separate purposes in the Solar Energy PEIS.

Of note, it is conceivable that some solar projects could be co-located in the Overlay District without compromising aviation safety and efficiency and without interfering with specific airport infrastructure. In such event, however, BLM can still conduct a site-specific EIS of that particular solar project in close coordination with FAA and Clark County.

#### **4. Other lands outside the Overlay District have been identified for airport infrastructure.**

The SNSA project will also require the construction of ancillary facilities and the use of public lands outside of the Airport Site (which the County currently owns) and the Airport Environs Overlay District (which the County will have the right to acquire once the environmental approvals are complete). For example, in coordination with the Clark County Regional Flood Control District, CCDOA has identified the need to construct flood control facilities (specifically, modified retention facilities or MRFs) to minimize the amount of water that would be collected and stored adjacent to the proposed SNSA

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<sup>26</sup> 43 U.S.C. § 1732(a) (“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.”)

<sup>27</sup> As noted in BLM’s 2008 NOI, one outcome of the Solar Energy PEIS could be to amend some of BLM’s existing Resource Management Plans. 73 Fed. Reg. at 30910.

<sup>28</sup> 43 U.S.C. § 1712(c); *see also* 43 C.F.R. § 1610.0-8 (development and amendment of resource management plans must be consistent with the principles of Section 202 of the Federal Land Policy and Management Act).

after large storm events.<sup>29</sup> In addition, the County will need to acquire appropriate rights from BLM to permit the increase in base flood elevations on the Roach Lake Playa for those portions of the playa that are outside of the Airport Environs Overlay District.<sup>30</sup> Clark County will file applications this month with the BLM Las Vegas Field Office to secure necessary rights for the proposed MRFs and the increase in base flood elevation in the Roach Lake Playa. A map depicting the boundaries of the proposed right-of-way applications is provided as **Exhibit F**.

Congress has directed BLM and FAA to jointly conduct an environmental review not just for the proposed airport, but also for any necessary airport infrastructure. Therefore, for the same reasons enumerated above, any lands identified for use for airport infrastructure should not be included in the scope of the Solar Energy PEIS. This issue is particularly relevant because BLM has already received applications for solar energy projects that would directly conflict with some of these facilities and land uses.<sup>31</sup>

##### **5. Solar projects have the potential to create aviation hazards.**

In addition to our specific concerns regarding the SNSA project, Clark County also has a general concern that the PEIS includes no general measures addressing aviation safety as a whole. This is critical because one of the key tenets of Executive Order 12212 (Actions to Expedite Energy-Related Projects) is that federal agencies shall take all actions necessary to accelerate the completion of energy-related projects “while maintaining *safety*, public health, and environmental protections.”<sup>32</sup>

Certain solar technologies have been demonstrated to pose a threat to aviation safety. For example, reflective mirrors used in certain solar technology can cause dangerous glare issues; similarly, other technologies may generate thermal plumes that pose dangers to aircraft in flight. Both Clark County and FAA noted these issues in recent scoping comments on the proposed Ivanpah Solar Electric Generating System Project in the Ivanpah Valley in California.<sup>33</sup> The expert report filed by Clark County notes that: “The close proximity between the [proposed solar project] and flight paths means it is likely that at some point the aircraft will be in line with reflective mirrors pointed at the receiver

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<sup>29</sup> See Conceptual Planning Report (Dec. 2008) Exhibit III-6 (attached as **Exhibit E**).

<sup>30</sup> See Conceptual Planning Report (Dec. 2008) Exhibit III-8 (attached as **Exhibit E**). Because the proposed airport platform will reduce the surface area of the existing Roach Lake Playa from approximately 5.4 square miles to about 2.0 square miles, the SNSA project is expected to increase base flood elevations on the Roach Lake Playa in a 100 year storm event. Note, however, that while it is not indicated on Exhibit III-8, changes in base flood elevation are also anticipated within the Airport Environs Overlay District, both in the remainder of Roach Lake Playa south of Airport site and also west of Union Pacific RR.

<sup>31</sup> See, e.g., BLM Serial No. NVN 083129 (application by Cogentrix for a solar facility; this application will conflict with the ROW application for the Lucy Gray MRF).

<sup>32</sup> Exec. Order 13212 at § 2, 66 Fed. Reg. 28357 (2001) (emphasis added).

<sup>33</sup> See Letter from T. Arnold (CCDOA) to C. McFarlin (California Energy Commission) re: Comments on the Preliminary Staff Assessment for the Proposed Ivanpah Solar Electric Generating System Project (07-AFC-5) (Jan. 23, 2009) (attached as **Exhibit G**) and exhibit thereto (Letter from D. Kessler (FAA) to G. Meckfessel (BLM) re: Proposed Ivanpah Solar Electric Generating System (Jan. 2, 2008)).

tower. Any 'spillage' of the beam would then be focused directly on the aircraft. This glare could then potentially blind a pilot during this critical phase of flight."<sup>34</sup>

As illustrated by Clark County's expert report, solar projects can have serious adverse effects on aviation. This is true not just for Clark County, but for all existing and planned aviation facilities. The specific effect on aviation facilities, however, depends on a number of variables, including the type of solar technology used, the terrain, flight paths, and the type of aircraft at issue. For this reason, the Solar Energy PEIS should include specific planning criteria to ensure that before approving any applications for the development of solar energy technology near any existing or proposed aviation facility, BLM *first* conducts a case-by-case examination of the specific solar project to identify any potential adverse effects to aviation. For example, BLM should not issue any final approval for a proposed solar development project until the project applicant has satisfied any notice obligations under 49 U.S.C. § 44718 and FAA has issued a hazard / no hazard determination under 14 C.F.R. Part 77, if applicable. Many solar projects may not trigger automatic review under FAA regulations due to the low height of many solar technologies, however. Therefore, BLM also should ensure that the PEIS put some process in place to guarantee that *all* solar projects (including those that do not automatically trigger review under 14 C.F.R. Part 77) are examined sufficiently to identify whether the project would interfere with air navigation. Ideally, the PEIS should require close coordination in such instances between the BLM, FAA and the relevant airport proprietor.

## **CONCLUSION**

For the reasons detailed above, we urge BLM to take the following steps in the Solar Energy PEIS:

- (1) Eliminate the Airport Site from the scope of the PEIS;
- (2) Eliminate the Transportation and Utility Corridor from the scope of the PEIS;
- (3) Eliminate the Airport Environs Overlay District from the scope of the PEIS;
- (4) Eliminate all other lands proposed to be used for SNSA facilities from the scope of the PEIS: and
- (5) Include new planning criteria and/or processes to ensure that when reviewing an application to develop any solar project near any existing or proposed airport, BLM will first examine each proposed solar project on a case-by-case basis to ensure that the particular project would not conflict with the airport or aviation facility and/or would not create hazards to air navigation.

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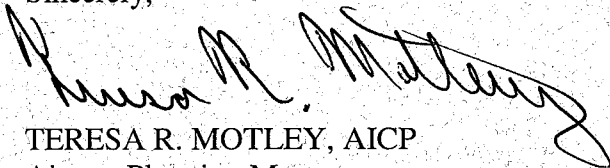
<sup>34</sup> See *id* and exhibit thereto (Memorandum re: impacts from Ivanpah Solar Electric Generating System, Jan. 23, 2009).



Clark County has already provided significant documentation regarding the SNSA Project to the BLM Project Manager for the SNSA EIS and the BLM Las Vegas Field Office. However, for the convenience of the staff in the Argonne National Laboratory Office, Clark County is providing relevant documents as exhibits to these comments. (Due to the size of these documents, Clark County is providing the exhibits by U.S. mail only, and not also through the online comment form). If additional documentation related to the SNSA Project would be helpful at any point during BLM's preparation of the Solar Energy PEIS, Clark County would be pleased to provide electronic or hard copies, as appropriate.

I appreciate your attention to these concerns. Please feel free to contact Robert Tweedy of my staff directly at (702) 261-5175 with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa R. Motley", written in a cursive style.

TERESA R. MOTLEY, AICP  
Airport Planning Manager

Encl. (filed by U.S. Mail only)

cc: Randall Walker  
Rosemary Vassiliadis  
Robert Tweedy  
Jeffrey Steinmetz  
Philip Rhinehart