California Desert & Renewable Energy Working Group
c/o Resources Legacy Fund
555 Capitol Mall, Suite 675
Sacramento, CA 95814

June 28, 2011

Mr. Robert Abbey
Director, Bureau of Land Management
United States Department of the Interior
1849 "C" Street, NW
Washington D.C. 20241

Dear Director Abbey:

In our May 2nd letter to the Bureau of Land Management in response to the Draft Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development, we outlined a solar energy program that focuses on guiding solar projects to Areas for Facilitated Development (AFDs) or Solar Energy Zones (SEZs) through clear incentives. However, as stated in those comments, we also believe that BLM must have a clear process for considering Variance Applications, applications for solar energy development outside AFDs or SEZs submitted after the date of issuance of the Solar PEIS Record of Decision (ROD). As promised, this letter provides additional recommendations on how to establish such a process.

The variance process should provide an opportunity for exceptions to be considered and should strengthen, rather than undermine, the directed development approach we advocate. For example, variances may be needed in the near term because sufficient AFDs may not yet have been designated or in order to allow a project to proceed on a small area of public lands outside of the existing SEZs and AFDs, if appropriate. Nonetheless, variances need to be limited in time and place, so that the exceptions do not become the rule, or take away from the directed development framework. As we stated in our May 2nd letter, designation of sufficient AFDs, accompanied with appropriate benefits, such as access to transmission, will provide an effective means to minimize applications in less preferable areas on federal land.

The Solar PEIS must outline a clear process and criteria for the consideration of Variance Applications, by personnel with appropriate expertise. We urge the BLM to take steps to ensure that these criteria and other elements of the program are applied consistently within and across state lines.

The process must ensure that Variance Applications meet the following criteria:

1. Variance applications must meet the economic, technological, cultural and environmental

criteria for suitable AFDs outlined in Section I.A. of our May 2, 2011 comments.[1]

2. Projects must be no bigger than 5,000 acres, within a Right of Way Application of no more than 8,000 acres. As contemplated in our May 2nd letter, we have previously recommended that AFDs be at least 5000 acres in size and be designed to accommodate more than two projects.

3. Prior to accepting a variance application, BLM must consult with the applicant and make a determination that either a) there is not sufficient, suitable land available to the applicant within an AFD or SEZ served by transmission in the same state as the applicant's proposal or, b) the proposed project is to be located predominantly on non-BLM land.

4. The application must be consistent with the Least Conflict Approach outlined for AFDs in Appendix B of our May 2nd, 2011 comments.

5. The applicant must demonstrate that the applicant's proposed project will make highly efficient use of the land considering the solar resource, the technology to be used, and the proposed project layout.

We believe that once the program outlined in our May 2, 2011 comments is implemented, new AFDs will ultimately result in a diminishing need for new applications outside AFDs. In its review of the need for new AFDs, as outlined in Section I.D of our comments, BLM should also assess the degree and extent to which Variance Applications are needed over time.

We also recommend that, at the time of application, applicants for variances be required to establish reimbursable accounts sufficient to reimburse BLM for all costs associated with accepting, reviewing, and processing a Variance Application including: conducting environmental review and related consultations; conducting cultural resource inventory and related consultations; and conducting inventories for sensitive wildlife habitat or wild lands. To encourage developers to pursue new applications in SEZs and AFDs, and to reflect the reduction in administrative costs associated with development in those areas, application fees for Variance Applications should be higher than for applications in SEZs or AFDs.

In addition, we recommend that the BLM require variance applicants to assume all risk associated with a Variance Application and to understand that their financial commitments in connection with their applications will not be a determinative factor in the Bureau's evaluation process. The Solar PEIS and ROD should also provide that any lands found unacceptable for solar energy development as a result of the environmental review and screening of a Variance Application will be excluded from solar energy development by an amendment of the underlying resource management plan (RMP) at the cost of applicant [2]

Finally, any and all data collected for processing a Variance Application should be made publicly available, provided that business and trade secrets are not compromised.

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[1] A variance application for a project located primarily on private land that does not meet the technical criteria for the public land portion of the project shall not be denied on the sole basis of not meeting the technical criteria on the public land portion.

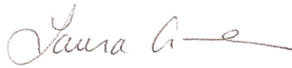
[2] This language should not be construed to say that the applicant should be required to pay rent on the land excluded from development.

Thank you for inviting us to submit these additional thoughts on ways to strengthen the Bureau's solar energy program.

Sincerely,

Darren Bouton
First Solar, Inc.

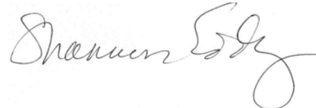
Barbara Boyle
Sierra Club



Laura Crane
The Nature Conservancy

Kim Delfino
Defenders of Wildlife

Pamela Pride Eaton
The Wilderness Society



Shannon Eddy
Large-scale Solar Association

Sean Gallagher
kRoad Power

Garry George
Audubon California

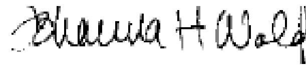
Arthur Haubenstock
BrightSource Energy

Michael Mantell, Chair
California Desert & Renewable Energy Working Group

Nino Mascolo
Southern California Edison

Billy Owens
Solar Millennium

Wendy Pulling
Pacific Gas & Electric



Johanna Wald
Natural Resources Defense Council

Peter Weiner
Solar Attorney

V. John White
Center for Energy Efficiency
& Renewable Technologies

cc. David Hayes, Deputy Secretary Department of the Interior
Steve Black, Senior Counselor, Department of the Interior
Janea Scott, Special Assistant to the Counselor, Department of the Interior
Jim Abbott, Acting California State Director, Bureau of Land Management, Department of the Interior

Appendix B. The Least Conflict Approach:

We offer the following criteria to evaluate BLM lands that would provide minimal conflict as Areas for Facilitated Development:

- Mechanically disturbed lands such as fallowed agricultural lands.
- Brownfields, idle or underutilized industrial areas.
- Locations adjacent to urbanized areas and/or load centers where edge effects can be minimized.
- Locations that minimize the need to build new roads and that meet the one or more of the following transmission sub-criteria: transmission with existing capacity and substations is already available; minimal additional infrastructure would be necessary, such as incremental transmission re-conductoring or upgrades, and development of substations.
- Public lands of comparatively low resource value located adjacent to degraded and impacted private lands on the fringes of BLM-managed land. This combination of public and private lands could allow for a conjunctive use area, allowing for the expansion of renewable energy development onto private lands.
- Locations that have been repeatedly burned and invaded by fire-promoting non- native grasses.

In addition, the following areas should be *avoided* when identifying Areas for Facilitated Development because of the high degree of conflict that a proposal for development would cause:

- Lands within one mile of lands designated by Congress, the President or the Secretary for the protection of sensitive resources and values (e.g., units of the National Park System, Fish and Wildlife Service Refuge System, National Forest System, and the BLM National Landscape Conservation System), which would be adversely affected by development.
- Lands that have been formally proposed by federal agencies for designation as wilderness, or proposed for a national monument or wilderness designation in S.2921 (111th Congress).
- Lands that were originally part of a renewable energy right of way application and were eliminated from a ROW application by BLM or the applicant due to resource conflicts *prior to or following the finalization the PEIS*. For example, where the final project represents a smaller or different footprint to avoid wildlife habitat, rare vegetation or desert washes, the excluded portion of the right of way should no longer be available for development.
- Lands that have conservation value and were purchased with federal, state or private funds, and donated or transferred to the BLM for conservation purposes.
- Lands purchased with federal, state or private funds, and donated or transferred to the BLM expressly as mitigation for project impacts.
- Lands that have been: inventoried by trained citizen groups, conservationists and/or agency personnel using BLM protocols; found to meet Congress'definition of —wilderness characteristics; and publicly identified as of November 19, 2010. Maps of these lands in the six study areas can be found at found at http://www.nrdc.org/land/sitingrenewables/default.asp.