

*Director's Protest Resolution Report*

**Imperial Sand Dunes  
Recreation Area  
Management Plan**

June 5, 2013



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## Reader's Guide

### *How do I read the Report?*

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

### **Report Snapshot**

**Issue Topics and Responses**  
NEPA

**Topic heading**

**Submission number**

**Issue Number:** PP-CA-ESD-08-0020-10  
**Protest issue number**

**Organization:** The Forest Initiative  
**Protesting organization**

**Protester:** John Smith  
**Protester's name**

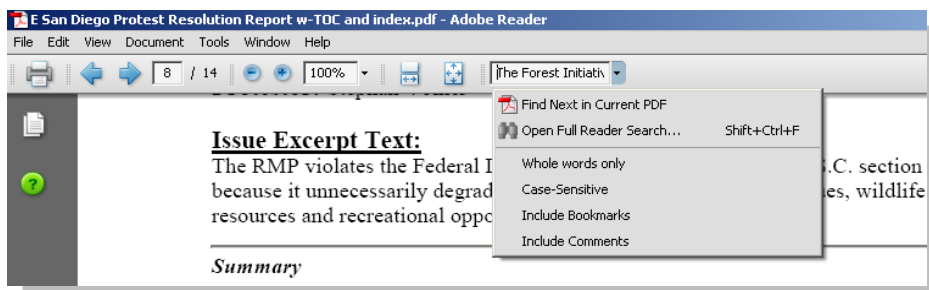
**Issue Excerpt Text:**  
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.  
**Direct quote taken from the submission**

**Summary**  
General statement summarizing the issue excerpts (optional).  
There is inadequate NEPA analysis in the RAMP for renewable energy projects.

**Response**  
BLM's response to the summary statement or issue excerpt if there is no summary.  
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IM	Instruction Memorandum
APD	Application for Permit to Drill	MOU	Memorandum of Understanding
BA	Biological Assessment	NECO	Northern and Eastern Colorado
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CDCA	California Desert Conservation Area	NRHP	National Register of Historic Places
CDFG	California Department of Fish and Game	NSO	No Surface Occupancy
CEQ	Council on Environmental Quality	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CFR	Code of Federal Regulations	PRAMP	Proposed Recreation Area Management Plan
COA	Condition of Approval	RAMP	Recreation Area Management Plan
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VRM	Visual Resource Management
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WECO	Western Colorado
FWS	U.S. Fish and Wildlife Service	WSA	Wilderness Study Area
GIS	Geographic Information Systems	WSR	Wild and Scenic River(s)
HMP	Habitat Management Plan		
IB	Information Bulletin		

**Protesting Party Index**

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Mr. Christopher R. Salomon	County Sanitation Districts of Los Angeles County	PP-CA-ISD-12-01	Denied - Issues, Comments
Mr. David P. Hubbard	Gatzke Dillon & Balance LLP (representing EcoLogic Partners, Inc. and American Sand Association)	PP-CA-ISD-12-02	Denied - Issues, Comments
Ms. Lisa T. Belenky	Center for Biological Diversity	PP-CA-ISD-12-03	Denied - Issues, Comments

## Issue Topics and Responses

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### **National Environmental Policy Act (NEPA)**

**Protest Issue:** PP-CA-Imperial-12-02-2

**Organization:** Gatzke Dillon & Ballance LLP (representing EcoLogic Partners, Inc. and American Sand Association)

**Protester:** David Hubbard

#### **Issue Excerpt Text:**

If BLM does plan to close or remove Patton Valley Road from the RAMP, it should have disclosed this fact in the EIS, especially since the proposed closure will result in potentially significant effects, including (1) loss of recreational connectivity between camping areas in the west to duning areas in the east, (2) life-safety impacts associated with requiring visitors to travel farther around or into remote areas of the dunes to return to camping areas, (3) impacts on PMV associated with inadvertent incursions into critical habitat, and (4) displacement impacts resulting from duners choosing to camp and recreate in areas other than the southern dunes due to inconvenience caused by closure of Patton Valley Road. The Final EIS includes no assessment of these potential impacts.

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**Protest Issue:** PP-CA-Imperial-12-03-18

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

#### **Issue Excerpt Text:**

The preferred alternative also fails to take into account the National Natural Landmark designation of over 23,000 acres of the Imperial Sand Dunes (aka Imperial Sand Hills) in 1966 or any discussion of efforts to manage the dunes in accordance with the

goals of the National Natural Landmark program. Although the Imperial Sand Dunes has been recognized by the Department of the Interior for almost fifty years as having "exceptional" natural history value, BLM failed to address its duty to provide responsible stewardship to protect the natural resources of the dunes.

The goals of the National Natural Landmark program are to encourage the preservation of sites illustrating the geological and ecological character of the United States, to enhance the scientific and educational value of sites thus preserved, to strengthen public appreciation of natural history, and to foster a greater concern for the conservation of the nation's natural heritage. According to the National Park Service, the ISDRA "is an outstanding example of dune geology and ecology in an arid land." BLM's pattern of ignoring the designation of the ISDRA as a Registered Natural Landmark (RNL) is evidenced by the lack of discussion of this designation in the proposed RAMP/FEIS.

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**Protest Issue:** PP-CA-Imperial-12-03-20

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

#### **Issue Excerpt Text:**

This proposal does not provide present baseline data against which the future effects of management actions on tortoise populations can be evaluated, therefore fails to provide an adequate baseline from which impacts to the tortoise can be evaluated as required under NEPA. Other species of special concern have been linked with the Algodones Dunes including Arizona Bell's vireo (*Vireo bellii arizonae*; state

endangered), Burrowing owl (*Ailene cunicularia*; BLM sensitive), Gila woodpecker (*Melanerpes uropygialis*; state endangered), LeConte's thrasher (*Toxostoma lecontei*; BLM sensitive). The RAMP/FEIS provides no information that surveys have been conducted in the planning area for these species and this lack of baseline data represents a serious flaw in BLM's NEPA analysis.

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**Protest Issue:** PP-CA-Imperial-12-03-21

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

While the proposed RAMP/FEIS presents an alternative that reflects the current situation with 49,310 acres of closures to ORV use in the Algodones Dunes in the Northern, Small Central, Large Central and the Southern Closures, (as per the settlement agreement of 2000) in addition to the Wilderness area as Alternative 2, the range of alternatives is still inadequate. For example, it fails to include in any alternative a carrying capacity limitation for the number of people on the dunes at any one time or based on air quality limits. Due to increasing use and visitation at the Algodones Dunes along with the inability of law enforcement to safely and effectively handle emergencies and illegal activities, much less protect the fragile resources the BLM needed to evaluate limits on the number of visitors that can safely access the Dunes at one time a carrying capacity limit but failed to do so. As much as this is a resource issue on the ground, it is also a human safety issue and an issue with air quality. Additionally because the data indicate that the highest visitation is primarily occurring coincidental with the growing and reproductive windows for many of the rare and sensitive biological resources that rely on the dune habitat at

least one alternative with a carrying capacity limit should have been evaluated in detail. Further, most of the proposed alternatives in the RAMP/FEIS allow for increased ORV use including the proposed preferred alternative which allows the most amount of habitat for dunes species to be open to ORVs. As discussed above, such an alternative fails to comply with the minimization requirements of the regulations.

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**Protest Issue:** PP-CA-Imperial-12-03-22

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

Failing to consider whether all or additional portions of the Algodones Dunes should be designated as an Area of Critical Environmental Concern (ACEC) based on the CDCA Plan ACEC criteria:

1. Identify and protect the significant natural and cultural resources requiring special management attention found on BLM-administered lands in the CDCA.
  2. Provide for other uses in the designated areas, compatible with the protection and enhancement of the significant natural and cultural resources. As a result, the agency also failed to consider whether it should put in place the CDCA plan requirements for ACECs including:
  3. Systematically monitor the preservation of the significant natural and cultural resources on BLM-administered lands, and the compatibility of other allowed uses with these resources (BLM 1999).
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**Protest Issue:** PP-CA-Imperial-12-03-24

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

Failing to adequately address the National Natural Landmark designation of the Imperial Sand Dunes. The regulations require: "Federal agencies should consider the existence and location of designated national natural landmarks, and of areas found to meet the criteria for national significance, in assessing the effects of their activities on the environment under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4321)" 36 CFR § 62.6

(i). The DRAMP and DEIS failed to even mention the designation and the final EIS mentions the designation (FEIS at 3-104) but provides inadequate discussion of the significance of the Registered National Landmark designation, the resources in the ISDRA that led to the designation, and fails to evaluate how each alternative may protect and enhance those resource values.

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**Summary**

The BLM's National Environmental Policy Act (NEPA) analysis in the Proposed Recreation Area Management Plan/Final Environmental Impact Statement (PRAMP/FEIS) is flawed because:

- There is no analysis for closing or removing Patton Valley Road in the PRAMP/FEIS;
- Fails to take into account the National Natural Landmark designation of the Imperial Sand Hills in its analysis;
- Does not provide present baseline data upon which impacts to tortoise, Bell's Vireo, Burrowing Owl, Gila Woodpecker, and LeConte's Thrasher populations can be properly analyzed, and is therefore inconsistent with NEPA;
- Fails to analyze a carrying capacity limit for the number of visitors to the Algodones Dunes; and
- Fails to consider whether all or additional portion of the Algodones Dunes should be designated as an Area of Critical Environmental Concern (ACEC).

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**Response**

The protest refers to Patton Valley Road, which is not a designated road or route addressed during the planning process. The area known as Patton Valley is within the existing and proposed Off-Highway Vehicle (OHV) Open Area. Gecko Road, the paved and maintained route used to access camping areas between Highway 79 and Roadrunner Campground, is the only route in the Open Area addressed in the PRAMP/FEIS. The protest may refer to the OHV Closed Area designation in the PRAMP/FEIS which corresponds to Critical Habitat for Peirson's milkvetch (PMV). This OHV Closed Area would limit east-west OHV travel across a portion of the south-central dunes. This OHV closure was included and analyzed in Alternatives 3, 4, 5, and 8. See Chapter 4.14 Impacts on Recreation Program, and Chapter 4.15 Transportation and Public Access.

The BLM did discuss the designation of the Imperial Sand Hills as a National Natural Landmark



(NNL) in the PRAMP/FEIS, and the BLM has considered the importance of this designation in its analysis and in making its final decision. The Imperial Sand Hills NNL has been protected as Wilderness and has received Multiple Use Class (MUC) C (Controlled Use/Wilderness) classification, which is the most protective of the MUC classifications, as it manages lands for preservation in a “natural state” and generally limits access to only non-motorized and non-mechanized means, and it prohibits competitive events, keeps areas already closed to motorized vehicles closed, and otherwise prohibits access outside of approved routes. (PRAMP/FEIS, 3-2, 3-104) This level of management protection is indicative of the importance that the BLM places on the Imperial Sand Hills as a National Natural Landmark, and the BLM recognizes that the Imperial Sand Hills contains a sand dune system “of a size and height that is unparalleled” which provides “a unique recreation resource in the southwestern United States.” (PRAMP/FEIS, 3-1)

The BLM’s responsibility for the management of specific wildlife species is limited by statute to the management of wildlife habitat. The BLM works in concert with the U.S. Fish and Wildlife Service (FWS) and the California Department of Fish and Game (CDFG) (who each have authority to manage wildlife populations) to manage wildlife occurring on BLM-managed lands, relying on their expertise to determine when population levels fall or would fall dangerously below trend, especially with regard to federally and state listed species, and state species of concern. The BLM conducted consultation with the FWS under Section 7 of the Endangered Species Act (ESA) and with CDFG with regard to state-managed species to ensure that BLM’s proposed management conformed to, and what is consistent with applicable laws and policies, governing management of wildlife species under the purview of FWS and CDFG in the development of this PRAMP/FEIS. (PRAMP/FEIS, 5-4, 5-6) In the PRAMP/FEIS, the BLM has identified the presence of Desert Tortoise (federally-listed), Arizona Bell’s Vireo (state-listed), Western Burrowing Owl (state species of concern), Gila Woodpecker (state-listed), and LeConte’s Thrasher (state species of concern) as well as other state and federally-managed species within the planning area. Additionally, the BLM has identified the history of these species, their distribution and level of occurrence within the planning area, and the threats affecting them both generally, and within the planning area. (PRAMP/FEIS, 3-42 – 3-55) The BLM has also identified the impacts to these species from the management actions proposed in the PRAMP/FEIS. The BLM has used this information to design mechanisms within the PRAMP/FEIS to ensure that BLM’s actions meet the regulatory requirements of the ESA and the California Endangered Species Act established for the protection of these species. (PRAMP/FEIS, 4-55 – 4-69) The information provided in the PRAMP/FEIS with regard to the status of federally and state managed species and the threats to them are drawn largely from reports by Federal and State agencies. The citations to these reports can be found both within the body of the PRAMP/FEIS as well as in the References Cited section. The BLM has used the best information available to make an informed analysis and determination about the impacts of its management actions within this PRAMP/FEIS on Federal and State managed species.

The question of visitor capacity was raised during public scoping (PRAMP/FEIS, Appendix A, A-3). Recreation use and visitation are described in Sections 3.15.5, 3.15.6, and 3.19.3 (PRAMP/FEIS, 3-115, 3-119, and 3-155). The PRAMP/FEIS points out that there is a wide range of visitation based on visitor preferences and expectations, seasons, holidays, and other factors. The visitor experience can range from solitude to busy crowds and noise. (PRAMP/FEIS, 3-120) The BLM has conducted numerous visitor surveys including analysis of

visitor satisfaction with the recreation experience in the planning area. (PRAMP/FEIS, 3-122) The BLM has found that visitation has fluctuated over the last decade, peaked in Fiscal Year 2006 at over 1.4m visitors per year, and has been falling since. Visitation is forecast at just over 1.2m annually for the life of the PRAMP/FEIS. (PRAMP/FEIS, 3-121) Visitor carrying capacity was not calculated in the PRAMP/FEIS, although Section 4.18.2.3.1 does estimate the number of visitors that could potentially recreate at the Imperial Sand Dunes (ISD) based on the accessible sand acreage. The BLM determined that the visitor capacity based on the accessible sand exceeds the projected number of visitors, therefore setting capacities was not necessary. Please see Section 4.18.2.3.1 (Economic Methodology) for more detail on visitor use numbers.

To address the issue of visitation and impacts to natural and cultural resources, the BLM has identified areas containing sensitive and designated critical habitat, and developed a range of recreation and OHV management classifications to protect sensitive habitat from the impacts of recreation and visitor use. The alternatives for recreation and OHV management classes are described in Chapter 2 (PRAMP/FEIS, 2-81 through 2-93) and analyzed in Chapter 4 (PRAMP/FEIS, 4-13 through 4-124). Impacts from the alternatives to visitors and their social setting are also described in Chapter 4. (PRAMP/FEIS, 4-138) While the BLM has not proposed limiting visitation to the recreation area, the plan contains a variety of management actions to minimize or eliminate impacts from recreation and other uses on sensitive habitat and resources including Best Management Practices (Appendix C), a Dust Control Plan (Appendix D), and a Monitoring Plan to evaluate management strategies and effectiveness. The PRAMP/FEIS also includes specific regulatory mechanisms, such as wilderness, designed to protect the Algodones Dunes from habitat degradation. (PRAMP/FEIS, 2-68) Based on the analysis provided in this PRAMP/FEIS, the BLM has determined that the protections established in this PRAMP/FEIS are appropriate given the importance of the Algodones Dunes and the level of analysis. Also, the protesting party has not provided a compelling rationale why additional protections, such as a capacity limitation, are necessary for protection of the Algodones Dunes.

Regarding carrying capacity and visitor safety, the plan notes that the majority of visitor use is concentrated in the BLM's developed recreation sites and along paved roads (PRAMP/FEIS, 3-115 and 3-142) rather than in areas of sensitive habitat. Visitation is also concentrated on only four major holiday weekends out of the seven-month use season. (PRAMP/FEIS, 3-123) The BLM describes the goals and objectives for visitor safety as common to all alternatives, and these include providing adequate law enforcement and emergency visitor services as needed to facilitate a safe visitor experience. (PRAMP/FEIS, 2-115 and 2-116) The BLM's law enforcement and visitor safety program are also discussed in Chapter 3 (PRAMP/FEIS, 3-140) and analyzed in Chapter 4 (PRAMP/FEIS, 4-129). The BLM has adapted its management and law enforcement presence by developing Ranger/Visitor Contact Stations at the most used recreation areas and scheduling the maximum staff for the holiday weekends. The BLM also brings in additional law enforcement resources on busy holidays from other local, state, and national agencies as needed.

One of the requirements for consideration of an area as an ACEC is that the area must require special management attention to protect relevant and important values in order to be considered for designation. (BLM ACEC Manual 1613 .12) As a portion of the Algodones Dunes are already designated as Wilderness it is not necessary to provide these areas with additional special

management attention as the Wilderness designation already provides such special management attention and protection of relevant and important values. (PRAMP/FEIS, 3-99)

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### *Fish, Wildlife, Plants, and Special Status Species*

**Protest Issue:** PP-CA-Imperial-12-03-34

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

#### **Issue Excerpt Text:**

In addition, no analysis is provided on the potential impacts to wildlife from people hanging around guzzlers or ephemeral ponds that occur primarily on the east side of the dunes in the microphyll woodlands or how human presence negatively affects wildlife visitation to guzzlers and water sources.

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#### **Summary**

The ISD PRAMP/FEIS failed to analyze impacts to wildlife near guzzlers, ephemeral ponds, and other water sources, specifically within microphyll woodlands on the east side of the dunes.

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#### **Response**

As addressed in the BLM’s response to public comments in Section 5.4.2, the Planning Area currently has six wildlife guzzlers—five within the North Algodones Dunes Wilderness, and one in the Mammoth Wash area (see Section 3.5.1.3—Wildlife Guzzlers). These locations have the lowest visitor use within the Planning Area. There are no wildlife guzzlers in the microphyll woodlands in the dunes south of Highway 78.

This issue (specific to OHV recreation and camping around microphyll woodlands) was also raised during the public comment period for the draft and the BLM has readdressed impacts to microphyll woodlands in the PRAMP/FEIS related to OHV recreation and camping in these sensitive areas within Section 4.5.1. In regards to the proposed alternative’s impacts related to camping prohibitions within microphyll woodlands south of Wash 33 and north of Wash 70, “potential OHV recreational impacts would likely occur; however, the elimination of camping would result in reduced impacts to vegetation and insect populations within the microphyll woodlands due to fire wood collection, fire danger, trampling of vegetation, and surface disturbance, resulting in a beneficial effect.”

Section 4.6.7.1 of the PRAMP/FEIS also points out that “the presence of humans, recreational activities, and noise reduce the value of vegetation to wildlife. Increased dispersed camping and/or day use would cause loss of such vegetation, which would affect deer, reptiles, and migratory birds.” For this reason, a range of alternatives were developed describing how the BLM will manage surface disturbing activities around these sensitive areas. Differences

between alternatives related to the management of the microphyll woodlands as described for vegetative resources in Section 4.5.1 would also apply to wildlife resources.

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## ***Soils***

**Protest Issue:** PP-CA-Imperial-12-03-28

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

Failing to adequately assess the impacts to soils. The PRAMP/FEIS fails to look at all the impacts on the geology and soils from ORV use in the planning area including sand compaction by vehicles and human trampling which increase soil bulk density,

penetration resistance, and thermal capacity. BLM failed to conduct any studies to compare hydrology and compaction between motorized and non-motorized areas, and such studies are not proposed in any of the alternatives. Such studies would help to assess the overall condition of habitat for sensitive plants and animals. The FEIS also fails to address the loss of intact cryptobiotic soil crusts and other stable soils outside of the dunes areas of the ISDRA and fails to adequately address the impacts to sand sources and sand transport from the proposed alternative.

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## **Summary**

The PRAMP/FEIS failed to:

- analyze the impacts of sand compaction by vehicles and human trampling associated with ORV use in the planning area;
- adequately address impacts to sand sources and sand transport;
- conduct or propose any studies comparing hydrology and compaction between motorized and non-motorized areas; and
- address the loss of intact microbiotic soil crusts and other stable soils outside of the dunes areas of the Imperial Sand Dunes Recreation Area.

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## **Response**

Land use planning is a tiered process ranging from broad general allocations and management prescriptions to subsequent site-specific authorizations. Impacts to soils are discussed in Section 4.3 (PRAMP/FEIS, 4-30 to 4-36) at a level of detail appropriate to a planning-tier analysis. Impacts will be analyzed and mitigation measures developed in more detail in the site-specific NEPA documents prepared for project-level actions.

The BLM has used the best available science in the impact analysis consistent with the BLM NEPA Handbook (H-1790-1, Chapter 6, and Section 6.8.1.2). The BLM has identified soil compaction as a potential impact of OHV use (PRAMP/FEIS, 4-30) and considered this impact in land use planning decisions (PRAMP/FEIS, 4-32 to 4-33). The BLM has also identified the impact of surface disturbing activities such as OHV use on the natural flows of washes and infiltration into the groundwater system (PRAMP/FEIS, 4-36) and considered this impact in land

use planning decisions (PRAMP/FEIS, 4-37).

There are no laws, regulations, or policies requiring the protection of biological soil crusts. The BLM has acknowledged the importance of microbiotic soil crusts in the soil standards for land health (PRAMP/FEIS, 2-23), and the dust control plan (Appendix D) incorporates several measures that will reduce impacts to biological soil crusts, such as administrative closures, signage of limited use areas, and patrolling by BLM law enforcement rangers to deter off-route unauthorized OHV use.

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## *Travel Management*

**Protest Issue:** PP-CA-Imperial-12-03-6

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

The preferred alternative is not consistent with Executive Orders requiring that impacts of ORV use be minimized. In response to the growing use of ORVs and attendant environmental damage, President Nixon and Carter respectively issued Executive Orders which mandated BLM to only allow ORV use on public lands if certain conditions were met. 37 Fed. Reg. 2877 (1972); 42 Fed. Reg. 26959 (1978). These Orders are binding on BLM and enforceable as law. See *Conservation Law Foundation v. Clark*, 590 F.Supp. 1467, 1477 (D. Mass. 1984) (holding that Executive Orders 11,644 and 11,989 are both "invested with the status of law" and enforceable), *aff'd*, *Conservation Law Found. v. Secretary of the Interior*, 864 F. Supp. 954 (1st Cir. 1989).

Executive Order 11644 mandated that the Secretary of the Interior issue regulations which require the designation of specific areas and trails on public lands to which ORV use will be limited. See 43 C.F.R. §§ 8340-42. Following the requirements of the Executive Orders, the regulations require that BLM protect the environment in

affected areas. These requirements, often referred to as the "minimization criteria," are as follow:

- "minimize damage to soil, watershed, vegetation, air, or other resources of the public lands and to prevent impairment of wilderness suitability" (43 C.F.R. § 8342.1 (a));
- "minimize harassment of wildlife or significant disruption of wildlife habitats" (43 C.F.R. § 83421(b));
- "minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors" (43 C.F.R. § 8342.1(c)); and
- prohibit trails in "officially designated wilderness areas or primitive areas" (43 C.F.R. § 8342.1 (d)).

In *Center for Biological Diversity v. BLM*, the court explained: "Minimize" as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, i.e. the BLM is required to place routes specifically to minimize "damage" to public resources, "harassment" and "disruption" of wildlife and its habitat, and minimize "conflicts" of uses. 43 C.F.R. § 8342.1(a)-(c), 2009 U.S. Dist LEXIS 90016, 1080 (N.D. Cal. September 28, 2009) (emphasis in original,

footnote omitted; finding that the WEMO Plan was deficient under the Federal Land Policy Management Act ("FLPMA") in failing to address the minimization requirements for route designations, and that the FEIS unlawfully failed to analyze specific impacts from the WEMO Plan on soils, cultural resources, "Unusual plant assemblages" (UPAs), water and riparian resources, and the Mojave fringe-toed lizard,

as required by NEPA). These criteria apply to areas open to ORV use as well. Here, the preferred alternative does not minimize damage to public resources, impacts to wildlife and habitats, or conflicts of uses from either authorized or unauthorized ORV use that is likely to occur in the ISDRA and therefore is in violation of the relevant regulations and executive orders.

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### **Summary**

The BLM failed to comply with Executive Orders 11644 and 11989, as well as the regulations within 43 CFR 8342.1, which requires the BLM to only allow ORV use on public lands when certain criteria (minimization requirements) are met.

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### **Response**

The BLM did comply with FLPMA, Executive Orders 11644 and 11989, and the designation criteria found in 43 CFR 8342. The alternatives were developed using the criteria in 43 CFR 8342.1 and are intended to minimize damage to vegetation, wildlife, and wildlife habitat, as well as to protect endangered or threatened species and their habitat and promote their recovery. Impacts to these resources and the measures taken to minimize impacts are described in the sections pertaining to these resources. The Proposed Plan designates all critical habitat for PMV as closed to OHV use. A total of 8,840 acres would be closed in addition to the areas closed through wilderness designation. After consultation with the FWS, the FWS issued a biological opinion that the proposed plan included measures to minimize impacts to PMV critical habitat and to populations of desert tortoise in the planning area, and is not likely to jeopardize the continued existence of Peirson's milkvetch or the desert tortoise; nor is it likely to destroy or adversely modify critical habitat for the Peirson's milkvetch (FWS-IMP-09BO172-11F031 0, 11/2/2012).

For any routes that are designated as open in OHV Limited Use areas in any alternative in the PRAMP or CDCA Plan Amendment and FEIS, a complete analysis of the minimization criteria was also completed and is included in Sections 2.3.16 and in Chapter 4. The "minimization criteria" from 43 CFR 8342 have been included in Section 3.16.1. Travel management designations made under the existing (Northern and Eastern Colorado (NECO) and Western Colorado (WECO) CDCA plan amendments were carried forward within the PRAMP/FEIS. (PRAMP/FEIS, 2-95) The NECO plan decisions have been in place since 2002 and the WECO decisions since 2003. Route designations from these plans were developed to minimize impacts to federally-listed and BLM-sensitive species, including the desert tortoise and flat-tailed horned

lizard. These decisions from the NECO and WECO plans are carried forward for all alternatives in this PRAMP/FEIS.

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## ***FLPMA***

**Protest Issue:** PP-CA-Imperial-12-03-9

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

The preferred alternative also fails to comply with BLM's obligations under the 1987 Algodones Dunes Wildlife Habitat Management Plan (HMP) created under the terms of the Sikes Act Two of the BLM's objectives under the HMP were to "determine the status of species of special management concern" and to "evaluate resource trend within the Wildlife Habitat Area, and its relationship to levels of recreational use." (HMP, page 13). BLM had a specific responsibility to establish

baseline conditions and to monitor population trends in order to ascertain whether federal and state-listed and other sensitive species were being harmed. Wildlife present at the Algodones Dunes that fell under this rubric included Couch's spadefoot toad (*Scaphiopus couchi*), Andrew's dune scarab beetle (*Pseudocotalpa andrewsi*), Flat-tailed homed lizard (*Phrynosoma mcalli*), and Colorado Desert fringe-toed lizard (*Uma notata*). In the more than 23 years since the HMP was signed, BLM has apparently conducted no surveys for the first two species in the planning area and only limited surveys for the others. The resulting lack of baseline data for analysis during the preparation of the environmental review as well as failure to comply with BLM's obligations under the HMP.

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## **Summary**

The PRAMP/FEIS is not consistent with FLPMA because it does not include adequate inventory and monitoring data pertaining to certain species of special management concern.

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## **Response**

The Habitat Management Plans (HMP) are management tools for use in meeting the objectives of the CDCA Plan and other resource management plans, and are used along with the Multiple Use Classes and other planning designations. As such, HMPs do not carry the same legal obligations as laws and regulations. While not referenced in the PRAMP/FEIS, the objectives set forth the HMP determine the status of special status species and evaluate wildlife habitat and the relationship to recreation use, which is well documented in the FEIS. Chapters 3 and 4, and Appendices I, J, and R include detailed survey data on both plants and animals in the planning area. Appendix F is the monitoring plan for special status species. As noted in a previous protest response, the BLM is not solely responsible for the management of animal and plant species occurring on BLM-managed lands. The BLM shares that responsibility with the FWS



and CDFG, and works in concert with those agencies to manage the special status wildlife and plant species occurring on BLM managed lands to ensure that their continued existence is not jeopardized. While it is helpful to have detailed inventory data for all special status species when planning for the protection of such species, funding and staffing constraints do not always allow the BLM to gather such data. But regardless, inventory data is not necessary to make an accurate assessment of the potential impacts to special status species. The BLM, in consultation with FWS and CDFG, has identified all of the special status species occurring within the planning area as well as their history, population extent within the planning area, and the threats impacting them. (PRAMP/FEIS, 3-37 to 3-60) From analyzing this information, the BLM has identified which proposed management actions would pose a threat to each species continued existence. The BLM has structured this plan accordingly to ensure that all special status species are appropriately protected. Then, through implementation of the monitoring plan found in Appendix F, the BLM will monitor the special status species occurring within the planning area (as funding and staffing allow) to ensure that BLM's management actions are not threatening the existence of any of the identified special status species within the planning area. (PRAMP/FEIS, Appendix F, F-3)

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### ***Visual Resource Management***

**Protest Issue:** PP-CA-Imperial-12-03-17

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

In addition, the preferred alternative fails to show how BLM will protect the Visual Resource Management Class I Area in the North Algodones Dunes Wilderness Area. The objective of this class is to preserve the

existing character of the landscape, including visibility. The North Algodones Dunes Wilderness is located between the Mammoth Wash open area and SR-78. Literally across the road are Glamis and Gecko areas. Glamis is a VRM Class III; Mammoth Wash and Gecko areas are VRM Class IV. The PRAMP/FEIS fails to explain how the BLM will preserve the Class I visibility in the Wilderness area, while allowing degradation to Class III and Class IV in adjacent areas.

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### **Summary**

The proposed alternative fails to show how the BLM will protect the Visual Resource Management (VRM) Class I Area in the North Algodones Dunes Wilderness Area.

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### **Response**

The BLM's responsibility to manage the scenic resources of public lands is established by both FLPMA and NEPA. Per BLM Manual 8400, the BLM is responsible for identifying and protecting visual values on all BLM lands. In 2009, the entire ISD planning area was inventoried. The visual resource inventory resulted in the Visual Resource Inventory Classifications, which provided the basis for considering visual values in the BLM's planning



process. Within the PRAMP/FEIS planning area, BLM lands within the planning area were assigned a visual resource management class. These VRM classifications varied by alternative and reflected the management strategies that placed a higher or lower priority on preserving or retaining the existing character and scenic quality of the landscape. (PRAMP/FEIS, 2-64)

Under all alternatives, the North Algodones Dunes Wilderness is designated as VRM Class I. The objective of VRM Class I is to preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic landscape should be very low and must not attract attention. Wilderness is withdrawn from mineral entry and is an exclusion area for most other land use actions, right-of-ways (ROW), mineral leasing, facilities, and other developments; thus eliminating any actions that would modify the existing character of the landscape. Under the Proposed Plan, lands surrounding the wilderness are designated as VRM Class II to the north and Class III on the east and west. (PRAMP/FEIS, 2-66 and Map 2-2) Best management practices and standard mitigation measures for any proposed land use actions within these classes would be applied to meet the management objectives for VRM Classes II and III. While a strip of VRM Class VI is designated along the south border of the wilderness, this VRM designation is applied to the intensively managed recreation facilities along Highway 78 and Gecko Road. These areas are not available for mineral leasing, wind, or solar energy ROW applications, thus reducing any impacts to the visual quality of the surrounding lands.

As stated in Section 4.11.2 of the PRAMP/FEIS, alternatives that maintain a high correlation between the inventoried VRI classes and the proposed VRM classes would result in the lowest amount of adverse impacts to visual quality. As shown in Table 4-13, Alternative 8 (proposed alternative) had a very high correlation to the inventoried VRI classes from 2009, designating 100 percent of VRI Class I as VRM Class I, 99 percent of VRI Class II as VRM Class II, and 90 percent of VRI Class III as VRM Class III. Therefore, the proposed alternative would result in a very high level of retention to the integrity of the inventoried values, and consequently, the lowest levels of potential visual impact to those values and beneficial effects overall.

Aside from the VRM class allocations, the PRAMP/FEIS has also proposed several management actions that would indicate an adequate level of protection to visual resources, including those within and surrounding the North Algodones Dunes Wilderness. These management actions are listed in Section 2.3.12.2 Management Actions Common to All Alternatives of the PRAMP/FEIS.

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### *Wilderness Characteristics and WSAs*

**Protest Issue:** PP-CA-Imperial-12-03-8

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The preferred alternative also fails to comply with Secretarial Order 3310 regarding lands with wilderness characteristics. While the RAMP/FEIS discusses the North Algodones Dunes Wilderness Area, it also identifies 42,083 acres of public lands that were part of the previous South Algodones Dunes WSA that meets the criteria for containing wilderness characteristics and identifies it as WCUI

(FEIS at 3-102) but fails to analyze any alternative that would protect these areas. The FEIS fails to discuss or identify other areas with wilderness characteristics nor does it provide any wilderness resource inventories. Additional areas in the Algodones Dunes retain all of the values of a wilderness area, including the current "central closure" and the inventories and analysis of wilderness characteristics should have been undertaken for these areas. Without the needed analysis, under the preferred alternative, 25,473 acres of WCU I would be open to ORVs, with an additional 10,947 acres open to limited ORV use (FEIS

at 4-107). In addition, under the preferred alternative, all of WCU I would be a solar and wind energy "avoidance area" (FEIS at 4-107) but not an exclusion area for these large-scale commercial uses. The designations under the preferred alternative simply will not provide protections of wilderness values that are needed. Because the BLM has failed to analyze the values of all areas with wilderness characteristics and provide protection for them in compliance with Secretarial Order No. 33 10 the decision is unlawful.

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## **Summary**

The proposed alternative does not comply with existing BLM policies regarding the management of WSAs and lands with wilderness characteristics:

- The PRAMP/FEIS identifies 42,083 acres of public lands as WCU 1 (FEIS at 3-102) but fails to analyze any alternative that would protect these areas.
- The PRAMP/FEIS does not discuss or identify other areas with wilderness characteristics and does not provide wilderness resource inventories.
- Under the preferred alternative, all of WCU 1 would be a solar and wind energy "avoidance area" (FEIS at 4-107), and many acres would be open to ORV use. This will not provide adequate protections of wilderness values.

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## **Response**

The BLM has complied with Sections 201 and 202 of FLPMA, and acted consistent with its policies regarding lands with wilderness characteristics. In July 2012, the BLM issued two new manuals: (1) MS-6310, Conducting Wilderness Characteristics Inventory of BLM Lands and (2) MS-6320, Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process. The BLM complied with the guidance contained in these manuals in its preparation of the Proposed Imperial Sand Dunes Recreation Area Management Plan/Plan Amendment to the CDCA Plan/Final EIS. Consistent with current guidance in these new manuals, lands within the planning area were inventoried for wilderness characteristics, and areas containing these characteristics were considered in the planning process regarding appropriate means to manage them. Lands identified as WCU 1 were considered for management to protect wilderness characteristics through OHV closures and other measures in Alternative 3 (Section 2.3.13.2.2) and were analyzed in Chapter 4 (Section 4.12). The inventory process and the results of the inventory for lands identified as having wilderness characteristics are discussed in the PRMP in

Section 3.13.2.2 (PRMP, p. 3-101 to 3-102). The decision to manage the lands within WCU 1 to emphasize recreation use, while still protecting other values, is consistent with all existing laws and policy. The BLM has also acted consistent with applicable laws and policies by allowing OHV use in WCU 1.

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## ***CDCA***

**Protest Issue:** PP-CA-Imperial-12-03-2

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

The preferred alternative is not consistent with the goals and objectives of the CDCA Plan and the bioregional planning approach. For example, protecting State listed and BLM sensitive species from decline on public lands is required under the terms of the CDCA Plan - "All state and federally listed species will be fully protected"; "Manage those wildlife species officially designated as sensitive by the BLM for California and their habitats so that the potential for Federal or State listing is minimized" CDCA Plan at 16 (plants), 20 (wildlife). However, the proposed alternative does not fully protect listed

species nor does it provide sufficient information to show that BLM knows the current status of sensitive species and habitats in order to show that the PRAMP/FEIS will adequately manage and minimize impacts to those species. For example, the preferred alternative only proposes to protect the Peirson's milkvetch critical habitat, does not protect all of the documented locations of that species, nor does it attempt to protect habitat for the Algodones Dunes sunflower (California endangered plant) and other rare endemic species. Further, the proposed RAMP does not adequately take into account ongoing planning in the Solar PEIS and Desert Renewable Conservation Plan ("DRECP") processes, which propose to allow for the development of unprecedented amounts of desert habitat affecting numerous species that also inhabit the Algodones Dunes and ISDRA.

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## **Summary**

The proposed alternative is not consistent with the goals and objectives of the California Desert Conservation Area (CDCA) Plan and the bioregional planning approach.

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## **Response**

Neither the Solar PEIS nor the Desert Renewable Conservation Plan (DRECP) will impact the BLM's reasonably foreseeable development scenario for solar energy within the PRAMP/FEIS planning area. The BLM's current analysis in the PRAMP/FEIS notes that "To date, there are no solar energy projects within the Planning Area. There have been numerous inquiries regarding the development of solar energy on BLM-administered lands within the Planning Area, and one application adjacent to the Planning Area would extend 322 acres into the Planning Area. The application has since been withdrawn by the applicant. Solar potential is likely discounted due to

the lack of large open flat spaces, topography, and/or excluded areas due to critical habitat, and VRM classes.” (PRAMP/FEIS, 3-134) All of the “solar energy zones” (SEZs) identified in the Solar PEIS are “well suited for utility-scale production of solar energy where the BLM would prioritize development” and would be located outside of the PRAMP/FEIS planning area. (Solar PEIS, ES-i, 9.1-2 to 9.4-2) As BLM will be prioritizing development outside of the PRAMP/FEIS planning area as part of the implementation of the Solar PEIS, it is hard to see how the PRAMP/FEIS’s projections for solar development would be impacted. Also, the DRECP planning effort is only in the scoping stage, and is currently unable to provide any rational basis for altering BLM’s analysis in the PRAMP/FEIS. Therefore, the protesting party has not provided a compelling rationale for the BLM to change its assessment of the impacts from solar energy development that is based on the reasonably foreseeable development projections for solar energy development.

With regard to the impacts from increased solar and renewable energy development and infrastructure driven by the Solar PEIS and the DRECP on habitat and the need for the BLM to account for those impacts in the PRAMP/FEIS, it is difficult given the timing of these various planning efforts for the BLM to fully consider the impacts from the Solar PEIS and the DRECP in this PRAMP/FEIS. But it is not necessary that the BLM do so. The Solar PEIS and DRECP will provide the BLM with a better understanding of the broader context within which solar development within the planning area would occur. They will allow environmental reviews for site-specific projects to tier to their broad scale analysis, which will make those site specific reviews “more effective and efficient.” (PRAMP/FEIS, Appendix T, T-2) Cumulative impact analyses to habitats that go beyond what has been analyzed within the Solar PEIS, the DRECP or this PRAMP/FEIS will be addressed at the site-specific level as projects tier to these various environmental documents.

Lastly, with regard to the protection of listed species within the PRAMP/FEIS, the BLM has consulted with both the FWS and the CDFG in the development of this PRAMP/FEIS to ensure that the BLM is meeting the requirements for protection of both federally and state managed species. All state and federally-managed species occurring within the planning area have been identified along with the threats currently impacting them. (PRAMP/FEIS, 3-37 to 3-60) The BLM has included regulatory mechanisms within this PRAMP/FEIS to ensure protection of these species. (PRAMP/FEIS, 2-7 to 2-9) Furthermore, part of BLM’s management under all alternatives is to “prohibit activities or projects on BLM-administered lands that would jeopardize the continued existence of federally-listed plant and wildlife species, or species proposed for listing...maintain or restore appropriate amount, distribution, and characteristics of life-stage habitats for special status species...prohibit commercial or personal collection of special status species...follow prescriptions in recovery plans for federally-listed species.” (PRAMP/FEIS, 2-48) These management actions will help ensure that all Federal and State managed-species occurring within the planning area are appropriately protected.

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*Climate Change*

Diversity

**Protester:** Lisa Belenky

**Protest Issue:** PP-CA-Imperial-12-03-32

**Issue Excerpt Text:**

**Organization:** Center for Biological

The FEIS is also inadequate and inaccurate with respect to analysis of greenhouse gas contributions and did not consider any mitigation measures or adaptive management measures to reduce or offset greenhouse gas emissions that will result from the preferred alternative. Moreover, the

agency failed to comply with Secretarial Order 3226 on global climate change by failing to evaluate the impacts of climate change on the resources in the ISDRA and failing to "recommend a set of response actions" that may be needed in future.

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### **Summary**

The FEIS is inadequate with respect to analysis of greenhouse gas contributions and did not consider any mitigation measures or adaptive management measures to reduce or offset greenhouse gas emissions.

The agency failed to comply with Secretarial Order 3226 on global climate change by failing to evaluate the impacts of climate change on the resources in the ISDRA and failing to "recommend a set of response actions" that may be needed in future.

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### **Response**

The impacts of climate change are discussed in the document at a level of detail appropriate to landscape-level analysis. The lack of scientific tools designed to predict climate change on regional or local scales limits the ability to quantify potential future impacts. Currently, the BLM does not have an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change. Further, the EPA has not developed a regulatory protocol or set of emission standards regarding global climate change. When these protocols and standards are available, the BLM will analyze potential effects on global climate change in the NEPA documentation prepared for site-specific projects, such as proposed development projects on lands made available for geothermal, solar, and wind energy. Consistent with the NEPA, the public will have the opportunity to participate in the environmental analysis process for actions implementing the Proposed Plan.

Climate change analysis for the purpose of this document was limited to the accounting and disclosing of factors that contribute to climate change, such as GHG emissions. These factors are described in Section 4.2.4. (PRAMP/FEIS, 4-25) The BLM will consider new information about climate change at the site specific level, when there is a new proposed action in the planning area that will require the BLM to complete a new NEPA analysis.

## *Editorial Changes*

**Protest Issue:** PP-CA-Imperial-12-01-2

**Organization:** County Sanitation districts

**Protester:** Christopher Salomon

### **Issue Excerpt Text:**

The first correction relates to the Final EIS discussion of the Final Raven Baseline Study performed for the Mesquite Regional Landfill. The Final EIS implies that operations at the landfill will not comply with the Biological Opinion for the landfill by allowing the waste to provide a 'year round food source' for ravens. As described in the landfill operating documents, the Districts will operate the landfill in compliance with all applicable requirements. We believe that the Final EIS should reflect the Districts' intent to comply and not assume that the Districts will not do so.

**Protest Issue:** PP-CA-Imperial-12-01-3

**Organization:** County Sanitation districts

**Protester:** Christopher Salomon

### **Issue Excerpt Text:**

The Final EIS also contains several statements which appear to conclude that truck traffic associated with the Mesquite Regional Landfill will impact recreational use of the dunes. These statements are inconsistent with the environmental analysis and mitigation measures contained in the Final Environmental Impact Statement & Environmental Impact Report for the proposed Mesquite Regional Landfill (SC

No 92051024, BLM No CA-060-02-5440-10-8026, June 1995), the Final Mesquite Regional Landfill CUP Amendments Subsequent Environmental Impact Report (SCH No. 20007071096, September 2010) and the Findings of Fact and Statement of Overriding Considerations for the Final Subsequent Environmental Impact Report (FSEIR) on Mesquite Regional Landfill CUP Amendments (CUP #06-003). These documents include the mitigation measure that refuse truck traffic to and from the landfill will be re-routed on heavy recreational use days. Among the examples of an erroneous conclusion in the Final EIS regarding this issue are:

- Final EIS Section 4.11.61.1, Cumulative Impacts on Visual Resources is inconsistent with the FSEIR for the landfill which found that Cumulative Impacts on Transportation/Circulation would be mitigated below a level of significance and impacts to visual/aesthetics would not be significant;
- Final EIS Section 4.15.5.1, Cumulative Impacts to Transportation and Public Access is inconsistent with the FSEIR for the landfill which found that Cumulative Impacts on Transportation/Circulation would be mitigated below a level of significance.

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## **Summary**

The PRAMP/FEIS erred in suggesting that the Mesquite Regional Landfill will not comply with the Biological Opinion for the landfill and that truck traffic associated with the Mesquite Regional Landfill would interfere with recreational use of the Imperial Sand Dunes.

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## **Response**

Thank you for your comments. The points raised are not valid protest issues; however, the BLM will make minor modifications in the ROD to clarify these points.

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### *Vegetation*

**Protest Issue:** PP-CA-Imperial-12-03-27

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

For example, the FEIS analysis of the preferred alternative which only excludes ORVs from Peirson's milkvetch critical habitat concludes that loss of habitat, disturbance of species, and direct mortality from OHV recreation would not occur, resulting in a beneficial effect on PMV (FEIS at 4-65). However, not all of the locations of Peirson's milkvetch occur within the boundaries of the designated critical habitat and impacts to this portion of the population are not adequately addressed nor how the preferred alternative could in fact "result in a beneficial effects" to the species. In order to achieve the important goals of species recovery, additional safeguards should have been considered to protect the plants outside of the boundaries of critical habitat, especially based on the fact that the Algodones dunes are moving southwest and habitat for this imperiled species is not static. Moreover, there is no information provided as to how the irregular boundaries of the critical habitat for

Peirson's milkvetch, can actually be protected from ORV use given the topography and shifting sands.

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**Protest Issue:** PP-CA-Imperial-12-03-4

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The BLM has failed to show that it is necessary to open an additional 40,000 acres of these lands to unrestricted ORV use or that the proposed exclusion areas to protect the Pierson's milkvetch critical habitat are realistically manageable (given the difficulty of constructing and maintaining fencing and signage in the deep sand and steep slope) or enforceable.

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**Protest Issue:** PP-CA-Imperial-12-03-7

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The FEIS fails to recognize that the Algodones Dunes and most of the ISDRA are identified as a UPA.



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## **Summary**

In regards to the Pierson's milkvetch (PMV), the BLM has failed to address:

- impacts to the species outside of its designated critical habitat boundaries,
- how the proposed alternative benefits the species,
- how the proposed alternative protects the critical habitat areas, as the boundaries constantly change due to shifting sand dunes, and
- how the proposed exclusion areas to protect the critical habitat can realistically be managed.

The PRAMP/FEIS also fails to recognize the Algodones Dunes and most of the ISDRA as a UPA.

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## **Response**

The protester claims that the BLM failed to analyze impacts to the PMV outside of the critical habitat boundaries. Section 4.7 Impacts on Special Status Species states that information regarding impacts to special status species are conducted “within BLM-administered lands in the Planning Area.” Section 3.8.1.3 Distribution and Occurrence within the Planning Areas clarifies that “within the Planning Area, this species is restricted to about 53,000 acres in a narrow band running 40 miles northwest to southeast along the western portion of the ISD. Plants are generally scattered throughout the dune complex with a higher abundance along the central and western aspect of the dunes. The sand dunes within the Planning Area are estimated to support between 75 and 80 percent of all of the world’s known colonies of this species (USFWS 1998).” The impacts to the PMV are therefore analyzed in locations where the PMV are likely to appear. As for cumulative impacts, the PRAMP/FEIS points out that the assessment area for cumulative impacts was not simply constrained to the PMV’s critical habitat, but also analyzed at the Planning Area level and looked at “critical habitat boundaries within and adjacent to the Planning Area, and existing ranges within the Planning Area. In general, actions within the Planning Area are not expected to affect adjacent lands; on the contrary, management actions that avoid or minimize impacts to vegetation and wildlife resources overall may also result in the protection of special status species habitat and populations on adjacent lands.” (PRAMP/FEIS, 4-70)

Impacts from the proposed alternative related to the PMV are outlined in Section 4.7.4.1.1 of the PRAMP/FEIS, which states that “development would not be authorized within PMV critical habitat and loss of habitat, disturbance of species, and direct mortality from development-related surface-disturbing activities would not occur, resulting in a beneficial effect on PMV.” The proposed alternative protects the PMV critical habitat by allocating this habitat as exclusion areas to surface disturbance activities, such as solar, wind, and geothermal developments (see Table 4-3 and Maps 2-30, 2-32, 2-34, and 2-36).

The protestor is correct in pointing out that the sand dunes do in fact shift due to variations in wind directions, thus impacting where the PMV can occur within the dune complex. While the BLM has conducted annual surveys for this species from 1997 to 2000 and from 2004 to 2007, the FWS is responsible for designating critical habitat areas for federally-listed species. The



FWS designated the PMV critical habitat in 2004 and revised the boundaries in 2008. The constituent elements the FWS used in making a determination for which areas would be critical habitat are discussed in Section 3.8.1.1.4 of the PRAMP/FEIS. After consultation with the FWS, the FWS issued a biological opinion that the proposed plan included measures to minimize impacts to PMV critical habitat and to populations of desert tortoise in the planning area, and is not likely to jeopardize the continued existence of PMV or the desert tortoise; nor is it likely to destroy or adversely modify critical habitat for the PMV. (FWS-IMP-09BO172-11F031 0, 11/2/2012)

There are several ways in which the BLM has the ability to manage restricted OHV access to protect the PMV. Within the proposed alternative, there are management actions which the BLM will carry forward in an attempt to minimize impacts to sensitive resources, reduce conflicts between users, and provide for visitor safety. Proactive measures the BLM will take to reduce OHV access into closed areas would include: monitoring, law enforcement, education, barriers, construct resilient signage for these areas, as well as several other measures which are discussed in Section 2.3.16.2.2 of the PRAMP/FEIS.

While the PRAMP/FEIS does not map the Algodones Dunes and portions of the ISDRA as unusual plant assemblages (UPAs), the CDCA 1980 Plan (as amended) does. The PRAMP/FEIS does not amend any of the management goals, objectives, or actions for UPAs within the CDCA Plan. However, the proposed alternative does reemphasize the continued protection of these UPAs by establishing a vegetation resource management goal in Section 2.3.6 which states, "Manage unusual plant assemblages, so that their continued existence is maintained. In all actions, include consideration of unusual plant assemblages, so that impacts are avoided, mitigated, or compensated."

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### *Air Quality*

**Protest Issue:** PP-CA-Imperial-12-03-11

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The BLM cannot lawfully make a conformity determination where the chosen alternative will increase ORV use and significantly contribute continued non-attainment in this area for ozone and PM<sub>10</sub>, because in fact the preferred alternative would unlawfully inhibit the air basin achieving the CAA standards. See Center/or Biological Diversity v. BLM, 2009 U.S. Dist. LEXIS 90016 (N.D. Cal. September 28, 2009) (finding BLM's conclusions

regarding impacts to air quality insufficient where they failed to take into account impacts from adjacent open areas).

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**Protest Issue:** PP-CA-Imperial-12-03-13

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The agency's conclusion to the contrary appears to be based on a truncated evaluation of the PM sources, for example, the emissions calculations for PM<sub>10</sub> and PM<sub>2.5</sub> in the FEIS and Appendix Q, fail to include PM<sub>10</sub> and PM<sub>2.5</sub> that is airborne due to winds. As a result, the agency attempts to ignore significant sources of PM including

the fact that increasing the area of ORV use will increase the destruction of stable crusts and vegetation that help stabilize soils on sand dune areas and other areas of the ISDRA. The only mention of wind borne PM appears to be in the context of a cumulative impacts analysis for air quality (FEIS at 4-28; noting cumulative impacts include from areas not under BLM control include "dust generated by natural wind and high wind events"). The FEIS appears to completely ignore the dust generated by wind on BLM managed lands --the amount of dust or PM generated by winds is not identified nor is any analysis of the impacts of PM provided.

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**Protest Issue:** PP-CA-Imperial-12-03-14

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The 2011 Dust Plan also fails to provide any meaningful limitations on use that would even arguably reduce PM<sub>10</sub> emissions from current levels, rather it simply readopts existing, inadequate, measures. See Appendix D, Dust Plan at 13-14. The EPA raised similar concerns with the proposed plan and its likely impacts on air quality, particularly PM<sub>10</sub>, in its comments to the BLM on the ISDR DRAMP and DEIS dated June 22, 2010, which appears to have been largely ignored.

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**Protest Issue:** PP-CA-Imperial-12-03-15

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

The FEIS provides a wholly inadequate analysis of impacts to air quality that nonsensically predicts that adding additional

open areas (that is, eliminating the current court ordered closures included in the baseline Alternative 2), will somehow decrease PM<sub>10</sub> and other air pollutants. (FEIS at 4-24, Table 4-5). This conclusion is contradicted by the dust plan and common sense and the agency appears to have reached this conclusion by simply ignoring significant sources of PM, for example, PM generated by winds in areas with disturbed soils. The BLM's failure to acknowledge the increases in PM<sub>10</sub> and PMs that will result from its preferred alternative and its failure to put in place any limits on use or other mitigation measures to protect air quality show that the consistency determination is fatally flawed.

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**Protest Issue:** PP-CA-Imperial-12-03-30

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

Additionally, the preferred alternative fails to require adequate air quality monitoring equipment be installed on and near the Dunes both in areas where the production of these pollutants occurs and where particulates and other pollutants drift or are carried by winds, so that the effects of air pollutants created on site can be quantitatively monitored and evaluated both on and off site going forward.

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**Protest Issue:** PP-CA-Imperial-12-03-31

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

**Issue Excerpt Text:**

As discussed above, the FEIS failed to accurately address air quality impacts particularly for PM. The preferred

alternative would increase the area open to ORV use by more than 40,000 acres and thereby clearly would increase air quality impacts; nonetheless, the FEIS found that impacts to air quality would not increase. The FEIS relied on an inadequate and truncated evaluation of the PM sources, for example, by failing to include PM<sub>10</sub> and PM<sub>2.5</sub> generated winds which is increased in areas with disturbed soils. The only mention of windborne PM appears to be in the context of a cumulative impacts analysis for air quality (FEIS at 4-28; noting cumulative impacts include from areas not under BLM control include "dust generated by natural

wind and high wind events"). The FEIS unlawfully ignores the dust generated by wind on BLM managed lands --the amount of dust or PM generated by winds is not identified in the FEIS nor is any analysis of the impacts of PM provided in the FEIS. The FEIS is also inadequate because it fails to identify all of the sources of PM<sub>10</sub> and PM<sub>2.5</sub> in the FEIS, fails to analyze the impacts of increased PM in this impaired basin, and fails to put in place any limits on use or other mitigation measures to protect air quality.

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## **Summary**

The proposed alternative is not in conformance with the Clean Air Act (CAA) because it will allow increased ORV use which will significantly contribute ozone and PM<sub>10</sub> to the air basin. This will prevent the air basin from meeting air quality standards.

The FEIS is flawed for the following reasons:

- The emissions calculations in the FEIS and Appendix Q failed to include PM<sub>10</sub> and PM<sub>2.5</sub> that is airborne due to winds.
- The FEIS does not incorporate the fact that increasing the area of ORV use will increase destruction of stable crusts and vegetation that help stabilize soils on sand dune areas and other areas of the ISDRA.
- The FEIS does not identify the amount of dust or PM generated by winds on BLM-managed lands and does not provide analysis of the impacts of PM generated by winds on BLM-managed lands.
- The preferred alternative does not require adequate air quality monitoring equipment be installed to effectively monitor the effects of air pollutants on and near the dunes.
- The FEIS does not implement limits on use or other mitigation measures to protect air quality.
- The FEIS fails to address concerns raised by the EPA regarding the need to reduce projected PM<sub>10</sub> emissions from current levels.

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## **Response**

The BLM is not in violation of the CAA. As seen in Table 4-5, the incremental estimated change in emissions generated in the Planning Area under all alternatives is less than the *de minimis* threshold and thus exempt from the conformity determination requirements of the EPA's

conformity rule. A record of non-applicability (RONA) will be prepared and included as an appendix or PRAMP/FEIS text (PRAMP/FEIS, 4-25).

The best available information for the Planning Area was used to develop the model and emissions estimates. Fugitive dust emissions for PM<sub>10</sub> and PM<sub>2.5</sub> were calculated using standard methodology developed by the EPA (EPA 2010) and the South Coast Air Quality Management District (see Appendix Q). This methodology included an analysis of potential wind erosion. Understanding wind erosion and emission from the dunes requires knowledge of the geomorphology and physics of sand dunes. Several comments mention soils and crusts that would be disturbed by OHV use. The concept of soil and crusts does not follow the accepted knowledge of sand dunes. R. A. Bagnold (1933) defines a dune as a “mobile heap of sand”. The EPA guidance discusses the physics of wind erosion. In the discussion, it notes that the emissions occur when fine particles are blown from the land surface. It further notes that the blowing of particles declines rapidly as the fines are blow away (called a decay factor). This means that the potential emissions from surfaces decline rapidly after it is disturbed. As noted in the FEIS, the use on the dunes is concentrated on a few specific times during the cool season. (PRAMP/FEIS, 3-121) Considering that, the surface of the dunes has long periods of low/no use, the potential erosion rate would be very low. Based on comments received on the Draft EIS, the BLM conducted additional soil sampling at numerous sites within the planning area to determine the soil silt content. (PRAMP/FEIS, 4-25) Surface samples on the dunes showed that over 75 percent of the surface material was fine sand (would not pass a 60 mesh screen) and only 0.5 percent was silt (passes a 200 mesh screen). With that knowledge in mind, the contribution of wind erosion as a result of the OHV use was found to be negligible. (Appendix Q) On October 16, 2012 the Imperial County Air Pollution Control Board of Directors approved and adopted changes to regulation VII Fugitive Dust Rules. The BLM is currently working on a dust control plan to address all applicable portions of the new regulation.

In regards to air quality monitoring and mitigation, air quality is currently being monitored by the air quality authorities in the area both west and east of the dunes. The monitoring network is evaluated for effectiveness yearly and reported to the EPA as required. Further, the BLM will implement actions to mitigate for contributions to the non-attainment due to activities in the Planning Area, as requested by ICAPCD, and as personnel and funding levels allow (PRAMP/FEIS, 2-26). As discussed above, the dust control plan identifies dust control measures to help minimize or eliminate PM<sub>10</sub> emissions. These measures include hardening of applicable roadways, watering or applying dust suppressants to roadways, limiting vehicle speeds, or restricting vehicular access (PRAMP/FEIS, 2-26 and Appendix D).