

Director's Protest Resolution Report

**Ivanpah Solar Electric
Generating System Project
Plan Amendment
California Desert Conservation Area Plan**

October 7, 2010



Contents

***Reader’s Guide*..... 3**

***List of Commonly Used Acronym*..... 4**

***Protesting Party Index* 5**

***Issue Topics & Responses*..... 6**

***National Environmental Policy Act (NEPA) of 1969*..... 6**

***Range of Alternatives*..... 6**

***Impact Analysis* 10**

***Cumulative Impacts Analysis* 13**

***Baseline Data* 14**

***Response to Comments* 15**

***Federal Land Policy Management Act (FLPMA) of 1976*..... 15**

***Multiple Use* 15**

***CDCA Multiple Use Class* 16**

***CDCA Plan*..... 18**

***Inventory*..... 21**

***Cultural*..... 22**

***Fish, Wildlife, Special Status Species* 23**

***Special Status Species* 23**

***Desert Tortoise* 26**

***Water*..... 27**

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 response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA — Topic heading

Submission number

Protest issue number

Issue Number: PP-CA-ESD-08-0020:10

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Issue Excerpt Text: Quotation taken from the submission

Rather than analyze these potential impacts, as required by the National Environmental Policy Act, the BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

General statement summarizing the issue excerpts (optional)

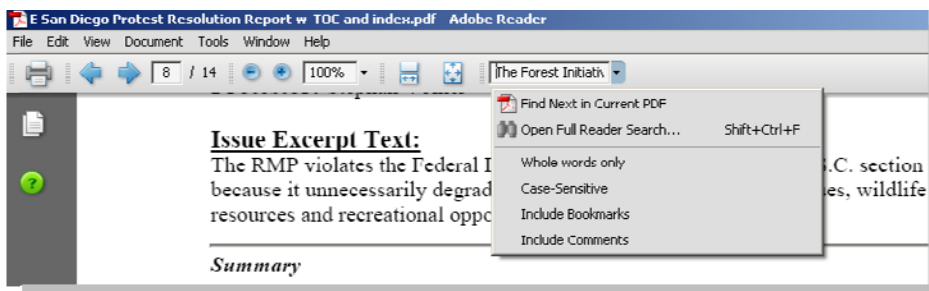
Summary
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response — The 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

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by the 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 used.



List of Commonly Used Acronym

ACEC	Area of Critical Environmental Concern	ISEGS	Ivanpah Solar Electric Generation System
AFC	Application for Certification	IVGB	Ivanpah Valley Groundwater Basin
AML	Appropriate Management Level	MUC	Multiple Use Class
APE	Area of Potential Effect	MW	Megawatt
ASLW	Assistant Secretary of Lands and Water	NEPA	National Environmental Policy Act of 1969
BA	Biological Assessment	NEMO	Northern and Eastern Mojave
BLM	Bureau of Land Management	MNRU	Northeastern Mojave Recovery Unit
CDCA	California Desert Conservation Area	NRHP	National Register of Historic Places
CEQ	Council on Environmental Quality	PRMP-A	Proposed Resource Management Plan Amendment
CFR	Code of Federal Regulations	RMP	Resource Management Plan
DEIS	Draft Environmental Impact Statement	ROD	Record of Decision
DNA	Deoxyribonucleic Acid	ROW	Right-of-Way
DTRP	Desert Tortoise Recovery Plan	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SLF	Sacred Lands File
ESA	Endangered Species Act	SO	State Office
ESU	Evolutionary Significant Unit	TCP	Traditional Cultural Property
FEIS	Final Environmental Impact Statement	T&E	Threatened and Endangered
FLPMA	Federal Land Policy and Management Act of 1976	USFWS	U.S. Fish and Wildlife Service
HMA	Herd Management Area		

Protesting Party Index

Protester	Organization	Submission Number	Determination
Dave Singleton	Native American Heritage Commission	PP-CA-ISEGS-10-0001	Denied-Comments
Glenn R. Stewart	Desert Tortoise Council	PP-CA-ISEGS-10-0002	Denied-Comments
Lisa T. Belenky	Center For Biological Diversity	PP-CA-ISEGS-10-0003	Denied-Issues Comments
Jarod Fuller	Individual	PP-CA-ISEGS-10-0004	Dismissed-Incomplete
Kim Delfino	Natural Resources Defense Council, Sierra Club, Defenders of Wildlife and The Wilderness Society (Natural Resources Defense Council et al.)	PP-CA-ISEGS-10-0005	Denied-Issues Comments
Lara Cunningham	Basin and Range Watch	PP-CA-ISEGS-10-0006	Denied-Issues Comments
Michael Conner	Western Watersheds Project	PP-CA-ISEGS-10-0007	Denied-Issues Comments

Issue Topics & Responses

National Environmental Policy Act (NEPA) of 1969

Range of Alternatives

Issue Number: PP-CA-ISEGS-10-0005-4

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

The purpose and need statement is too narrow. BLM considers the purpose and need to be responding to the applicant's right of way application under Title V of the [Federal Land Policy Management Act] FLPMA. ([Final Environmental Impact Statement] FEIS at 2-6). It is focused on meeting the objective of the applicant (FEIS at 2-5) and on amending the [California Desert Conservation Area] CDCA for this project only, thus essentially foreclosing serious consideration of meaningful alternatives during the formulation of the final decision. See *National Parks Conservation Assn. v. BLM*, 586 F.3d 735 (9th Cir. 2009). Our organizations commented on the inadequacy of the purpose and need and alternatives analysis in the DEIS, strongly advocating that [Bureau of Land Management] BLM comply with NEPA by not only considering, but analyzing a range of alternatives that would contribute to achieving the federal and state mandated goals for generation and distribution of electrical energy from renewable sources. In preparing the FEIS, BLM considered a relatively large number of alternatives (i.e., 25) but prematurely and improperly dismissed all but four for further analysis.

Issue Number: PP-CA-ISEGS-10-0005-5

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

The dismissal of private land alternatives is contrary to the requirements of NEPA as we have argued in our comments, and one public land alternative, the Siberia East, was eliminated from further analysis by BLM on the ground that it would not meet the applicant's objectives because it would not provide the proponent with the means to satisfy the timing

conditions of their contractual obligations in their power purchase agreements.

Issue Number: PP-CA-ISEGS-10-0005-6

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

The Ivanpah Dry Lake Alternative was dismissed because BLM assumed the costs associated with dike construction for flood control would be prohibitively expensive, and would eliminate the use of Ivanpah Dry Lake for current recreational use (i.e., land sailing) (FEIS at 3-81). However, BLM did not undertake any studies of the dry lake alternative to estimate the cost of flood control. Nor did it consider that the proposed project would not affect the entire dry lake surface and not necessarily completely displace land sailing recreation use. Lastly, the Ivanpah Dry Lake alternative was eliminated, in part, because it is currently closed to off-road vehicle use as per the CDCA Plan. Such restriction applies only to casual off-road vehicle use which would not apply in the case of an authorized activity. It is our understanding that the applicant initially considered the Ivanpah Dry Lake for the proposed project but was deterred from pursuing that alternative based on discussions with BLM personnel from the Needles Field Office due to concerns over the impact to land sailing recreation.

Issue Number: PP-CA-ISEGS-10-0005-7

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

The private land alternatives located near Harper Dry Lake and the triangular area east of Barstow were dismissed based on the applicant's conclusion that the costs associated with land acquisition were too high (Harper Dry Lake area) and that the ability of a developer to acquire multiple, contiguous private

land holdings covering a large area would not likely be feasible (triangular area east of Barstow).

Issue Number: PP-CA-ISEGS-10-0005-8

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

The Siberia East Alternative on public land was dismissed, in part, based on BLM's assumption that the impacts would not be substantially less than those associated with the proposed project site in Ivanpah Valley. (FEIS at 3-48). These reasons are not consistent with BLM's responsibilities under NEPA.

Issue Number: PP-CA-ISEGS-10-0005-9

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

B. Because of the overly restricted purpose and need statement, the alternatives considered and analyzed do not include a reasonable range. The BLM's dismissal of the off-site alternatives assumed that the applicant's needs for a proposed 400 MW project needed to be met in one location rather than multiple, smaller sites even if they were located within the same general area. The rationale for dismissing such an alternative is puzzling considering that the proposed project in Ivanpah Valley is actually comprised of four separate right of way applications.

Issue Number: PP-CA-ISEGS-10-0006-11

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

FEIS fails to justify the reason for elimination of the private land alternative "Multiple scoping comments requested that an alternative site be considered on disturbed private land in order to minimize the loss of more pristine public lands. The applicant evaluated three private land alternatives in its [Application for Certification] AFC (Harper Lake, Lucerne Valley, and Rabbit Lake alternatives; see Figure 3.15). All of these sites were eliminated from further consideration by the applicant because they would have required completing option-to-purchase agreements with multiple private owners. BrightSource felt that

obtaining site control with numerous owners would have been time-consuming and risky (CH2M Hill 2007)" (Page 3-54 of FEIS). A private land alternative would eliminate the outstanding unresolved issues that stand now on the site with biological, visual and hydrologic resources. The time schedule of Bright Source should not be the burden of the public land owner who is concerned about their resources.

Issue Number: PP-CA-ISEGS-10-0006-8

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

After reviewing the FEIS and what appears to be the intent of the PRMP-A, any approvals for the grant of a ROW are inconsistent with the clear text in the introduction to both the original 1980 CDCA Plan and the 1999 CDCA Plan as Amended. By failing to include a comprehensive analysis of alternatives and any need other than processing an application submitted, BLM has failed to demonstrate any real need to approve such a massive industrial scale solar project of unproven technology on such sensitive lands. BLM has failed to demonstrate that there are no other alternative sites. Alternatives analysis should not be guided by the desires of a project applicant, but in the guidance set forth in the Introduction to the CDCA Plan.

Issue Number: PP-CA-ISEGS-10-0007-3

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

The BLM has eliminated from detailed study alternatives that would avoid or minimize impacts to biological resources. Locating the project on private lands would obviously minimize impacts to public land resources. Despite NEPA's mandate to consider reasonable alternatives not within the jurisdiction of the lead agency, the BLM dismissed this alternative from detailed study on the grounds that the applicant would have to buy the land which would be costly and acquire multiple parcels which would be time-consuming. By this token, the BLM will never consider private land alternatives for projects. This is not in keeping with the spirit or intent of NEPA.

Issue Number: PP-CA-ISEGS-10-0007-4
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests BLM's unreasonable dismissal of an alternative proposed by Western Watersheds Project and others to site the [Ivanpah Electric Generation System] ISEGS plant on Ivanpah Dry Lake Playa. FEIS at 3-81. This "Ivanpah Playa Alternative" would avoid many of the project's impacts on desert tortoises, rare plants and other sensitive resources, and minimize restoration costs by locating the project within the 35 square mile Ivanpah Dry Lake playa. The BLM dismissed this alternative on the grounds that it would not be economically feasible because of flooding issues and would be inconsistent with current management objectives for non-motorized recreation on the Dry Lake bed. The BLM provides no substantiation for its claim of lack of economic feasibility. As we pointed out, the I-15 freeway crosses the playa, as does a major electric power line; clearly the engineering challenges are neither insurmountable nor cost prohibitive. In addition, use of this location could result in considerable savings to the applicant in reduced mitigation costs. As to this alternative being inconsistent with management objectives for recreation, BLM could accommodate any need to change management objectives within the plan amendment process. As it is, the proposed CDCA Plan Amendment essentially converts 3,564 acres of public land that is class [Multiple Use Class] MUC limited and available for multiple use to a single use (solar power generation).

Summary

The proposed plan amendment/FEIS does not evaluate a reasonable range of alternatives and eliminated alternate sites without adequate justification.

Response

In accordance with NEPA, the BLM has discretion to specify the underlying purpose and need to which the agency is responding in proposing the alternatives for the proposed action (40 CFR 1502.13). The BLM's guidance requires the BLM to construct its purpose and need for the action

Issue Number: PP-CA-ISEGS-10-0007-5
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests the BLM failure to consider alternatives to the proposed plan amendment such as designating the North Ivanpah Valley or parts of the North Ivanpah Valley as an Area of Critical Environmental Concern (ACEC) to protect sensitive resources from further degradation, or to make the Clark Mountain Grazing Allotment available for voluntary relinquishment to benefit resource conservation which would have made grazing allotment buyout available as a site-specific mitigation measure. BLM dismissed these alternatives as somehow being outside the scope yet they concern the very same lands addressed by the proposed plan amendment.

Issue Number: PP-CA-ISEGS-10-03-25
Organization: Center for Biological Diversity
Protester: Lisa Belenky

Issue Excerpt Text:

The inadequacies in the environmental review for the project required by NEPA include, but are not limited to, the following:

- Narrowing the purpose and need to such an extent that the BLM failed to adequately address a meaningful range of alternatives.
- Failing to analyze a range of appropriate project alternatives including distributed generation, a phased alternative, and off-site alternatives on previously disturbed or degraded lands

to conform to existing decisions, policies, regulation, or law (BLM NEPA Handbook H-1790-1 Section 6.2).

The purpose and need for the proposed action defines the range of alternatives to be considered. The action alternatives are developed to respond to the problem or opportunity that is presented (in this case, the application), and provide a basis for eventual selection of an alternative in a decision. Tying the purpose and need to the decision to be made establishes the scope of NEPA review, clearly explains the decision to be made to the public, sets expectations, and focuses the NEPA analysis. The BLM must analyze a range of reasonable alternatives, but the agency is not required to analyze in detail every possible alternative or variation. According to the Council of Environmental Quality (CEQ) regulations for implementing NEPA, an alternative may be eliminated from detailed study if, for example, it is determined not to meet the proposed action's purpose and need; its implementation is speculative or remote; or it is technically or economically infeasible (BLM NEPA Handbook H-1790-1 Section 6.6.3).

The FEIS considered a range of reasonable alternatives designed to meet the BLM's legal responsibilities and its purpose and need for action. The purpose and need for the proposed action was described as a response to the ISEGS FLPMA right-of-way application for a solar energy facility on public land (FEIS p. 2-6). With respect to the BLM's land use plan decision, a non-public land alternative would not be within the range of reasonable alternatives to the proposed planning action because the BLM has no decision authority with regard to non-BLM administered lands. Nevertheless, to help inform the BLM's land use plan decision, the BLM considered off-site locations for utility scale solar development on non-BLM administered lands.

As explained in the FEIS, several alternative locations were eliminated from detailed study:

The BLM considered four alternatives outside of the Ivanpah Valley and two alternative locations in the Ivanpah Valley in addition to the selected location. Site characteristics, such as minimal slope, proximity to transmission, and whether or not the lands were in critical habitat, influenced the BLM's consideration of alternatives.

The BLM considered alternatives outside the jurisdiction of the BLM but did not carry them forward for detailed analysis. CEQ regulations state that an agency should include reasonable alternatives not within the jurisdiction of the lead agency (40 CFR 1502.14(c)). According to BLM guidance, such circumstances would be exception and limited to the broadest, most programmatic EISs that would involve multiple agencies (BLM NEPA Handbook H-1790-1 Section 6.6.1 and FEIS p. 3-2). Because the Ivanpah plan amendment is a site-specific analysis and not a programmatic EIS, and these types of alternatives were identified, but were not carried forward for full evaluation for BLM purposes in this FEIS.

BrightSource Energy, Inc. also filed an application to build a similar-sized plant on the Siberia Site, in addition to the selected Ivanpah location, that would be developed for solar energy. In addition to eliminating the Siberia site alternative because it is already under a separate application by BrightSource Energy, the Siberia site is also anticipated to have nearly identical impacts as the Ivanpah location, which further justifies its elimination from consideration.

Regarding the Ivanpah Playa Alternative, the BLM determined that this alternative was not feasible due to the potential for flooding at the site. As stated in the FEIS, the dry lake bed floods occasionally (sometimes more than once per year) and remains flooded for weeks to months (FEIS p. 3-81).

The BLM eliminated the Private Land Alternative from detailed study because its implementation is remote and speculative. This alternative first would require the acquisition of approximately 70 parcels. This alternative is impractical because of the difficulty associated with obtaining site control over sufficient land at the site. The FEIS describes the characteristics of the private land alternative and the BLM's rationale for elimination on pages 3-54–3-56.

As noted on page A.1-37 of the FEIS, the BLM developed the Modified I-15 Alternative in response to concerns raised during the public comment period. The Northern and Eastern Mojave Desert Management Plan Amendment declined to designate this area as an ACEC because it: (1) was not designated as critical habitat by U. S. Fish and Wildlife Service (USFWS), (2) would not be included in a Desert Wildlife Management Area because it is considered to be relatively small (29,110 acres), (3) is separated from other desert tortoise populations in the Northern and Eastern Mojave (NEMO) Planning Area by I-15 and Ivanpah Dry Lake; and, (4) is undergoing substantial development pressures particularly adjacent to I-15 (Northern and Eastern Mohave Desert Management Plan Amendment (2002) p. A-4). The BLM rejected consideration of the North Ivanpah Valley as a potential ACEC as being untimely and because reevaluation of the area was not warranted. (Letter from Steven Borchard, July 2, 2009.)

Certain protesting parties also raised the issue of relinquishment of the Clark Mountain grazing allotment. Relinquishment of a grazing allotment merely ends the lessee's priority to graze specified public lands, it does not render unavailable the public lands for grazing (BLM Instruction Memorandum 2007-067). Upon receipt of a request for relinquishment, the priority to use public lands under that lease terminates immediately. That does not mean however that the allotment cannot be grazed by another applicant.

Impact Analysis

Issue Number: PP-CA-ISEGS-10-0007-10

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests that FEIS simply mentions that the project will impact connectivity and provides no data, discussion or analysis. Connectivity between desert tortoise populations is essential to maintain gene flow and genetic heterogeneity (Hagerty, 2008) Disruption of this connectivity poses a threat to the genetic diversity of the Mojave population as a whole. The FEIS provides no analysis of impacts to connectivity between the Northeastern Mojave and Eastern

Mojave desert tortoise ESUs, which as we pointed out is believed to be via Mountain Pass. The FEIS provides no analysis of connectivity between Californian and Nevadan Northeastern Mojave populations. California's Ivanpah Valley desert tortoise population is increasingly threatened with isolation from desert tortoises in the rest of the Northeastern Mojave Recovery Unit to the north by existing and proposed solar power plants and other developments in Nevada's Primm Valley.

Issue Number: PP-CA-ISEGS-10-0007-11

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests that the proposed plan amendment will fragment a breeding population of desert tortoise. The FEIS recognizes that the proposed action will fragment desert tortoise habitat but does not quantify the degree of fragmentation nor does it provide any analysis of the viability of the fragmented desert tortoise populations. Nor does the FEIS address cumulative fragmentation effects. Fragmentation of occupied desert tortoise habitat results in smaller, isolated desert tortoise populations that become increasingly susceptible to negative effects and have decreased viability. Fragmentation is particularly problematic when population densities are low.

Issue Number: PP-CA-ISEGS-10-0007-15

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Fails to Take NEPA's Requisite "Hard Look" at Impacts to Wild Horse and Burros. Although the BLM has established the [Appropriate Management Area] AML for burros in the Clark Mountain [Herd Management Area] HMA at zero, there are many burros (and at least one wild horse) that use the proposed project site. If the project site is fenced the burros and wild horse will be displaced. They may concentrate in other areas resulting in impacts to other resources offsite. BLM cannot simply pronounce that because they have established a zero AML, wild horses and burros will not be impacted by any of the alternatives. BLM must address the actual impacts consequent to the proposed plan amendment.

Issue Number: PP-CA-ISEGS-10-0007-17

Organization: Western Watersheds Project

Protester: Michael Connor

Summary

The FEIS does not adequately analyze the impacts of the proposed plan amendment, including impacts to sensitive species and wild horses and burros.

Issue Excerpt Text:

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Fails to Take NEPA's Requisite "Hard Look" at Impacts to Other BLM Sensitive Species. The NEMO Plan set the goal for special status species as "Populations and their habitats are sufficiently distributed to prevent the need for listing" (NEMO Plan at 2-6). The FEIS fails to document how impacts to sensitive and rare wildlife such as gila monsters, burrowing owl, golden eagles, other bird species, bats, and other wildlife will be mitigated. This is particularly problematic for species such as the gila monster which has such a limited distribution in the area.

Issue Number: PP-CA-ISEGS-10-0007-9

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests that the FEIS does not document how many desert tortoises will be directly affected the proposed action. The FEIS states without further documentation, "some estimates suggest that up to 50 tortoises may reside in the project area." FEIS at 4.3-44. No clarification is given as to whether this is an estimated number of adult tortoises or includes desert tortoises of all age classes.

Issue Number: PP-CA-ISEGS-10-03-13

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

The inadequacies in the environmental review for the project required by NEPA include, but are not limited to, the following:

Deferring identification and analysis of impacts to resources including late/summer/early fall blooming plants.

Response

The RMP/EIS fully assesses and discloses the environmental consequences of the Proposed Plan amendment and alternatives in Section 4.0. Before beginning the land use plan amendment process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions on the proposed plan amendment. While preparing the proposed plan amendment/EIS, the BLM consulted with, and used data from, other agencies and sources, including but not limited to: the California Energy Commission, Department of Energy, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the National Park Service, Tribes, the California Water Resources Control Board/Regional Water Quality Control Board, the California Department of Fish and Game, and the County of San Bernardino. (FEIS p. 1.4) The BLM also consulted on the analysis and the incorporation of available data into the proposed plan amendment/FEIS with its cooperating agencies and other agencies with jurisdiction or expertise in that area.

The BLM considered and used public input to refine its analytical approaches to planning. The interdisciplinary team that developed the Ivanpah project documents used a systematic process to evaluate public input and comments during the planning process. As a result of these actions, the BLM gathered the necessary data to make a reasoned choice among the alternatives analyzed in detail in the proposed plan amendment/EIS. The BLM analyzed the available data that led to an adequate disclosure of the potential environmental consequences of the preferred alternative and other alternatives. As a result, the BLM has taken a hard look (as required by the NEPA) at the environmental consequence of the alternatives to inform the public and enable the decision maker to make an informed decision.

With regard to the analysis of impacts to individual resources raised by protesters:

The FEIS analyzed the impacts of the plan amendment on late summer/early fall blooming plants in Section 4.3. Many California Native Plant Society and special status species are unlikely to occur at the ISEGS site due to lack of suitable habitat; however, some of these species (such as the desert portulaca) were either detected during the 2007/2008 surveys or are otherwise known to occur at or near the site (FEIS p. 4.3-6). There are no known occurrences of Federal- or State-listed plant species within the project area, and the only BLM sensitive species known to occur within the project area is the Rusby's desert mallow (FEIS p. 4.3-14).

Surveys were conducted for sensitive plant species. Mitigation measure BIO-21 requires that further field surveys be conducted during the appropriate season and within suitable habitat in the project area following survey protocols appropriate for the species of interest. If special status species occurrences are identified, preferred mitigation is avoidance, whenever practical (FEIS p. 4.3-38).

The FEIS described the affected environment regarding the desert tortoise at Section 4.3.14 and analyzed the impacts of the plan amendment on the desert tortoise in various subsections of 4.3.2. According to the Biological Opinion for the project, the USFWS has modeled that there are approximately 7,580 square miles of Desert Tortoise habitat in the Northeastern Mojave Recovery Unit with an average density of 4.4 tortoises per square mile. They further estimate

that there are approximately 15,600 tortoises in the recovery unit. The USFWS estimates that based on the inventories of tortoises and burrows conducted in the project site, the project will displace up to 36 sub-adult and adult desert tortoises.

The BLM analyzed the impact of the plan amendment on wild horses and burros in Section 4.18 of the FEIS. The NEMO plan amendment reduced the AML for burros in this area of the HMA from 44 to 0. Pursuant to this amendment, the BLM has been actively removing burros, which are still protected by the provisions of the Wild and Free-Roaming Horses and Burros Act. Ninety-six burros were removed from the herd area in January 2007. The remaining burros are expected to be removed in the near future after additional NEPA review. Due to ongoing burro removals from the area pursuant to the NEMO amendment, the FEIS stated that the impact of the proposed project on burros would not be considered adverse. As cited in the FEIS, the mitigation measures would prevent injury to burros that may still be in the project area or vicinity. The FEIS discusses mitigation measures for biological resources, including sensitive wildlife, in Section 4.3.3.

Cumulative Impacts Analysis

Issue Number: PP-CA-ISEGS-10-0006-30

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

Cumulative Impacts Inadequately Considered. The FEIS does not adequately analyze cumulative impacts to cultural, biological, water, traffic, and visual resources, instead laying out standard treatment measures at FEIS 5.2. There is no analysis of the cumulative loss of specific cultural values across the traditional homeland of the Chemehuevi Tribes of the resources, traditional practices, belief systems that could be destroyed piecemeal and the affect that would have on the sustainability for these indigenous cultural life ways and beliefs. In addition, cumulative impacts to the Northeastern Recovery Unit and genetic lineage of the Desert tortoise was not analyzed at all. Without this level of analysis in narrative form looking at the impacts across the desert, it cannot be said that BLM has truly taken these impacts and effects into account.

Response

The BLM thoroughly explained its consideration and analysis of cumulative effects of the plan amendment in Section 5.0 of the FEIS. The cumulative impact analysis in the FEIS considered the present effects of past actions to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented is sufficient to enable the decision maker to make an informed decision.

The FEIS discusses the cumulative impacts of the plan amendment on cultural resources in Section 5.2.3, which builds upon the discussion of the environmental consequences of the proposed plan amendment with regard to cultural resources found in Section 4.4. The anticipated site densities in the immediate vicinity of the proposed project would be low because of the nature of the alluvial fan and braided washes that constantly flow across the project site (FEIS

pp. 4.4-7 and 4.4-32). The FEIS is in compliance with the CDCA Plan guidelines as they apply to cultural resource considerations as explained on page 4.20-2.

The FEIS discusses the cumulative impacts of the plan amendment on the desert tortoise and other biological resources in section 5.2.3, which likewise builds on section 4.3 of the FEIS. Genetic lineage of the desert tortoise within the proposed project area is discussed on page 4.3-18, in which BLM references the USFWS recovery plan and established in the Desert Wildlife Management Areas. The FEIS is in compliance with the CDCA Plan guidelines as they apply to biological resources, including listed species, as explained on page 4.20-5.

Baseline Data

Issue Number: PP-CA-ISEGS-10-0007-7

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests that the FEIS fails to provide crucial baseline information such as the amount of desert tortoise habitat in the Northeastern Mojave Recovery Unit in California, and that the FEIS fails to adequately document the extent of the impacts to this resource. Without an adequate description of the habitat occupied by the Northeastern Mojave ESU desert tortoises, a full analysis of the impacts of the proposed plan amendment is impossible. Nor is a meaningful comparison of alternatives or the development of adequate mitigation measures possible.

Response

The baseline data provided in Chapter 4 and various appendixes in the proposed plan amendment/FEIS are sufficient to support the environmental impact analysis of the plan amendment. Although BLM realizes that more data could always be gathered, the baseline data provide the necessary basis to make an informed decision regarding the plan amendment.

Before beginning the land use plan revision process and throughout the planning effort, the BLM considered the: availability of data from all sources, adequacy of existing data, data gaps, and type of data necessary to support informed management decisions. During preparation of the plan amendment/EIS, the BLM consulted with, and used data from, other agencies and sources, including but not limited to: the California Energy Commission, U.S. Army Corps of Engineers, National Park Service, USFWS, California State Water Resources Control Board/Regional Water Quality Control Board, California Department of Fish and Game, and the County of San Bernardino. The BLM consulted on the analysis and the incorporation of available data into the proposed plan amendment/FEIS with its cooperating agencies and other agencies with jurisdiction or expertise. The FEIS describes the affected environment of the amendment site with regard to desert tortoise at Section 4.3.1.4. The Biological Opinion for the plan amendment provides additional information. Specifically, the USFWS has modeled that there are approximately 7,580 square miles of Desert Tortoise habitat in the Northeastern Mojave Recovery Unit with an average density of 4.4 tortoises per square mile. They further estimate

that there are approximately 15,600 tortoises in the recovery unit. The USFWS estimates that based on the inventories of tortoises and burrows conducted in the project site, the project will displace up to 36 desert tortoises.

Response to Comments

Issue Number: PP-CA-ISEGS-10-03-33

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

The inadequacies in the environmental review for the project required by NEPA include, but are not limited to, the following:

Failing to address the significant impacts from creating a sprawling de facto renewable energy zone in the Ivanpah Valley without prior planning or consideration of alternatives. These issues are not adequately addressed in the EIS. BLM's response to comments on this issue-that the project has somehow "benefitted" from the Programmatic Solar EIS process-does not address the concerns raised.

Response

The BLM has adequately responded to public comments on the DEIS and Supplemental DEIS. The FEIS describes the affected environment of the amendment site and the environmental consequences of amending the CDCA plan in Section 4.0. Additionally, the FEIS analyzes the cumulative effects of amending the plan in Section 5.0. As noted in Appendix A of the FEIS: "In general, it is BLM's preference to develop Programmatic NEPA documentation, and use it as a basis for site-specific projects, which is why the process for the Programmatic Solar EIS is occurring. However, at the same time, [the] BLM has a responsibility to perform a timely environmental review in response to individual applications." (FEIS p. A.1-76). In accordance with NEPA regulation, a cumulative effects analysis is required to address the cumulative or aggregation of effects of reasonably foreseeable future actions, past and present actions, and the proposed action. NEPA regulation does not require that the BLM wait until a programmatic plan and associated environmental review is completed before beginning to analyze site-specific project proposals.

Federal Land Policy Management Act (FLPMA) of 1976

Multiple Use

Issue Number: PP-CA-ISEGS-10-0007-24

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Violates FLPMA. The Federal Land Policy Management Act (FLPMA) guides the BLM's management and uses of public lands. 43U.S.C. §1732(a) directs that these lands be managed under principles of multiple use and sustained yield. The plan amendment will eliminate multiple use on 3,564 acres of public lands in the CDCA and will create a de facto industrial zone.

Western Watersheds Project protests that the adoption of the proposed plan amendment will change the multiple-use character of these lands which currently provides habitat for the threatened desert tortoise, rare and sensitive plants, grazing, and off-road vehicle routes in favor of a single use that will completely displace other uses on the proposed site.

Response

The proposed plan amendment is consistent with the BLM's multiple use and sustained yield mandate pursuant to the FLPMA.

FLPMA (Section 103(c)) defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. Accordingly, the BLM is responsible for the complicated task of striking a balance among the many competing uses to which public lands can be put. However, the BLM’s multiple-use mandate does not require that all uses be allowed on all areas of the public lands. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate *balance* of resource uses, which involves compromise among competing uses.

The CDCA Plan recognizes the potential compatibility of solar-generation facilities on public lands and requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a project site to be considered instead through the Plan Amendment process. The CDCA Plan outlines a framework for balancing use and protection in the context of the entire CDCA, but recognizes that certain sites will strike the balance one way or another, depending on relevant factors. The CDCA Plan specifically cites energy development and transmission as a "paramount national priority" to consider when striking that balance (CDCA Plan, p. 3). The CDCA Plan originally contemplated (and has been amended several times to include) industrial uses analogous to the use analyzed by the proposed plan amendment, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p. 95).

CDCA Multiple Use Class

Issue Number: PP-CA-ISEGS-10-0005-14

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

B. The impacts to Multiple Use Class L lands and their sensitive natural and cultural resources, and the loss of multiple uses on those lands that will result if this project is permitted to go ahead have not been addressed. Although the CDCA Plan allows for consideration of wind and solar energy generation facilities within Multiple Use Class L lands, any proposed facility, such as the proposed ISEGS, must conform to the management principles guidelines for

such activities within the context of Multiple Use Class L lands. According to the CDCA Plan, as amended, “Multiple-Use Class L (Limited Use) protects sensitive, natural, scenic, ecological, and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished.” (CDCA Plan at 13). There has been no meaningful analysis of how construction and maintenance of the proposed large-scale fenced industrial project will or could conform to the Multiple Use Class L management principles and guidelines.

Issue Number: PP-CA-ISEGS-10-0006-4
Organization: Basin and Range Watch
Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

Proposed project PRMP-A, if approved, essentially privatizes and fences off now public lands for private profit and permits intensive industrial scale solar development on resource sensitive CDCA public lands managed by BLM as MUC L. PRMP-A is inconsistent with FLPMA because it did not adequately consider alternatives to protect sensitive resource values.

Issue Number: PP-CA-ISEGS-10-03-7
Organization: Center for Biological Diversity
Protester: Lisa Belenky

Issue Excerpt Text:

Adoption of a plan amendment to allow a large-scale industrial facility on MUC class L lands is

inappropriate. Under the CDCA Plan, Multiple-use Class L (Limited Use) “protects sensitive, natural, scenic, ecological, and cultural resources values. Public lands designated as Class L are managed to provide for generally *lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished.*” CDCA Plan at 13 (emphasis added). While the CDCA Plan does allow for amendments to the plan to accommodate solar energy production where appropriate, the environmental review for this project shows that clearly this site is inappropriate and that the site configuration will maximize impacts to surrounding public lands and resources due to fragmentation and edge effects. The proposed project is a high-intensity, single use of resources that will displace all other uses and that will significantly diminish over 4,000 acres of excellent occupied desert tortoise habitat and destroy habitat for many rare plants among other direct and indirect impacts of the proposed project.

Summary

The proposed plan amendment is inconsistent with the designation Multiple-Use Class Limited, which requires that sensitive values are not significantly diminished.

Response

The proposed plan amendment is consistent with the Multiple-Use Class Limited designation.

As stated in the FEIS, the location of the proposed ISEGS facility includes land that is classified as “Multiple-Use Class L (Limited Use)” in the CDCA Plan. The CDCA Plan contemplates industrial uses analogous to the solar use analyzed by the proposed plan amendment, including utility rights of way outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p. 95). The CDCA Plan allows for solar development in Multiple-Use Class Limited areas. The CDCA Plan expressly provides for solar generation facilities within areas designated as Multiple-Use Class Limited. The CDCA Plan states that solar development “may be allowed after NEPA requirements are met” (CDCA Plan, p. 15). The EIS that accompanies the proposed plan amendment acts as the mechanism for complying with those NEPA requirements (FEIS p. 4.6-9). The BLM has met those NEPA requirements in the analysis contained in the DEIS, Supplemental DEIS, and FEIS. Because solar power facilities are an allowable use of the land as it is classified in the CDCA Plan, the proposed action does not conflict with the CDCA Plan.

The CDCA Plan requires that newly proposed power sites that are not already included within the plan be added to the plan through the plan amendment process. Because the ISEGS site is not currently included in the CDCA Plan, a plan amendment is required to include the site as a

recognized element in the CDCA Plan. The CDCA Plan provides guidance concerning the management and use of BLM lands in the California Desert while protecting resources and balancing other public needs. The CDCA Plan specifically cites energy development and transmission as a “paramount national priority” to consider in balancing use and protection of resources (CDCA Plan, p. 13). The proposed plan amendment would allow the solar use only on the proposed project site. The proposed plan amendment and the corresponding analysis of the proposed plan amendment with respect to the requirements contained within Chapter 7 of the CDCA Plan are provided within Section 2 of the FEIS. The amendment decision will occur after publication of the Final Environmental Impact Statement (FEIS p. 4.6-11). The proposed plan amendment identifies and analyzes sensitive resources and values, and the BLM has ensured that the plan amendment will not significantly diminish sensitive values by way of appropriate design features, mitigation, and monitoring.

In the CDCA Plan ROD, the Assistant Secretary for Land and Water Resources (ASLW) discussed remaining major issues in the final CDCA Plan before he approved the same. (CDCA ROD, p. 10, *et seq.*) One of the remaining major issues was the allowance of wind, solar, and geothermal power plants within designated Class L lands (CDCA ROD, p. 15). The ROD recognized that “these facilities are different from conventional power plants and must be located where the energy resource conditions are available. An EIS will be prepared for individual projects.” The recommended decision, which was ultimately approved, noted: “Keep guidelines as they are to allow these power plants if environmentally acceptable. Appropriate environmental safeguards can be applied to individual project proposals which clearly must be situated where the particular energy resources are favorable.”

The allowance of wind, solar, and geothermal power plants on designated Class L lands in the CDCA was approved by the ASLW and concurred with by the Secretary of the Interior on December 19, 1980. The BLM has met the NEPA requirements for the plan amendment through the analysis contained in the DEIS, SDEIS, and FEIS. The amendment will allow the solar use only on the ISEGS project site. As stated in the FEIS, the reason for the amendment is to specifically allow a solar-power generation project on the project site. This amendment and the overall amendment process are consistent with the implementation of the CDCA Plan. The CDCA Plan amendment will not result in sweeping changes to the Limited Use designation within the overall boundary of the CDCA. Furthermore, the proposed plan amendment identifies and analyzes sensitive resources and values. In addition, the BLM has ensured that the plan amendment will not significantly diminish sensitive values by way of design features, mitigation, and monitoring.

CDCA Plan

Issue Number: PP-CA-ISEGS-10-0005-13

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

A. The proposed CDCA Plan Amendment and project have not been analyzed in the context of the CDCA and the CDCA Plan. Although specific

management principles and guidelines are contained in the CDCA Plan, they have not been applied to either the proposed amendment or project. Nor have landscape level issues and management objectives been considered in evaluating these proposals or in selecting meaningful alternatives to them. Specifically, the analysis of the proposed plan amendment and project have not been adequately

analyzed in the context of FLPMA's mandate for the CDCA: "... to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality." (FLPMA Sec. 601 (b)).

Issue Number: PP-CA-ISEGS-10-0007-26
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Does Not Comply with the Land Use Plan and BLM Policy. The NEMO Plan's mitigation for Category III habitat applies to projects of less than 100 acres. NEMO at 2.27. The proposed action area is nearly forty times the maximum acreage for projects covered under the NEMO Plan. Thus, the BLM cannot simply tier off the NFMO Plan's mitigation guidance but must fully analyze the direct, indirect and cumulative impacts to the Northeastern Mojave desert tortoise population.

Summary

The proposed plan amendment is inconsistent with the specific management principles in the CDCA plan, as amended.

Response

The proposed plan amendment is consistent with the specific management principles and plan amendment criteria listed in the CDCA Plan, as amended.

The CDCA Plan itself recognizes that proposed plan amendments, such as the proposed plan amendments, may occur and outlines a process to approve or deny them (CDCA Plan, pp. 119–22). The management principles listed are: "multiple use, sustained yield, and maintenance of environmental quality contained in law" (CDCA Plan, p. 6). These principles were the basis for BLM's development of the proposed plan amendment. The CDCA Plan also lists management approaches to be used to resolve conflicts. These approaches are designed to help achieve the goals of allowing for the use of desert lands and resources while preventing their undue degradation or impairment, and responding to national priority needs for resource use and development "both today and in the future, including such paramount priorities as energy development and transmission, without compromising basic desert resources...[and] erring on the side of conservation in order not to risk today what we cannot replace tomorrow"(CDCA Plan, p. 6). The CDCA Plan conceives of balancing use and protection in the overall context of the entire CDCA, but recognizes that certain sites will strike the balance in favor of protection or use depending on relevant factors. The CDCA Plan management principles section specifically cites energy development and transmission as a paramount national priority to consider in striking that balance (CDCA Plan, p. 6).

The CDCA Plan is specifically referenced and analyzed throughout the proposed plan amendment and FEIS. The CDCA Plan was initially prepared to, and continues to, provide guidance concerning the use of the California desert public land holdings while balancing other public needs and protecting resources. Amendments to the CDCA Plan can be site-specific or global, depending on the nature of the amendment. In the case of the proposed plan amendment, the amendment is site-specific, but considers the larger context of the CDCA and its plan. The

CDCA Plan originally included, has been amended several times to include, and contemplates industrial uses analogous to, the solar use analyzed by the proposed plan amendment, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission within the broader CDCA context (CDCA Plan, p. 95). The BLM has the discretion, based on its expertise, to determine whether a plan amendment adheres to the principles of multiple use, sustained yield, and maintenance of environmental quality.

The proposed plan amendment adheres to the management principles and amendment criteria in the CDCA Plan. As described in Sections 1.6, 2.2.3, and 2.2.5 and later analyzed in Sections 4.3, 4.6, and 4.20 in the FEIS, the CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands and requires that all sites associated with power generation or transmission (not specifically identified in the CDCA Plan for a project site) be considered through the plan amendment process. As stated in the FEIS, the sole purpose of this amendment is to allow power generation and transmission on the ISEGS project site. This amendment is limited geographically to the project site only, and further, by the accompanying right-of-way grant application. This amendment will allow solar energy use on the ISEGS project site only.

The proposed plan amendment is consistent with the NEMO amendment to the CDCA Plan. According to FEIS Section 4.20, and as discussed in Section 4.3, “the desert tortoise, which is listed as federally and state threatened, would be affected by the proposed project, Mitigated Ivanpah 3 Alternative, or the Modified I-15 Alternative. However, none of the alternatives would affect critical habitat. As specified in the guideline, [the] BLM has initiated formal consultation with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act. [The] BLM has worked with the Energy Commission, USFWS, California Department of Fish and Game, applicant, and intervenors to develop protection and compensation measures for the desert tortoise, which include stringent avoidance measures, the full level of compensation required by USFWS for this category of tortoise habitat, and enhancement and protection measures in other areas. Therefore, the proposed project and its alternatives would comply with the guideline to provide full protection to the species.” It also states that “[c]ritical habitat for the desert tortoise was designated in 1994, largely based on proposed DWMAs in the draft Recovery Plan. The ISEGS project is approximately five miles from the nearest desert tortoise critical habitat” (FEIS p. 4.3-2). Table 4.3-3 further describes mitigation measures for the desert tortoise: “Off-site habitat acquisition, endowment, and enhancement of suitable desert tortoise habitat” (BIO-17); “conduct desert tortoise clearance surveys and establish exclusionary fencing” (BIO-8); “develop and implement desert tortoise translocation plan” (BIO-9); “implement avoidance measures and Best Management Practices” (BIO-11); “implement raven and weed management plant” (BIO-12 and BIO-13).

As noted in the response to comments on the DEIS, the CDCA Plan was adopted in 1980 and has since been amended many times. Frequently, long-range plans that cover large geographic areas, such as the California Desert, are “living” documents intended to provide overall land use planning guidance and general regulation with more detailed land use information provided through amendments, special area plans, or other more focused planning documents. Former BLM California State Land Director James B. Ruch, stated the following in his letter presenting the CDCA Plan, as amended, in 1999: “The California Desert Plan encompasses a tremendous

area and many different resources and uses. The decisions in the Plan are major and important, but they are only general guides to site-specific actions.”

Inventory

Issue Number: PP-CA-ISEGS-10-0007-25

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project Protests that the BLM has failed to conduct an adequate inventory of the resources of the affected lands as required by 43 U.S.C. §1711(a). It does not even know how many desert tortoises are present on the project site. Without this baseline inventory, BLM cannot ensure that its decisions will prevent unnecessary and undue degradation of the public's lands in violation of FLPMA sections 1732(b) and 1732(d)(2)(a).

Summary

The BLM failed to prepare, conduct, or maintain an adequate inventory of the resources of the public lands in accordance with FLPMA Sec. 201 (43 U.S.C. 1711(a)) in preparing and reviewing the proposed plan amendment.

Response

The BLM relied on up-to-date and adequate inventories of the resources of the public lands in compliance with FLPMA.

Section 201 of the FLPMA (43 U.S.C. 1711(a)) states: “The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Section 202 states: “In the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values” 43 U.S.C 1712(c)(4).

The BLM has a baseline inventory of information for the ISEGS proposed project site that was prepared during the development of the CDCA Plan and the NEMO amendment to the CDCA Plan, and it is updated on an ongoing basis. Using these inventories, the BLM is able to protect and manage the public lands within the area of the proposed plan amendment consistent with its statutory directives.

As stated in the proposed plan amendment/FEIS Appendix A, Section 6.1, “[i]n support of this EIS, BLM has worked with the applicant to conduct the full scope of resource inventories necessary to support consultation with respect to biological and cultural resources for a Federal project. In addition, [the] BLM has required the applicant to collect additional data and perform other site-specific analyses that are not required for formal interagency consultation, but that [the] BLM deemed necessary to allow for a full evaluation of potential impacts in all resource

areas. As part of the review of the public comments on the DEIS, [the] BLM considered each specific item to determine if such an inventory was required, or would support the impact analysis in a way which could result in a clear distinction among alternatives. As a result of this review, [the] BLM determined that the inventory of resources associated with the proposed project was sufficient to satisfy regulatory requirements and to allow for full resource impact evaluation.”

With respect to the specific resource question raised by a protesting party, the FEIS relied on recent desert tortoise inventories for the ISEGS project area. It states: “[t]he 2007/2008 protocol desert tortoise surveys found 25 live desert tortoises, 97 desert tortoise carcasses, 214 burrows, and 50 other tortoise sign (CH2M Hill 2007)” (FEIS p. 4.3-19). It also states that “[c]ritical habitat for the desert tortoise was designated in 1994, largely based on proposed [Desert Wildlife Management Areas] in the draft Recovery Plan. The ISEGS project is approximately 5 miles from the nearest desert tortoise critical habitat” (FEIS p. 4.3-2).

Cultural

Issue Number: PP-CA-ISEGS-10-0006-28

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

The input of the Chemehuevi Tribe was not included. We believe the archaeological site ISEGS-01 (discussed in the FEIS, pages 4.4-44 to 4.4-55) to be eligible for NRHP, based on our own discussions and site visits with Chemehuevi elders who have seen the site. No mitigation or protection has been proposed for this unique feature, which needs more study and cultural consultation.

Response

No specific concerns were expressed by any of the Tribes during government-to-government consultation. Although information was requested, no sites of traditional or religious use were identified in the area by the Tribes. Numerous letters as well as phone calls and face to face meetings occurred with the Tribes on this project.

The project is within the homeland of the Chemehuevi (as well as the Southern Paiute). Four letters were sent to the Chemehuevi Tribe as follows:

- (1) October 4, 2007: Initiating coordination/consultation with results of archaeological survey;
- (2) March 5, 2009: As follow-up and with results of additional survey;
- (3) December 16, 2009: As notification of the Draft EIS; and
- (4) April 16, 2010: As notification of the Supplemental Draft EIS.

The BLM also provided information to the Chemehuevi Tribe’s Cultural Lead in January 2010 via email and offered to take her on a site visit of the project area; she declined. Prior to that, the Needles Field Office Manager and archaeologist had spoken to the Cultural Lead about the

project when attending an off-highway vehicle conference at Chemehuevi Reservation in Spring 2009, and no concerns were expressed.

No additional requests for information or issues were provided by the Chemehuevi Tribe. The Chemehuevi Tribe has not yet accepted the invitation to consult, nor has the Tribe provided the BLM with information on any Traditional Cultural Properties (TCP) within the amendment area or any TCPs that could be non-physically impacted by solar energy development in the amendment area. The Chemehuevi Tribe was included on the Native American Contact List found in Table 4.4-4 in Section 4.4.2 of the FEIS.

Section 4.4.2 of the FEIS also documents that the California Native American Heritage Commission was contacted to request information from its Sacred Lands File on any reported Native American cultural resources in the project area of analysis (defined in Section 4.4.2 of the FEIS). A letter to the California Energy Commission dated November 29, 2007, stated, “The Native American Heritage Commission was able to perform a record search of the Sacred Lands file (SLF) for the affected project area. The SLF failed to indicate the presence of Native American cultural resources in the immediate project area. The absence of specific site information in the Sacred Lands File does not guarantee the absence of cultural resources in any area of potential effect (APE).”

The archeological site ISEGS-01 was found during the BLM-requested survey described in Section 4.4.2 of the FEIS. It is not within the amendment area and would not be physically impacted by solar energy development in the amendment area. Since it has not been identified as a Traditional Cultural Property nor determined eligible for the National Registry of Historic Properties, no mitigation or protection is warranted.

Fish, Wildlife, Special Status Species

Special Status Species

Issue Number: PP-CA-ISEGS-10-0005-18

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

The Proposed CDCA Plan Amendment and FEIS do not comply with BLM Manual 6840: Special Status Species Management, for the following reasons: A. Because the proposed action would result in the destruction of approximately 4,000 acres of occupied suitable habitat for the threatened Desert Tortoise, the proposed action is inconsistent with the BLM's obligation to conserve and/or recover listed species and the ecosystems on which they depend so that [Endangered Species Act] ESA protections are no longer needed. B. Because the proposed action would result in the destruction of approximately 4,000 acres

of habitat utilized by special-status wildlife species, including Burrowing Owl, Loggerhead Shrike, Crissal Thrasher, Golden Eagle, and American Badger the proposed project is inconsistent with BLM's policy for management of these at-risk species. The proposed project would also impact vegetation in the 4,000 acre project area, including Rusby's Desert-mallow, a BLM Sensitive Species.

Issue Number: PP-CA-ISEGS-10-0005-20

Organization: Defenders of Wildlife et al.

Protester: Kim Delfino

Issue Excerpt Text:

IV. The Proposed CDCA Plan Amendment and FEIS do not conform with the requirements contained in BLM Manual 1745: Introduction, Transplant,

Augmentation and Reestablishment of Fish, Wildlife and Plants The Proposed CDCA Plan Amendment and FEIS do not conform to BLM Manual 1745: Introduction, Transplant, Augmentation and Reestablishment of Fish, Wildlife and Plants, for the following reasons: A. All proposed introductions, transplants, reestablishments, or augmentation/restocking shall be in conformance with management direction and decisions in an applicable Resource Management Plan (RMP) (see BLM Manual Sections 1601 and 1622). A site-specific activity plan must be prepared, using an interdisciplinary planning process, for all proposed introductions, transplants, and reestablishments, unless waived by the State Director. B. NEPA compliance is required before introductions, transplants and reestablishments can be approved. C. Quarantine procedures must comply with all Federal and State regulations, restrictions, and requirements governing the release of disease free organisms and the importation of exotic Plants and animals into the U.S.D. Interested and affected State and Federal agencies, private landowners, and other individuals and organizations must be notified through identified processes of possible introductions, transplants, and reestablishments during the planning and NEPA review processes. E. Public participation is required. Parties potentially affected by introductions transplants, or reestablishments, must be given the opportunity to be involved in the public participation process outlined in BLM Manual Section 1614. Potentially affected parties include adjacent State, Federal, and private landowners, other interested groups, and individuals. F. A site-specific activity plan is required prior to the introduction, transplant, and reestablishment of plants or animals on public lands, unless waived by the state Director. The activity plan must include: 1) Site-specific and measurable vegetation/habitat population objectives which are based on existing ecological site potential/condition, habitat capability, and other important factors. (See BLM Manual Sections 1619, 6780, and 4120). 2) Planned actions to accomplish the stated objectives. 3) Appropriate monitoring and evaluation. 4) Coordination with other management plans and programs.

Issue Number: PP-CA-ISEGS-10-0007-22

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

It is therefore the BLM's job to ensure that it considers and evaluates all data relating to impacts to listed species from projects it is evaluating. In response to ours and others concerns relating to desert tortoise translocation, the BLM responded, "The Biological Assessment includes an evaluation of impacts to desert tortoises, including those associated with the translocation of individuals. It is the responsibility of the USFWS to review the document and determine, based on their expertise, whether the conclusions reached within the Biological Assessment are valid. If the USFWS agrees with the findings of the Biological Assessment, they will issue a Biological Opinion, which may include additional mitigation or conservation measures. Alternatively, if the USFWS determines there are substantive residual impacts, even with the application of additional mitigation measures, they will issue a jeopardy opinion in the Biological Opinion that would prevent the Project from moving forward as proposed." FEIS at A.I-B3. It is the BLM's job to seek to conserve listed species and thus to ensure that impacts are mitigated to the extent practicable and that the Fish and Wildlife Service are fully informed with respect to a project's impacts. It is not appropriate for the BLM to simply dismiss valid and significant concerns on the grounds that the USFWS is the one making the jeopardy/non-jeopardy call

Issue Number: PP-CA-ISEGS-10-0007-27

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

BLM Handbook 1745 -Introduction. Transplant, Augmentation, and Reestablishment of Fish, Wildlife, and Plants -requires that "Decisions for making introductions, transplants, or reestablishments should be made as part of the land use planning process (see BLM Manual Section 1622). Releases must be in conformance with approved RMPs. A Land Use Plan Amendment must be prepared for proposed releases if management

direction is not provided in the existing Land Use Plan (see BLM Manual Section 1617, emphasis added).” The two new proposed alternatives and the other projects proposed for the project area will result in large-scale movement and translocation of desert

tortoises. There is no consideration in the California Desert Conservation Area Plan as amended by the NEMO Plan for desert tortoise translocations on this scale. Therefore, a plan amendment is required to comply with BLM policy.

Summary

The proposed plan amendment does not comply with BLM Manual 6840, BLM Manual 1745, or Section 7 of the Endangered Species Act (ESA).

Response

The BLM appropriately analyzed effects to Special Status Species, consistent with the ESA and BLM Special Status Species Policy (BLM Manual 6840).

The BLM ensures that all BLM actions comply with the ESA, its implementing regulations, and other directives associated with ESA-listed and proposed species, which includes compliance with Section 7 consultations as well as conferences with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. A major focus of Manual 6840 is to ensure that BLM actions do not contribute to the need to list any species under the ESA, and to improve the condition of special species habitat to the point where their special status is no longer warranted.

The BLM Manual 1745 (1992) provides guidance for the introduction, transplant, augmentation, and re-establishment of fish, wildlife, and plant species. Translocation of a species, as is being proposed for desert tortoises on this project, is not specifically addressed in Manual 1745. Furthermore, Manual 1745 references land use planning manual sections that have been removed. In November 2000, the BLM removed Manual Sections 1614, 1617 and 1622 and issued Manual 1601. Manual Section 1601 (2000) explains that site-specific plans (for example, habitat management plans) are to be considered implementation-level decisions rather than planning decisions. The BLM's translocation plan for this project is considered an implementation or activity plan, rather than an element of the land-use plan, and therefore is not subject to protest.

BLM Manual 6840 – Special Status Species Management provides policy and guidance for the conservation of BLM special status species on BLM-administered lands and the ecosystems upon which they depend. As outlined in Manual 6840, when the BLM engages in the planning process, land-use plans and subsequent implementation-level plans shall identify appropriate outcomes, strategies, restoration opportunities, use restrictions, and management actions necessary to conserve and/or recover listed species, as well as provisions for the conservation of BLM sensitive species. In particular, such plans should address any approved recovery plans and conservation agreements.

The FEIS outlines the Applicable Laws, Regulations, and Supplemental Authorities regarding Special Status Species in Chapter 4 (FEIS p. 4.3-2, 2010) and details mitigation measures that will ensure the actions taking place will not contribute to the need to list any species under the ESA (FEIS p. 4.3). There are 64 special status plant species known or potentially occurring in

the CDCA plan amendment area and vicinity; however, none of them is federally listed as Endangered or Threatened. Of these, 12 were detected during surveys in 2007/2008 (FEIS p. 4.3-7). For the analysis of effects on special status plants, the FEIS groups impact sources into four impact categories: construction, operational, closure/decommissioning, and beneficial. The section on effects to special status botany species discusses impact avoidance and minimization efforts and mitigation measures consistent with BLM Special Status Species Policy Manual 6840 and other applicable laws and regulations; the effects to BLM sensitive species; and the effects for each category of impact for the Proposed Action and alternatives (FEIS Ch. 4). There are 20 special status wildlife species documented or suspected to occur in the project area, only one of which (desert tortoise) is federally listed as threatened. During the 2007/2008 field surveys, nine of these were detected (FEIS 4.3-8, 2010). Effects to Special Status Wildlife species, including the desert tortoise, were discussed and documented in detail in FEIS Chapter 4 – Affected Environment and Environmental Consequences.

Desert Tortoise

Issue Number: PP-CA-ISEGS-10-0006-15

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

The project would significantly affect a genetically distinct subpopulation of desert tortoise, the northeastern Mojave Evolutionarily Significant Unit (ESU). This ESU only occurs in California in the Ivanpah Valley and is the most genetically distinct of the California populations. The cumulative impacts of development in the North Ivanpah Valley threaten the degradation of a quarter of California's Ivanpah Valley desert tortoise habitat. The Northeast Mojave Population is protected under the California Endangered Species Act. This potentially could result in the listing of this population under the Federal Endangered Species Act.

Issue Number: PP-CA-ISEGS-10-0007-13

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

Western Watersheds Project protests that the proposed mitigation for impacts to desert tortoise is non-specific and inadequate. Although the

Northeastern Mojave ESU desert tortoises will be impacted, the proposed mitigation for the proposed action does not require acquisition of replacement habitat within the Northeastern Mojave recovery unit. This contradicts longstanding BLM policy to “Mitigate the impacts of energy and mineral development in tortoise habitat to the extent possible”.

Issue Number: PP-CA-ISEGS-10-0006-2

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

Improper Deferral of Plans Addressing Environmental Impacts, and Mitigation Measures Reports, Plans, and analysis must be concluded prior to project approval. Otherwise, it cannot be said that the agencies have truly taken into account all the adverse effects of the project and considered all feasible mitigation measures. Improperly delaying the completion of mitigation plans and impact reports until after project approval is something we are seeing with more frequency on projects in our area, especially those related to industrial utility projects and is a practice that we believe is not supported in the law. [Draft BO]

Summary

The PRMP-A could result in the listing under the ESA of the Northeastern Mohave Evolutionarily Significant Unit of the desert tortoise population and contradicts BLM policy to mitigate impacts of energy development in tortoise habitat.

Response

The USFWS 1994 Desert Tortoise Recovery Plan (DTRP) identifies six Evolutionarily Significant Units (ESU). These ESUs are defined in the recovery plan as important components to the evolutionary legacy of *Gopherus agassizii* due to significant differentiation in genetics, morphology, ecology, or behavior. The USFWS refers to ESUs as “Recovery Units” (DTRP), p. 20). The Northeastern Mojave Recovery Unit (NMRU) is “found primarily in Nevada, extending into California along the Ivanpah Valley and into extreme southwestern Utah and northwestern Arizona. Three mitochondrial DNA haplotypes are found in this recovery unit, but they exhibit low allozyme variability with relative little local differentiation.” (DTRP p. 21). Ivanpah Valley contains approximately 230,000 acres of desert tortoise habitat (a small portion of the 4.8 million acres of the habitat in the NMRU) and extends 20 miles north into Nevada and 15 miles south into California within the Mojave National Preserve (Nussear, K.E.; Esque, T.C.; Inman, R.D.; Gass, Leila; Thomas, K.A.; Wallace, C.S.A.; Blainey, J.B.; Miller, D.M.; and Webb, R.H.; 2009, Modeling habitat of the desert tortoise (*Gopherus agassizii*) in the Mojave and parts of the Sonoran Deserts of California, Nevada, Utah, and Arizona: U.S. Geological Survey Open-File Report 2009-1102, p. 18).

The BLM strives to mitigate the impacts of energy and mineral development in tortoise habitat to the extent possible. The FEIS and Biological Assessment (BA) for this project include an evaluation of impacts to desert tortoises with recommended impact avoidance, minimization efforts, and mitigation measures. It is the responsibility of the USFWS to review the BA and determine, based on their expertise, whether the conclusions reached within the BA are valid. The USFWS completed their review of the BLM’s BA and issued a Biological Opinion that includes terms and conditions that BLM is required to implement. Due to insufficient availability of private lands in the NMRU, acquisition of land for replacement habitat cannot completely take place within the NMRU. Therefore, to fulfill this mitigation requirement, acquisition of land for replacement habitat will have to take place outside of the NMRU.

Water

Issue Number: PP-CA-ISEGS-10-0006-21

Organization: Basin and Range Watch

Protester: Laura Cunningham and Kevin Emmerich

Issue Excerpt Text:

Independent groundwater basin analysis should be undertaken, as other sources indicate overdrafts which are not discussed in the FEIS. Precipitation recharge in this basin is low: the Environmental Protection Agency, when analyzing the Ivanpah Valley Aquifer for the Coliseum Mine in the 1990s,

was concerned about overdrafts from any water extractions, as the annual recharge is so small (only 800 acre-feet per year) (Reference: <http://epa.gov/waste/nonhaz/industrial/special/mining/techdocs/gold/goldch3.pdf>). This is too risky to allow more groundwater pumping, especially considering cumulative impacts. The project should not be approved until more study is done on the basin recharge.

Issue Number: PP-CA-ISEGS-10-0007-19

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

The project site is in an area of the Ivanpah Ground Water Basin where substantial declines in groundwater levels have already been observed. Groundwater discharge from the Ivanpah Ground

Water Basin occurs mainly through pumping and underflow towards the Las Vegas Valley. FEIS at 4.10-12. Although the FEIS claims that the project's groundwater draw is exceeded by the natural recharge rate of the Basin, the FEIS fails to examine any cumulative effect on the underflow to the Las Vegas Valley, which is in a serious overdraft.

Summary

The FEIS fails to conduct an adequate analysis of the impacts of the plan amendment on groundwater in the basin.

Response

The FEIS contains an analysis of groundwater and impacts to groundwater at a scale appropriate for the effects of solar power development on the lands subject to the CDCA amendment. FEIS pages 4.10-12–4.10-15 describe Ivanpah Valley Groundwater Basin (IVGB) characteristics in the context of naturally occurring precipitation, discharge, water quality, and beneficial uses. The FEIS contains a detailed explanation of groundwater in the Ivanpah Valley, Section 4.10. The Ivanpah Groundwater Basin provides only a portion of the recharge via possible underflow to the Las Vegas Valley. As part of the Ivanpah Groundwater Basin analysis it was determined that water use by the Proposed Action would be less than 2 percent of the total use of that groundwater basin and thus would not create an adverse effect. The effect upon recharge to the Las Vegas Valley would therefore be minimal. As noted on page 4.20-1, the FEIS is in compliance with CDCA Plan guidelines as they relate to groundwater.