

Director's Protest Resolution Report

**Rice Solar Energy Project
Plan Amendment
California Desert Conservation Area Plan**

November 15, 2011



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided 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's) response to the summary statement.

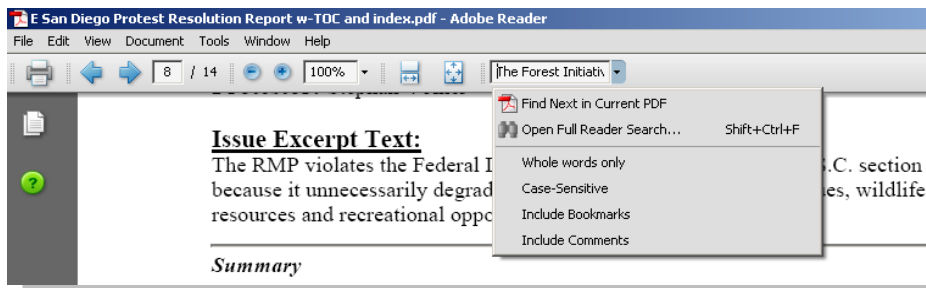
Report Snapshot

The diagram shows a report snapshot with several sections and callouts:

- Issue Topics and Responses**: NEPA
- Topic heading**: Callout pointing to the section title.
- Submission number**: Callout pointing to the number 10.
- Issue Number**: PP-CA-ESD-08-0020-10
- Protest issue number**: Callout pointing to the number 10.
- Organization**: The Forest Initiative
- Protesting organization**: Callout pointing to The Forest Initiative.
- Protester**: John Smith
- Protester's name**: Callout pointing to John Smith.
- 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.
Callout: Direct quote taken from the submission
- Summary**:
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS 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

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.



Note Regarding Citations

The Western Area Power Administration (Western) in conjunction with the California Energy Commission (CEC), the Bureau of Land Management (BLM), and the Department of Energy Loan Guarantee Program (LGP) issued an abbreviated Final Environmental Impact Statement (FEIS) in accordance with CFR 1500.4(m) and 1503.4(c). The document address changes to the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) resulting from public comments received on the SA/DEIS, and does not reprint the full text of the SA/DEIS. The abbreviated FEIS, combined with the SA/DEIS, serve as the Final EIS and California Desert Conservation Area (CDCA) Plan Amendment (PA/FEIS). Issue responses in this Director's Protest Resolution Report cite to page numbers found in the SA/DEIS, as incorporated by the PA/FEIS.

List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
APD	Application for Permit to Drill	IM	Instruction Memorandum
APE	Area of Potential Effect	MFTL	Mojave Fringe-Toed Lizard
ASLW	Assistant Secretary for Land and Water	MOU	Memorandum of Understanding
BA	Biological Assessment	NECO	Northern and Eastern Colorado Desert
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
CEQ	Council on Environmental Quality	NSO	No Surface Occupancy
CFR	Code of Federal Regulations	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
COA	Condition of Approval	PSPP	Palen Solar Power Project
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
DWMA	Desert Wildlife Management Area	SA/DEIS	Staff Assessment/Draft EIS
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)	WHMA	Wildlife Habitat Management Area
FWS	U.S. Fish and Wildlife Service	WSA	Wilderness Study Area
GIS	Geographic Information Systems	WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Mekaela Gladden	La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy	PP-CA-Rice-11-01	Denied—Issues, Comments

ISSUES

NEPA

Range of Alternatives

Issue Number: PP-CA-Rice-11-01-10

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

If the goal is 10,000 MW of electricity by 2015 as articulated under the Energy Policy Act of 2005, distributed solar can meet that goal.

Issue Number: PP-CA-Rice-11-01-12

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

Furthermore, the federal government has undertaken a number of projects to promote distributed PV, demonstrating that a DG alternative is a reasonable alternative. For example, photovoltaics have been installed on rooftops of federal correctional facilities, military bases, and postal service buildings. Exs. A37-A44. Altogether, an analysis of a DG alternative or an alternative that includes at least some DG component would allow for a meaningful review of the appropriate balance to strike between environmental impacts caused by land-intensive utility-scale generation and the electricity-generation capacity. Without an analysis of this alternative, the decision-makers cannot make an informed decision about what impacts are an acceptable cost for the benefit attained.

Issue Number: PP-CA-Rice-11-01-14

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

Conservation, demand response and other demand-side measures can reduce congestion on the grid. Conservation and other demand-side alternatives are needed to provide the basis for informed decision-making about the environmental impacts of increased transmission. Therefore, this alternative should have been considered in the EIS. Again, although a demand-side management alternative may be outside

BLM's jurisdiction, the alternatives analysis is not limited to an agency's jurisdiction. See 40 C.F.R. 1502.14(c).

Issue Number: PP-CA-Rice-11-01-17

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

As shown in the preceding section, there are a number of examples of siting renewable energy developments on federal, state, or private land. Exs. A37-A44. Looking at such an alternative is reasonable here.

Issue Number: PP-CA-Rice-11-01-25

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

BLM also identifies its purpose and need to "respond to a FLPMA right-of-way (ROW) application." However, the purpose and need to focus on the agency's purpose and need and not the applicant's. Focusing on the applicant's needs unduly restricts the alternatives analysis.

Issue Number: PP-CA-Rice-11-01-8

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

In what is identified as DOI Comment 3 in the FEIS, the Department of Interior explains that the "[p]urpose and need statement in the draft environmental document is so narrowly focused that other alternatives that offer less environmentally damaging solutions (i.e., energy conservation, energy efficiencies, distributed energy, etc.) were not comprehensively analyzed." We wholeheartedly agree.

Summary

The PA/FEIS's narrow purpose and need statement unduly restricts the alternatives analysis. As a result, the PA/FEIS does not include consideration of a reasonable range of alternatives, including off-site alternatives on private or state land, distributed solar generation, or demand-side measures.

Response

Purpose and Need

In accordance with NEPA, the BLM has discretion to specify the underlying purpose and need for action (40 CFR 1502.13), which helps to define the range of alternatives to be considered. Consistent with BLM NEPA guidance, the BLM constructs its purpose and need statement to conform to existing laws, regulations, policies, and decisions (BLM NEPA Handbook H-1790-1 at 6.2). As stated in the protest letter, for externally generated actions (such as this right-of-way application for a transmission line that crosses BLM lands), the purpose and need statement must describe the purpose and need of the BLM, not that of the applicant.

The purpose and need statement of the PRMP/EIS properly described the purpose and need of the BLM, not that of the applicant. The BLM purpose and need was appropriate, as stated that "BLM's purpose and need for the [Rice Solar Energy Project] is to respond to the applicant's application under Title V of the FLPMA (43 USC 1761) for a right-of-way (ROW) grant to construct, operate, maintain, and decommission a generation tie-line, a portion of which would be located on public land" (DEIS P 2-8). The need for the action was based on authorities promoting renewable energy development (see Executive Order 13212, the Energy Policy Act of 2005, and Secretarial Order 3285A1).

As part of the analysis, the BLM determined that the proposed solar project and associated right-of-way would require an amendment to the CDCA Plan. This land use planning consideration is a necessary component of the BLM's response to the right-of-way application in this instance because the (CDCA) requires the BLM to undertake a plan amendment process when a proposed renewable energy project is to be located on a site not already identified in the CDCA Plan as available for that kind of development. As such, the BLM's land use plan decision included appropriate alternatives that met the BLM's purpose and need. Alternative PA1 would amend the CDCA Plan to designate a corridor to allow for the generation tie-line to support the Rice Solar Energy Project, while Alternative PA2 would not amend the CDCA Plan (DEIS P 2-12).

Non-Public Land Alternative

A non-public land alternative would not be within the range of reasonable land use planning alternatives because the BLM's land use planning authority is limited to public lands, and because such an alternative would not meet the agency's purpose and need as it would not be responding to the application for the solar energy project and the associated generation tie-line on BLM lands. BLM IM 2011-059, National Environmental Policy Act Compliance for Utility-

Scale Renewable Energy Right-of-Way Authorizations, supports this approach, stating that “The BLM will not typically analyze a non-Federal land alternative for a right-of-way application on public lands because such an alternative does not respond to the BLM’s purpose and need to consider an application for the authorized use of public lands for renewable energy development.”

Distributed Generation Alternative

The BLM adequately considered a distributed generation alternative in the NEPA analysis. A thorough rationale for why this alternative was eliminated from detailed discussion is included on Pages 4.34-4.37 of the DEIS. The DEIS discusses the impacts from distributed generation, and concludes that while a distributed generation alternative might reduce impacts and could meet the project objectives, such an alternative would not be feasible for the following reasons:

- Would likely require increased subsidies and tariffs to influence the pace of large scale deployment
- Would likely be more expensive than the proposed alternative
- Would be difficult to integrate into electricity distribution systems throughout the state of California
- California’s electric distribution systems are not designed to easily accommodate large quantities of randomly installed distributed generation resources
- May not be able to be implemented within the timeframes required for the project

Regarding a possible distributed generation alternative that could have been considered on Federal buildings, the analysis summarized above concluded that such an alternative would not be a feasible alternative throughout the state of California. Considering both public and private facilities, it was appropriate to not fully analyze an alternative that would consider distributed generation solely on Federal public facilities.

Demand-Side Alternative

Additionally, the BLM adequately addressed the consideration of a demand-side alternative, as an alternative considered but not evaluated in further detail in the DEIS. As stated, conservation and demand-management alone is not sufficient to address all of California’s energy needs. Additionally, it will not provide the renewable energy required to meet the California Renewable Portfolio Standard requirements” (DEIS p 4-50).

Impact Analysis

Issue Number: PP-CA-Rice-11-01-31

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

A programmatic environmental impact statement ("PEIS") should have been prepared. The Bureau of Land Management’s NEPA compliance handbook requires a PEIS under circumstances like those present here. "Connected actions are those actions that are ‘closely related’ and ‘should be discussed’ in the same NEPA

document." Ex. P1. The Department of Interior has implicitly acknowledged that the large number of solar energy projects being proposed in the Southwest are intimately connected and a programmatic EIS is necessary by preparing a PEIS for "Solar Energy Development in Six Southwestern States." Ex. P2. The problem is that the PEIS has not yet been approved and site-specific projects should tier off this document. Ex. P3. Unfortunately, the Rice Project is moving in reverse order, with a site-specific project coming before the programmatic impacts are understood.

Summary

The PA/FEIS failed to adequately analyze the impacts of the proposed plan amendment because:

- A programmatic environmental impact statement was not prepared; and
 - It did not analyze solar energy projects being proposed in the Southwest as connected actions.
-

Response

The BLM analyzed the available data that led to an adequate consideration and disclosure of the potential environmental consequences of the proposed plan amendment and its alternatives. As a result, the BLM has complied with NEPA by taking a hard look at the environmental consequences of the proposed plan amendment and its alternatives, enabling the decision-maker to make an informed decision.

NEPA regulations and BLM policy do not require the preparation of a programmatic environmental impact statement (PEIS). The purpose of the BLM Solar Energy Development PEIS ("Solar PEIS") is to analyze the effects of "replacing certain elements of its [BLM] solar energy policies with a comprehensive Solar Energy Program" (Draft Solar PEIS p 1-7). The Solar PEIS does not assess site-specific issues or authorize any future individual solar energy development projects (Solar PEIS p 1-14, p 1-17). As stated in the Solar PEIS, the BLM is proceeding with the processing of right-of-way applications for solar facilities while the PEIS is being prepared (Solar PEIS p 1-9, Footnote 3).

The PA/FEIS appropriately considered the Solar PEIS and other proposed solar energy development projects in the cumulative effects analysis (DEIS Tables 5-1A, 5-1B, 5-2, 5-3). The analysis took into account the relationship between the proposed plan amendment and these projects. This served as the determining factor as to the level of analysis performed and presented.

The proposed plan amendment and other solar energy projects proposed in the Southwest are not connected actions, as defined by CEQ regulations 40 CFR 1508.25(a)(i, ii, iii) because:

- The proposed plan amendment does not automatically trigger solar energy development at other sites;
- Solar energy development at other sites does not require the proposed plan amendment to be taken previously or simultaneously; and
- The proposed plan amendment and solar energy development at other sites are not interdependent parts of a larger action that depend on the larger action for their justification.

Cumulative Impact Analysis

Issue Number: PP-CA-Rice-11-01-29

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

The EIS fails to adequately analyze cumulative impacts. The purpose of a cumulative impacts analysis is to examine the specific project and its interactive and synergistic adverse environmental effects when considered in the context of similar projects. *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989 (9th Cir. 2004). The EIS should have considered all solar energy projects within the CDCA. Congress has recognized that "the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed." 43 U.S.C. 1781(a)(2). As a special area, Congress required that a "comprehensive, long-range plan for the management, use, development and protection of the public lands within the California Desert Conservation Area" be prepared. *Id.* at 1781(d). Failing to look at similar projects, all requiring amendments to the CDCA Plan defies the Congressional mandate for a cohesive plan. See Exs. C1-7. Yet that is precisely what happened here. The geographic restrictions are also arbitrary with respect to cultural resources. You should have considered the impacts of all the projects on Chemehuevi, Fort Mojave and other Native American ancestral land.

Summary

The PA/FEIS does not adequately analyze the cumulative impacts of the proposed plan amendment because:

- It failed to consider the cumulative effects of other solar projects within the CDCA; and
- It failed to consider the cumulative effects on Chemehuevi, Fort Mojave and other Native American ancestral land.

Response

The BLM adequately explained its consideration and analysis of cumulative effects of the proposed plan amendment in Chapter 6 of the DEIS. The cumulative effect analysis in the DEIS considered the present effects of past actions, to the extent that they are relevant, as well as effects of current and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The analysis took 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 BLM established the geographic scope for cumulative effects analysis in Chapter 5 of the DEIS. The geographic scope considers how widespread the effect may be (DEIS p 5-1, 5-2). The BLM identified the California desert as the largest geographic area "within which cumulative effects should be assessed" (DEIS p 5-3).

The BLM used this geographic scope to provide a cumulative projects scenario. The cumulative project scenario included relevant past, current, and reasonably foreseeable projects within the geographic scope, including solar energy projects in the California desert (DEIS Table 5-1A, 5-

1B, 5-2, 5-3). The cumulative projects scenario served as the basis for the cumulative effects analysis found in Chapter 6 of the DEIS.

The area of cumulative effects varies by resource. The BLM defined the geographic scope for the cultural resource effects analysis on page 6.3-59 of the DEIS. The geographic scope is not limited to the Rice Valley, but also includes its northwest continuation into the Ward Valley. The scope includes the following mountain ranges, which represent the mining activities that took place in the immediate area and provide a broader historic context for the region: Turtle Mountains, Whipple Mountains, Chemehuevi Mountains, Old Woman Mountains, and Africa Mountains.

Federal Land Policy and Management Act

Conformance with the California Desert Conservation Area Plan

Issue Number: PP-CA-Rice-11-01-22

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

The project is inconsistent with applicable land use plans. Under the California Desert Conservation ("CDCA") Plan, you are required "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 the environmental quality." 43 U.S.C. 1781(b). "Once a land use plan is developed, '[all] future resource management authorization and action. . . shall conform to the approved plan.'" Oregon Natural Resources Council Fund v. Brong, 492 F.3d 1120, 1125 (9th Cir. 2007). This project is on Class M lands even though there are millions of acres of Class I lands available.

Issue Number: PP-CA-Rice-11-01-35

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

Furthermore, the project is within the CDCA Plan. BLM is required "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 the environmental quality." 43 U.S.C. 1781(b). The approval of the Rice Solar Energy Project violates this mandate because it substantially degrades a scenic resource within the Planning Area. The FEIS acknowledges that the project would have significant/substantial, unavoidable impacts with respect to a loss of scenic character when considering both direct and cumulative impacts and the project would contribute substantially to a cumulative land use and visual/scenic character impacts. This project is on Class M lands even though there are millions of acres of Class I lands available.

Summary

The proposed Plan Amendment is inconsistent with the specific management principles in the CDCA plan.

Response

The proposed Plan Amendment adheres to the management principles and guidelines in the CDCA Plan and considers the broader CDCA context. 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. The CDCA Plan itself recognizes that plan amendments such as the proposed Plan Amendment may occur, and outlines a process to approve or deny these amendments (CDCA Plan, pp. 119-122).

The management principles in the CDCA Plan include “multiple use, sustained yield, and maintenance of environmental quality contained in law” (CDCA Plan, p. 6), and were the basis for the BLM's development of the proposed Plan Amendment. The CDCA Plan provides 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 specifically cites energy development and transmission as a “paramount national priority” to consider in balancing uses and protection of resources (CDCA Plan, p. 13) and states that power facilities may be allowed within Multiple Use Class M (Moderate Use or MUC-M) areas after NEPA analysis and a plan amendment process (if it is a power generation facility not already identified in the Plan) has been completed (CDCA Plan, pp. 15 and 95). The EIS that accompanies this proposed Plan Amendment process acts as the mechanism for complying with NEPA requirements.

As noted on page 13 of the CDCA Plan, lands classified as Moderate Use may allow higher-intensity use balanced with protection of public lands and “provides for a wide variety of present and future uses such as ...energy, and utility development.”

Because the CDCA Plan requires that the BLM strike a balance between uses and protecting resources, the FEIS (DEIS as amended) identifies and analyzes sensitive resources and values within these classification areas. Multiple uses in a given area “will be mutually exclusive and require selective decisions to be made for that area. Resolution of these conflicts and tradeoffs between and within varying uses are fundamental to multiple-use management” (CDCA Plan, p. 21).

During the plan amendment process, 28 possible site locations in addition to the Rice site location were evaluated in order to determine a full range of alternatives that appropriately balanced the needs and benefits of the project itself against the impacts it would have on the surrounding environment and other resources (DEIS, p. 4-2 – 4-29). The project site is located on previously disturbed lands (a former airfield) (FEIS, p. 46), and significant environmental mitigation steps have been included in the project and plan amendment to prevent undue degradation and impairment of the surrounding environment (DEIS, p. 6.2-156 – 6.2-229).

Consistency with Other Plans

Issue Number: PP-CA-Rice-11-01-23

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

The project is also inconsistent with the County of Riverside General Plan. When revising land-use plans, they are to be consistent with state and local plans. See 43 U.S.C. 1712(c) (9). The EIS acknowledges that the project is not consistent with the Riverside County General Plan Land Use Element policies LU4.3, LU 6.1, LU 8.2, LU 13.1, LU 13.3, LU 20.1, LU 20.2, LU 20.4, or LU 30.1 or Multipurpose Open Space Element policy OS 21.1. See FEIS p. 1-17.

Summary

The proposed Plan Amendment is inconsistent with the specific management principles in the County of Riverside General Plan.

Response

Under the Federal Land Management Policy Act (FLPMA), BLM plans are required to be consistent with State and local plans to “the maximum extent possible” (43 U.S.C.1712 (c) (9)). Conformance with local plans “whenever possible” is one of the required decision criteria that the CDCA Plan establishes for evaluating applications such as the Rice solar energy project (DEIS, p. 2-11). Under FLPMA, even though the BLM is not required to comply fully with all requirements of applicable local plans, the BLM did adhere to the conformance criteria laid out in the DEIS. The County of Riverside provided comments on the project and the amendment that considered the project's compliance with the Riverside County's Land Use and Multipurpose Open Space Elements of the County General Plan (County of Riverside 2003) for biological resources. Those comments were addressed by including Proposed Conditions for Certification/Mitigation Measures for compliance with the California Environmental Quality Act (CEQA), which when implemented should ensure that the project remains in compliance with the Riverside County General Plan regarding biological resources (DEIS, p. 6.2-156 – 6.2-229).

Cultural Resources

Issue Number: PP-CA-Rice-11-01-6

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

There are several problems with respect to cultural resources. The EIS acknowledges that the project site is on or near several significant Chemehuevi, Mohave, and other Native American resources. Unfortunately, there has not been adequate consultation with Native American tribes, representatives, and other interested people and entities. Significantly, the project will restrict access to religious and culturally-significant sites in violation of the Religious Freedom Restoration Act. In addition, the EIS does not adequately address the project's impacts on Native American sacred sites and culturally-significant sites and artifacts. These issues need to be addressed before the project can go forward. Even without having done adequate consultation, the EIS notes the presence of a number of trails, geoglyphs, and other Native American artifacts. See EIS pp. 6.2-123 to 6.3-151. Lacuna also pointed out

sacred sites near the project that may be impacted. When examining other solar projects in the area, BLM has recognized the unique nature of Native American impacts and analyzed the issue separately from other cultural impacts. See Ex. Cult1. In any event, whether part of a separate section of the EIS or with other cultural resources, the EIS fails to take a hard look at Native American impacts.

Summary

The EIS fails to take a hard look at Native American impacts and acknowledges that the project site is on or near several significant Chemehuevi, Mohave, and other Native American resources. Unfortunately, there has not been adequate consultation with representatives of Native American tribes and other interested people and entities. The project will restrict access to religious and culturally-significant sites in violation of the Religious Freedom Restoration Act.

Response

To date, nine Tribes have been contacted regarding the Rice Solar Project. The Fort Mojave Indian Tribe and the Ft. Yuma Quechan Tribe have sent representatives to the Project site on two occasions. On June 2, 2010, Ms. Linda Otero, Cultural Resources Director for the Ft. Mojave Indian tribe, visited the Project site; and on April 20, 2011, Mr. Manfred Scott, Cultural Committee member of the Ft. Yuma Quechan Tribe was dispatched by Bridget Nash, Quechan Tribal Historic Preservation Director to the site. No specific concerns have been cited by these representatives.

No religious or prehistoric culturally significant sites have been identified within the project area; the project will not obstruct access to any archaeological sites outside of the project area of potential effect (APE). Access from existing roads adjacent to the project area will not be closed off to the public. Areas east and south of the project area can be accessed via existing unmaintained, two-track roads. Areas to the north of the Project area can be accessed via Highway 62, and areas to the west accessed via Midland-Rice Road. The Final Archaeological Survey Report (Cultural Resources Inventory of the Rice Solar Energy Project, Riverside County, California) states that the cultural resource surveys conducted by CH2M Hill yielded no prehistoric sites within the newly designated APE, despite several field checks by WAPA Archaeologist Steve Tromly and BLM Archaeologist George Kline as well as from site visits by the aforementioned tribal cultural resources representatives. The prehistoric sites identified in the EIS will not be affected due to the elimination of the pre-existing transmission line fiber optic portion of the project

Tribal Interests

Issue Number: PP-CA-Rice-11-01-6

Organization: La Cuna de Aztlan Sacred Sites
Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

Alfredo A. Figueroa alerted the agency to the fact that there was a Memorandum of Understanding between La Cuna and BLM (i.e., a previously established consultation relationship). Yet, in addition to deficiencies with consultation directly with recognized tribes and tribal leaders, no consultation was initiated with known interested

people and entities. Rather than make further attempts to consult with Native Americans, Western's response to Mr. Figueroa was simply that "Western understands the potential impact of the Project on cultural resources and has consulted with tribes to gather information regarding the Project area." Altogether, the consultation done for this project (or the lack thereof) is insufficient for BLM to make a decision on this project.

Issue Number: PP-CA-Rice-11-01-6

Organization: La Cuna de Aztlan Sacred Sites Protection Circle, Californians for Renewable Energy

Protester: Mekaela Gladden

Issue Excerpt Text:

Tribal consultation was inadequate. In addition to deficiencies with consultation directly with recognized tribes and tribal leaders, no consultation was initiated with known interested people and entities. Altogether, the consultation done for this project (or the lack thereof) is insufficient for BLM to make a decision on this project

Summary

Consultation with Tribes, Tribal Leaders and other known interested people and entities was inadequate. Therefore, the BLM cannot make a fully-informed decision on this project.

Response

The BLM conducted adequate Tribal consultation for the Rice Solar Project EIS/CDCA Plan Amendment. To date, nine Tribes have been contacted regarding the Rice Solar Project. The Fort Mojave Indian Tribe and the Ft. Yuma Quechan Tribe have sent representatives to the Project site on two different occasions. On June 2, 2010, Ms. Linda Otero, Cultural Resources Director for the Ft. Mojave Indian tribe, visited the Project site, and on April 20, 2011, Mr. Manfred Scott, Cultural Committee member of the Ft. Yuma Quechan Tribe was dispatched by Bridget Nash, Quechan Tribal Historic Preservation Director to the site. No specific concerns have been cited by these representatives.

The MOU to which Mr. Figueroa refers is with the BLM Yuma, Arizona Office and specifically deals with the Colorado River Intaglios. The BLM, Palm Springs – South Coast Field Office has no such agreement on lands managed by that particular office. While it is alleged that no consultation was initiated with known interested people and entities, on January 18, 2011 a letter was received from Mr. Alfredo Figueroa of the La Cuna group stating his opposition to the project on the grounds that the plant will be constructed on pristine desert land. A response was given that the solar field will be constructed on the WWII-era Rice Army Airfield, located on significantly disturbed land, and that the transmission tie line will follow an existing road. This area has also been heavily impacted by ongoing recent recreational use, and the WWII Desert Training Center activities. Other interested parties and groups have expressed specific and general concerns and have made comments in the public EIS meeting held on January 5, 2011 (see page 86 of the FEIS). Members of the Desert Survivors—including Bob Ellis—met with the Palm Springs Field Office on January 6, 2011.
