

Director's Protest Resolution Report

**Soda Mountain Solar Project
Proposed Resource Management
Plan Amendment
(Barstow Field Office)/ Final
Environmental Impact Statement
California Desert Conservation Area Plan**

March 28, 2016



Contents

Reader’s Guide..... 3
List of Commonly Used Acronyms 4
Protesting Party Index..... 5
Issue Topics and Responses..... 6
NEPA - Purpose and Need..... 6
NEPA - Range of Alternatives..... 7
NEPA - Impacts Analysis - Cultural..... 11
NEPA - Impacts Analysis - Wildlife 14
NEPA - Impacts Analysis - Air 17
NEPA - Mitigation..... 19
NEPA - Response to Comments 20
NEPA - Consultation 22
FLPMA - Unnecessary or Undue Degradation..... 23
FLPMA - CDCA..... 24
FLPMA - Consistency with other Plans 26
National Historic Preservation Act 28
Secretarial Order 3330 31
BLM ACEC Policy 32
BLM Visual Resource Management Policy 34
BLM Wildlife Policy 37
Clarification 39

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 BLM's response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

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

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

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.

Summary

General statement summarizing the issue excerpts (optional).

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

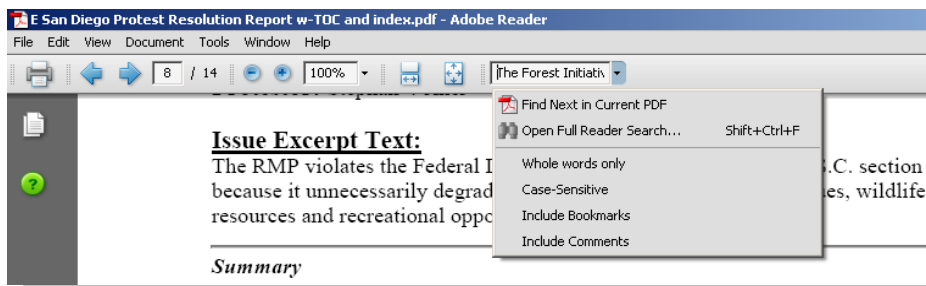
Response

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 site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

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

Protesting Party Index

Protester	Organization	Submission Number	Determination
Tom Budlong	Individual	PP-CA-SODA-15-01	Denied – Issues and Comments
Kevin Emmerich / Laura Cunningham	Basin and Range Watch	PP-CA-SODA-15-02	Denied – Issues and Comments
Dennis Patch	Colorado River Indian Tribes	PP-CA-SODA-15-03	Denied – Issues and Comments
David Lamfrom / Jeff Aardahl / Sarah Friedman / Ileene Anderson	National Parks Conservation Association, Defenders of Wildlife, Sierra Club, and Center for Biological Diversity	PP-CA-SODA-15-04, 4a, 4b, 4c	Denied – Issues and Comments

Issue Topics and Responses

NEPA - Purpose and Need

Issue Number: PP-CA-SODA-15-01-2

Organization: Individual

Protester: Tom Budlong

Issue Excerpt Text: In crafting its Purpose and Need statement the BLM ignored these NEPA and CEQ requirements. Instead the BLM used the applicant's Purpose and Need as the basis for its own. This fundamental flaw allowed BLM to, out-of-hand, omit evaluation of other reasonable alternatives.

restricting its statement of Purpose and Need to responding to the Project application and thereby eliminating consideration of alternatives that do not involve approving some version of the Project. In response to comments urging BLM to consider project alternatives that would have achieved goals related to renewable energy production at lower cost to cultural and biological resources, BLM explained that such alternatives "would not meet the BLM's Purpose and Need to respond to the Applicant's application for a ROW grant." FEIS at 4-15.

Issue Number: PP-CA-SODA-15-03-32

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: The Colorado River Indian Tribes object to BLM's ongoing practice of

This response illustrates how BLM's Purpose and Need is too closely aligned with the applicant's plans. If BLM acknowledges that it has the discretion to deny the application altogether- by analyzing and potentially adopting the no-project alternative-then it has the discretion to consider alternatives that put the proposed Project's impacts into context.

Summary:

The Soda Mountain Solar Proposed Resource Plan Amendment/Final Environmental Impact Statement (PRMPA/FEIS) does not comply with NEPA because the Purpose and Need statement is based on the applicant's objectives, subsequently impacting the BLM's suitable range of alternatives.

Response:

In accordance with NEPA, the BLM has discretion to establish the Purpose and Need for a proposed action (40 CFR 1502.13). The BLM must construct its Purpose and Need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The BLM's guidance further explains that for externally generated actions (such as a Right-of-Way application), the Purpose and Need must describe the BLM's Purpose and Need, and not that of the applicant (Id). In the case of a Right-of-Way (ROW) application, then, the BLM's action is to respond to the application by granting the ROW, granting the ROW with modifications (including alternative locations), or denying the Right-of-Way.

The Purpose and Need may not be so narrow that only one alternative becomes a foreordained outcome, and may not be so broad that an infinite number of possibilities could accomplish the goals of the project.

The BLM established the Purpose and Need for the Soda Mountain Solar PRMPA/FEIS, which is described on page 1-3, to meet its land use planning mandate under FLPMA. The Purpose and Need provided the appropriate scope to allow the BLM to analyze a reasonable number of

alternatives that represent alternative approaches for managing the public lands in the planning area.

In the subsequent section of the Soda Mountain Solar PRMPA/FEIS, it is noted that FLPMA mandates the BLM to manage lands under the principles of multiple use and sustained yield, and authorizes the BLM to issue ROW grants for systems for generation, transmission, and distribution of electric energy (Soda Mountain Solar FEIS, pg. 1-4).

Additionally, the BLM noted that the Purpose and Need for the Soda Mountain Solar PRMPA/FEIS conforms to the authorities assigned to the Department of the Interior (DOI) consistent with meeting objectives for energy transmission and renewable energy development. Examples of such authorities include: (1) Executive Order 13212, which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the production and transmission of energy in a safe and environmentally-sound manner, and (2) the President's Climate Action Plan, released on June 25, 2013, which sets forth a new goal for the DOI to approve 20,000 MW of renewable energy projects on the public lands by 2020. (Soda Mountain Solar PRMPA/FEIS, pgs. 1-3).

The BLM properly established the Purpose and Need for the Soda Mountain Solar PRMPA/FEIS.

NEPA - Range of Alternatives

Issue Number: PP-CA-SODA-15-01-6

Organization: Individual

Protester: Tom Budlong

Issue Excerpt Text: Chapter 2, Proposed Action and Alternatives, includes as alternatives only variations of the proposed action. It does not include other reasonable alternatives. By including only variations of the same project, the DEIS is in violation of NEPA. The selection of alternatives is too narrow.

Issue Number: PP-CA-SODA-15-01-8

Organization: Individual

Protester: Tom Budlong

Issue Excerpt Text: Reasonable Alternative Locations - Soda Mountain LLC's Form SF-299 submitted in March of 2013 describes its site selection process. Without explanation, the search for alternative sites was restricted to within 50 miles (5 million acres) of the proposed site – any possible site

within the vast territory beyond this 50 mile limit was consequently rejected. The DRECP is evaluating some 22.5 million acres, only 5 million of which are (presumably) in the 50 mile radius. The balance was not considered. The solar PEIS identified 285,000 acres in Solar Energy Zones in six western states. The solar PEIS identified another 19 million in variance areas, none of which were considered. Failure to consider these other areas, with no explanation or justification, appears arbitrary. As a minimum, to avoid the potentially huge effort of evaluating as much as 19 million acres, the applicant could have evaluated the 285,000 SEZ acres, a much smaller area than the 5 million acres that was evaluated.

Issue Number: PP-CA-SODA-15-02-10

Organization: Basin and Range Watch

Protester: Kevin Emmerich

Issue Excerpt Text: The BLM rejected the Distributed Generation Alternative without fully considering all of the details. In February, Basin and

Range Watch along with 200+ groups and individuals submitted a letter for the DRECP Draft Environmental Impact Statement requesting that the California Energy Efficiency Strategic Plan be considered as an alternative to destructive utility scale green energy projects on public and other lands. The California Energy Efficiency Strategic Plan (CEESP) is a Distributed Generation plan which is already California state law that just needs to be implemented with popular support. We believe it should be the priority plan for conservation before large tracts of land are chosen for development. The full letter that we submitted for the Desert Renewable Energy Conservation Plan can be seen here: http://www.drecp.org/draftdrecp/comments/LCunningham_KEmmerich_BPowers_SBowers_comments_2015-01-30.pdf.

Since NEPA requires BLM to consider alternatives outside of their jurisdiction, we believe BLM should list this as an alternative for the Soda Mountain Project.

Issue Number: PP-CA-SODA-15-02-6
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text: The BLM review of this project failed to fully look at reasonable alternatives. A Distributed Generation Alternative utilizing the California Energy Efficiency Strategic Plan was not even considered for this project. As the BLM is aware, the Soda Mountains Solar Project will have a full spectrum of immitigable impacts. It is the requirement of BLM under CEQA and the National Environmental Policy Act to consider the full range of alternatives to avoid these impacts.

Issue Number: PP-CA-SODA-15-02-8
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text: The BLM rejected a private lands alternative because the applicant claims they could not find a suitable private land location within 50 miles of the project site. There is nothing written in NEPA or CEQA requiring an alternative location to be 50 miles from an applicant's preferred location.

Issue Number: PP-CA-SODA-15-03-34
Organization: Colorado River Indian Tribes
Protester: Dennis Patch

Issue Excerpt Text: Similarly, BLM declined to consider an alternative that would site the Project in a Solar Energy Zone ("SEZ") on the grounds that the environmental review associated with Six State Solar PEIS specifically rejected the idea of limiting utility-scale solar development to areas within the SEZs (FEIS 4-16, 17). This response, while an accurate description of the SEZ review process, indicates nothing about whether it would be inappropriate to consider whether this Project would be better suited to siting within the SEZs. Put another way, the Six State Solar PEIS opted not to restrict development to lands within the SEZs, but it did not decide that it would be inappropriate to compare applications outside the SEZs with alternatives within the SEZs.

Issue Number: PP-CA-SODA-15-04-11
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: The project description in the FEIS is faulty given it is unlikely the project would use LADWP's Market Place-Adelanto 500 kV transmission line, yet the FEIS did not analyze any other alternatives.

Issue Number: PP-CA-SODA-15-04-13
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: Although the applicant reportedly considered more than 20 alternative project locations on public land, the DEIS did not specify their locations or provide any comparative analysis of the environmental impact relative to the proposed project. This information is critical to determine if there was prejudice in moving forward with an existing application site in contrast to finding a site with reduced environmental impact. The DEIS should have disclosed if these alternative sites overlap with designated Solar Energy Zones. The DEIS is deficient in this regard, and we

recommended that locations within Solar Energy Zones that are not encumbered by existing applications be identified and analyzed as alternative locations for the project.

Issue Number: PP-CA-SODA-15-04-14
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: We also commented that the statement from the applicant that it considered 20 alternative sites for the project does not itself constitute an analysis of alternative locations. We asked that the names and particulars of these locations be provided to the public. We also commented that we were not able to assess the validity of the assertion that 15 of the 20 alternative sites on public land were dismissed because they were encumbered by existing right of way grants or applications or other factors. In the absence of supporting information and an analysis in the FEIS, it was inappropriate for BLM to conclude that development of the project at any of the alternative

sites would not avoid or substantially lessen any significant effects of the Project” (DEIS, pages 2-39, 40, and repeated in the FEIS on page 2-40).

Issue Number: PP-CA-SODA-15-04-16
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: We also recommend in our comments on the DEIS that disturbed or fragmented lands within the Mojave Valley (Daggett Triangle) be considered as alternative locations for the proposed project. Nearly 4,000 acres of such lands in two separate units were identified as potential alternatives for the proposed Calico solar project in the Final Staff Assessment and Supplemental Staff Assessment for the Calico solar energy project published by the California Energy Commission in 2010. See: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?doctnumber=08-AFC-13>. These alternative sites were not analyzed in the FEIS and there is no indication they were considered.

Summary:

The NEPA document’s Range of Alternatives is inadequate because:

- the BLM did not consider the full range of alternatives to avoid environmental impacts;
 - the action alternatives are all variations of the proposed action;
 - the search for alternative sites was restricted to within 50 miles of the proposed project, with insufficient explanation or justification for this limitation;
 - the BLM rejected from detailed analysis a Distributed Generation Alternative – NEPA requires the consideration of alternatives outside agency jurisdiction;
 - rejection of private lands alternative because it was not within 50 miles from the applicant’s preferred location does not conform with NEPA;
 - adequate rationale was not provided for declining to consider an alternative in a Solar Energy Zone;
 - no alternatives were analyzed that would use transmission lines other than the LADWP Market Place-Adelanto 500 kV transmission line;
 - the lack of information on the 20 alternative locations considered but rejected by the applicant precludes the ability to consider other potential sites with reduced environmental impact, especially if they fell within Solar Energy Zones; and
 - a recommendation brought forward for alternative locations on disturbed or fragmented lands within the Mojave Desert was not considered.
-

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

Additionally, agencies are allowed to eliminate an alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if it is determined not to meet the Purpose and Need for the proposed action; determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3). The agency must also briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14).

The BLM developed a range of reasonable alternatives that meet the agency's Purpose and Need for the Soda Mountain Solar PRMPA/FEIS and that address resource issues identified during the scoping period. The Soda Mountain Solar PRMPA/FEIS analyzed in detail seven alternatives that considered a range of plan-amendment outcomes, including not amending the CDCA Plan, amending the CDCA Plan to identify the development footprint as suitable for solar energy use, and amending the CDCA Plan to identify the development footprint as not suitable for solar energy use (Soda Mtn. Solar Proposed PA/FEIS, pg. 2-2). This full spectrum of alternatives, described in Chapter 2 of the Soda Mountain Solar PRMPA/FEIS, also included multiple alternatives with smaller development footprint acreages.

In section 2.2 of the Soda Mountain Solar PRMPA/FEIS, there are eight criteria questions, based from NEPA and CEQA that were used to screen alternatives for the Proposed Action. As the BLM NEPA Handbook (§ 6.6.3) goes on to state, alternatives considered, but not analyzed further must be explained why they were eliminated. Beginning with Section 2.9, the Soda Mountain Solar PRMPA/FEIS explains the reasoning for limiting the site alternatives (2.9.1.1), eliminating potential private land sites (2.9.1.2) and degraded lands (2.9.1.3), and not analyzing in detail other types of renewable energy projects, including distributed generation (2.9.2).

Further, regarding concerns that the BLM did not fully consider other alternatives, the Soda Mountain Solar PRMPA/FEIS did address in Section 4.5.3.1 that in accordance with BLM's NEPA Handbook, a carefully crafted Purpose and Need can eliminate unnecessary analysis and delays in the process (Soda Mountain Solar PRMPA/FEIS, pgs. 4-11 to 4-17). For example, the BLM's involvement in this process is to consider granting a Right-of-Way (ROW) on public lands for energy use and undertaking a corresponding land use plan amendment, including with modifications, if applicable (Soda Mountain Solar PRMPA/FEIS, pg. 4-13).

The rationale for not considering an alternative in a Solar Energy Zone (SEZ) is explained in the FEIS, where the BLM notes that it considered a “pending” application for the purposes of the Western Solar Plan (Solar PEIS ROD), but is processing pending applications consistent with land use plan decisions and policies in place prior to the amendment from the Solar PEIS ROD (Soda Mountain Solar PRMPA/FEIS, p. 4-16).

During the scoping period and during the public comment period for the Draft RMPA/Draft EIS, the BLM received comments asking that the range of alternatives include an alternative in a SEZ. These comments, however, lacked specificity and failed to identify a specific SEZ or set of SEZ lands to be analyzed in detail. The Western Solar Plan, as approved in October 2012, included 17 SEZs in six different states, covering a total of about 285,000 acres, the closest of which is approximately 100 miles from the proposed Soda Mountain project site. The BLM was therefore unable to develop a specific alternative from the generalized comments provided.

One protester states that “it is unlikely the project would use LADWP’s Market Place-Adelanto 500 kV transmission line, yet the FEIS did not analyze any other alternatives”. The removal of the LADWP as a purchasing entity has no bearing on the ability to use the LADWP transmission lines. The LADWP potential Power Purchase Agreement is not needed in order for the Soda Mountain Solar Project to use the Market Place-Adelanto transmission line to transmit/supply energy to other market users or offtakers.

The BLM considered a range of reasonable alternatives in the Soda Mountain Solar PRMPA/FEIS in full compliance with NEPA. The BLM also properly considered all alternatives submitted by the public for the Soda Mountain Solar PRMPA/FEIS.

NEPA - Impacts Analysis - Cultural

Issue Number: PP-CA-SODA-15-03-11
Organization: Colorado River Indian Tribes
Protester: Dennis Patch

Issue Excerpt Text: This constriction of the cumulative impact analysis significantly downplays the Project’s impacts. The cultural resources in this part of the American Southwest are finite. They are also irreplaceable. While this Project concerns “only” 4,179 acres, when its impacts are combined with those of the myriad other projects in the region, the aggregate depletion and degradation of these resources is inarguably vast. The FEIS does not acknowledge, let alone take a hard look at, this issue.

Issue Number: PP-CA-SODA-15-03-5
Organization: Colorado River Indian Tribes
Protester: Dennis Patch

Issue Excerpt Text: The FEIS completely ignores impacts to other sites within visual range of the Project but outside the overly narrow APE. For example, the Project is situated near two playas (or ancient lakes). FEIS at 3.6-4 (noting that the Project is 4 miles west of Soda Lake Playa and 7 miles southwest of Silver Lake Playa). Dry lakes are hotspots for archaeological resources, as indigenous desert peoples lived and hunted in close proximity to these water sources. The FEIS explains that these nearby lakebeds contain a “large number of archeological sites” and that the Project might be visible from some of those sites (FEIS at 3.6-26).

Yet BLM declines to perform any analysis of impacts to these cultural resources because “they have not been formally evaluated ... and the BLM has made no formal findings regarding the potential landscape.” Now is the time to perform that analysis. NEPA requires BLM to take a “hard look” at the Project’s potential effects, not to bury its head in the sand by declining to analyze nearby resources.

Issue Number: PP-CA-SODA-15-03-7

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: The FEIS is unclear about exactly which resources within the APE are likely to be destroyed. The document merely states that “the Proposed Action would directly impact a total of 4 of the sites and 36 of the isolates through construction-related ground disturbance” (FEIS 3.6-26). Because the agencies have determined that the Arrowhead Trail Highway is an eligible resource, if it is one of the 4 affected sites then NEPA requires an analysis of the adverse impacts on this resource. BLM admits that the entire Arrowhead Trail Highway might be eligible for listing in the National Register or California Register, but concludes that the 4.5-mile portion within the Project site is “not a contributor” to eligibility (FEIS at 3.6-14). BLM does not elaborate on this conclusion. NEPA’s implementing regulations, however, require BLM to consider the degree to which the Project may adversely affect

“districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places” or may cause loss or destruction of “significant scientific, cultural, or historical resources” (40 CFR 1508.27(b)(8)). Indeed, if the “entire” Arrowhead Trail Highway is potentially eligible for listing, then damage or destruction of any portion could be significant or could imperil the eligibility of the remaining portions. As a result, BLM must analyze the Project’s impacts on this eligible resource.

Issue Number: PP-CA-SODA-15-03-9

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: BLM arbitrarily restricts its analysis of cumulative impacts to cultural resources to “Eastern San Bernardino County” (FEIS at 3.1-5 and 3.6-30). This scope ignores the regional transformation taking place in the ancestral homelands of Tribal members. Over the last several years, the Mojave Desert has been changed from a landscape that looked essentially as wild and untrammled as it did for the last several centuries to one pockmarked by utility scale renewable energy developments. By design, these developments tend to occupy large pieces of land and often draw the eye with bright lights or highly reflective materials arranged in striking geometric patterns.

Summary:

The analysis of potential impacts on cultural resources violates NEPA because:

- the cumulative impacts analysis downplays the project’s impacts on cultural resources in the region;
- the analysis fails to take a hard look at potential visual impacts on surrounding cultural resources, including on nearby playas; and
- the analysis fails to analyze the potential impacts on the Arrowhead Trail Highway, a resource eligible for listing on the National Register of Historic Places.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR

1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting this Soda Mountain Solar PRMPA/FEIS to the California Desert Conservation Area Plan, 1980, as amended.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Section 3.6 of the Soda Mountain Solar PRMPA/FEIS discloses the potential impacts to cultural resources. In a letter to the California State Historic Preservation Officer (SHPO), dated August 12, 2013, the BLM provided its formal determination of eligibility and findings of effect for all sites located in the Project Area of Potential Effect (APE), and the California SHPO submitted to the BLM a letter, dated November 4, 2013, concurring that the undertaking will cause no adverse effects to historic properties (Soda Mountain Solar PRMPA/FEIS, pg. 3.6-24). In regards to the Arrowhead Trail Highway, the BLM determined, and the California SHPO agreed, that while the Arrowhead Trail Highway as a whole may be eligible for the National Register of Historic Places, the segment within the APE is a non-contributing element given its lack of integrity.

The APE for the Project was defined as a 4,236-acre area that includes the 4,179-acre ROW application area and an additional 57 acres outside the ROW application area that could be disturbed if the Alternative B Razor Road realignment were approved (Soda Mountain Solar PRMPA/FEIS, pgs. 3.6-23 and 3.6-3). However, a pedestrian archaeological survey was conducted over a larger surface area of 7,124 acres, representing the initial ROW application acreage prior to acreage reductions made (Soda Mountain Solar PRMPA/FEIS, pgs. 3.6-23 and 3.6-13).

While tribal consultation is on-going, no cultural resources of significance to Indian tribes have been identified as a result of consultation efforts conducted as of the date of publication of the Soda Mountain Solar PRMPA/FEIS (See Amendment, pg. 3.6-12). The analysis recognizes that construction activities could unearth, expose, or disturb subsurface archaeological, historic, or Native American resources that may not have been apparent on the surface and that may be eligible for listing in the National Register of Historic Places (Soda Mountain Solar PRMPA/FEIS, pgs. 3.6-26 through 3.6-28). Mitigation Measures 3.6-1 through 3.6-3 would reduce impacts to these resources (Soda Mountain Solar PRMPA/FEIS, pg. 3.6-27).

Section 3.6.7 of the Soda Mountain Solar PRMPA/FEIS discloses the potential cumulative impacts to cultural resources. The geographic area of cumulative impacts analysis for cultural resources is broader than the Project area and study area, and includes the cultural resources, traditional use areas, and cultural landscapes located in eastern San Bernardino County. The BLM disclosed and recognized that “...the Project vicinity contains a significant archaeological and historical record that, in many cases, has not been well documented or recorded. Thus, there is the potential for the Proposed Action or an alternative and all ongoing and reasonably

foreseeable future development projects in the vicinity (including all projects summarized in Table 3.1-3 and shown on Figure 3.1-1) to inadvertently discover, unearth, expose, or disturb, and thereby damage, archaeological, historic, and Native American resources, the locations of which are unknown. Any number of these resources could be eligible for listing in the National Register or California Register (Soda Mountain Solar PRMPA/FEIS, p. 3.6-30).”

The BLM further recognizes that, “None of the archeological sites or isolates, once damaged or destroyed by the Project or other projects in the cumulative scenario, can be replaced. Damage to or destruction of archaeological sites or isolates would result in an adverse cumulative impact. A large number of prehistoric archaeological sites are located around the margins of Soda Playa and the Mojave River. The Proposed Action and other projects in the cumulative scenario would introduce industrial facilities into the area surrounding these sites, resulting in a change in the overall context of these sites and the overall landscape in which they are situated. Similarly, the introduction of industrial facilities into the area surrounding the National Register-eligible Mojave Road would result in a change in the historic setting of the resource.” (Soda Mountain Solar PRMPA/FEIS , pg. 3.6-31)

The FEIS associated with the Soda Mountain Solar PRMPA provides adequate analysis of potential impacts on cultural resources.

NEPA - Impacts Analysis - Wildlife

Issue Number: PP-CA-SODA-15-02-18
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text: The FEIS fails to cumulatively evaluate both the direct and cumulative impacts of the worst case scenario of declining water levels at Soda Springs and Zzyzx. The BLM should conduct a “Pumping Sensitivity Study” which should evaluate how declining water levels would impact the Mojave tui chub, desert bighorn sheep, water birds and all migratory birds.

Issue Number: PP-CA-SODA-15-04-18
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: The analysis of impacts to desert bighorn sheep is inadequate or incomplete because it is focused on maintaining opportunities for restoring connectivity into the North Soda Mountains and Avawatz Mountains. Missing is an

analysis of the effects of the project on the long-term viability of the existing population of desert bighorn sheep in the South Soda Mountains. The sheep population in the South Soda Mountains, estimated at approximately 50 to 100 individuals, is the result of a recent recolonization of suitable habitat, with a high probability that the source of the recolonization was the rapidly expanding population in the Cady Mountains to the west of the project area. The population in the Cady Mountains expanded from approximately 75 to 400 individuals after domestic cattle were removed from the Cady Mountain grazing allotment in about 1994.

Issue Number: PP-CA-SODA-15-04-20
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: Field studies in support of the NEPA analysis for the project focused on observing desert bighorn sheep over a limited timeframe in the spring of 2012. Such limited observations would fail to account for movements of

individuals between the South Soda Mountains and Cady Mountains, for example, which would most likely occur during the fall, winter and early spring seasons when temperatures are cooler.

The analysis in support of the FEIS fails to analyze the effects of the project on sheep movements between the Cady and South Soda Mountains and the long term viability of these herds in the event such movement is limited or curtailed due to the project.

Issue Number: PP-CA-SODA-15-04-21

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: Furthermore, the cumulative effects of the project combined with the off-road vehicle use occurring in the adjacent Razor Open Area on desert bighorn sheep and their movements to and from the South Soda Mountains is absent from the FEIS.

Summary:

The analysis of potential impacts on wildlife violates NEPA because:

- there is no analysis of the effects of the project on the long-term viability of the existing desert bighorn sheep population in the South Soda Mountains;
- observations of impacts to desert bighorn sheep movement are limited to too narrow a timeframe;
- there is no analysis of the cumulative effects of the project combined with off-road vehicle use occurring in the adjacent Razor Open Area on desert bighorn sheep and their movements to and from the South Soda Mountains; and
- there is no analysis of the direct and cumulative impacts of declining water levels on Mojave tui chub, desert bighorn sheep, water birds, and all migratory birds.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Soda Mountain Solar Proposed Plan Amendment.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and degree of change (impact) caused by the proposed action and alternatives (BLM Handbook, H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. NEPA regulations require the BLM to “insure professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” for meaningful evaluation of effects (40 CFR 1500.1(b)).

A land use planning-level decision, such as a plan amendment to permit a ROW, is broader in scope, does not directly result in any on-the-ground impacts, and does not consider project-

specific impacts. For this reason, analysis of land use plan alternatives is broader and qualitative rather than focused on the project-specific actions. The baseline data provided in the Soda Mountain Solar PRMA/FEIS provides the necessary basis to make an informed land use plan decision. The land use planning decision associated with the Soda Mountain Solar PRMPA/FEIS is to ascertain whether the CDCA Plan should be amended to grant the ROW based on suitability of the site for solar energy development (Soda Mtn. Solar Proposed PA/FEIS, pg. 2-2).

The affected environment and the current condition of the resident desert bighorn sheep population near the proposed project area are described in Section 3.4.2.3 of the Soda Mountain Solar PRMA/FEIS (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-16 – 3.4-19). The analysis describes the population trends, the essential habitat needs, and the impacts contributing to the decline in bighorn sheep populations.

Section 3.4.6 of the Soda Mountain Solar PRMA/FEIS discusses the potential impacts of a ROW on desert bighorn sheep. In regards to the impacts of the project on desert bighorn sheep when added to activity in the Razor OHV area, the analysis explains on page 3.4-42 that, “Once the Project is constructed, project-related noise and human activity are expected to be low, and associated primarily with panel washing and other maintenance activities. With the exception of recreational vehicle traffic on Razor Road used to access the nearby Razor Off-Highway Vehicle (OHV) area, the Project site is located in an area that receives minimal public use. Day-to-day activities on the Project site are not expected to be substantially greater as a result of vehicular use and human activity than what already occurs in the area; however, they would increase incrementally above existing conditions...”

The analysis in Section 3.4.6 then continues to discuss research that has determined that the “...presence of Project facilities within occupied bighorn sheep habitat have the potential to adversely affect regional sheep movement opportunities and locally reduce the availability of high quality seasonal forage areas within Soda Mountain Valley” (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-42).

The Soda Mountain Solar PRMPA/FEIS describes in Section 3.4.9 that residual impacts to desert bighorn sheep habitat would remain even with proposed design features, APMs, and mitigation measures (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-70 – 3.4-77). The mitigation measures to improve genetic diversity and improve connectivity with the South Soda Mountain bighorn sheep population and northern Avawatz Mountains are described in the Soda Mountain Solar PRMPA/FEIS as Mitigation Measures 3.4-3a through 3.4-e, and APM 75. The long-term viability of the desert bighorn sheep population may be improved through maintaining existing levels of connectivity and the potential for establishing a wildlife overpass across Interstate 15 at the northern end of the project area (Soda Mountain Solar PRMPA/FEIS, pp. 3.4-18).

The Soda Mountain Solar PRMPA/FEIS describes the survey methodology and results of desert bighorn sheep in Section 3.4.2.3 of the FEIS (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-16 – 3.419) and Appendix E. The BLM responded to comments regarding the survey methods in the Draft EIS and the summary response is provided in Section 4.5.3.2, Common Response 2:

Bighorn Sheep (Soda Mountain Solar PRMPA/FEIS, p. 4-18).

The BLM analyzed the potential direct, indirect, and cumulative impacts to groundwater supply and recharge in Section 3.19 of the Soda Mountain Solar PRMPA/FEIS. Section 3.19.4 described the analytical methodology for modeling groundwater storage and extraction (Soda Mountain Solar PRMPA/FEIS, pg. 3.19-21). The analysis of groundwater resource related impacts was based primarily on the technical studies provided in Appendix H of the Soda Mountain Solar PRMPA/FEIS. The affected environment assessment for groundwater resources including the Soda Mountain sub basin storage, estimated annual recharge, and groundwater use is provided in Section 3.19.2.3 of the Soda Mountain Solar PRMPA/FEIS (PRMPA/FEIS pgs. 3.19-5 – 3.19-10). The direct and indirect impacts to groundwater are detailed in Section 3.19.6.1 (Soda Mountain Solar PRMPA/FEIS, pgs. 3.19-28 – 3.19.40). The conclusion of the analysis demonstrated that the Soda Mountain sub basin aquifer is not in a state of overdraft (Soda Mountain Solar PRMPA/FEIS, pg. 3.19-10) and the reduction in groundwater outflow from project use would be minor, and very unlikely to affect levels at Soda Springs and Zzyzx sites (Soda Mountain Solar PRMPA/FEIS, pgs. 3.19-33 – 3.19-34).

The BLM conducted a groundwater modeling sensitivity analysis (Appendix H-4) to ascertain if potential overestimation of recharge and hydraulic conductivity in the groundwater flow model had occurred (Soda Mountain Solar PRMPA/FEIS, pg. 3.19-34). The results of the sensitivity analysis indicate that predicted reduction in groundwater flow and groundwater levels at Soda Springs were minimal under all modeled scenarios and demonstrate that the project would not affect the water bodies that support the Mohavie tui chub (Soda Mountain Solar PRMPA/FEIS, pg. 3.19-34). As explained in Section 3.4.2.3 of the Soda Mountain Solar PRMPA/FEIS, surface water is an essential factor for desert bighorn sheep, water birds, and migratory birds. The impacts of groundwater pumping in support of the proposed project would not affect intermittent surface waters which are based on precipitation.

The BLM complied with NEPA's requirements to analyze the environmental impacts of the proposed project to wildlife in the Soda Mountain Solar PRMPA/FEIS.

NEPA - Impacts Analysis - Air

Issue Number: PP-CA-SODA-15-02-13

Organization: Basin and Range Watch

Protester: Kevin Emmerich

Issue Excerpt Text: Air Quality: The FEIS claims that Valley Fever (Coccidioidomycosis) incidents are "extremely low" in San Bernardino County, but fails to acknowledge the complete cumulative scenario of the spread of this disease through the development of many industrial scale solar projects.

Issue Number: PP-CA-SODA-15-02-14

Organization: Basin and Range Watch

Protester: Kevin Emmerich

Issue Excerpt Text: The FEIS also fails to consider the potential health impacts fugitive dust could have on the community of Baker, 6 miles away, and the Desert Studies Center about 2 miles away.

Summary:

The Soda Mountain Solar PRMPA/FEIS fails to consider the potential air quality impacts on human health resulting from this proposed project.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting this Proposed Plan Amendment (PA) to the California Desert Conservation Area Plan, 1980, as amended.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Section 3.8 of the Soda Mountain Solar PRMPA /FEIS discusses Coccidioidomycosis, commonly known as valley fever. Valley fever is caused by the fungus *Coccidioides*, which grows in soils in areas of low rainfall, high summer temperatures, and moderate winter temperatures. These fungal spores become airborne when the soil is disturbed by winds, construction, farming, and other activities (Soda Mtn. Solar Proposed PA/FEIS, p. 3.8-5). San Bernardino County had 75 cases of valley fever in 2011 for an incidence rate of 3.4 cases per 100,000 persons (San Bernardino County Department of Public Health, 2013), which is relatively low compared to adjacent Kern County, which had an incidence rate of 305 cases per 100,000 persons (CDPH, 2011).

While the BLM acknowledges that fugitive dust generated during Project construction, maintenance, and decommissioning could expose workers to *Coccidioides* fungal spores that may be present in desert soils, it points out that compliance with health and safety guidelines, as well as the implementation of control measures required by MDAQMD Rule 403.2 and other applied measures designed to reduce fugitive dust would reduce the risk to workers and the public of contracting valley fever due to Project-related ground disturbance. Therefore, under the Proposed Action, it is not considered likely that there would be public health impacts associated with operation, maintenance, or decommissioning of a project in this area. (Soda Mountain Solar PRMPA/FEIS, pgs. 3.8-22 and 3.8-23)

The FEIS associated with the Soda Mountain Solar PRMPA provides adequate consideration of potential air quality impacts on human health.

NEPA - Mitigation

Issue Number: PP-CA-SODA-15-03-13

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: The FEIS relies heavily on the eventual drafting of a Cultural Resources Discovery and Monitoring Plan (“CRDMP”). However, this reliance improperly defers mitigation of impacts to cultural resources. Rather than conducting an analysis of potential mitigation measures now, when the public has an opportunity to comment in the NEPA “action- forcing” context, BLM postpones its mitigation planning until a later date. See, e.g., 40 CFR § 1502.1 (“The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.”); see also CEQA Guidelines § 15126.4 (prohibiting deferral of formulation of mitigation measures); *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645, 672 (2007) (deferring mitigation inhibits public understanding and involvement in environmental review).

Issue Number: PP-CA-SODA-15-04-22

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: Mitigation measures proposed for the project relative to bighorn sheep impacts emphasize development of water sources to entice bighorn to move into the North Soda Mountains by way of existing underpasses under Interstate 15. Numerous water sources are proposed in the North Soda Mountains as well as at underpasses at I-15. Monitoring of sheep movements is proposed as a form of adaptive management to determine if the mitigation measure of adding water sources has the desired effect.

In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, BLM must discuss the mitigation measures “in sufficient detail to ensure that environmental consequences have been fairly evaluated” (*Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992)). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must “analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485 US 439 (1988).

Summary:

The Soda Mountain Solar Proposed Plan Amendment/FEIS violates NEPA mitigation requirements by:

- deferring the formulation of mitigation measures to address impacts on cultural resources; and
- identifying mitigation measures for desert bighorn sheep, but failing to evaluate the effectiveness of the measures.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3)

rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The Soda Mountain Solar PRMP/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether and minimizes other potential future impacts. For example, the BLM Proposed Plan Amendment, based on Alternative B, excludes the northern portion of the proposed project from the development footprint, in order to protect potential future bighorn sheep connectivity opportunities in an area that is being considered as an area of critical environmental concern in the Draft Desert Renewable Energy Conservation Plan (Soda Mountain Solar PRMPA/FEIS, pgs. 1-8 and M-3). Section 3.4.9 of the Soda Mountain Solar PRMPA/FEIS discusses the potential residual impacts to wildlife, including bighorn sheep that would remain after the implementation of all proposed design features and mitigation measures.

The cultural impacts analysis concludes that, within the area of potential effect, there would be no construction-related direct or indirect impacts to resources that are listed in or eligible for listing in the National Register of Historic Places (Soda Mountain Solar PRMPA/FEIS, pg. 3.6-23). Currently, a Cultural Resources Discovery and Monitoring Plan (CRDMP) is being drafted as described in Mitigation Measure 3.6-2 to address the potential for inadvertent discovery, and will be submitted to the Tribes for comment. While Tribal consultation is on-going, no other issues were identified by Tribes as of the date of publication of the Soda Mountain Solar PRMPA/FEIS (Soda Mountain Solar PRMPA/FEIS, pg. 4-5).

The approval of the Soda Mountain Solar PRMPA to the CDCA would not directly result in any on-the-ground impacts. However, the Soda Mountain Solar PRMPA/FEIS provides clear procedures for the development and application of site-specific mitigation measures. For example, Section 3.6.8 of the Soda Mountain Solar PRMPA/FEIS lists project-specific measures to mitigate potential cultural resource impacts associated with construction, operation, maintenance, and decommissioning, and include the development of the CRDMP.

The Soda Mountain Solar PRMPA/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP Amendment.

NEPA - Response to Comments

Issue Number: PP-CA-SODA-15-04-16
Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: We also recommend in our comments on the DEIS that disturbed or fragmented lands within the Mojave Valley (Daggett Triangle) be considered as alternative locations for the proposed project. Nearly 4,000 acres of such lands in two separate units were identified as potential alternatives for the proposed Calico solar project in the Final Staff Assessment and Supplemental Staff Assessment for the Calico solar energy project published by the California Energy Commission in 2010. See: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?doctnumber=08-AFC-13>. These alternative sites were not analyzed in the FEIS and there is no indication they were considered.

Issue Number: PP-CA-SODA-15-04-24
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: The Agency ignores the comments of two cooperating agencies (NPS and CDFW) who recommend avoiding the 739 acres of bighorn sheep habitat within the project footprint. According to CDFW, “the project as proposed also reduces sheep access to foraging habitat and escape terrain. To reduce impacts to bighorn sheep the Department recommends placing the project perimeter fence 0.25 miles from the 10% slope and leaving Rasor Road in its existing location”

Summary:

The BLM violated NEPA by failing to respond to the following comments:

- Recommendations to consider disturbed or fragmented lands within the Mojave Valley as alternative locations.
- Cooperating agency recommendations to avoid the 739 acres of bighorn sheep habitat within the project footprint.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pg. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the Soda Mountain Solar PRMPA/FEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. The Soda Mountain Solar PRMPA/FEIS covered responses to considering alternative lands, including but not limited to those in the Mojave Valley, or any other alternative locations (Soda Mountain Solar PRMPA/FEIS, Section 4.5.3.1, p. 4-11 - 4-17). The Soda Mountain Solar PRMPA/FEIS covered responses to concerns over bighorn sheep conservation, including avoidance and any other applicable management scenarios (Soda Mountain Solar PRMPA/FEIS, Section 4.5.3.2, p. 4-17 to 4-21). Appendix K of Soda Mountain Solar PRMPA/ FEIS provides responses for each substantive comment received on the Draft Plan Amendment/DEIS.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

It is important for the public to understand that BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Soda Mountain Solar PRMPA/FEIS.

The BLM adequately responded to public comments on the Soda Mountain Solar Draft Plan Amendment/Draft EIS.

NEPA - Consultation

Issue Number: PP-CA-SODA-15-03-2

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: Thus, pursuant to NEPA and the NHPA, BLM must consult with the Colorado River Indian Tribes and other tribes to adequately identify and assess the Project's impacts to cultural resources. This consultation must include discussion

about the importance of identified cultural resources, the agency's assessment of impacts to archaeological sites and potential mitigation measures, and likely impacts to the Tribes' traditional trails and songscapes. BLM should have taken these actions prior to its release of the FEIS. Moreover, BLM may not defer any of these analyses until after the Project has been approved as it has done in the past; doing so shields the Project from public comment and review and risks the loss of irreplaceable cultural resources.

Summary:

The BLM violated NEPA by failing to consult with Tribes to assess potential impacts on cultural resources.

Response:

The National Environmental Policy Act (NEPA) establishes national policy for the protection and enhancement of the environment. Part of the function of the federal government in protecting the environment under NEPA is to "preserve important historic, cultural, and natural aspects of our national heritage" (42 USC §4331(b)) and to provide for public participation in the consideration of cultural resource issues, among others, during agency decision making (Soda Mountain Solar PRMPA/FEIS, pg. 3.6-10). Council on Environmental Quality regulations require that Federal agencies consult with Indian Tribes early in the NEPA process (40 CFR 1501.2(d)(2)).

As explained on pages 4-4 and 4-5 of the Soda Mountain Solar PRMPA/FEIS, the BLM has formally invited the following eight (8) federally-recognized Tribes to consult on the Project: Chemehuevi Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, San Manuel Band of Mission Indians, Timbisha Shoshone Tribe, and the Twenty-Nine Palms Band of Mission Indians. The BLM notified and formally requested consultation with the above-listed Indian Tribes by letter on August 21, 2012. The BLM Field Manager and staff have actively responded to all requests to meet with Tribal leaders and staff throughout project review. A summary of the major consultation milestones includes:

- August 21, 2012: The BLM notified and formally requested consultation with Indian Tribes, including the Colorado River Indian Tribes, at the earliest stages of Project planning and review;
- January 23, 2013: Representatives from Tribes, including the Colorado River Indian Tribes, attended a meeting and visit to the Project site;
- November 17, 2014: A site visit with representatives from the Fort Mojave Indian Tribe; and
- November 19, 2014 a meeting with representatives from the Chemehuevi Indian Tribe.

Currently, a Cultural Resources Discovery and Monitoring Plan is being drafted as described in Mitigation Measure 3.6-2 to address the potential for inadvertent discovery, and will be submitted to the Tribes for comment. While Tribal consultation is on-going, no other issues were identified by Tribes as of the date of publication of the Soda Mountain Solar PRMPA/FEIS (Soda Mountain Solar PRMPA/FEIS, pg. 4-5).

The BLM has complied with NEPA Tribal consultation requirements.

FLPMA - Unnecessary or Undue Degradation

Issue Number: PP-CA-SODA-15-02-2

Organization: Basin and Range Watch

Protester: Kevin Emmerich

Policy Management Act (FLPMA) which requires BLM to prevent unnecessary or undue degradation of public lands (43 USC § 1732(b)). The BLM has failed to show that it is necessary to approve the proposed large-scale solar industrial project on this site and that there are no other suitable alternative sites within the California Desert Conservation Area.

Issue Excerpt Text: The proposed plan amendment is not consistent with the Federal Land

Summary:

The Soda Mountain Solar PRMPA fails to comply with the Federal Land Policy and Management Act (FLPMA) requirements to prevent unnecessary or undue degradation of public lands by failing to show why approval of the large-scale project at this site is necessary.

Response:

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands”.

The Soda Mountain Solar PRMPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the Soda Mountain Solar PRMPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Soda Mountain Solar PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM does not consider activities that comply with applicable statutes, regulations, and BLM policy—and include appropriate mitigation measures—to cause unnecessary or undue degradation.

As explained in Section 1.2 and 1.3 of the Soda Mountain Solar PRMPA/FEIS, the Purpose and Need for the proposed action and subsequent analysis does adhere to the BLM’s principles of multiple use and sustained yield, as well as complying with the BLM’s policy guidance on solar energy development. (Soda Mountain Solar PRMPA/FEIS, pgs. 1-3 to 1-9).

The Soda Mountain Solar PRMPA/FEIS will not result in “unnecessary or undue degradation of the lands” as set forth in Section 302(b) of FLPMA.

FLPMA - CDCA

Issue Number: PP-CA-SODA-15-02-4
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text: The project would be completely inconsistent with the management requirements of the California Desert Conservation Area. In FLPMA Sec. 60I. [43 USC 1781] (a) The Congress finds that:

- (1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;
- (2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;
- (3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;
- (4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where

appropriate, of off-road recreational vehicles; Clearly, the Interior Department has already determined that approval of this project would not be consistent with the COCA which is why a Land Use Plan amendment is needed. But a land use plan amendment is inconsistent with public opinion. The COCA is popular and has been in existence since 1976.

Much of this project would be built on Class L Lands in the California Desert Conservation Area. Class L lands are defined:

“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.”

Any approved solar projects would be inconsistent with the BLM’s management objectives for Class L lands.

Issue Number: PP-CA-SODA-15-04-5
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: The BLM was required to

ensure that the proposed plan amendment would be consistent with the CDCA Plan as a whole but did not. *ONRCF v. Brong*, 492 F.3d 1120, 1025 (9th Cir. 2007) (“Once a land use plan is developed, ‘[a]ll future resource management authorizations and actions . . . shall conform to the approved plan’ (43 CFR § 1610.5-3(a)).”). Under the terms of the CDCA Plan, BLM is required to affirmatively protect State listed and BLM sensitive species from decline on public lands including listed species affected by this project (including the desert tortoise and the Mojave

tui chub) and sensitive species such as the desert bighorn (CDCA Plan at 16: “All state and federally listed species will be fully protected”; and at 28: “Manage those wildlife species officially designated as sensitive by the BLM for California and their habitats so that the potential for Federal or State listing is minimized”). Indeed, the CDCA Plan expressly requires that BLM “Include consideration of crucial habitats of sensitive species in all decisions so that impacts are avoided, mitigated, or compensated” (CDCA Plan at 28).

Summary:

The Soda Mountain Solar PRMPA/FEIS is not consistent with the management requirements for the California Desert Conservation Area (CDCA) in the following ways:

- It does not conform to the Multiple Use-Class L standards for the CDCA.
- It fails to include consideration of crucial habitats in all decisions so that impacts are avoided, mitigated, or compensated for desert tortoise, Mojave tui chub, and desert bighorn sheep.

Response:

Section 601 of the FLPMA (43 USC 1781(a)) describes the values and uses of the California desert environment and specifically provides for the use of resources in a “multiple use and sustained yield management plan to conserve these resources for future generations” (43 USC 1781(a)(4)). The Soda Mountain Solar PRMPA adheres to the land use planning process established by Section 202 of the FLPMA (43 USC 1712) and the Resource Management Planning regulations in 43 CFR 1610 in order to evaluate the proposed solar energy development project within the broader context of the CDCA Plan. The CDCA Plan details the requirements and process for conducting a plan amendment in Chapter 7 (CDCA Plan, pp. 119-122). The CDCA Plan acknowledges California’s long-term goals for solar and wind energy and provides for the future development of CDCA lands through plan amendment procedures to implement alternative energy programs in an environmentally sound manner (CDCA Plan, pg. 95).

The Soda Mountain Solar PRMPA is consistent with Multiple-Use Class Limited (MUC-L) designations in the CDCA Plan. The CDCA expressly provides for solar generation facilities within areas designated as MUC-L, stating that wind and solar development “may be allowed after NEPA requirements are met” (CDCA Plan, pg. 15).

The BLM clearly identified the need for the CDCA Plan amendment in response to the request for ROW to construct, operate, maintain, and decommission a solar PV facility in Section 1.2.1 of the Soda Mountain Solar PRMPA/FEIS (Soda Mountain Solar PRMPA/FEIS, pg. 1-3). The BLM described the conformance of the Soda Mountain Solar PRMPA/FEIS to the CDCA Plan in Section 1.3.3 and disclosed the proposed project site location within Multiple Use Classes L (Limited Use), M (Moderate Use), and I (Intensive Use) areas (Soda Mountain Solar PRMPA/FEIS, pg. 1-5). Section 3.9 presents the regional and local environmental settings (Soda Mountain Solar PRMPA/FEIS, pp. 3.9-1, to 3.9-2), the analytical methodology (Soda Mountain

Solar PRMPA/FEIS, pgs. 3.9-6 to 3.9-11), and consistency with the MUC guidelines of the CDCA Plan with the Soda Mountain Solar PRMPA (Soda Mountain Solar PRMPA/FEIS, pgs. 3.9-14 to 3.9-15).

The special management considerations proposed in the Soda Mountain Solar PRMPA/FEIS are consistent with the goals for wildlife and special status species under the CDCA Plan (CDCA Plan, p. 20). The proposed project area was not designated as one of the key Planned Management Areas for Fish and Wildlife in the CDCA Plan (CDCA Plan, Table 2). The Soda Mountain Solar PRMPA/FEIS correctly notes that the proposed project area is not located within a desert bighorn sheep Wildlife Habitat Management Area and would not result in loss of habitat or extirpation of the species in these critical areas (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-53).

The BLM complied with the amendment process established in the CDCA Plan through the development of the Soda Mountain Solar PRMPA/FEIS and complying with the land use planning regulations in 43 CFR 1610. The proposed solar energy project is allowable within the management objectives of the MUC-L guidelines.

FLPMA - Consistency with other Plans

Issue Number: PP-CA-SODA-15-03-44

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: For commercial solar energy facilities proposed within two miles of the Mojave National Preserve boundaries, the local zoning ordinance requires that facilities do not become “a predominant visual feature of, nor substantially impair views from, hiking and backcountry camping areas within the National Preserve.” San Bernardino, Cal., Ordinance Amending Chapter 84.29, Renewable Energy Generation Facilities, and Chapter 810.01, Definitions of the San Bernardino County Development Code, Relating to the Regulation of Commercial Solar Energy Generation Facilities (Dec. 17, 2013), § 3(c)(26).

Issue Number: PP-CA-SODA-15-04-2

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: The FLPMA requirement that BLM’s management of public lands be coordinated and ‘harmonious’ extends to those management obligations of other federal agencies, as well as State and local governments:

“...to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located” (43 USC 1712 (c)(9)).

Based on comments submitted by the Superintendent of the Mojave National Preserve to the BLM on the DEIS (memorandum dated March 3, 2014) and on the FEIS (memorandum dated April 10, 2015), it is evident that the preferred alternative will result in significant adverse impacts to the lands and resources in the Mojave National Preserve. Despite BLM’s numerous coordination meetings with the Superintendent and staff of the Preserve, BLM’s selection of the preferred alternative will be contrary to provisions of FLPMA relative to management of public lands being harmonious with management of lands and resources in the Preserve.

Summary:

The Soda Mountain Solar PRMPA/FEIS violates FLPMA requirements related to consistency with existing state, local, and regional plans in the following ways:

- It does not conform to San Bernardino County Ordinances related to visual features in proximity of the Mojave National Preserve.
- It does not conform to the management obligations for the Mojave National Preserve.

Response:

Section 202(c)(9) of FLPMA requires that “to the extent consistent with the laws governing the administration of the public lands, [the Secretary shall] coordinate the land use inventory, planning, and management activities of or for such lands with land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located...” Section 202(c)(9) further states that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to Federal, state, local, and Tribal plans that are germane to the development of the Soda Mountain Solar PRMPA/FEIS. The BLM has worked closely with state, local, and Tribal governments during the preparation of this Plan Amendment. San Bernardino County is the state lead on this project as the Lead Agency under the California Environmental Quality Act, which governs the Environmental Impact Report and project-level permitting (Soda Mountain Solar PRMPA/FEIS, pgs. 1-1, 1-9, and 1-11). The National Park Service (NPS) has acted as a cooperating agency in the preparation of the proposed plan amendment, and Section 4.1.3 describes the coordination process between BLM and NPS (Soda Mountain Solar PRMPA/FEIS, pg. 4-2). The BLM will discuss why any remaining inconsistencies between the Soda Mountain Solar Project and the relevant local, state, and Tribal plans cannot be resolved in the Record of Decision for the Approved Plan Amendment to the CDCA for the Soda Mountain Solar PRMPA/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Section 3.4.3, “Applicable Laws, Regulations, Plans, and Standards” of the Soda Mountain Solar PRMPA/FEIS (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-20 – 3.4-24). The BLM identified elements of the San Bernardino County General Plan that were relevant to this analysis in Section 3.4.3.3 (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-24). The regulations and resources of the Mojave National Preserve General Management Plan were addressed in the analysis of the proposed plan amendment in Section 3.13 (Soda Mountain Solar PRMPA/FEIS, pgs. 3.13-1 – 3.13-21).

On December 17, 2013, the San Bernardino County Board of Supervisors adopted an ordinance amending Chapter 84.29 of the County Development Code. This ordinance states, “For

proposed facilities within two (2) miles of the Mojave National Preserve boundaries, the location, design, and operation of the proposed commercial solar energy facility will not be a predominant visual feature of, nor substantially impair views from, hiking and backcountry camping areas within the National Preserve.” Neither San Bernardino County nor the State of California Governor’s Office have raised any concerns to the BLM related to this ordinance.

For the analysis of visual impacts to the Mojave National Preserve, the BLM collaborated with the NPS and added additional key observation points (KOP) per NPS request. Section 3.18.6 of the PRMPA/FEIS discusses this visual impacts analysis, and explains that “there is no point within the Preserve from which the entire Project site would be visible, though large areas within the Preserve would potentially afford views of some portions of the solar array areas and/or the substation site. However, the combined effect of distance and atmospheric conditions would mute the detail and contrast of Project features against the backdrop of the Soda Mountains.” (Soda Mountain Solar PRMPA/FEIS, p. 3.18-29) Furthermore, the BLM Proposed Plan Amendment in the targeted Soda Mountain Solar PRMPA/FEIS (based on Alternative B) excludes the area north of I-15 from the development footprint suitable for solar energy use, and therefore avoids visual impacts from multiple KOPs within the Preserve (Soda Mountain Solar PRMPA/FEIS, pgs. 3.18-29 – 3.18-32). KOPs 13 and 14 were identified as the most important locations from the NPS perspective, and are primarily used by dispersed recreational users at a rate of possibly two visitors per year (Soda Mountain Solar PRMPA/FEIS, p. 3.18-16). It is important to note, however, that because KOPs 13 and 14 lie in an area where public access potentially may impact the presence of bighorn sheep, Preserve staff have indicated a desire to avoid encouraging human access into these mountains (Soda Mountain Solar PRMPA/FEIS, pgs. 3.18-30).

The BLM satisfied FLPMA’s consistency requirement in its preparation of the Soda Mountain Solar PRMPA/FEIS.

National Historic Preservation Act

Issue Number: PP-CA-SODA-15-03-2

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: Thus, pursuant to NEPA and the NHPA, BLM must consult with the Colorado River Indian Tribes and other tribes to adequately identify and assess the Project’s impacts to cultural resources. This consultation must include discussion about the importance of identified cultural resources, the agency’s assessment of impacts to archaeological sites and potential mitigation measures, and likely impacts to the Tribes’ traditional trails and songscapes. BLM should have taken these actions

prior to its release of the FEIS. Moreover, BLM may not defer any of these analyses until after the Project has been approved as it has done in the past; doing so shields the Project from public comment and review and risks the loss of irreplaceable cultural resources.

Issue Number: PP-CA-SODA-15-03-24

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: The FEIS states that on January 23, 2013, “[t]ribes attended a meeting and visit to the Project site” (FEIS at 4-5). Such informational meetings do not satisfy the

requirements of the NHPA. See *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept of Interior*, 755 F.Supp.2d 1104, 1119 (S.D. Cal. 2010) (“While public informational meetings, consultations with individual tribal members, meetings with government staff or contracted investigators, and written updates are obviously a helpful and necessary part of the process, they don’t amount to the type of ‘government-to-government’ consultation contemplated by the regulations.”). BLM must do more than merely provide information to Tribal members to satisfy its government-to- government consultation mandate. The Colorado River Indian Tribes is a sovereign nation, therefore, true consultation takes place via one-on-one meetings with Tribal Council.

Issue Number: PP-CA-SODA-15-03-4

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

Issue Excerpt Text: The FEIS defines the Area of Potential Effects (“APE”) too narrowly. According to NHPA’s implementing regulations, the APE is the “geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use associated review proceedings were begun prior to December 19, 2014, this letter will continue to refer to the earlier codification of historic properties, if such properties

exist” (FEIS 3.6-3, citing 36 CFR § 800.16(d) (emphasis added)). Yet the FEIS for this Project limits the APE to the 4,179-acre ROW application and an additional 57 acres outside the ROW that might be impacted if the Alternative 8 is approved. These areas represent land that will be directly impacted by the Project. For example, BLM’s literature review and records search revealed sixteen recorded cultural resources- the majority of which were prehistoric rock and linear features “such as cleared circles, rock alignments, and trail segments” (FEIS 3.6-13). However, only one of these resources was within the BLM’s narrowly defined APE - a portion of the Arrowhead Trail Highway. Pedestrian archaeological surveys of the Project area yielded “12 archeological sites and 77 isolates” of which only 5 sites and 52 isolates were located within the APE.2 !d. The FEIS limits its analysis to those resources falling inside the APE, and summarily omits any further reference to the dozens of identified resources that exist near the Project site. These resources, given their proximity to the Project site, are candidates for likely indirect impacts from the Project. The “trail segments,” for example, are likely to have cultural significance to the Colorado River Indian Tribes. FEIS at 3.6-13. BLM must follow NHPA’s implementing regulations and include areas containing historic properties- such as trail segments and culturally-significant vistas- that could be indirectly impacted by the presence of a nearby utility-scale energy project.

Summary:

The Soda Mountain Solar Proposed Plan Amendment/FEIS violates the National Historic Preservation Act (NHPA) by:

- failing to conduct adequate consultation with tribal representatives to discuss the importance of and potential impacts to archeological and historic cultural resources within and near the proposed project location;
- defining the Area of Potential Effects too narrowly; and
- failing to provide one-on-one meetings with Tribal Council, as required by the Government-to-Government consultation requirements of NHPA.

Response:

The National Historic Preservation Act (54 USC § 300101 et seq.) is the principal federal law addressing historic properties. Section 106 (54 USC § 306108) of the NHPA requires a federal agency with jurisdiction over a proposed federal action (referred to as an “undertaking” under the NHPA) to take into account the effects of the undertaking on historic properties, and to provide the Advisory Council on Historic Preservation an opportunity to comment on the undertaking.

The Section 106 process does not require the preservation of historic properties; instead, it is a procedural requirement mandating that federal agencies take into account effects to historic properties from an undertaking prior to approval. The steps of the Section 106 process are accomplished through consultation with the State Historic Preservation Officer (SHPO), federally recognized Indian tribes, local governments, and other interested parties.

The National Register of Historic Places was established by the NHPA, as “an authoritative guide to be used by federal, state, and local governments, private groups and citizens to identify the Nation’s cultural resources and to indicate what properties should be considered for protection from destruction or impairment” (36 CFR 60.2). The National Register recognizes both historical-period and prehistoric archaeological properties that are significant at the national, state, and local levels. As indicated in the NHPA, properties of traditional religious and cultural importance to a Tribe are eligible for inclusion in the National Register.

Section 3.6 of the Soda Mountain Solar PRMPA/FEIS discloses the potential impacts to cultural resources. In a letter to the California State Historic Preservation Officer (SHPO), dated August 12, 2013, the BLM provided its formal determination of eligibility and findings of effect for all sites located in the Project Area of Potential Effect (APE), and the California SHPO submitted to the BLM a letter, dated November 4, 2013, concurring that the undertaking will cause no adverse effects to historic properties (Soda Mountain Solar PRMPA/FEIS, pg. 3.6-24).

The APE for the Project was defined as a 4,236-acre area that includes the 4,179-acre ROW application area and an additional 57 acres outside the ROW application area that could be disturbed if the Alternative B Razor Road realignment were approved (Soda Mountain Solar PRMPA/FEIS, pgs. 3.6-23 and 3.6-3). However, a pedestrian archaeological survey was conducted over a larger surface area of 7,124 acres, representing the initial ROW application acreage prior to acreage reductions made (Soda Mountain Solar PRMPA/FEIS, pgs. 3.6-23 and 3.6-13).

As explained on pages 4-4 and 4-5 of the Soda Mountain Solar PRMPA/FEIS, the BLM has formally invited the following eight (8) federally recognized Tribes to consult on the Project: Chemehuevi Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, San Manuel Band of Mission Indians, Timbisha Shoshone Tribe, and the Twenty-Nine Palms Band of Mission Indians. The BLM notified and formally requested consultation with the above-listed Indian Tribes by letter on August 21, 2012. The BLM Field Manager and staff have actively responded to all requests to meet with Tribal leaders and staff throughout project review. A summary of the major consultation milestones includes:

- August 21, 2012: The BLM notified and formally requested consultation with Indian Tribes, including the Colorado River Indian Tribes, at the earliest stages of Project planning and review;
- January 23, 2013: Representatives from Tribes, including the Colorado River Indian Tribes, attended a meeting and visit to the Project site;

- November 17, 2014: a site visit with representatives from the Fort Mojave Indian Tribe; and
- November 19, 2014 a meeting with representatives from the Chemehuevi Indian Tribe.

Currently, a Cultural Resources Discovery and Monitoring Plan is being drafted as described in Mitigation Measure 3.6-2 to address the potential for inadvertent discovery, and will be submitted to the Tribes for comment. While Tribal consultation is on-going, no other issues were identified by Tribes as of the date of publication of the Soda Mountain Solar PRMPA/FEIS (Soda Mountain Solar PRMPA/FEIS, pg. 4-5).

The BLM has complied with the National Historic Preservation Act.

Secretarial Order 3330

Issue Number: PP-CA-SODA-15-04-3
Organization: National Parks Conservation Association
Protester: David Lamfrom

contradicts the provisions in Secretarial Order 3330 to "...use a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region...and to avoid potential environmental impacts from projects through steps such as advanced landscape-level planning that identifies areas suitable for development because of low or relatively low natural and cultural resource conflicts."

Issue Excerpt Text: Furthermore, as noted by the Superintendent in the April 10, 2015 memorandum, BLM's preferred alternative

Summary:

The Soda Mountain Solar PRMPA/FEIS does not conform with the requirements of Secretarial Order 3330 to facilitate investment in key conservation priorities and to avoid potential environmental impacts from projects.

Response:

The purpose of the Department of Interior (DOI) Secretarial Order 3330 was to establish a Department-wide mitigation strategy to ensure consistency and efficiency in the review and permitting of infrastructure development projects and in conserving the Nation's valuable natural and cultural resources.

The DOI has significant review and permitting responsibilities over infrastructure development projects both on and off public lands. In executing those duties, the Department seeks to avoid potential environmental impacts from projects through steps such as advanced landscape-level planning that identifies areas suitable for development because of low or relatively low natural and cultural resource conflicts. Where impacts cannot be avoided altogether, Secretarial Order 3330 requires that the DOI work to ensure that projects minimize impacts to the extent practicable. Finally, for impacts that cannot be avoided or effectively minimized, the DOI should seek ways to offset or compensate for those impacts to ensure the continued resilience and viability of our natural resources over time. (Sec. Order 3330, pg. 2, October 31, 2013)

As explained in the Soda Mountain Solar PRMPA/FEIS, the site plan has been modified to avoid major drainage washes, to maintain corridors for wildlife movement, and to minimize conflicts with recreational uses (Soda Mountain Solar PRMPA/FEIS, pg. 2-4). Additional mitigation measure, including compensatory mitigation, are also included and discussed in multiple resource sections of Chapter 3 of the Soda Mountain Solar PRMPA/FEIS.

The BLM has complied with the requirements of Secretarial Order 3330.

BLM ACEC Policy

Issue Number: PP-CA-SODA-15-02-12
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text: The BLM failed to consider a No Action Alternative that designates the entire region as an Area of Critical Environmental Concern. Since the Soda Mountain Valley has been nominated for ACEC status under two Land Use Plans, this alternative would be legal as well as popular.

Issue Number: PP-CA-SODA-15-04-44
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: According to BLM Manual 1613, the evaluation of ACEC nominations must determine if an area meets specific criteria for both relevance and importance. If an ACEC nomination meets at least one criterion under relevance and importance, the nomination must be considered under at least one alternative in the proposed amendment to the applicable resource management plan. The BLM acknowledges that the ACEC nomination meets the criterion for consideration, but offers an inadequate – and likely inaccurate – rationale for dismissing the ACEC nomination.

According to the BLM’s review of the NPCA

nomination for an ACEC in the Soda Mountains area (FEIS, Appendix M), the nomination meets criteria for both relevance and importance. However, the FEIS does not consider establishment of the ACEC (wholly or partially) in any of the alternatives of the FEIS. Appendix M of the FEIS inaccurately concludes that no further consideration of the NPCA’s ACEC nomination is needed because only the “northernmost portion of the nomination area that includes the intersection of Interstate 15 (I-15) and Blue Bell Mine Road/Zzyzx Road and portions of the north and south Soda Mountains close to the highway meets both the criteria of relevance,” and that “[t]his area already is under consideration as a proposed ACEC as part of the Preferred Alternative of the draft Desert Renewable Energy Conservation Plan (DRECP), for which a Draft Environmental Impact Statement and Environmental Impact Report was issued in September 2014 (California Energy Commission et al., 2014)” (Appendix M, and FEIS page 1-9). No alternative in the DRECP would designate lands immediately south of Interstate 15 as an ACEC. Alternative 2 of the DRECP would designate the lands as NLCS, although the NLCS lands would not necessarily be managed for the conservation of bighorn sheep. BLM erred in concluding that the area meeting the relevance and importance criteria is “already under consideration as a proposed ACEC” in the draft DRECP because it does not propose ACEC designation and protection measures for the portion of the Soda Mountains south of I-15.

Summary:

The BLM failed to consider a proposal for a regional ACEC.

Response:

Section 202(c)(3) of the FLPMA mandates that the BLM give priority to the designation and protection of ACEC's in the development and revision of land use plans. The BLM's planning regulations (43 CFR 1610.7-2) establish the process and procedural requirements for the designation of ACEC's in resource management plans and in plan amendments. The public has an opportunity to submit nominations or recommendations for areas to be considered for ACEC designation. Nominations may be made at any time and must receive a preliminary evaluation to determine if they meet the relevance and importance criteria, and, therefore, warrant further consideration in the planning process..." (BLM Manual Section 1613.41). If a planning effort is not underway that can consider nominated areas, the authorized officer must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met, and if so, must initiate either a plan amendment to further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning (BLM Manual Section 1613.21E).

The BLM has been preparing this targeted Plan Amendment and EIS for the Soda Mountain Solar Project during an on-going resource management plan revision called the Desert Renewable Energy Conservation Plan (DRECP) that addresses approximately 22.5 million acres of federal and non-federal land in the Mojave and Colorado deserts, including the area of the proposed Soda Mountain Solar Project. The Draft DRECP Preferred Alternative proposes to designate the area north of I-15 in the Soda Mountains Valley, including those portions of the Soda Mountain Solar Project site north of I-15, as the Soda Mountains Expansion ACEC. Given that the draft DRECP is already analyzing this proposed ACEC, the BLM Proposed Plan Amendment in the targeted Soda Mountain Solar PRMPA/FEIS (based on Alternative B) excludes the area north of I-15 from the development footprint suitable for solar energy use, and thus avoids impacts to the proposed ACEC (Soda Mountain Solar PRMPA/FEIS, pg. 1-7 and 1-8).

The BLM received a nomination by the National Parks Conservation Association for lands encompassing the Project area to be considered as an ACEC in March 2015. Pursuant to BLM Manual 1613, an evaluation of the nominated area was conducted by the BLM interdisciplinary team, and the team's evaluation report is provided in Appendix M of the Soda Mountain Solar PRMPA/FEIS. The BLM interdisciplinary team determined that only the northernmost portion of the nomination area meets the relevance and importance criteria for an ACEC as described in Manual 1613. This northern portion that meets the relevance and importance criteria is already under consideration as part of the Draft DRECP's proposed Soda Mountains Expansion ACEC (Soda Mountain Solar PRMPA/FEIS, pg. 1-9 and M-3). As mentioned in the previous paragraph, the BLM-preferred alternative in the targeted Proposed Plan Amendment/FEIS for the Soda Mountain Solar Project (i.e., Alternative B) excludes the area north of I-15 from the Right-of-Way permit for the project, and thus avoids impacts to this proposed ACEC (Soda Mountain Solar PRMPA/FEIS, pg. 1-8).

The Soda Mountain Solar PRMPA/FEIS has complied with BLM ACEC policy.

BLM Visual Resource Management Policy

Issue Number: PP-CA-SODA-15-02-16

Organization: Basin and Range Watch

Protester: Kevin Emmerich

Issue Excerpt Text: The BLM failed to evaluate the entire area from a Class I VRM perspective. The project would be visible from most distance zones, many of which are known for high conservation value.

Issue Number: PP-CA-SODA-15-04-32

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: In assigning a sensitivity level of medium to the project area, the BLM focused solely on the level of recreation use and ignored the other listed indicators of public concern. For example, BLM ignored the fact that the project site is located adjacent to the Preserve, whose purpose includes preserving and protecting scenic viewsheds and which receives hundreds of thousands of visitors a year. BLM also did not adequately consider the project area's proximity to designated Wilderness Areas.

While both the "type of use" and "public interest" factors for the project site are rated as high, these factors are ignored in assigning the visual sensitivity level. These other factors should have been considered:

Factor 1 - type of users – states that "[r]ecreational sightseers may be highly sensitive to any changes in visual quality." In other words, this factor recognizes that the visual sensitivity rating should not be entirely contingent upon the number of users an area receives. Factor 3 – public interest – takes into account the concerns of local, state, and national groups, as expressed through instruments such as land-use plans. Here, both San Bernardino County and the Mojave National Preserve's land use plans express concern for preserving the scenic qualities of the Preserve.

Factor 4 – adjacent land uses – states that the "interrelationship with land uses in adjacent lands can

affect the visual sensitivity of an area." The FEIS does not explain why BLM chose to ignore the scenic importance of the Preserve when it rated the "adjacent land use" of the project site as low. Factor 5 – special areas – "frequently require special consideration of the visual values" of Natural Areas, Wilderness Areas, or Wilderness Study Areas." The Mojave National Preserve contains natural areas and Wilderness Areas.

Each of the five factors, above, must be considered in assigning a VSL rating. Here, BLM does not take all five factors into consideration and instead assigns the project site a VSL rating of medium based entirely on the amount of use, failing to account for the fact that the Preserve and Wilderness areas are also directly adjacent to the project site.

Issue Number: PP-CA-SODA-15-04-34

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: The FEIS assigns a Scenic Quality Rating of medium to the Project site, but it fails to explain the basis for its numeric rating. The scenic quality rating criteria consists of Landform, Vegetation, Water, Color, Adjacent Scenery, and Scarcity. The rating should give particular emphasis to the Adjacent Scenery criterion, which measures the degree to which scenery outside the scenery unit being measured (e.g., the project site) enhances the overall impression of the scenery unit.

Issue Number: PP-CA-SODA-15-04-36

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: The FEIS gives scant analysis to the distance zones of the project site, simply stating that, "[a]ccording to the VRI...all portions of the Project site are within the foreground/middleground zone because I-15 and other public routes of travel are located within a distance of 5 miles." First, the FEIS does not explain how this "foreground/middleground zone" analysis

affects the VRI rating. Second, it fails to acknowledge and analyze the implications of the Preserve being adjacent to the project site.

Issue Number: PP-CA-SODA-15-04-37

Organization: National Parks Conservation Association

Protester: David Lamfrom

Issue Excerpt Text: The BLM's decision to classify the project area as Class III is not appropriate because the site lies immediately adjacent to the Preserve and Wilderness Areas. The BLM must

consider the visual values of the areas surrounding the Project site. "For example, highly scenic areas which need special management attention may be designated as scenic Areas of Critical Environmental Concern and classified as VRM Class I based on the importance of the visual values." The Preserve contains numerous unique features, including the world's largest and densest forest of Joshua trees, tall sand dunes, and volcanic cinder cones that, collectively, comprise an ecosystem of biological diversity. Consequently, the BLM should have considered classifying the project site as VRM Class I.

Summary:

Visual Resources were not appropriately addressed in the Soda Mountain Solar PRMPA/FEIS because:

- the BLM failed to evaluate the entire area from a VRM Class I perspective, given its proximity to areas of high conservation value; and
- important factors were ignored when assigning sensitivity values.

Response:

BLM regulations and policy in the FLPMA (43 USC 1701), and the BLM Land Use Planning Handbook (H-1601-1 Appendix C, p. 11), require the BLM to protect the quality of scenic resources on public lands and manage scenic resources in accordance with the Visual Resource Management (VRM) objectives (management classes). The sections of FLPMA relevant to visual and scenic resources are:

- Section 102(a)(8): Declares that it is the policy of the United States that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values."
- Section 103(c): Identifies "scenic values" as one of the resources for public management.
- Section 201(a): States that "the Secretary shall prepare and maintain on a continuing basis and inventory of all public lands and their resources and other values (including...scenic values)."
- Section 505(a): Requires that "Each Right-of-Way shall contain terms and conditions which will...minimize damage to the scenic and esthetic values."

The BLM must manage visual resource values through the VRM system which designates VRM management classes based on an inventory of visual resources and management considerations for other land uses. This process is described in detail in BLM Handbook H-8410-1, BLM Manual 8400, and BLM Handbook H-8341-1. In addition, Washington Office-Instruction Memorandum 2009-167 details the proper implementation of the VRM system with regard to renewable energy.

Public lands are inventoried through a process that assigns one of four visual resource inventory (VRI) classes through composite evaluation of three categories: scenic quality, sensitivity level, and delineation of distance zones. VRI classes are informational in nature and provide the basis for considering visual values in the Land Use Plan process (BLM Handbook H-8410-1, V.A.1). VRM classes are based on the VRI values and have management objectives that establish the threshold of acceptable visual change as land use plan decisions (BLM Handbook H-8410-1, I.A.). These VRM objectives provide the standards to which implementation-level actions must conform when determining visual impacts and mitigation measures to minimize adverse visual impacts. BLM Handbook H-8431-1 provides guidance to evaluate proposed projects and determine whether visual disturbance conforms to the land use plan approved VRM objectives.

The Soda Mountain Solar PRMPA/FEIS references an existing VRI conducted in the 2010 time frame for all BLM-administered lands within the Barstow Field Office, including the area of the Proposed Action (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-7). This VRI was conducted in accordance with the procedures in BLM Handbook H-8410-1, Visual Resource Inventory (Soda Mountain Solar PRMPA/FEIS, pg. 4-34). According to the Barstow Field Office VRI, one scenic quality rating unit covers the whole project area. The rating was determined based on seven key factors, which were evaluated from four Inventory Observation Points (IOPs 34, 35, 36, and 37). For the entire unit, the inventory and mapping identified a Scenic Quality Rating of B (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-7). Section 3.18.2.5 of the Soda Mountain Solar PRMPA/FEIS, pg. 3.18-7, includes a table disclosing the rationale for the scenic quality rating based on each of seven key factors.

The Barstow Field Office VRI (2010 time frame) also assigned sensitivity ratings to the inventoried area. As with scenic quality, sensitivity determination is unit based and are termed Sensitivity Level Rating Units (SLRU). SLRU's are delineated and assigned a sensitivity level of high, medium or low based on six key factors that measure public sensitivity for scenic quality. The Proposed Action is located within a single SLRU that was assigned a sensitivity level of medium by the Barstow Field Office VRI, in accordance with the guidelines of BLM Handbook H-8410-1, Visual Resource Inventory. The Barstow Field Office VRI, conducted in the 2010 time frame, fully evaluated the six key factors for measuring public concern that comprise the sensitivity level rating unit within which the project is located (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-8).

The project lies within an area of the landscape that is defined as the foreground/middleground distance zone, as delineated within the Barstow Field Office VRI (2010 time frame). This determination was due to the fact that this area is within a distance of five miles from I-15 and other public routes of travel (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-8). The FEIS cites Map 4-1 of the Barstow Field Office VRI. This delineation is also supported based on maps of the proposed project area in Figures 3.18-4 and 3.18-5 (Soda Mountain Solar PRMPA/FEIS, Appendix A).

The BLM determined the VRI class for the project area as VRI Class III based on the

intersection of the scenic quality rating unit (B), the visual sensitivity level (Medium), and the foreground/midground distance zone. This basis for determining the VRI Class value is in accordance with BLM Handbook H-8410-1 (Illustration 11). The FEIS correctly describes VRI Class III as having moderate visual resource value (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-8).

The BLM assigned an interim VRM Class III to the project area following the guidelines in Sections I to V of BLM Handbook H-840-1 and through a close examination of the CDCA Land Use Plan (Soda Mountain Solar PRMPA/FEIS, pg. 3.18-6). Portions of the Project site occupy areas designated multiple-use Class L (“Limited”), Class M (“Moderate”), and Class I (“Intensive”) in the CDCA Plan (see Figure 1-2). Solar energy facilities are permitted in each of these multiple use classes provided the BLM complies with NEPA and follows the CDCA Plan amendment process (BLM CDCA Plan, 1999). Within the project area, there are no Wilderness Areas, or proposed/designated areas of critical environmental concern for the protection of scenic resources (Soda Mountain Solar PRMPA/FEIS, pg. 2-5 and Appendix M).

The BLM properly considered the VRI values when designating an interim VRM classification in the preparation of the Soda Mountain Solar Project Proposed Plan Amendment/FEIS.

BLM Wildlife Policy

Issue Number: PP-CA-SODA-15-04-7
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text: In addition, with regard to management of wildlife habitat, BLM’s national policy is to: 1) manage habitat with an emphasis on ecosystems to ensure self-sustaining populations and a natural abundance and diversity of wildlife, fish, and plant resources on the public lands; 2) use habitat conservation assessments based on regional ecosystem assessments, where available, to develop conservation strategies and agreements that outline the program of work necessary to reduce, eliminate,

or mitigate specific threats to sensitive species; and to develop an ecosystem management approach to conservation on BLM-administered lands; and 3) actions authorized by the BLM shall further the conservation and/or recovery of federally listed species and conservation of Bureau sensitive species.

The action alternatives, including the preferred alternative, violate BLM’s wildlife habitat and special status species management policies with regard to conservation of the desert bighorn sheep, a BLM- designated sensitive species. These alternatives do not further the conservation of desert bighorn sheep, and specifically contribute to the decline of the species in the central Mojave Desert.

Summary:

The Soda Mountain Solar PRMPA/FEIS violates BLM national wildlife habitat and special status species management policies with regard to conservation of the desert bighorn sheep.

Response:

The primary objectives of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section

6840.02.B). The BLM is responsible for ensuring during the planning process that land use plans and subsequent implementation-level plans 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 Bureau sensitive species. In particular, such plans should address any approved recovery plans and conservation agreements (BLM Manual Section 6840.04.D. 05). When BLM engages in the planning process, it shall address Bureau sensitive species and their habitats in land use plans and associated NEPA documents (BLM Manual Section 6840.06.2.B).

The BLM identified the desert bighorn sheep as a BLM California Sensitive Species, a State Fully Protected Species, and a State Game Species (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-16) and described the criteria for inclusion as a special status species (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-2). In accordance with BLM special status species policy, the BLM addressed the effects that the proposed project would have on desert bighorn sheep and its habitat, and identified mitigation measures that would reduce threats to the species.

The Soda Mountain Solar Project PRMPA/FEIS described the resident desert bighorn sheep population demography and distribution within the project area in Section 3.4.2.3 of the document, based on the results of surveys conducted using California Department of Fish and Wildlife (CDFW) protocols, consultation with bighorn sheep biologists, and current scientific literature (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-16 – 3.4-19). The Soda Mountain Solar PRMPA/FEIS described that CDFW, the National Park Service (NPS), and the Society for the Conservation of Bighorn Sheep have expressed interest in improving genetic diversity of bighorn sheep populations within the Soda Mountains by reconnecting the population in the South Soda Mountains to the Avawatz Mountains, north of the project area (Soda Mountain Solar PRMPA/FEIS, pg. 3.4-18).

The restoration opportunities and mitigation for desert bighorn sheep within the project area are identified in the Soda Mountain Solar PRMPA/FEIS as Mitigation Measures 3.4-3a through 3.4-e, and APM 75 which address distribution and dispersal of bighorn sheep by creating additional water sources, increasing passage across I-15, and establishing an adaptive management approach with near-term and long-term goals for desert bighorn sheep. In addition, the North Array portion of the project area is currently being considered by the Desert Renewable Energy Conservation Plan as part of a proposed area of critical environmental concern (Soda Mountain Solar PRMPA/FEIS, Appendix M, p. M-2). The BLM Proposed Plan Amendment (based on Alternative B) in the Soda Mountain Solar PRMPA excludes the North Array from the development footprint suitable for solar energy use, and therefore avoids impacts to this area with potential future desert bighorn sheep connectivity opportunities.

The special management considerations proposed in the Soda Mountain Solar PRMPA/FEIS are consistent with the goals for wildlife and special status species under the CDCA Plan which would be amended to permit the ROW (CDCA Plan, p. 20). The proposed project area was not designated as one of the key Planned Management Areas for Fish and Wildlife in the CDCA Plan (CDCA Plan, Table 2). The Soda Mountain Solar PRMPA/FEIS correctly notes that the

proposed project area is not located within a desert bighorn sheep Wildlife Habitat Management Area and would not result in loss of habitat or extirpation of the species in these critical areas (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-53). The BLM has consulted with the USFWS regarding potential effects of the proposed action and is engaged in coordination with NPS and CDFW regarding potential effects to ESA listed and non-listed special status species (Soda Mountain Solar PRMPA/FEIS, pgs. 3.4-71).

The management proposed in the Soda Mountain Solar PRMPA complies with BLM's Special Status Species policy.

Clarification

Issue Number: PP-CA-SODA-15-03-26

Organization: Colorado River Indian Tribes

Protester: Dennis Patch

mitigation is expected to require "2.455.77" acres of compensatory lands to mitigate impacts to desert tortoise habitat (FEIS at 4-24). The Colorado River Indian Tribes assume this is a typo that should read 2,455.77 acres of compensatory lands.

Issue Excerpt Text: The FEIS states that

Summary:

The BLM needs to correct a typographical error in mitigation acreage on page 4-24 of the Soda Mountain Solar Proposed Plan Amendment/FEIS.

Response:

The following correction will be made on page 4-24 of the Soda Mountain Solar PRMPA/FEIS: "...it is estimated that the proposed Project would require 2,455.77 acres of compensatory lands..."