

Director's Protest Resolution Report

**Stateline Solar Farm Project
Plan Amendment**

California Desert Conservation Area Plan

February 14, 2014



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

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

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

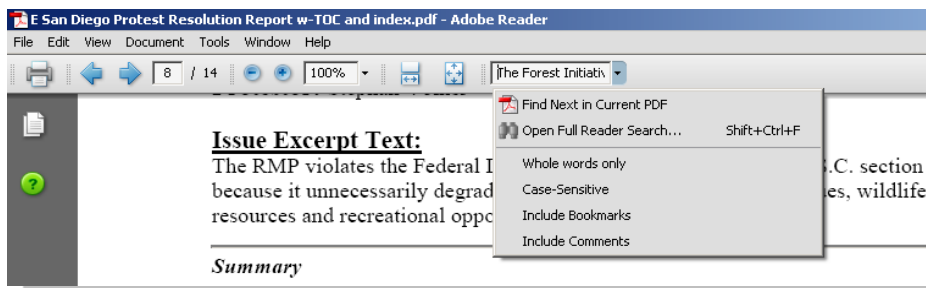
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

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

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	EIS	Environmental Impact Statement
AO	Authorizing Officer	EO	Executive Order
ASLW	Assistant Secretary of Land and Water	EPA	Environmental Protection Agency
BBCS	Bird and Bat Conservation Strategy	ESA	Endangered Species Act
BLM	Bureau of Land Management	FEIS	Final Environmental Impact Statement
BO	Biological Opinion	FEIS/PA	Final Environmental Impact Statement/Plan Amendment
CDCA	California Desert Conservation Area	FLPMA	Federal Land Policy and Management Act of 1976
CDFW	California Department of Fish and Wildlife	FO	Field Office (BLM)
CESA	California Endangered Species Act	FWS	U.S. Fish and Wildlife Service
CEQ	Council on Environmental Quality	NEPA	National Environmental Policy Act of 1969
CFR	Code of Federal Regulations	NEMO	Northern and Eastern Mojave
DOI	Department of the Interior	PEIS	Programmatic Environmental Impact Statement
DRECP	Desert Renewable Energy Conservation Plan	RMP	Resource Management Plan
DWMA	Desert Wildlife Management Area	ROD	Record of Decision
EA	Environmental Assessment	ROW	Right-of-Way
		SO	State Office
		USC	United States Code

Protesting Party Index

Protester	Organization	Submission Number	Determination
Kim Delfino; Helen O'Shea	Defenders of Wildlife; Natural Resources Defense Council	PP-CA-Stateline-14- 01	Denied—Issues, Comments
Michael Connor	Western Watersheds Project	PP-CA-Stateline-14- 02	Denied—Issues, Comments
Sarah Friedman	Sierra Club	PP-CA-Stateline-14- 03	Denied—Issues, Comments
Thomas Driggs	Cotton, Driggs, Walch, Holley, Woloson & Thompson	PP-CA-Stateline-14- 04	Dismissed— Comments Only
Kevin Emmerich & Laura Cunningham	Basin and Range Watch	PP-CA-Stateline-14- 05	Denied—Issues, Comments
Lisa Belenky	Center for Biological Diversity	PP-CA-Stateline-14- 06	Denied—Issues, Comments
David Lamfrom	National Parks Conservation Association	PP-CA-Stateline-14- 07	Denied—Issues, Comments

Issue Topics and Responses

NEPA

Purpose and Need

Issue Number: PP-CA-Stateline-14-01-5

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

BLM states that its purpose and need in analyzing the proposed project is to respond to the project proponent's application for a right of way to construct, operate, maintain and decommission a solar generation powerplant and ancillary facilities. It is focused on meeting the objective of the applicant and on amending the California Desert Conservation Area ("CDCA") Plan for this project only and at one location, thus essentially foreclosing serious consideration and analysis of meaningful alternatives during the formulation of the final decision. See National Parks Conservation Assn. v. BLM, 586 F.3d 735 (9th Cir. 2009).

Issue Number: PP-CA-Stateline-14-01-7

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

BLM has acted arbitrarily and capriciously by developing a purpose and need statement so narrow as to limit consideration of a true range of reasonable alternatives. Significantly, the purpose and needs statement fails to include BLM's statutory, regulatory and policy responsibilities for management of public lands and their resources in a sustained-yield, multiple use manner, and especially those responsibilities

related to management of the public lands in the CDCA, and conservation and recovery of the desert tortoise through protection of its habitat and ecosystems upon which it depends.

Issue Number: PP-CA-Stateline-14-02-5

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

In defining the purpose and need simply to process a ROW application rather than a purpose and need statement that reflects the larger multiple use mandates of FLPMA and the BLM's duty to avoid unduly degrading public lands, the BLM has ensured that other means of achieving renewable energy goals that better protect and conserve important public resources are ignored and not evaluated.

Issue Number: PP-CA-Stateline-14-02-6

Organization: Western Watersheds Project

Protester: Michael Connor

Issue Excerpt Text:

The BLM is also responding to an ACEC nomination in this FEIS. The need to respond to the ACEC nomination should have been incorporated into the purpose and need statement itself.

Summary:

BLM developed an overly narrow purpose and need statement. The purpose and need fails to include BLM's responsibility to manage public lands in the CDCA to protect desert tortoise habitat. The BLM should have responded to the ACEC nomination by incorporating it into the purpose and need statement.

Response:

Federal regulations at 40 CFR 1502.13 state a purpose and need statement... shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. The purpose and need of the Stateline Solar Farm Project Final Environmental Impact Statement (FEIS) as stated in section 1.1.1 is to respond to a specific Proposed Action; that is, a FLPMA Right-of-Way (ROW) application for a solar energy-generating facility on public lands administered by the BLM in accordance with FLPMA Section 501(a)(4), BLM ROW regulations, and other applicable Federal laws and policies. In connection with its decision on the Proposed Action, the BLM will also consider potential amendments to the CDCA Plan to identify the Project site as suitable or unsuitable for solar energy development, and to decide whether or not to make high conflict or sensitive resource value areas within the project application area unavailable for solar development. Chapter 2 of the FEIS includes a robust description of the Proposed Action and alternatives, including a no action alternatives, and various alternatives that were not carried forward for detailed analysis.

In addition to consideration potential California Desert Conservation Area (CDCA) Plan amendments necessitated by the project, the BLM's purpose and need set forth in section 1.1.1 of the FEIS also explained that BLM would also be evaluating whether or not to amend the CDCA Plan to make high conflict or sensitive resource value areas within the project area unavailable for solar development, such as the changes to the Ivanpah Desert Wildlife Management Area (DWMA) evaluated in the Final EIS.

Range of Alternatives

Issue Number: PP-CA-Stateline-14-01-13
Organization: Defenders of Wildlife
Protester: Kim Delfino

Issue Excerpt Text:

Furthermore, BLM's failure to identify and analyze alternatives outside of high-quality desert tortoise habitat in Ivanpah Valley contradicts BLM regulations for achieving

public land health: "Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species."

Issue Number: PP-CA-Stateline-14-01-15
Organization: Defenders of Wildlife
Protester: Kim Delfino

Issue Excerpt Text:

BLM acted arbitrarily and capriciously by not analyzing our recommended desert tortoise avoidance alternative, and by simply stating that it "considered" it without any rational or justification for its dismissal of our recommendation. This dismissal is especially troubling because one of the requirements of NEPA in analyzing alternatives is to find one or more that lessen significant adverse impacts on important resources, such as the desert tortoise and its habitat.

Issue Number: PP-CA-Stateline-14-02-8
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

In our comments we asked the BLM to consider a number of alternatives to both the plan amendment and the ROW issuance including: use of public lands that are not desert tortoise habitat; a private lands alternative under which the project is built on private lands only; and, a distributed energy alternative using "roof top" solar to avoid the need for construction of a power plant. As we explained, full analysis of these alternatives will clarify the need for the proposed project, provides a baseline for identifying and fully minimizing resource conflicts, facilitates compliance with the BLM's FLPMA requirement to prevent the unnecessary and undue degradation of public lands and its resources, and provides a clear basis for making informed decisions. The BLM has simply ignored these proposed alternatives.

Issue Number: PP-CA-Stateline-14-03-10
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

Additionally, BLM states that the smaller-acreage Desert Tortoise Avoidance Alternative would make it difficult for the applicant to reach the megawatt (MW) goals stated in their application, and hence it would be difficult for the state to meet renewable energy and greenhouse gas emission reduction goals. This seems inconsistent given that the FEIS includes a reduced MW (232 MW) alternative. Without analyzing the Desert Tortoise Avoidance Alternative it seems difficult to ascertain how the smaller project translates to reduced MW. Additionally, it may be possible to reduce the MW output under the applicants' commercial contract. Given the number of solar energy projects in California, both with and without commercial contracts, of which the BLM is amply aware because of their role in processing right-of-way applications, assuming that reducing the acreage of the Stateline project to reduce impacts to desert tortoise will stall California's climate change and renewable energy goals seems questionable at best.

BLM acted arbitrarily and capriciously by not analyzing the Desert Tortoise Avoidance Alternative. This dismissal is especially troubling because one of the requirements of NEPA in analyzing alternatives is to find one or more that lessen significant adverse impacts on important resources, such as the desert tortoise and its habitat.

Issue Number: PP-CA-Stateline-14-03-3
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

Although BLM claims to have considered other locations, all of them were dismissed from analysis under NEPA. BLM relied solely on the applicant's criteria for identifying potential alternative locations to the Project. These criteria seemed to depend exclusively on the applicant's technical analysis of the transmission system.

Issue Number: PP-CA-Stateline-14-03-4
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

BLM also perfunctorily dismissed the Desert Tortoise Avoidance Alternative for failure to meet the applicant's technical or commercial requirements before analyzing the feasibility of this alternative and how well this alternative could meet these requirements.

Issue Number: PP-CA-Stateline-14-03-8
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

Per the FEIS, "Development of public lands outside of the Mountain Pass, Ivanpah Valley, and Shadow Valley areas is not a feasible alternative to the Proposed Action because it would not utilize the existing interconnection capacity available in the Ivanpah Valley [SD6] for such a renewable project." The FEIS provided no details as to where it looked to find potentially suitable alternatives on public lands. BLM's own

Solar Energy Program was aimed at concentrating solar development on those lands, among those it managed, which it determined had the best potential for reliable and available electricity transmission and the least environmental conflict. The BLM should have consulted with its Palm Springs and El Centro Field Offices which manages public lands within the two [SF7] designated California Solar Energy Zones (i.e., Riverside East and Imperial East) before relying on the applicant's determination that no suitable alternate sites were available.

Issue Number: PP-CA-Stateline-14-05-4
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text:

On Page 65 of the FEIS, the DRECP is listed indicating it would be a potential conservation alternative should its land use designation favor conservation in Ivanpah Valley., yet the FEIS fails to consider a DRECP conservation alternative.

Issue Number: PP-CA-Stateline-14-06-8
Organization: Center for Biological Diversity
Protester: Lisa Belenky

Issue Excerpt Text:

The FEIS failed to analyze the Desert Tortoise Avoidance Alternative. BLM states only in the response to comments: "The map showing a proposed desert tortoise avoidance alternative recommendation has been reviewed by BLM, and has been considered, along with many other alternatives, in the development of the project boundaries in the PA/FEIS/FEIR." (FEIS at Appendix G pdf pg.50). It is unclear what type of "review" and

"consideration" BLM performed for this

feasible and impact reducing alternative.

Summary:

The BLM failed to:

- analyze an alternative outside of desert tortoise habitat;
 - consider siting the project on private land;
 - consider using "roof top" solar to avoid the need for construction of a power plant;
 - consider a DRECP conservation alternative; and,
 - consider alternative means of achieving renewable energy goals that better protect and conserve important public resources.
-

Response:

40 C.F.R. 1502.14 requires an EIS to examine all reasonable alternatives to the proposal. Reasonable alternatives must be practical and feasible from a technical and economic standpoint and use common sense (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 2A). The ability of potential alternatives to achieve the purpose and need and stated objectives is the primary criteria used to evaluate alternatives. As explained above, the FEIS including a robust analysis of the Proposed Action, various action alternatives, including alternate site configurations and the no action alternative. This analysis also considered numerous alternatives, such as alternate generation technologies and project site locations. In each instance, these alternatives were eliminated from further analysis because they did not meet both the BLM's and/or San Bernardino County's purpose and need, and/or those alternative were determined to be technically or economically infeasible because they could not meet the objectives, or had greater environmental impacts than the currently Proposed Action or alternatives.

Alternate sites eliminated from further analysis are discussed in section 2.8.1. A private land alternative was eliminated and is discussed in section 2.8.1.1. Other types of energy projects, Conservation and Demand-Side management, and Distributed Generation are discussed in section 2.8.4. Alternative Site Configurations are discussed in section 2.8.2. Alternative Construction Methods are discussed in section 2.8.3. Other types of energy projects eliminated from detailed analysis are discussed in Table 2-9.

The relationship between the FEIS and the DRECP is explained in Section 1.4.1.4 of the FEIS:

“The purpose of the DRECP is to advance federal and state species and ecosystem conservation goals, while also facilitating the timely permitting of renewable energy projects. The DRECP may include potential amendments to the CDCA Plan and other BLM land use plans, a Habitat Conservation Plan developed in accordance with the Endangered Species Act, and a Natural Communities Conservation Plan developed in accordance with the California Natural Communities Conservation Planning Act.

At this time, a Draft EIS for the DRECP has not been published. And while the DRECP includes potential land use plan amendments to the CDCA Plan, existing land use plan decisions remain in effect during the BLM's consideration of those Plan amendments and until a final decision is made on them (BLM Land Use Planning Handbook H-1601-1; March 2005, pg. 47). Therefore, the BLM evaluated the Applicant's ROW grant application under existing CDCA Plan requirements/criteria."

The FEIS evaluated a full range of alternatives, including Alternative 6, which would deny the project ROW and amend the CDCA to expand the DWMA.

Solar Programmatic

Issue Number: PP-CA-Stateline-14-01-10

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

BLM provided no details as to where it looked to find potentially suitable alternatives on public lands within the CDCA, including lands within Solar Energy Zones which it designated in 2011.

Summary:

The BLM failed to consider alternative locations within the CDCA, specifically other lands within designated Solar Energy Zones.

Response:

The BLM does discuss the relationship with potentially suitable alternatives with the 2012 Programmatic Land Use Plan Amendments for Solar Energy Development in Six Southwestern States (Solar PEIS). In section 1.4.1.3, for example, the FEIS states that while the surrounding area was categorized in the Solar PEIS ROD as an exclusion area, the Solar PEIS did classify the Stateline Solar Project as a "pending" project. Thus, utility-scale solar energy development in the area is not subject to exclusion under the Solar PEIS ROD. (Stateline Solar FEIS/PA, pg. 1-12).

In section 2.8.1, a discussion of alternative sites were considered, but ultimately eliminated from detailed analysis because of several factors related to siting a large-scale solar facility. Mainly, the BLM-administered lands in the Mountain Pass, Shadow Valley and other parts of the Ivanpah Valley were precluded from development due to special resource designations and did not meet the basic policy objectives for management of the area. (Stateline Solar FEIS/PA, pg. 2-48). Additionally, under FLPMA the BLM has an obligation to respond and process applications for the use of federal lands in the area where they are received (i.e., for the specific lands where the use is requested). The obligation is reflected in the BLM's purposes and need for the proposed action.

Impacts Analysis

Issue Number: PP-CA-Stateline-14-02-15
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

The FEIS recognizes the importance of Stateline Pass in providing connectivity between the Ivanpah and Mesquite Valley tortoise populations and that tortoises may occasionally move through Stateline Pass. FEIS at 4.22-14. Further, the FEIS acknowledges "the potential connectivity via the Stateline Pass into the Mesquite Valley would be reduced by the lack of tortoises occupying the project area, and the reduction of space due to the proximity of the project to Ivanpah SEGS." Ibid. However, despite all this the FEIS then concludes without analysis that any reduction in this connectivity is not significant. The FEIS does not even attempt to quantify the extent of the impacts to connectivity. It does not even attempt to estimate how many desert tortoises would need to move through Stateline Pass over the life of the project to provide sufficient gene flow to maintain genetic heterogeneity in the Ivanpah and Mesquite Valley tortoise populations.

Issue Number: PP-CA-Stateline-14-02-17
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

The failure to analyze the effects of the Proposed Action on gene flow between desert tortoise populations and failure to consider the impacts of severe restrictions on desert tortoise movement due to proximity to ISEGS are major oversights.

None of the mitigation measures proposed in the FEIS would assure that the existing connectivity would not be compromised.

Issue Number: PP-CA-Stateline-14-02-27
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

The NEMO Plan's mitigation for Category III habitat applies to projects of less than 100 acres. NEMO at 2.27. The proposed action area is 23 times the maximum acreage for projects covered under the NEMO Plan. Thus, the BLM cannot simply tier off the NEMO Plan's mitigation guidance but must fully analyze the direct, indirect and cumulative impacts to the Eastern Mojave desert tortoise population.

Issue Number: PP-CA-Stateline-14-06-10
Organization: Center for Biological Diversity
Protester: Lisa Belenky

Issue Excerpt Text:

While Figure 2-1 shows the proposed project (not the preferred alternative) and the proposed ACEC (Ivanpah DWMA) expansion, the FEIS fails to include an analysis of the connectivity areas not only in this part of the Ivanpah Valley but also to conservation areas adjacent to or nearby the action area, including the Larger-Scale Translocation Study Site (LSTS site) which is located north of the action area in Nevada, the Mojave National Preserve which is located south of the action area, and Mesquite Valley which is located northwest of the action area. The FEIS appears to rely on the Draft Regional Assessment, Stateline

Solar Farm Project (2012) (at pdf pg. 800), although a Final Regional Assessment (2012) is actually available. The FEIS does not clearly discuss the alternatives impacts on the connectivity as described above.

Issue Number: PP-CA-Stateline-14-07-2
Organization: National Parks Conservation Association
Protester: David Lamfrom

Issue Excerpt Text:

NPCA recognizes and wants to highlight that the significant and unmitigable impacts identified to Mojave National Preserve from the ISEGS projects are exacerbated by the Stateline project. Similarly, the cumulative

impacts to the Valley from Ivanpah Solar, Silver State North and South, DesertXpress, Ivanpah Airport, the agricultural station, the expansion of the Molycorp mine, any proposed rare earths mines in Nevada's Ivanpah Valley, proposed wind projects nearby, expansions of the gas and transmission lines, and any proposed expansion or modification of I-15 freeway corridor must be viewed cumulatively with the proposed impacts of the Stateline project to wildlife, connectivity, habitat, cultural resources, recreation, and national parks. This analysis was insufficient within the FEIS, and no proactive efforts were made to identify locations that would have allowed a project to move forward while limiting impact to the Valley.

Summary:

The FEIS does not address the extent of impacts to desert tortoise connectivity to maintain genetic heterogeneity between the Ivanpah and Mesquite Valley tortoise populations, nor does it analyze connectivity between adjacent or nearby conservation areas. The BLM did not correctly follow the NEMO Plan's habitat mitigation guidance in analyzing impacts to the Eastern Mojave desert tortoise population. The BLM also did not sufficiently analyze the proposed impacts of the Stateline project in combination with impacts associated with other active and proposed projects in the Ivanpah valley.

Response:

The BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Plan Amendment FEIS. The BLM analyzed the available data that led to an adequate disclosure of the potential environmental consequences of the preferred alternative and other alternatives. As a result, the BLM has taken a "hard look," as required by NEPA, at the environmental consequences of the alternatives, including impacts to desert tortoise habitat connectivity, to enable the decision maker to make an informed decision on the Proposed Action.

The FEIS discussed that the 2013 US Fish and Wildlife (USFWS) Biological Opinion (BO) for both the Stateline project and the Silver State South project concluded that the projects would not appreciably diminish the tortoise population in the Ivanpah Valley. (Stateline Solar FEIS/PA, pg. 1-8). Further, the FEIS found that while there would be a loss of desert tortoise habitat from the

Stateline Solar project, the overall impact of the project would not significantly reduce the existing connectivity between the Northern Ivanpah Valley Unit and other adjacent populations.

Although the BO acknowledged that tortoises may occasionally move through Stateline Pass to the north of the project, it concluded that Stateline Pass was unlikely to support a long-term population of tortoises, and does not provide a demographic connection between Ivanpah Valley and areas outside of Ivanpah Valley. Specifically, the BO observed, in concurring that the Project is not likely to measurably affect connectivity with Ivanpah Valley, that:

...the northern edge of the Stateline Project would be located approximately 0.9 mile from the southernmost point of the eastern arm of the Clark Mountains. The resulting linkage between the Stateline facility and the Clark Mountains would connect desert tortoises to the northeast of the project with animals to the west, in the remaining habitat west of Interstate 15. Although this width is less than a single desert tortoise lifetime utilization area (i.e., 1.4 miles), the linkage will likely remain functional because its length is very short; the southernmost extension of the Clark Mountains is shaped like a peninsula and the linkage becomes wider immediately to the east and west of the narrowest point. Additionally, even without the proposed project, the width of the area where Stateline detected desert tortoises south of the “peninsula” is less than 1.4 miles because the substrate becomes silt-like as the alluvial fan levels out and approaches Ivanpah Dry Lake. (USFWS, 2013).

Concerning the adherence with the 2002 NEMO amendments of the CDCA, the FEIS notes that the same management prescriptions that were developed for the protection of desert tortoises in the current Ivanpah DWMA would be applied to the expanded portion of the DWMA. This includes adoption of land use restrictions such as ensuring specific design features to minimize potential impacts to desert tortoise and desert tortoise habitat. (Stateline Solar FEIS/PA, pgs. 2-25 to 2-26). Further analysis concluded that the expansion of the Ivanpah DWMA to include the proposed project area in conjunction with additional protection measures would ultimately be beneficial to the tortoises in the area. (Stateline Solar FEIS/PA, pgs. 4-22-24 to 4-22-25).

Finally, the BLM did analyze additional alternative sites for consideration, but they were eliminated from further analysis as described in section 2.8 of the FEIS. The cumulative impacts from the proposed action with other active projects and reasonably foreseeable future actions in the Ivanpah Valley were outlined in the Cumulative Scenario Approach section of chapter 4. Table 4.1-1 provided a comprehensive listing of all existing and foreseeable projects that could contribute to the cumulative impact on the environment. (Stateline Solar FEIS/PA, pg. 4.1-5). The USFWS BO also included a robust analysis of desert tortoise impacts in the Ivanpah Valley from existing development, the Proposed Action, and the Silver State South Project in Nevada.

FLPMA

Issue Number: PP-CA-Stateline-14-06-16

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

It is also inconsistent with the FLPMA provisions which contemplate that BLM will prepare and maintain adequate inventory data on the resources of an area and that information be used to inform the planning

process. 43 U.S.C. § 1711(a); 43 U.S.C. § 1701(a)(2). Here, the dynamics of the desert tortoise population on BLM lands both within and adjacent to the Ivanpah DWMA are not included as part of the analysis of the project. Indeed, it may be that the population on the project site is actually more robust than the population on BLM lands in the existing Ivanpah DWMA.

Summary:

The BLM does not show an adequate inventory of resources, specifically with the desert tortoise population, in the proposed area, as required by FLPMA.

Response:

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

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

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

With respect to the specific resource question raised by a protesting party, the FEIS relied on recent desert tortoise inventories for the Stateline project area. Desert tortoise surveys were conducted from 2008 to 2012, following USFWS protocols. Additional surveys in the spring of 2012 were taken to estimate population size for each alternative that was analyzed in the FEIS.

(Stateline Solar FEIS/PA, pgs. 3.22-8 to 3.22-10). It should also be noted that the USFWS BO included a robust analysis of baseline conditions as they relate to desert tortoise.

CDCA

Issue Number: PP-CA-Stateline-14-06-6

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

The proposed Plan amendment is not consistent with the bioregional planning approach in the CDCA Plan. The overarching principles expressed in the

Decision Criteria in the CDCA are applicable to the proposed project including minimizing the number of separate rights-of-way, providing alternatives for consideration during the processing of applications, and "avoid[ing] sensitive resources wherever possible." CDCA Plan at 93. Because the area where the proposed project is sited is more appropriate for conservation than for industrial development, the proposed project is inconsistent with the CDCA Plan.

Summary:

The proposed Plan Amendment is not consistent with the CDCA Plan's bioregional planning approach.

Response:

The proposed Plan Amendment adheres to the management principles and guidelines in the CDCA Plan and considers the broader CDCA context. The CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands and requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a project site be considered through the plan amendment process. (Stateline Solar FEIS/PA, Section 1.4.1.2).

The CDCA Plan itself recognizes that plan amendments such as the proposed Plan Amendment may occur, and outlines a process to approve or deny these amendments (CDCA Plan, pgs. 119-122). The management principles in the CDCA Plan include "multiple use, sustained yield, and maintenance of environmental quality contained in law" (CDCA Plan, pg. 6) and were the basis for the BLM's development of the proposed Plan Amendment. The CDCA Plan provides management approaches to be used to resolve conflicts. These approaches are designed to help achieve the goals of allowing for the use of desert lands and resources while preventing their undue degradation or impairment, and responding to national priority needs for resource use and development "both today and in the future, including such paramount priorities as energy development and transmission, without compromising basic desert resources...[and] erring on the side of conservation in order not to risk today what we cannot replace tomorrow" (CDCA Plan, pg. 6). The CDCA Plan conceives of balancing use and protection in the overall context of the

entire CDCA, but recognizes that certain sites will strike the balance in favor of protection or use depending on relevant factors. The management principles section of the Plan specifically cites energy development and transmission as a paramount national priority to consider in striking that balance (CDCA Plan, pg. 6).

Amendments to the CDCA Plan can be site-specific or global depending on the nature of the amendment. In the case of the proposed Plan Amendment, while the Amendment is site-specific, it is considered in the larger context of the CDCA and its plan. The CDCA Plan has been amended several times to include industrial uses analogous to the solar use analyzed by the proposed Plan Amendment, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission within the broader CDCA context (CDCA Plan, pg. 95). The BLM has the discretion, based on its expertise, to determine whether a plan amendment adheres to the principles of multiple use, sustained yield, and maintenance of environmental quality.

MUC-L

Issue Number: PP-CA-Stateline-14-03-22

Organization: Sierra Club

Protester: Sarah Friedman

Issue Excerpt Text:

Adoption of the proposed plan amendment to allow this large-scale industrial facility on MUC class L lands is inappropriate based on the site specific review. Under the COCA Plan, "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." Although the COCA Plan allows renewable energy projects to be located within Limited Use Class lands in some instances, after full NEPA review and if appropriate environmental safeguards are put in place to protect resources, the proposed project here does not meet these criteria for several reasons. These include, but are not limited to, the lack of adequate NEPA review for many of the resources (as discussed above

and in DEIS Comments) and the fact that the project will unnecessarily impact desert tortoise habitat without adequate safeguards.

Issue Number: PP-CA-Stateline-14-06-4

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

Adoption of the proposed plan amendment to allow this large-scale industrial facility on MUC class L lands is inappropriate based on the site specific review. Under the CDCA Plan, "Multiple-Use Class L (Limited Use) protects sensitive, natural, scenic, ecological, and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished." CDCA Plan at 13. Although the CDCA Plan allows renewable energy projects to be located within Limited Use Class lands in some instances, after full NEPA review and if appropriate environmental safeguards are put in place to protect resources, the

proposed project here does not meet these criteria for several reasons including, but not limited to, the lack of adequate NEPA review for many of the resources (as discussed below and in comments on the DEIS) and because it will unnecessarily impact a critical connectivity corridor for the

threatened desert tortoise as identified by the U.S. Fish and Wildlife Service's Desert Tortoise Recovery Office. The only alternative considered in the FEIS that is consistent with the Limited Use Class guidelines is Alternative 6 – No project and exclude solar development on the site.

Summary:

The proposed Plan Amendment is inconsistent with the Multiple-Use Class designations of the CDCA Plan.

Response:

The proposed plan amendment is consistent with the Multiple-Use Class – Limited (MUC-L) designation.

The CDCA Plan provides guidance for balancing public needs and protecting resources in the management and use of BLM-administered lands in the California Desert. The Plan specifically cites energy development and transmission as a “paramount national priority” to consider in balancing uses and protection of resources (CDCA Plan, pg. 13) and states that power facilities may be allowed within on Multiple Use Class L (Limited Use or MUC-L) areas after NEPA analysis and a plan amendment process (if it is a power generation facility not already identified in the Plan) has been completed (CDCA Plan, pgs. 15 and 95). In the MUC Class L designation, the Plan directs the BLM Authorized Officer (AO) to use his/her judgment in allowing for consumptive uses by taking into consideration the sensitive natural and cultural values that might be degraded. The EIS that accompanies this proposed Plan Amendment process acts as the mechanism for complying with these NEPA requirements for the reasons discussed in Section 4.6.3 of the Final EIS.

The propriety of siting renewable energy generation facilities on MUC-L lands was addressed in the 1980 CDCA Plan Record of Decision where the Assistant Secretary for Land and Water Resources discussed the remaining major issues in the final CDCA Plan before he approved it (CDCA ROD, pgs. 10 et seq.). One of the remaining major issues was the allowance of wind, solar, and geothermal power plants within designated Class L lands (CDCA ROD, pg. 15). The ROD recognized that, "These facilities are different from conventional power plants and must be located where the energy resource conditions are available. An EIS will be prepared for individual projects." The recommended decision, which was ultimately approved, noted, "Keep guidelines as they are to allow these power plants if environmentally acceptable. Appropriate environmental safeguards can be applied to individual project proposals which clearly must be situated where the particular energy resources are favorable." The ASLW approved the allowance of wind, solar, and geothermal power plants on designated Class L lands in the CDCA and the Secretary of the Interior concurred on December 19, 1980.

As stated in the FEIS, the reason for the amendment is to specifically allow a solar power generation project on the identified site. This amendment and the overall amendment process are consistent with the implementation of the CDCA Plan. The proposed CDCA plan amendment will not change the MUC-L designation within the overall boundary of the CDCA. The CDCA Plan requires that newly proposed power sites that are not already included within the plan be added through the plan amendment process. Because the Stateline Solar site is not currently included in the CDCA Plan, a plan amendment is required in order for the site to be recognized as an element in the CDCA Plan. The CDCA Plan provides guidance concerning the management and use of the BLM lands in the California Desert while balancing other public needs and protecting resources. The CDCA Plan specifically cites energy development and transmission as of “paramount national priority” to consider in balancing use and protection of resources (CDCA Plan, pg. 13).

Section 4.6.3 of the FEIS describes how the proposed site location for the Stateline Solar Project meets MUC-L guidelines in the CDCA Plan. The proposed plan amendment identifies and analyzes sensitive resources and values, and the BLM has ensured that the plan amendment will not significantly diminish sensitive values by the adoption of appropriate design features, mitigation, and monitoring. (Stateline Solar FEIS/PA, pgs. 4.6-1 to 4.6-6).

Unnecessary and Undue Degradation

Issue Number: PP-CA-Stateline-14-03-6

Organization: Sierra Club

Protester: Sarah Friedman

proposed or candidate threatened and endangered species, and other special status species".

Issue Excerpt Text:

By determining the Ivanpah Valley was the only viable location for the project, BLM so constrained the alternative site selection that it placed itself in a position of violating both NEPA and its national policy for management of Special Status Species, thereby contributing to the unnecessary and undue degradation of public lands and their significant resources in the CDCA. BLM's failure to identify and analyze action alternatives outside of high-quality desert tortoise habitat in Ivanpah Valley contradicts BLM's regulations for achieving public land health: "Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal

Issue Number: PP-CA-Stateline-14-06-14

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

The proposed plan amendment is not consistent with FLPMA which requires

BLM to prevent unnecessary or undue degradation of public lands. 43 U.S.C. § 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 CDCA.

Summary:

The proposed plan amendment does not sufficiently demonstrate that the BLM has analyzed alternatives to prevent unnecessary and undue degradation to significant resources within the CDCA.

Response:

The proposed Plan Amendment adheres to the management principles and guidelines in the CDCA Plan and considers the broader CDCA context. The CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands and requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a project site be considered through the plan amendment process. (Stateline Solar FEIS/PA, Section 1.4.1.2).

The CDCA Plan itself recognizes that plan amendments such as the proposed Plan Amendment may occur, and outlines a process to approve or deny these amendments (CDCA Plan, pgs. 119-122). The management principles in the CDCA Plan include “multiple use, sustained yield, and maintenance of environmental quality contained in law” (CDCA Plan, pg. 6) and were the basis for the BLM's development of the proposed Plan Amendment. The CDCA Plan provides management approaches to be used to resolve conflicts. These approaches are designed to help achieve the goals of allowing for the use of desert lands and resources while preventing their undue degradation or impairment, and responding to national priority needs for resource use and development “both today and in the future, including such paramount priorities as energy development and transmission, without compromising basic desert resources...[and] erring on the side of conservation in order not to risk today what we cannot replace tomorrow” (CDCA Plan, pg. 6). The CDCA Plan conceives of balancing use and protection in the overall context of the entire CDCA, but recognizes that certain sites will strike the balance in favor of protection or use depending on relevant factors. The management principles section of the Plan specifically cites energy development and transmission as a paramount national priority to consider in striking that balance (CDCA Plan, pg. 6).

The FEIS noted that the alternatives that were analyzed were based on the specific site requirements and proximity to existing infrastructure in the Ivanpah Valley (Stateline Solar FEIS/PA, pg. 1.6). The FEIS goes on further to state that other alternatives were considered, but

eliminated from detailed analysis because the alternative areas did not comply with the BLM's purpose and need to consider a request for a solar energy facility in the Ivanpah Valley. (Stateline Solar FEIS/PA, pg. 2-48). Specifically, during scoping, the BLM ruled out surrounding BLM-administered lands because of inconsistencies with special designations for resource protections for these areas and the basic policy objectives for management of the area. (Stateline Solar FEIS/PA, pg. 2-48).

Finally, the FEIS analyzed a robust suite of applicant propose measures and mitigation measures developed by the BLM to avoid, minimize, and/or mitigate the impacts of the Proposed Action. The measures paired with the terms and conditions identified in the Project BO, as well as compliance with any other applicable federal rules and regulations, are designed to protect public health and safety, prevent unnecessary damage to the environment, and support a determination by the BLM that the project will not result in unnecessary or undue degradation of public lands.

ACEC

Issue Number: PP-CA-Stateline-14-02-10
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

We also protest the BLM's failure to consider significant new data generated in the project analysis in its consideration of the proposed ACEC boundary. The DEIS and the Regional Assessment have established that the Stateline Pass area is important for regional connectivity for desert tortoise because it is one of the few potential corridors for connectivity in this basin surrounded by mountain ranges. Although the BLM modified its proposed action to alter the proposed project footprint it has not altered the boundary of the proposed ACEC to include the Stateline Pass.

Issue Number: PP-CA-Stateline-14-05-7
Organization: Basin and Range Watch
Protester: Kevin Emmerich

Issue Excerpt Text:

On Page 94, the FEIS accounts that Basin and Range Watch made a 32,000 acre nomination for an ACEC.

“The ACEC, as proposed by Basin and Range Watch, would comprise an area of 129,379 acres within both California and Nevada, including approximately 32,000 acres within the CDCA. The purpose of the nomination was to preserve lands in Ivanpah Valley for protection of biological, visual, and cultural resources.”

The FEIS fails to acknowledge that we nominated the region as an ACEC to be considered as an ALTERNATIVE to both the Stateline Solar Farm Project and the Silver State South Solar Project.

Summary:

The BLM failed to include the Stateline Pass as an important desert tortoise connectivity corridor within the boundary of the proposed ACEC, and also failed to consider a proposal for a regional ACEC as an Alternative to the solar projects.

Response:

The ACEC nomination proposed by Basin and Range Watch, submitted as a scoping comment letter to the BLM Needles Field Office Manager on October 23, 2011, would comprise an area of 129,379 acres within both California and Nevada, including approximately 32,000 acres within the CDCA. With respect to the portion of the nominated ACEC in Nevada, lands in Nevada are under the jurisdiction of the Las Vegas Field Office in the Nevada State Office. BLM-Nevada and BLM California coordinated review of the ACEC nomination; however, BLM-California does not have jurisdiction to amend the Las Vegas Resource Management Plan or put temporary management actions in place in Nevada. Therefore, the Las Vegas Field Office is evaluating the Nevada portion of the nomination area in connection with their Las Vegas Resource Management Plan revision and the Supplemental Draft EIS for the Silver State South Solar Project. (Stateline Solar FEIS/PA, pg. 2-24).

The portion of the nominated ACEC in California was determined by the BLM to meet both the relevance and importance criteria for the desert tortoise, and was considered in the Silver State South Solar Project PA/Draft EIS (Stateline Solar FEIS/PA, Appendix D, pg. 7). A Desert Wildlife Management Area (DWMA) is a type of ACEC specifically designated for the protection of wildlife resources. The establishment of DWMA's for the protection of desert tortoises was recommended in the USFWS 1994 Desert Tortoise (Mojave Population) Recovery Plan. (Stateline Solar FEIS/PA, pg. 3.15-1). Under Alternative 6, in which the Stateline Solar Farm project would not be approved and the project area would be identified in the California Desert Conservation Area Plan as not suitable for solar development, the Ivanpah DWMA boundaries would be modified to include the entire 29,110 acre area except for the two projects (Ivanpah SEGS and Joint Port of Entry) which have already been approved. (Stateline Solar Farm Project PA/FEIS/FEIR, p. 2-25). The Stateline Pass would fall within this modified DWMA boundary, as can be seen in Figure 3.22-1 of the Stateline Solar FEIS/PA.

DWMA

Issue Number: PP-CA-Stateline-14-06-9

Organization: Center for Biological Diversity

Protester: Lisa Belenky

Issue Excerpt Text:

Specifically as to the connectivity issue, the FEIS does not include any figure of the actual expansion area for the Ivanpah DWMA so it is impossible to tell from Figure 2.4 (FEIS in Appendix A at pdf 8) the actual width of the connectivity corridor and how Revised Alternative 3 presented as

the preferred alternative in the FEIS impacts USFWS' desert tortoise connectivity corridors in this part of the Ivanpah Valley. It appears that the expansion of the DWMA to protect desert tortoise connectivity falls short of what is needed to protect present and future connectivity of tortoise habitat in

this part of the Ivanpah Valley to areas north and south of the preferred alternative. It is unclear if this is an oversight in the FEIS mapping or what the actual Ivanpah DWMA expansion looks like that is part of the BLM's Preferred Alternative and proposed LUPA.

Summary:

The FEIS does not identify the actual expansion area for the Ivanpah DWMA, making it impossible to analyze whether the desert tortoise connectivity corridor will be adequate.

Response:

Revised Alternative 3 was developed by BLM, in coordination with the Applicant, to increase the area for potential tortoise connectivity between the solar facility and Metamorphic Hill to the west, and the slope of the Clark Mountains to the north. Under Revised Alternative 3, the project fence line would be separated from the base of Metamorphic Hill by approximately 1,250 feet at its closest point. Similarly, the northern fence line of Alternative 3 would be 3,000 feet from the slope of the Clark Mountains. (Stateline Solar FEIS/PA, pg. 4.22-37). Figure 2-1 of the Stateline Solar Farm FEIS/PA presents the proposed expansion area for the Ivanpah DWMA.

The U.S. Fish and Wildlife Service Biological Opinion for the project states that:

“Construction of the project would result in a net loss of desert tortoise habitat and is likely to impair connectivity to some degree in the linkage between the project site and the Clark Mountains. This linkage has already been compromised to a large degree by the Ivanpah Solar Electric Generating System, DesertXpress, Primm, and the Large-Scale Translocation Site. Additionally, the point of constriction that the proposed action would cause would be short in length and natural features in that area also pose constraints to connectivity. The Bureau and Stateline will fund and implement numerous measures to improve management of the remaining habitat for desert tortoises in the surrounding area. These measures include expanding the Ivanpah Desert Wildlife Management Area by approximately 42 square miles; this change in management direction would increase the emphasis on protection of desert tortoises in the remaining habitat.” (USFWS, 2013, pg. 86).

See also the discussion above regarding the analysis of connectivity.

Endangered Species Act

Issue Number: PP-CA-Stateline-14-02-20
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

The FEIS at 4.22-11 provides data on the numbers of adult desert tortoises reported in surveys conducted by the applicant. However, the FEIS provides no data on the numbers of sub-adult desert tortoises and desert tortoise eggs in the project area. The Endangered Species Act protects all components of the species life-cycle. Omitting this information underestimates the size and extent of the project's impacts. This is also significant given that the desert tortoise takes several decades to reach maturity; since it was listed 23 years ago any recovery would be reflected largely in increased numbers of young not adults.

Issue Number: PP-CA-Stateline-14-02-32
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

As a Federal agency, the BLM is bound by this mandate independent of any review by the U.S. Fish and Wildlife Service in a Biological Opinion. It is the BLM's job to seek to conserve listed species and to ensure that impacts are avoided and mitigated to the extent practicable. If the BLM had followed the recommendations of the 1994 Desert Tortoise Recovery Plan, the lands in question would be part of a designated ACEC. But it was BLM not Fish and Wildlife Service that made that call. And now, the BLM seems to be attempting to move forward with a project that could severely set back desert tortoise recovery efforts. This is a blatant violation of the BLM's obligations under the ESA.

Summary:

The BLM violated the Endangered Species Act by failing to seek to conserve the desert tortoise on the lands in question. The BLM also failed to survey desert tortoise sub-adults and eggs, which are also protected by the Endangered Species Act.

Response:

The 1994 Tortoise Recovery Plan proposed the project area (part of the Northern Ivanpah Valley Unit) to be included in the proposed Ivanpah DWMA. However, the 1994 Recovery Plan also states, on Page ii, that their recommendations are general areas, and specific boundary delineation should be accomplished by land management agencies in close coordination with the U.S. Fish and Wildlife Service (USFWS) and State wildlife agencies. In 1994, USFWS also designated critical habitat for the desert tortoise, and chose not to designate the Northern Ivanpah Valley Unit. Based on that decision, and other factors, BLM, in coordination with USFWS, chose not to designate the Northern Ivanpah Valley Unit as part of the DWMA in the 2002 Northern and Eastern Mojave Desert Planning Area Plan amendments. (Stateline Solar FEIS/PA, Appendix G, pg. G-52).

USFWS completed consultation by issuing the Biological Opinion for the Stateline Solar Farm Project on September 30, 2013. The Biological Opinion concluded that the Proposed Action is not likely to appreciably diminish reproduction, numbers, or distribution of the tortoise in Ivanpah Valley, and would not affect desert tortoises within the remainder of the Eastern Mojave Recovery Unit or the remainder of the range of the Mojave population of the desert tortoise. (Stateline Solar FEIS/PA, pg. 3.22-22). Additionally, surveys conducted from 2008 to 2012 provide an adequate estimate of population density in the area. (Stateline Solar FEIS/PA, pg. 3.22-9).

The BLM-preferred Alternative, Revised Alternative 3, was developed by the BLM, in coordination with the Applicant, to increase the area for potential tortoise connectivity. (Stateline Solar FEIS/PA, pg. 4.22-37). Revised Alternative 3 reduces the project footprint to 1,685 acres, and modifies the existing Ivanpah DWMA, as described in Section 2.2.2 of the FEIS, by increasing the overall acreage of the DWMA. Section 4.22.11 of the FEIS identifies mitigation measures to aide in desert tortoise protection, and the USFWS Biological Opinion identifies mitigation requirements as well. (Stateline Solar FEIS/PA, pg. 4.1-4).

Special Status Species

Issue Number: PP-CA-Stateline-14-01-21

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

BLM has not used the best available technical and scientific information regarding the effects of translocation on the desert tortoise, such as recent reports on the translocation of desert tortoises from the Southern Expansion Area of Fort Irwin, California...Although BLM and the Project applicant rely on and describe the proposed desert tortoise relocation and translocation as mitigation measures, evidence indicates that these practices are wrought with uncertainty, untested and experimental.

Issue Number: PP-CA-Stateline-14-01-29

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

BLM policy includes taking actions "To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species." BLM Manual 6840.02.A. BLM's proposed action is inconsistent with this policy objective and further undermines recovery and, or conservation of the desert tortoise.

Issue Number: PP-CA-Stateline-14-01-32

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

We protest all the action alternatives, including the Project, because they rely on translocation of desert tortoises onto public lands in the absence of an approved translocation plan developed according to the requirements in BLM Manual 1745.

Issue Number: PP-CA-Stateline-14-02-28
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

BLM Special Status Species policy is to "To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species." BLM Manual 6840.02.A. Because it has significant impacts on crucial desert tortoise linkage habitat the Proposed Action does not conserve "the ecosystem on which they depend" and is inconsistent with BLM's Special Status Species policy.

Issue Number: PP-CA-Stateline-14-02-29
Organization: Western Watersheds Project
Protester: Michael Connor

Issue Excerpt Text:

Department of Interior policy as outlined in Secretarial Order 3283 clearly states, "The Department supports the permitting of environmentally responsible wind, solar, biomass, and geothermal operations and required electrical transmission facilities on the public lands." Secretarial Order 3283, emphasis added. Yet, the BLM recognizes that the Stateline Solar project would have unavoidable adverse environmental impacts including to desert tortoise. Because of the known threats this project poses it fails to meet DOI policy requiring environmentally responsible permitting of solar power plants.

Issue Number: PP-CA-Stateline-14-03-12
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

The FEIS claims the proposed Project would not reduce the number of desert tortoises occurring in the Ivanpah Valley west of I-15 because those occurring within the fenced project site would be moved out of harm's way or translocated to one or more sites surrounding the project. The FEIS assumes relocation and translocation of adult desert tortoises would be 100% successful. However, elsewhere in the FEIS, BLM describes the scientific uncertainty and potential perils of translocation, directly contradicting this premise. Furthermore, the USFWS recently stated they did not support translocation as minimization in comments on another large-scale solar energy project in the Ivanpah Valley.

Issue Number: PP-CA-Stateline-14-03-19
Organization: Sierra Club
Protester: Sarah Friedman

Issue Excerpt Text:

BLM policy includes taking actions "(T)o conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species." BLM Manual 6840.02.A. BLM's proposed action is inconsistent with this policy objective and further undermines recovery and/or conservation of the desert tortoise.

Summary:

The FEIS does not adequately protect special status species for the following reasons:

- Inconsistency with policy objectives of BLM manual 6840.02 – to conserve and recover ESA-listed species;
- Inconsistency with Secretarial Order 3282, which requires renewable energy projects to be “environmentally responsible”;
- Inconsistency with BLM manual 1745 as not having a translocation plan;
- Downplays risks in translocating endangered desert tortoises and does not rely on current science and information including the Fort Irwin report;
- Inconsistency with assumed success rate and risks of translocation; and
- Inconsistency with why translocation was not appropriate at another solar energy projects in the Ivanpah Valley, but was appropriate here.

Response:

The objective of BLM manual 6840 is to conserve and/or recover listed species, and to initiate conservation measures to reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing. As outlined in Manual 6840, when the BLM engages in the planning process, land-use plans and subsequent implementation-level plans shall identify appropriate outcomes, strategies, restoration opportunities, use restrictions, and management actions necessary to conserve and/or recover listed species, as well as provisions for the conservation of BLM sensitive species. In particular, such plans should address any approved recovery plans and conservation agreements. In the case of desert tortoise, section 4.6 of the FEIS states:

“As evaluated in Section 4.22, Wildlife Resources, the desert tortoise, which is listed as federally and state threatened, would be potentially affected by the Proposed Action. As specified in the guideline, BLM will initiate formal consultation with the USFWS in accordance with Section 7 of the Endangered Species Act. BLM has worked with USFWS, California Department of Fish and Wildlife (CDFW), and the Applicant to develop protection and compensation measures for the desert tortoise. Therefore, the Proposed Action would comply with the guideline to provide full protection of the species.” (Stateline Solar FEIS/PA, pg. 4.6-6).

The BLM finds that the Stateline Solar FEIS/PA has adequately complied with its multiple-use mandate, as stated above in the CDCA discussion. While Secretarial Order 3283 (2009) does indeed require environmentally responsible renewable energy projects, the Responsibilities section of the Order also calls for agencies to ensure that “processing and permitting of renewable energy projects complies with the requirements of the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and all other laws and regulations”. The FEIS/PA has evaluated the potential effects to desert tortoise and provided sufficient measures to mitigate the impacts to the species.

The BLM Manual 1745 (1992) provide guidance for the introduction, transplant, augmentation, and re-establishment of fish, wildlife, and plant species. Translocation of a species, as is being

proposed for desert tortoises on this project, is not specifically addressed in Manual 1745. Furthermore, Manual 1745 references land use planning manual sections that have been removed. In November 2000, the BLM removed Manual Sections 1614, 1617 and 1622 and issued Manual 1601. Manual Section 1601 (2000) explains that site-specific plans (for example, habitat management plans) are to be considered implementation-level decisions rather than planning decisions. The BLM's translocation plan for this project is considered an implementation or activity plan, rather than an element of the land-use plan, and therefore is not subject to protest. Substantively, the translocation of desert tortoise is discussed extensively in section 4.22 of the FEIS. The risks and uncertainties for the species were reviewed and are well known in the desert tortoise scientific community. Moreover, the Applicant's Translocation Plan complies with 2011 USFWS guidelines, follows a 2012 Regional Assessment for connectivity potential, and takes additional steps to ensure translocation will have as minimal impact as possible. (Stateline Solar FEIS/PA, pgs. 4.22-16 to 4.22-17).

The potential recipient sites for translocation based on the Applicant's 2012 Translocation Plan were introduced in section 2.1.3.5 of the FEIS and further detailed in section 3.22 of the FEIS.

Habitat

Issue Number: PP-CA-Stateline-14-01-27

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

A critical omission from the FEIS is that the BLM fails to indicate to what extent private land habitat for the desert tortoise exists and is available for purchase within the Eastern Mojave Recovery Unit. The ecological benefit to the desert tortoise from the retirement of the Clark Mountain grazing allotment was not provided in the FEIS, and the effectiveness of various improvements to existing public land habitat was also absent from the analysis. Without such details, the public has no opportunity to ascertain the overall effectiveness of these proposed measures to compensate for the adverse impacts of the Project.

Issue Number: PP-CA-Stateline-14-03-17

Organization: Sierra Club

Protester: Sarah Friedman

Issue Excerpt Text:

A critical omission from the FEIS is that the BLM fails to indicate to what extent private land habitat for the desert tortoise exists and is available for purchase within the Eastern Mojave Recovery Unit. The ecological benefit to the desert tortoise from the retirement of the Clark Mountain grazing allotment was not provided in the FEIS, and the effectiveness of various improvements to existing public land habitat was also absent from the analysis. Without such details, the public has no opportunity to ascertain the overall effectiveness of these proposed measures to compensate for the adverse impacts of the Project.

Summary:

Because the EIS fails to analyze the extent to which private lands are available for purchase for desert tortoise habitat and fails to describe the effectiveness of improvements to existing public land habitat, the public cannot ascertain overall effectiveness of the proposed measures to compensate for the adverse impacts of the Proposed Action.

Response:

The EIS include sufficient detail and analysis to provide an overall assessment of the effectiveness of the proposed desert tortoise mitigation measures to compensate for the potential impacts of the Proposed Action. As the EIS explained, “the Project is not expected to substantially alter viability of the population located in the western lobe of the Ivanpah Valley or result in indirect adverse effects to population viability within the greater Ivanpah Valley or Eastern Mojave Recovery Unit. Furthermore, compensatory mitigation and effectiveness monitoring completed as part of the Proposed Action would contribute to the recovery of the species” (Stateline Solar FEIS/PA, Appendix G, pg. G-50, Response 63-8).

This conclusion was based on analysis in the EIS that explained with respect to the Project area that:

[t]he average density for the western lobe is estimated to exceed the minimum density recommended in the 1994 recovery plan (10 tortoises per square mile). The 1994 Recovery Plan (USFWS 1994) also recommended that reserves be a minimum of 1,000 square miles (640,000 acres) in size. The western lobe, even without any solar projects, is only 33,000 acres in size. Therefore, this area is only about 5 percent of the recommended size needed for a preserve. Implementation of the project would reduce this to about 4.8 percent of the recommended size. Therefore, with respect to the USFWS-recommended reserve size, the project would not have any substantial effect, and would not result in changing a reserve of an acceptable size to support a viable population to one with an unacceptable size. Ninety-four percent (94 percent) of the available habitat within the western lobe would persist following the Project. (Stateline Solar FEIS/PA, pg. 4.22-13).

These conclusions were affirmed by the United States Fish and Wildlife Service (USFWS). As the Final EIS explains, the USFWS completed consultation by issuing the Biological Opinion for the Project on September 30, 2013. The Biological Opinion was developed jointly for the Stateline project and the nearby Silver State South project, in order to consider the effects of both projects. The Biological Opinion concluded, [based in part on an analysis of the effectiveness of the proposed mitigation measures,] that the Proposed Actions are not likely to appreciably diminish reproduction, numbers, or distribution of the tortoise in Ivanpah Valley, and would not affect desert tortoises within the remainder of the Eastern Mojave Recovery Unit or the remainder of the range of the Mojave population of the desert tortoise. (Stateline Solar FEIS/PA, pg. 1-8).

More generally the protests above “...fails to acknowledge the enormous amount of tortoise habitat in Ivanpah Valley which has been permanently protected from further development.” (Stateline Solar FEIS/PA, Appendix G, pg. G-34, Response 59-4). As discussed in the FEIS, “the analysis demonstrated that the cumulative projects would impact up to 15 percent of the tortoise habitat in Ivanpah Valley. Most of the remainder of the habitat is currently protected from any further development by being designated as part of the Mojave National Preserve, Ivanpah DWMA, or other wilderness areas or ACECs. If the modification of the Ivanpah DWMA boundary, which would add an additional 23,000 acres to the protected area, is implemented, then the remaining 85 percent of the habitat in the valley would be permanently protected from further development.” (Stateline Solar FEIS/PA, Appendix G, pg. G-34, Response 59-4).

The protests also fail to acknowledge the mitigation measures proposed with respect to desert tortoise habitat. For example, MM-Wild-8, which requires:

“Habitat Acquisition for Desert Tortoise. To compensate for desert tortoise habitat affected during construction, these effects would be offset through either an acceptable land acquisition, habitat improvements or an assessed financial contribution, based on the final construction footprint. ...The Applicant would provide compensatory mitigation at a 3:1 ratio for impacts to 2,143 acres (for the Proposed Action) or other acreage disturbed by the final project footprint. For compliance with the California Endangered Species Act (CESA), as administered by the CDFW, at least two-thirds of the 3:1 mitigation would be achieved by acquisition, in fee title or in easement, of land suitable for desert tortoise, or by habitat enhancement, such as retirement of grazing, as allowed for under the CDFW’s Interim Mitigation Strategy as required by SB X8 34, September, 2010. The Applicant would provide funding for the acquisition, initial habitat improvements, and long-term management endowment of these CDFW compensation lands.” (Stateline Solar FEIS/PA, pg. 4-22-70).

With respect to the analysis of grazing allotment retirement, the responses to comment included with the FEIS explained that “[t]he text of the PA/FEIS/FEIR Section 4.22.11.3 has been modified to include an analysis of the suitability of grazing retirement as an acceptable component for CDFW-required habitat compensation.” (Stateline Solar FEIS/PA, Appendix G, pg. G-25, Response 56-88).

Based on the foregoing, there was no need to analyze the suitability/availability of additional lands for desert tortoise habitat to compensate for the effects of the Project.

Bird and Bat Conservation Strategy

Issue Number: PP-CA-Stateline-14-01-25

Organization: Defenders of Wildlife

Protester: Kim Delfino

Issue Excerpt Text:

Furthermore, the FEIS states "The (BLM letter to the USFWS) also summarized the Applicant's commitments for conservation measures, as specified in their Bird and Bat Conservation Strategy, and concluded that the document included the same essential elements as an Eagle Conservation Plan. Again, the applicant's proposed Bird and Bat Conservation Strategy was not included in the DEIS or FEIS. The public was afforded no opportunity to assess this reported "strategy" and we seriously question how any conservation measures would avoid, minimize or compensate for the loss of approximately 2,000 acres of existing golden eagle foraging habitat.

Issue Number: PP-CA-Stateline-14-03-15

Organization: Sierra Club

Protesters: Sarah Friedman

Issue Excerpt Text:

Furthermore, the FEIS states "The (BLM letter to the USFWS) also summarized the Applicant's commitments for conservation measures, as specified in their Bird and Bat Conservation Strategy, and concluded that the document included the same essential elements as an Eagle Conservation Plan. Again, the applicant's proposed Bird and Bat Conservation Strategy was not included in the DEIS and FEIS. The public was afforded no opportunity to assess this reported "strategy" and we seriously question how any conservation measures would avoid, minimize or compensate for the loss of approximately 2,000 acres of existing golden eagle foraging habitat.

Summary:

The public was afforded no opportunity to assess the Proposed Actions Bird and Bat Conservation Strategy, and therefore serious questions exist as to how any conservation measures would avoid, minimize or compensate for the loss of approximately 2,000 acres of existing golden eagle foraging habitat.

Response:

NEPA does not require mitigation plans identified in an EIS to be finalized prior to the conclusion of the NEPA process, nor does it require the BLM to make those plans available for public review and comment. Rather, NEPA requires sufficient detail about the potential content of such plans be provided in the EIS so that the effects of the measures can be disclosed and analyzed in the NEPA document. Similarly, while NEPA requires an agency to discuss possible mitigation measures, 42 U.S.C. § 4332(C)(ii), it does not require specific types of mitigation to be analyzed or adopted; those decisions are left to the discretion of the Agency. As explained below, the analysis of the Proposed Action Bird and Bat Conservation Strategy (BBCS) in the Final EIS satisfies these requirements. Similarly, the BLM has taken a hard look at potential impacts to Golden Eagles, including loss of habitat, and is requiring proactive measures from the applicant to mitigate those impacts.

At the outset it should be noted that the, "[t]he applicant's Bird and Bat Conservation Strategy is available on the project website and is included as an additional file on the electronic version of the Final PA/EIS/EIR. Additional baseline data, impacts analysis, and applicant-proposed mitigation measures, based on the Bird and Bat Conservation Strategy, has been added to Section 4.22.11 of the PA/FEIS/FEIR." (Stateline Solar FEIS/PA, Appendix G, pg. G-67, Response 66-24). Similarly, the Biological Technical Resources Report and Vegetation Management Plan, and other plans were provided on request, and are posted on the project website at http://www.blm.gov/ca/st/en/fo/needles/stateline_solar_farm.html. The plans are also included as attachments to the FEIS/PA.

With respect to eagle impacts it should be noted that the Final EIS (pages 4.22-18 and 19) did in fact disclose impacts to Golden Eagles and measures that will be taken to mitigate those impacts to the bird and loss of potential foraging habitat:

"Potential direct impacts to breeding eagles as a result of construction and operation activities could include injury or mortality due to vehicle collisions, abandonment of a breeding territory or nest site, or the potential loss of eggs or young, which would reduce productivity for that breeding season, if present. Direct impacts also would include the long-term reduction of approximately 2,023 acres of potential foraging habitat associated with development of the project. Development of the project would result in an incremental increase in noise and human presence, and these could cause an indirect impact to golden eagles. The project would also include a 2.3 mile long gen-tie transmission line, which would present a potential collision hazard.

Potential impacts to golden eagles would be reduced through implementation of APMs and mitigation measures required by BLM for protection of wildlife and other resources. APMs that would contribute to reducing potential direct impacts to golden eagles include MM-Wild-3 (WEAP), MM-Wild-4 (Delineation of Sensitive Areas), and MM-Wild-11 (Bird and Bat Conservation Strategy, which includes the required components of an Eagle Conservation Plan).

In accordance with BLM Instruction Memorandum 2010-156 dated July 9, 2010, the BLM made a determination that the project is not likely to result in the take of golden eagles not to disrupt essential breeding behavior. This conclusion, and the supporting rationale, were provided to the USFWS in a letter dated April 22, 2013. The letter summarized observed golden eagle activity in the vicinity since 2010, and concluded that the existing projects in that area (Ivanpah SEGS, Kern River Lateral gas line, and EITP transmission line) had not affected behavior. The letter also summarized the Applicant's commitments for conservation measures, as specified in their Bird and Bat Conservation Strategy, and concluded that the document included the same essential elements as an Eagle Conservation Plan." (Stateline Solar FEIS/PA, pgs. 4.22-18 to 4.22-19).

As for the BBCS, it goes into some detail as to the substantive details of the plan. As the EIS explains, the purpose of the BBCS is "to identify resident and migratory bird and bat species that could potentially be present, identify project-related activities that could affect individuals or

habitat, define measures to be used to minimize the potential for impacts, and establish a monitoring program to evaluate the strategy." (Stateline Solar FEIS/PA, pg. 2-21). The EIS the goes on to list the specific measures to be included in the BBCS:

"The Applicant has designed the construction and operation of the Proposed Action to incorporate a variety of mitigation and minimization measures to minimize impacts on all terrestrial special-status species. These APMs are specified in the Applicant's Plan of Development (First Solar 2011), as well as a variety of management plans and technical reports..." (Stateline Solar FEIS/PA, pg. 4.22-54).

The BBCS is contained in Applicant Proposes Measure (APM-Wild-5 - First Solar BBCS, 2012g) set forth in detail on FEIS as follows (Stateline Solar FEIS/PA, pgs. 4.22-55 to 4.22-56):

"These measures are:

1. Vegetation clearing and grading would be avoided wherever possible.
2. Vegetation clearing would be conducted outside of the bird breeding season to the extent practicable. When vegetation clearing during breeding season cannot be avoided, the applicant would communicate the rationale to BLM, USFWS, and CDFW. If this occurred, the Lead Bird Biologist or their designee would oversee construction to locate active nests, establish exclusion zones, and, if necessary, stop construction activities that disturb an active nest.
3. Exclusion zones would be established around active nests, areas of high levels of bat and bird use, and known bat roosts. Clearance surveys would be conducted within 30 days prior to vegetation removal, and exclusion zones established and monitored. Exclusion zones would be established 200 feet from active nests for passerines, 500 feet from an active raptor nest, two miles from any active eagle nest, and 250 feet from any active burrowing owl nests. Exclusion distances for bat roosts sites, maternity colonies, or hibernacula would be established by the Lead Biologist depending on disturbance type, time of year, and duration of disturbance, but would be a minimum of 165 feet.
4. Worker Environmental Awareness Plan training would include bird nest and bat colony avoidance, including identification of and compliance with exclusion zones.
5. The project would follow APLIC guidance for overhead utilities.
6. Construction activities would be conducted in a manner to reduce potential fire hazards.
7. Trash would be removed and disposed promptly to avoid attracting birds and bats.

8. The applicant would implement their Integrated Weed Management Plan to reduce the risk of introducing or spreading invasive plant species.

9. Re-vegetation would be done using only native plants.

The applicant would also implement conservation measures during operations as defined in their BBCS (First Solar 2012g). These measures are:

1. The applicant would avoid creating or maintaining features that would attract birds or bats. Road kills would be removed and disposed to avoid attracting scavengers, vegetation around substations would be removed to reduce raptor foraging, and no open water sources would remain on-site during operations.

2. Lighting would be designed to use the minimum necessary for safety and security.

Also during operations, the applicant would conduct avian monitoring and reporting, as described in Section 5 of their Bird and Bat Conservation Strategy (First Solar 2012g). The monitoring program would continue for a minimum of three years following completion of construction, and would be extended if specific mortality level triggers are reached, or in the event of a take of a listed species or eagle. Monitoring would include next surveys, seasonal point counts, and mortality studies.”

This level of detail provides sufficient information so that the effects of the proposed mitigation measures can be disclosed and analyzed in the NEPA document, and therefore, the BLM has met its NEPA obligations here with respect to the BBCS.
