



***Bureau of Land Management
Director's Summary Protest Resolution
Report***

**Ten West Link Transmission
Line Final Environmental
Impact Statement and
Proposed Resource
Management Plan
Amendments**

November 21, 2019

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Acronyms

Term	Definition
BLM	Bureau of Land Management
CAP	Central Arizona Project
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CRIT	Colorado River Indian Tribes
DEIS	Draft Environmental Impact Statement
DRECP	Desert Renewable Energy Conservation Plan
FEIS	Final Environmental Impact Statement
Final EIS/Proposed RMPA	Final Environmental Impact Statement/Proposed Resource Management Plan Amendments
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
PA	Programmatic Agreement
ROD	Record of Decision
TCP	Traditional Cultural Property

Protesting Party Index

Protester	Organization	Determination
Dennis Patch, Chairman	Colorado River Indian Tribes	Denied
Jerry Melcher	Public Advocates Office, California Public Utilities Commission	Dismissed

NEPA – Best Available Information

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: To select the route, BLM primarily relied on Class I surveys, which simply evaluate existing archaeological or ethnographic studies, to the extent feasible. The problem with this approach is that the study area has not been adequately surveyed. Consequently, the Class I surveys are frequently incomplete. BLM cannot understand the potential tradeoffs of different alternatives without a more thorough study. [1-16]

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: Moreover, BLM further claims that requiring Class III surveys prior to route selection would be “impractical.” FEIS at Appendix 8-47. But this is not the standard. As CRIT pointed out, BLM must collect incomplete information “if the overall costs is not exorbitant” (40 C.F.R. § 1502.22(a)). BLM has made no showing relating to cost.

Summary:

The Ten West Link Transmission Line Final Environmental Impact Statement/Proposed Resource Management Plan Amendments (Final EIS/Proposed RMPA) (BLM 2019) failed to use the best available information when it relied on Class I surveys, rather than conducting Class III surveys, to conduct its analysis of impacts on cultural resources.

Response:

The Council on Environmental Quality’s (CEQ’s) regulations implementing the National Environmental Policy Act (NEPA) require that agencies use “high quality information” (40 Code of Federal Regulations [CFR] 1500.1(b)). NEPA regulations require the Bureau of Land Management (BLM) to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The CEQ’s NEPA regulations require the BLM to obtain information if, among other qualifications, “the overall cost of obtaining it is not exorbitant” (40 CFR 1502.22). The National Historic Preservation Act (NHPA) Section 106 regulations require an agency make a “reasonable and good faith effort” to carry out appropriate identification efforts (36 CFR 800.4(b)(1)).

With the numerous alternative routes and sub-alternatives throughout the study area comprising hundreds of miles, the cost to conduct a Class III survey on all routes in the study area would be exorbitant. The work required would include conducting field archaeological inventories, ethnographic and historical studies, and tribal consultation over the landscape in order to define the cultural landscapes’ legal boundaries, classify them as recognized cultural property types, identify and describe their contributing elements, and obtain any other information required to evaluate and assess impacts on them. Where, as here, the proposed undertaking involves a complex Project involving corridors or large land areas, an agency may, under 36 CFR §§ 800.4(b)(2), 800.5(a)(3), and 800.6(b) and (c), use a phased approach for complying with the NHPA. This phased approach is described in the Project’s Programmatic Agreement (PA) signed into effect by the Advisory Council on Historic Preservation on October 25, 2019. The PA describes how studies conducted as part of the EIS (i.e., the Class I records and literature search, Ethnographic Overview, Research Design and Work Plan, and Geo-archaeological Study) and continuing tribal consultation will inform the pre-construction Class III cultural resources survey, associated inventory reports, and the Historic Properties Treatment Plans.

NEPA requires that all alternatives be treated equally for comparative analysis. A Class I inventory was completed on all alternatives and sub-alternatives within the study area, as described in Section 3.5.1.1 of the Final EIS/Proposed RMPA. The Class I inventory documented sufficient information to understand the nature, density, and distribution of cultural resources, and to allow the BLM to develop the range of alternatives analyzed in the Ten West Link Transmission Line Final EIS/Proposed RMPA and to understand each alternative's impacts on cultural resources.

Avoidance of cultural resources during final design and construction is the preferred adverse effect resolution measure. As noted in Section 4.5.1 of the Final EIS/Proposed RMPA, once a route is selected, a Class III cultural resource inventory will be conducted. As noted in Section 4.5.7.1, potential adverse effects on historic properties would be resolved in accordance with the provisions of the PA and the development of specific Historic Properties Treatment Plans.

NEPA – Cumulative Impacts on Cultural Resources

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: The FEIS fails to adequately evaluate potential cumulative impacts to cultural resources in at least three ways. First, Riverside County has been ground zero for the development of renewable energy projects and associated transmission infrastructure. Removal of cultural resources from the landscape to accommodate these projects has resulted in the removal of the Tribes' footprint. While the FEIS has been revised to at least acknowledge the presence of some of these massive infrastructure projects, it still does not mention or analyze the cumulative impacts that result from removing a significant portion of the tribal footprint. BLM's response on this point- that the FEIS has been revised to acknowledge that this is a "cultural landscape with TCPs present" (FEIS at Appendix 8- 50) - is non-responsive to the particular concern articulated by the Tribes. The Project will result in adverse, cumulative impacts. This fact must be acknowledged.

Summary:

The Final EIS/Proposed RMPA (BLM 2019) fails to adequately address cumulative impacts on the cultural landscape caused by the development of renewable energy projects and associated transmission infrastructure.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ's regulations define cumulative effects as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions" (40 CFR 1508.7).

The BLM has complied with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis (see Final EIS p. 3-73 and pp. 4-106 through 4-107) considered the effects of the planning effort when added to other past present and reasonably foreseeable (not speculative) Federal and non-Federal actions. This served as the determining factor as to the level of analysis performed and presented.

The Final EIS/Proposed RMPA discusses cumulative effects analysis methodology for cultural resources in two sections, Section 4.5, *Cultural Resources*, and Section 4.6, *Indian Tribe Concerns*; together, the sections provide impact analysis from the perspective of the tribes as well as fulfilling the determination of effect requirements in the NHPA. In these sections, the Final EIS/Proposed RMPA addresses the

cumulative impacts on cultural resources and the cultural landscape from past, existing, and future foreseeable projects, including renewable energy projects and associated transmission lines.

Section 4.6.11 notes that “Tribes have expressed interest and concern about potential effects to the native landscape, the viewshed, trails and elements of Native infrastructure across the desert, cultural resource sites, and areas of elevated spiritual importance that are within their traditional territories and may have been inhabited or used by their ancestors... All of this development has had the effect of substantially altering the native landscape of affiliated Indian tribes. Large linear projects, such as DPV1 and the construction of I-10 and the CAP canal have had the effect of altering the viewshed of the native landscape and disrupting the trails and elements of traditional native infrastructure across the desert...”

These cumulative effects are manifested in terms of the loss of pristine environment, erasure of the tribal footprint on the landscape, vandalism of archaeological sites due to increased off-highway vehicle traffic and visitation, and potential restriction to areas. The BLM concluded that in combination with past, present, and foreseeable future projects, the Project would further contribute to the noted cumulative effects. Minimization of cumulative effects of this Project would be addressed through implementation of the PA, which directs avoidance of sites and minimization of the Project footprint before any consideration of mitigation of sites and data recovery.

The BLM complied with NEPA’s requirement to analyze the cumulative effects on cultural resources in the Final EIS/Proposed RMPA.

NEPA – Impact Analysis on Cultural Resources

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: The Tribes are primarily concerned that the FEIS does not adequately study potential cultural resources impacts that would result from development of certain alternatives evaluated in the FEIS and not yet eliminated. While the Tribes are aware that BLM intends to approve the Agency Preferred Alternative, BLM still has discretion to select a route alternative that more directly impacts the Mule Mountains or the Colorado River Indian Reservation, such as the original Proposed Action or the I-10 Route. The Tribes do not believe that the FEIS would serve as an adequate basis for approval of either route. For instance, the Mule Mountains are not even mentioned in Chapter 4.5, which addresses the Project’s potential impacts on cultural resources. FEIS at 4-54 to 4-83. As BLM is aware, the Mule Mountains are a place of critical cultural importance to the Tribes. The area contains a wealth of archaeological sites and other features. CRIT considers it to be an irreplaceable cultural landscape. It is unfathomable that Chapter 4.5 omits any specific discussion of this area.

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: While Chapter 4.6, concerning issues of importance to Indian Tribes, briefly mentions the Mule Mountains area. it also fails to adequately study the potential impacts of the original Proposed Action. Instead, it briefly summarizes some of the Tribes’ critical concerns, including lack of access and visual degradation. An adequate analysis, however, would describe these impacts in detail, with specific reference to the types of resources and the location of the potential route. It would also provide a better sense of the severity of this potential impact, especially compared to other alternatives. And it would evaluate the Project’s consistency with the Religious Freedom Restoration Act and federal requirements to provide access to areas of religious importance. Suggested future additions to a programmatic agreement-especially one that has already been finalized are woefully insufficient. FEIS at 4-94.

Summary:

The Final EIS/Proposed RMPA (BLM 2019) failed to adequately analyze potential impacts from the range of alternatives on cultural resources in the Mule Mountains area.

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 Ten West Link Transmission Line Final EIS/Proposed RMPA.

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. A land use planning–level decision is broad in scope. For this reason, analysis of land use plan decisions is typically broad and qualitative rather than quantitative or focused on site-specific impacts.

As stated in Appendix 8 of the Final EIS/Proposed RMPA (see p. 8-44), a Class I cultural inventory was completed on all potential routes with a 1-mile analysis buffer. There was sufficient existing information within this 1-mile buffer to understand the nature, density, and distribution of cultural resources within the analysis area. The BLM used this information to develop the range of alternatives analyzed in the Draft EIS. Following publication of the Draft EIS, a Class III inventory was completed where the Proposed Action came closest to the Mule Mountains (segments P-17 and P-18). In addition to information gathered from the Class III inventory, the BLM also adjusted the Preferred Alternative (see Final EIS/Proposed RMPA p. 2-18) based on information provided by the Tribes.

As noted in Section 4.5.1 of the Final EIS/Proposed RMPA, once a route is selected, a Class III cultural resource inventory will be conducted regardless of the alternative chosen. Additionally, and as noted in Section 4.5.7.1, potential adverse effects on historic properties under any of the alternatives would be resolved in accordance with the provisions of the PA and the development of specific Historic Properties Treatment Plans. Avoidance of cultural resources by final design and construction is the preferred adverse effect resolution measure.

NEPA – Response to Comments***Colorado River Indian Tribes******Dennis Patch, Chairman***

Issue Excerpt Text: In a November 29, 2018 comment letter, the Tribes raised a number of issues with respect to the Draft Environmental Impact Statement (DEIS) released for this Project. See FSEIS at Appendix 8-44 to 8-53. BLM’s responses to these comments, however, frequently summarize the Tribes’ concerns, rather than offer an adequate change, justification, or explanation. This effort violates the National Environmental Policy Act (NEPA). 40 C.F.R. § 1503.4

Summary:

The Final EIS/Proposed RMPA (BLM 2019) did not adequately respond to public comments received on the Ten West Link Transmission Line Draft EIS/Draft RMPA (BLM 2018).

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, pp. 23–24).

In compliance with NEPA, the BLM considered all public comments submitted on the Ten West Link Transmission Line Draft EIS/Draft RMPA. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix 8 of the Final EIS/Proposed RMPA presents the BLM’s responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s responses to comments on the Ten West Link Transmission Line Draft EIS/Draft RMPA (BLM 2018) raised by the Colorado River Indian Tribes are found in Appendix 8 of the Final EIS/Proposed RMPA (BLM 2019) (Appendix 8 pp. 8-44 through 8-53). In its responses, the BLM identified any modifications to the alternatives, clarification and additional information added as a result of the public comment, improvements to the impacts analysis, and 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.

Environmental Justice***Colorado River Indian Tribes******Dennis Patch, Chairman***

Issue Excerpt Text: The FEIS Defers Any Environmental Justice Analysis of Cultural Resource Impacts. The Tribes previously articulated that cultural resource impacts must be treated as environmental justice concerns, as such impacts disproportionately impact a traditionally marginalized community. While the FEIS now includes paragraphs summarizing CRIT’s concerns (see FEIS at 4-139 to 4-140), the document does little to actually analyze or address this issue. Instead, the FEIS states only that “Consultation with CRIT is ongoing.” This deferral of analysis is inadequate. The Tribes provided BLM with a roadmap for completing an adequate study of the environmental justice implications of cultural resource harm and for developing mitigation measures that might start to remedy some of this injustice. BLM has provided no explanation for its failure to complete this analysis in the FEIS.

Colorado River Indian Tribes***Dennis Patch, Chairman***

Issue Excerpt Text: In addition, the FEIS offers no study of the potential cultural resource impacts associated with development of the project on the Colorado River Indian Reservation. Reservation lands are held in trust for the benefit of the Tribes, and use of these lands for non-tribal purposes can have significant political and cultural implications for the tribal owners. Yet this issue is not addressed in the FEIS at all. The document cannot serve as a basis for approving an alternative that would require development of lands within the Colorado River Indian Reservation.

Summary:

The Final EIS/Proposed RMPA fails to adequately analyze environmental justice implications by not considering cultural resources in the analysis, and does not consider impacts on cultural resources from development on the Colorado River Indian Reservation.

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 the Final EIS/Proposed RMPA (BLM 2019).

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. A land use planning–level decision is broad in scope. For this reason, analysis of the land use plan amendment alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions.

Additionally, the BLM is responsible for implementing the provisions of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The BLM analyzed whether the alternatives would adversely and disproportionately affect minority populations, low-income communities, and tribes and considered the aggregate, cumulative, and synergistic effects of its actions along with the actions taken by other parties. While Environmental Justice analysis is specifically concerned with disproportionate effects on the three populations, the social and economic analysis produced in accordance with NEPA considers all potential social and economic effects, positive and negative, on any distinct group (BLM Land Use Planning Handbook, Appendix D, p. D-11).

The BLM addressed the requirements of NEPA and Executive Order 12898 in three sections of the Final EIS/Proposed RMPA, specifically Sections 4.6, *Concerns of Indian Tribes* (p. 4-83), Section 4.9, *Socioeconomics* (p. 4-128), and Section 4.10, *Environmental Justice* (p. 4-136). Taken collectively, the analysis addresses multiple aspects of the Project’s effects on Indian Tribes. These include discussing the Project’s effects on issues and areas of concern to Indian Tribes (Section 4.6); discussing the Project’s effects on the economy, population, housing, tax revenues, public services, property values, and the tourism- and recreation-related economy of the Project analysis area that includes the Colorado River Indian Reservation (Section 4.9); and identifying and analyzing the Project’s and plan amendment’s effects on specific identified Environmental Justice populations including the Colorado River Indian Tribes (Section 4.10).

The Colorado River Indian Reservation was identified as an Environmental Justice community in Section 3.10.2.4 (p. 3-52) and tribal lands are shown on Figures 3.10-1 through 3.10-3 (Appendix 7). The Environmental Justice discussion draws conclusions as to whether minority, low-income, and/or tribal peoples have a disproportionate share of the negative environmental consequences resulting from the Project and/or plan amendments. The analysis concluded that given the characteristics “of the area and the Project, low-income and minority populations would be affected by the Project, regardless of which Action Alternative is selected... [and the] CRIT have expressed that the Project would constitute an adverse impact to the Tribe that exceeds that of the general population, as they have greater ties to the specific environments and lands encompassing the Project Area...discussed in further detail in Section 4.6” (p. 4-136).

In the referenced Section 4.6, the analysis states that the Project area contains “cultural and spiritual energy for Indian tribes, and continue to play fundamental roles in cultural traditions, group identities, and ongoing religious and ceremonial traditions” (p. 4-83). Direct, indirect, and cumulative analysis areas and assumptions for analysis were defined, which provided the analysis methodology. As noted in the assumptions, “The PA and ROD would outline protocols for minimizing impacts to areas of concern to Indian tribes, such as options for regulating access, provisions for the inclusions of tribal members in cultural resources investigations and fieldwork, and the preparation of ethnographic studies, among other provisions, as required” (p. 4-85).

The BLM complied with NEPA’s requirement to analyze the Environmental Justice impacts on the tribes and cultural resources in the Final EIS/Proposed RMPA.

NEPA – Mitigation

Colorado River Indian Tribes

Dennis Patch, Chairman

Issue Excerpt Text: The FEIS claims that cumulative impacts can be addressed through data recovery and other methods. In response to the Tribes’ comment that such traditional methods are insufficient to reduce cumulative impacts, the FEIS has been revised to state that the DRECP PA “contains measures to address cumulative effects not addressed by data recovery or other traditional adverse effect resolution measures.” FEIS at 4-83. As far as CRIT is aware, the only cumulative effects mitigation in the DRECP is the payment of a compensatory fee. However, development of this fee program is at best uncertain. And even if the Tribes had any faith that the relevant agencies would revive the effort to develop the fee, compensatory mitigation is insufficient to reduce cumulative impacts to cultural resources. Again, the adverse cumulative impacts from this Project must be acknowledged.

Summary:

The Final EIS/Proposed RMPA (BLM 2019) fails to include the necessary mitigation measures for cumulative effects on cultural resources.

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).

Similarly, Section 106 of the NHPA requires a Federal agency to consider the potential effects of its undertaking on historic properties. When a Federal agency has found that an undertaking may adversely affect historic properties, it must develop and consider alternatives or measures to avoid, minimize, or mitigate such effects. Under Section 106, a PA that stipulates the resolution of adverse effects agreed to by the signatories is an appropriate vehicle to identify treatment and mitigation measures developed for complex projects where the effects on historic properties cannot be fully determined prior to the approval of the undertaking.

On October 25, 2019, the PA for the Ten West Link Transmission Line was signed into effect by the Advisory Council on Historic Preservation, the BLM, the Arizona and California State Historic Preservation Officers, and the Colorado River Indian Tribes. The PA identifies the mitigation strategies developed during compliance with Section 106. Impacts on prehistoric cultural resources that convey the significance of the landscape, including those not eligible for the National Register of Historic Places and historic properties mitigated through data recovery, cumulatively affect the cultural landscape.

Minimization of cumulative effects of the Ten West Link Transmission Line would be addressed through implementation of the PA, which directs avoidance of sites and minimization of the Project footprint as the primary mitigation measures before any consideration of other methods including data recovery. As described in revised draft PA for the Final EIS/Proposed RMPA (see Final EIS/Proposed RMPA Appendix 2D), mitigation measures for cultural resources would be implemented prior to and during construction and post-construction during operations and maintenance activities.

The regulations implementing NHPA Section 106 (36 CFR Part 800) allow a range of options when determining what constitutes appropriate mitigation of adverse effects on historic properties; alternative mitigation is not prohibited and there is no prescription for specific measures (36 CFR § 800.6(a)). The BLM may opt to develop alternative, creative measures with cooperating agencies, project proponents, and tribal governments, including compensating for the impact by providing substitute resources or funding, as part of resolving adverse effects.