



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

**West Mojave Route  
Network Project Final  
Supplemental  
Environmental Impact  
Statement (WMRNP FSEIS)**

October 3, 2019

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## *Acronyms*

<b>ACEC</b>	Area of Critical Environmental Concern
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ALAA</b>	American Lands Access Association
<b>BLM</b>	Bureau of Land Management
<b>CBD</b>	Center for Biological Diversity
<b>CDCA</b>	California Desert Conservation Area
<b>CEQ</b>	Council on Environmental Quality
<b>CFMS</b>	California Federation of Mineralogical Societies
<b>CFR</b>	Code of Federal Regulations
<b>CMA</b>	Conservation and Management Action
<b>CNPS</b>	California Native Plant Society
<b>CRIT</b>	Colorado River Indian Tribes
<b>DRECP</b>	California Desert Renewable Energy Conservation Plan
<b>DSEIS</b>	Draft Supplemental Environmental Impact Statement
<b>EIS</b>	environmental impact statement
<b>FEIS</b>	Final Environmental Impact Statement
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>FSEIS</b>	Final Supplemental Environmental Impact Statement
<b>GHG</b>	greenhouse gas
<b>GIS</b>	geographic information systems
<b>HPMP</b>	Historic Properties Management Plan
<b>km<sup>2</sup></b>	square kilometer
<b>LUPA</b>	Land Use Plan Amendment
<b>NEPA</b>	National Environmental Policy Act
<b>NHPA</b>	National Historic Preservation Act
<b>OHV</b>	off-highway vehicle
<b>ORV</b>	off-road vehicle
<b>PA</b>	Programmatic Agreement
<b>PCNST</b>	Pacific Crest National Scenic Trail
<b>PCT</b>	Pacific Crest Trail
<b>SDEIS</b>	Supplemental Draft Environmental Impact Statement
<b>SEIS</b>	Supplemental Environmental Impact Statement
<b>SFEIS</b>	Supplemental Final Environmental Impact Statement
<b>SHPO</b>	State Historic Preservation Officer
<b>TTM</b>	Travel and Transportation Management
<b>TWS</b>	The Wilderness Society
<b>U.S.C.</b>	United States Code
<b>UPA</b>	Unusual Plant Assemblage
<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>WEMO</b>	West Mojave
<b>WMRNP</b>	West Mojave Route Network Project

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
Greg Herring	First Class Miners, Inc	Dismissed – Comments Only
Jon Aichele	Bakersfield	Dismissed – Comments Only
Suzanne Gooch	Individual	Dismissed – Comments Only
John Hunter	Individual	Dismissed – Comments Only
William Riggs	Individual	Dismissed – Comments Only
Dennis Patch	Colorado River Indian Tribe	Denied – Issues and Comments
Withheld (Susan E. Herring)	First Class Miners, Inc	Dismissed – Comments Only
Jennifer Haley	CFMS & ALAA	Dismissed – Comments Only
John Martin	ALAA	Dismissed – Comments Only
Raymond Pessa	Friends of Giant Rock	Dismissed – Comments Only
Withheld (Mary Dellavalle)	Individual	Dismissed – Comments Only
Paul Polly	Society of Vertebrate Paleontology	Dismissed – Comments Only
Withheld (Jeff Aardahl, Ed LaRue, and Nicholas Jensen)	Defenders of Wildlife, Desert Tortoise Council, and California Native Plant Society	Dismissed – Comments Only
Jeff Aardahl	Defenders of Wildlife	Denied in part – Issues and Comments
Benjamin Barry	Pacific Crest Trail Association	Denied in part – Issues and Comments
Donald Scott	Individual	Dismissed – Comments Only
Lisa Belenky	Center for Biological Diversity	Denied – Issues and Comments
Mike Hawkins	Friends of Giant Rock	Dismissed – Comments Only
Bob and Margo Howlett	Friends of Giant Rock	Dismissed – Comments Only
Jenny Wilder	Friends of Juniper Flats	Dismissed – Comments Only
Sarah Kennington, Steve Bardwell	Individual	Denied – Issues and Comments
Miriam Seger	Individual	Dismissed – Comments Only
Robert Reynolds	Individual	Dismissed – Comments Only
Mark, Kyle, and Lisa Lanham	Friends of Giant Rock	Dismissed – Comments Only
Alison Flint, et al.	The Wilderness Society, Defenders of Wildlife, California Wilderness Coalition, Sierra Club, California Native Plant Society, Western San Bernardino County Landowners' Association, and Conservation Lands Foundation	Denied – Issues and Comments
Bernard Donnelly	Individual	Dismissed – Comments Only
Thomas Koch	Individual	Dismissed – Comments Only
Martin H. Milas	Individual	Dismissed – Comments Only

<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
John Stewart	California 4 Wheel Drive Association	Dismissed – Comments Only

## ***NEPA—Mitigation***

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** The FSEIS provides almost no discussion whatsoever as to possible mitigation measures, insisting that this will all be developed as part of the Section 106 Programmatic Agreement. But this effectively means that the potential mitigation will never undergo NEPA review and, because it is largely missing from the FSEIS, will be known only to the select parties consulted as part of the Agreement process. This arrangement undermines NEPA's core purposes.

#### **Summary:**

The Final Supplemental Environmental Impact Statement (FSEIS) fails to provide detailed mitigation for cultural and tribal resources, removing the opportunity for public review under the National Environmental Policy Act (NEPA).

#### **Response:**

NEPA requires the Bureau of Land Management (BLM) to include a discussion of measures that may mitigate adverse environmental impacts (40 Code of Federal Regulations [CFR] 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The West Mojave Route Network Project (WMRNP) FSEIS incorporated mitigation measures in the alternatives and analyzes measures that avoid some potential future impacts. For example, the FSEIS addresses cultural resources mitigation measures, including as part of the land use plan-level allocations and incorporated with the alternatives, specifically the network-wide minimization measures from Table 2.2-1 on page 2-12; as part of the NEPA analysis for reducing impacts as described in Section 4.1.2, *Analysis Methodology*; and in the cultural resources section in multiple areas that include discussion for how the network-wide minimization measures and specific mitigation measure help resolve potential adverse effects on historic properties, including page 4-153 for resolving adverse effects on historic properties from the route designations, page 4-161 for effects resulting from PA-III allocations under the alternatives, and page 4-165, which provides a list of specific mitigation measures developed from the information gained through implementation of the Cultural Resources Programmatic Agreement (PA) for the West Mojave (WEMO) Plan Amendment.

Appendix F (page 9-10) of the FEIS lists the major milestones leading up to the signing of the PA on September 30, 2015. Appendix B to the PA contains details regarding consultation meetings in the development of the PA. In the implementation of the PA, the BLM held two consulting parties meetings regarding the development of the Historic Properties Management Plan (HPMP), ten consulting party reporting meetings, and submitted three annual reports to consulting parties. In addition to the consultation requirements of the PA, the BLM has made progress on other implementation requirements of the PA including completing BLM Class III inventory of 418.94 miles of routes (15,106 acres), documenting and evaluating 322 new cultural resources, and monitoring 116 previously documented cultural resources.

The BLM provides a discussion of the development and stipulations in the PA under *NEPA—Impacts Analysis: Cultural Resources*. As noted, the PA includes stipulations and standard protective measures that would mitigate adverse effects on historic properties. Any or all these measures may be carried forward into the Record of Decision and could be used to help mitigate or minimize adverse effects on historic properties. The FEIS, Chapter 6.1 Appendix F (page 10) describes how the HPMP was developed. The HPMP will guide the BLM in designing inventory strategies for the WEMO Planning Area; in evaluating identified resources for NRHP eligibility; in assessing effects to historic properties; in the application of appropriate avoidance, minimization, or mitigation measures and adjustments to the travel network where adverse effects to eligible historic properties are occurring.

The WMRNP FSEIS complied with NEPA by including a discussion of measures that may mitigate adverse effects on historic properties appropriate for the scope of the amendment.

## ***NEPA—Impact Analysis: Special Status Species***

### ***Defenders of Wildlife***

#### ***Jeff Aardahl***

**Issue Excerpt Text:** Protest Statement: BLM’s analysis failed to quantify the amount and extent of dust generated from disruption of surface soil crusts on Cuddeback and Coyote Dry Lakes, and its impact to desert tortoise Critical Habitat and habitat of Special Status Plant Species adjacent to and downwind from these lake beds. While BLM recognized that arsenic-laden soil exists on the Cuddeback Dry Lake, it failed to analyze the effects of such dust generated from disruption of the playa crust from off-highway vehicles. It dismissed this impact by simply stating, “...continued use may have an already existing direct adverse impact on air quality, including impacts for fugitive dust with high arsenic concentrations.” In the Council’s comment letter on the Draft SEIS, it informed the BLM in numerous ways how opening Cuddeback Lake (located in the Fremont-Kramer ACEC and Critical Habitat Unit) and Coyote Lake (located in the Superior-Cronese ACEC and Critical Habitat Unit) to unrestricted vehicle use and introducing new competitive vehicle events into the Ord-Rodman Critical Habitat Unit are inconsistent with BLM’s mandate under FLPMA to manage designated desert tortoise critical habitat primarily for the conservation and recovery of Agassiz’s desert tortoise.

#### **Summary:**

The WMRNP FSEIS fails to analyze the effects of surface soil disruptions and dust generated from travel management area allocations and this impact on desert tortoise Critical Habitat and habitat of Special Status Plant Species adjacent to and downwind from dry lakebeds.

#### **Response:**

NEPA directs that data and analyses in an environmental impact statement (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 WMRNP.

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 alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. The plan does not make travel management area allocations; it does however provide a framework for transportation management, and specific travel management implementation strategies.

The 2005 WEMO Plan EIS analyzed the impacts of the route network evaluated in that EIS with respect to wildlife habitat, wildlife corridors, and special status wildlife species. The analysis included a discussion of the effects of off-highway vehicle (OHV) Open use for Cuddeback and Coyote dry lakebeds on specific wildlife species, including the desert tortoise, Mohave ground squirrel, and others. The U.S. District Court for the Northern District of California evaluated the analysis specific to these species and did not identify any deficiencies in the analysis of impacts on these wildlife species, corridors, or habitat.

As noted on pages 3-60 through 3-62 of the FSEIS, the dry lakebeds do not support the primary constituent elements for desert tortoise critical habitat; therefore, direct impacts on designated critical habitat were not discussed in the FSEIS. However, the FSEIS analyzed the impacts of fugitive dust resulting from the vehicular travel over soils on unpaved routes on adjacent vegetation, wildlife including desert tortoise and other special status plant and animal species, air quality, and visual resources (FSEIS pp. 4-14 to 4-15; Sections 4.4.1.2 and 4.4.1.3; Sections 4.4.2.2 and 4.4.2.3; p. 4-60; Section 4.10.2). The BLM complied with NEPA's requirement to analyze the environmental impacts of fugitive dust on vegetation and desert tortoise in the WMRNP plan amendment effort.

## ***NEPA—Impacts Analysis: Cultural Resources***

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** The Tribes extensively explained their concerns about BLM's methodology and failure to adequately consider cultural resource impacts—one of the same flaws that initially led the District Court to overturn the 2006 WEMO. Yet, BLM's only response to CRIT's comments (and those of many other commenters, sharing similar concerns) was a single sentence: "BLM followed all requirements of the BLM NEPA Handbook (H-179Q-1) in acquiring public input into the scope of analysis and range of alternatives that were employed in the DSEIS." (FSEIS: Appendix I at 1-5.) This inadequate response in no way engaged with the substance of CRIT's comments or provided any analysis regarding the adequacy of the SEIS's cultural resource analysis.

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** As the Tribes predicted in our 2018 comment letter on the DSEIS, BLM's decision to defer its cultural resource analysis to Programmatic Agreement process has resulted in final NEPA documents that do not fully understand or consider the project's cultural resource impacts and, therefore, cannot offer meaningful mitigation of those impacts. Per BLM's own explanation, the FSEIS's baseline for cultural resources focused primarily on studies completed between 1960 and 1980 in support of the original West Mojave Plan. (FSEIS at 3-120.) Those early studies have proven to be quite limited: BLM's renewed surveying efforts have revealed 8,000 more miles of OHV routes than accounted for in the 2006 WEMO Plan. (Id. at 1-3.)

However, rather than pausing to ensure development of an adequate baseline that accounts for these additional routes, BLM is plunging ahead without the information. As BLM admits, its “quantitative analysis of [cultural resource] impacts is based on the number of known cultural resources in varying proximity to each route designation type or concentrated area of grazing use.” (Id. at 4-3 (emphasis added).) BLM cannot analyze impacts based on data it did not bother to gather.

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** BLM also discusses the intermediate cultural resource identification efforts it has undertaken in the last several years while the project has been under NEPA review. Given the size of the Planning Area, BLM opted to undertake a set of Class III cultural resource surveys in which the agency surveyed 1 % of the Planning Area each year for five years (concluding in 2019). (FSEIS at 3-122, 4-153.) The FSEIS does not detail where these surveys occurred, only that the areas were selected at random and are meant to be a representative sampling of the Planning Area. (Id.) The Tribes have a number of issues with this approach. First, without more information on BLM’s random selection methodology, CRIT doubts whether a “random” sampling size of an area as vast as the Planning Area can really capture the diverse desert landscape and varying cultural resource impacts. Second, this approach did not take into account input from local tribes and past studies regarding the sensitive locations where cultural resource impacts are most likely to occur. BLM would have been better served focusing its limited time and resources on those areas first, and developing mitigation measures that would better protect those resources. Finally, it is unclear to the Tribes what purpose these sample surveys played in BLM’s NEPA analysis. At one point, the agency states “[t]he site location data collected as part of this planning effort indicate many portions of the planning area may be considered sensitive for the occurrence of cultural resources.” (Id. at 3-124). Yet, just a few pages earlier, the FSEIS also explained that though the Class III surveys “increased cultural knowledge,” they have “not resulted in significant route closures.” (Id. at 3-120.) In other words, it appears that BLM has proceeded with its preferred project-keeping many routes open—even though the very limited data gathered suggests that the project is likely to have an adverse impact on sensitive cultural resources. The Tribes, and the rest of the reviewing public, cannot make sense of this approach.

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** Prehistoric Trail Systems, Traditional Use Areas, and Cultural Landscapes: The FSEIS contains numerous paragraphs addressing historic trails and national scenic areas, yet the analysis makes no mention of any prehistoric trail systems or sacred cultural landscapes in the Planning Area. (FSEIS at 3-131, -145.) The Tribes are especially confused by this glaring error, given that BLM just finalized a prehistoric trails context document as part of its Programmatic Agreement efforts. This appears to be yet another example in which the information derived from BLM’s Section 106 consultation efforts did not get incorporated into the agency’s NEPA analysis.

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** In response to CRIT’s comment encouraging BLM “to consider limiting stopping, parking, and camping to within 50 feet of a centerline of a route within all ACECs” as a means of reducing “direct impacts on 313 known cultural resource sites,” DSEIS Comments at 7-8, BLM responded only that the Tribes “did not provide additional information regarding the analysis; therefore, no changes were made to the Draft SEIS.” (FSEIS: Appendix I at 1-10.) Even worse, the Tribes’ concerns about routes in or near dry lake beds having the potential to disturb or destroy a high volume of cultural resources went completely unacknowledged. BLM’s response to all dry lake bed comments discussed only critical tortoise habitat. (Id. at 1-13.)

Finally, BLM lumped the remainder of CRIT’s cultural resource and environmental justice concerns into a single summary, to which the agency responded that it had “evaluated additional GIS layers related to potential affected cultural resources,” “take[n] into consideration the designation criteria for cultural resources,” and made “[s]urgical designation changes” in response to “specific public comments where appropriate.” (Id. at 10 60.) These responses fall far short of NEPA’s requirement that an agency “assess and consider comments both individually and collectively” and “respond” by modifying alternatives, developing new alternatives, supplementing its analysis, making factual corrections, or explaining why the comments do not warrant further agency response by citing “sources, authorities, or reasons which support the agency’s position.” 40 C.F.R. § 1503.4(a). The Tribes protest these inadequate responses to our comments and BLM’s resulting violation of NEPA.

### ***Individual***

#### ***Sarah Kennington***

**Issue Excerpt Text:** The Presidential Proclamation creating Sand to Snow National Monument further cites: The San Manuel Band of Mission Indians and the Morongo Bands of Mission Indians, descendants of the ancient Serrano inhabitants of the Pipes Canyon Buttes, consider this a sacred landscape. (note 3) The sacred landscape is in jeopardy from motorized access. The WMRNP EIS presents contradictory assessments of decision-makers ability to protect cultural resources based on available information, on one hand: ...to the extent the effect of travel on cultural resources had not been fully determined, the FEIS was inadequate. BLM acknowledges that the current WMRNP will adversely affect cultural resources and believes it has enough information to date to define the effects of the plan on cultural resources on a programmatic land use planning basis. (WMRNP 4-156) Elsewhere the EIS states: ...the geodatabase location information (feature classes or shapefiles), the associated information about each resource or investigation (attribute data) is limited or inconsistent. As it exists now, the geodatabase cannot be used for predictive analyses like those recommended in A Strategy for Improving Mitigation Policies and Practices of the Department of the Interior (DOI 2014). (Note 4) These statements and the specific impacts noted in our comments lead us to question whether sufficient and quality information was available and used in WEMO decision-making. The fact that the Cultural Resources Programmatic Agreement (PA) for the WEMO Planning Area will not be completed until a later date in 2019 provides additional basis of concern.

### ***The Wilderness Society***

#### ***Alison Flint***

**Issue Excerpt Text:** With respect to known cultural resources, BLM fails to demonstrate how its proposed route network will protect cultural resources. See, e.g., TWS/CalWild June 14, 2018 Comments at 57-62. BLM’s preferred alternative would result in “an increase in the total number of sites potentially impacted from 640 in the No Action Alternative to 710, and has the second greatest number of known sites in proximity to transportation linear disturbances with 930 miles.” FSEIS at 4-165. BLM’s approach addressing the potentially significant adverse impacts associated with its proposed route network on both known and unknown cultural resources is to rely on a series of minimization and mitigation measures that “may be included.” Id. It is unclear if, when, or how those measures will be applied. Not only does this approach violate the NHPA but also it violates BLM’s duty to protect monument objects.

### **Summary:**

The WMRNP FSEIS fails to:

Adequately explain, analyze, or mitigate impact to cultural resources;

Consider input from local tribes.

**Response:**

Section 106 of the NHPA does not require a complete Class III inventory of historic properties in any given resource area (FSEIS page 4-157). Section 106 requires an agency to make a reasonable and good faith effort to carry out appropriate identification efforts. These efforts may include background research, consultation, oral history interviews, sample field investigations, and field surveys, taking into consideration past planning, research, and studies; the nature and magnitude of the undertaking; the nature and extent of the potential effect; and the likely nature and location of historic properties within the area of potential effect. The reasonable and good-faith effort is determined through consultation with the ACHP and SHPO, and all of these efforts were employed with the WMRNP planning effort.

On September 30, 2015, the BLM California State Director, California State Historic Preservation Officer (SHPO), and Chairman of the Advisory Council on Historic Preservation (ACHP) signed and executed a Programmatic Agreement (“PA”) for the WMRNP.<sup>1</sup> The PA was developed after many months of consultation among the BLM, the California SHPO, the ACHP, and 64 additional Consulting Parties including federally and non-federally recognized tribes, local, state, and Federal government entities, and organizations and individuals. The PA establishes a framework for addressing current limits in information, and includes the development of a predictive model, level of additional inventory, additional consultation, and other measures deemed necessary to identify areas of higher cultural resource sensitivity that may be affected by the transportation network within the WMRNP planning area (FSEIS pages 3-120 to 3-122).

The PA incorporates a phased approach to identify and evaluate historical properties.<sup>2</sup> In conformance with the PA, BLM used information from Phase I to develop a GIS based sensitivity analysis and a predictive model to identify cultural resources within the planning area. See e.g., FSEIS page 3-132. The model will be used in implementation of the Historic Properties Management Plan (“HPMP”); both the model and the HPMP have and will continue to allow BLM to design inventory strategies, evaluate eligibility, and assess impact to historic properties within the planning area. FSEIS, at 3-132. The PA specifies how individual effects on historic properties will be addressed and lists standard protective measures that the BLM may apply (see Table 2.2-1 and p. 4-165).

The BLM field offices involved in the development of route network alternatives utilized a Microsoft Access Database, coupled with site specific reviews completed by field office archaeologists, to analyze WEMO IDs (route segments) and cultural resources that may be affected, consistent with the designation (i.e., OHV Open, OHV Limited, or OHV Closed) for the respective travel area.

The Access Database contains tabs that include information such as public scoping input, public comments, and cultural resource geospatial data, and all were considered for the route designation decision-making process. Resource considerations along with public input and comments, including tribal input and comments, were reviewed, analyzed, and incorporated along with the best available data to propose stopping, parking, and camping limitations for PA VI. Furthermore,

<sup>1</sup> The PA is entitled the *Programmatic Agreement among the Advisory Council on Historic Preservation, the Bureau of Land Management-California and the California Office of Historic Preservation Regarding National Historic Preservation Act Responsibilities for the West Mojave Plan Environmental Impact Statement and the West Mojave Route Network Project*.

<sup>2</sup> A phased approach is appropriate where alternatives under consideration consist of large land areas such as the travel management areas under consideration in the WMRNP. FSEIS page 4-156.

all affected resources were reviewed and analyzed to determine the most appropriate level of travel use for a specific WEMO route ID.

Impact to historic properties and sensitive resource areas may be protected through a myriad of mitigating mechanisms including rerouting, reconstruction, new construction, limitations on vehicle type, and time or season of travel restrictions, or designation of routes as transportation linear disturbances. If the BLM determines that a particular designation has the potential to adversely affect a known historic property, it will further consult with the Consulting Parties to the PA on specific measures to avoid, minimize, or mitigate adverse effects according to the BLM PA and applicable state protocol or 36 CFR Part 800 regulations.

## ***NEPA—Impacts Analysis: Environmental Justice***

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** Environmental Justice: Despite the Tribes’ repeated comments explaining the devastating sociocultural and religious effects of cultural resource destruction for Tribal members, the FEIS’s description of environmental justice issues in Chapter Three: Affective Environment does not make any mention of Native American tribes or the project’s potential impacts on this distinct minority group. (FSEIS at 3-71 to -74)

#### **Summary:**

The WMRNP FSEIS fails to address environmental justice concerns because tribal religious and social concerns are not addressed in the Environmental Justice section.

#### **Response:**

The information in FSEIS Section 3.5.2, *Environmental Justice* (pp. 3-71 through 3-74), and pages 4-119 through 4-131 is consistent with Executive Order 12898, which requires federal agencies to “identify and address the disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” According to the Council on Environmental Quality’s (CEQ’s) *Environmental Justice Guidance Under the National Environmental Policy Act* (CEQ 1997), “minority populations should be identified where either: (a) the minority population of the affected region exceeds 50 percent or (b) the minority population percentage of the affected region is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis.” Consistent with these orders and guidance, pages 3-71 through 3-74 in the FSEIS identify locations of census tracts with considerations of minority and low-income populations of environmental justice concern.

The BLM included descriptions of cultural resources and cultural landscapes in the planning area in FSEIS Section 3.9, *Cultural Resources* (pp. 3-119 and 3-132). The referenced FSEIS section includes a thorough account of objects and locations of traditional cultural or religious significance to social and/or cultural groups, including Native American tribes.

## ***NEPA—Impact Analysis: Air Emissions and Climate Change***

### ***Center for Biological Diversity***

#### ***Lisa Belenky***

**Issue Excerpt Text:** The FEIS does not actually make a conformity determination but rather in a section entitled “Conformity Determination” states “Appendix E discusses and lists the thresholds

(de minimis amounts) of additional criteria pollutants that a federal project may not exceed in a designated nonattainment area or maintenance area.” FSEIS at 3-10. The reference is to Appendix E-2, which provides an entirely new air quality report that was not circulated to the public with the DSEIS.]

The FEIS states that BLM was aware of the need to include emissions from open areas in the conformity analysis, as required by the court, but there is no evidence it has done so.

### Summary:

The WMRNP FSEIS fails to:

- properly account for emissions from OHV Open areas in the conformity analysis or apply the correct baseline for assessing the emissions resulting from OHV Open areas;
- make conformity determinations;
- assess greenhouse gas (GHG) emissions in the conformity analysis; and
- circulate new air quality report with DEIS.

### Response:

The Federal General Conformity Rule (40 CFR 51 Subpart W, 40 CFR Part 93 Subpart B) requires that Federal agencies ensure that their actions do not disrupt progress toward achievement of air quality standards, as set forth in the applicable State Implementation Plans for a particular criteria pollutant. General Conformity regulations apply only to direct and/or indirect emissions caused by Federal agency actions that occur in areas designated as nonattainment or maintenance areas with respect to the National Ambient Air Quality Standards for a criteria pollutant. If the applicable emissions exceed de minimis thresholds (listed in Appendix E of the FSEIS) outlined in the Federal General Conformity Rule, then the Federal agency prepares a formal General Conformity Determination for public comment. Section 176(c) of the Clean Air Act, as amended (42 United States Code [U.S.C.] 7401 et seq.), and regulations under 40 CFR, part 93, subpart W govern how Federal agencies assess proposed actions in designated nonattainment areas or maintenance areas.

In the Summary Judgment order, the Court held that the BLM only analyzed the impact of air emissions on open routes but did not analyze the impacts of OHV emissions that would occur within OHV Open Areas. No other deficiencies were identified in the air quality analysis in the 2005 WEMO Plan Final Environmental Impact Statement (FEIS). The Court required that the analysis be extended to include emissions from OHV Open areas. Subsequently, the BLM applied the methodology overviewed in FSEIS Section 4.2, *Air Quality*, pages 4-7 through 4-9 to assess criteria pollutant emissions from OHV Open areas. The Draft Conformity Determination resulting from the BLM’s analysis, including *de minimis* threshold exceedances by criteria pollutant, appears on FSEIS pages 4-19 through 4-25. The BLM is in the process of developing the Final Conformity determination consistent with IM 2013-025 and it will be published prior to the agency’s issuance of the Record of Decision per 40 CFR 93.153 (f) through (h). The BLM’s analysis addresses air quality impacts of OHV use on open or limited routes and in OHV Open areas, which addresses all the deficiencies identified in the court’s order.

The BLM chose to use 2017 as the baseline for conformity analysis because those year’s conditions reflect initial data close to the start of the implementation period. The 2001 baseline was too distant and would not account for the progress that the BLM has made in undertaking road closures and soil surface and restoration as a means to reduce redundant routes and vehicle tailpipe and fugitive dust emissions. 2035 was chosen as the conformance determination year because net benefits appear after the time lapse due to changes in vehicle technology efficiency, and the restoration of ground surfaces is progressive and would indicate the long-term benefits anticipated from the proposed action. It was determined after consultation with the air quality districts that the 2001

baseline was inadequate. Appendix E-2, *Aspen Air Quality Analysis Report*, does consider OHV Open Areas, specifically referred to as “BLM Route Network + OHV Areas.” Thus, the BLM’s analysis addresses the air quality impacts of OHV use on open or limited routes and in OHV Open areas and complies with the court’s order.

The Court’s Summary Judgment and Remedy orders did not specifically reach conclusions or provide direction regarding the methodology to analyze the impacts of alternatives on GHG emissions. While transportation, including the use of OHV Open areas, produces GHG, the absence of reliable data limited the BLM’s ability to quantify emissions at the planning level. Additional information on the effects of transportation on GHG emissions appears on pages 4-31 and 4-33 of the FSEIS. Because GHGs are not criteria pollutants, they are not subject to General Conformity regulations and were not included in the BLM’s Conformity analysis.

The impacts from GHG are discussed in the document at a level of detail appropriate to landscape-level analysis. The lack of scientific tools designed to predict climate change on regional or local scales limits the ability to quantify potential future impacts. Currently, the BLM does not have an established nationally standardized mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change. The BLM will be issuing a CO<sub>2</sub> equivalents metrics table in the Errata for OHV use within the WEMO Planning Area, in response to public comment received on the FSEIS. This additional data does not change the BLM’s proposed action or alternative or result in additional air quality impacts and does not result in the need to significantly modify the proposed LUPA per 40 CFR 1502.9 (c).

While effects on resources in the planning area from global climate change are not environmental consequences of the proposed actions, the FSEIS notes that both the 2006 WEMO Plan and 2016 California Desert Renewable Energy Conservation Plan (DRECP) Land Use Plan Amendment (LUPA) provide data and adaptive management approaches that may help minimize or mitigate adverse climate change effects on wildlife and their habitat:

*“The 2006 WEMO plan included a strong emphasis on wildlife corridors and habitat linkages and the proposed plan alternatives consider and comply with those conservation objectives and thereby provide support for some climate adaptation approaches. New travel routes through important existing or projected wildlife, as well as plant, corridors and/or habitat areas vulnerable to greenhouse gases (periphery populations) could preclude some climate adaptation opportunities. Additional plan-or project-level climate assessments and strategies should utilize the information provided in the 2016 DRECP LUPA climate models to assess wildlife corridors and habitat linkages under future scenarios and consider climate adaptation opportunities that could be beneficial to biological resources under a range of scenario conditions.”* (FSEIS p. 4-28)

Public comments received during the 90-day public comment period for the March 2018, Draft SEIS identified potential impacts to air quality resources that were not fully addressed in the Draft SEIS. Thus, a new air quality technical report (AQTR) was developed after the conclusion of the March 2018 - June 2018, 90-day public comment period.

The AQTR was completed in September 2018 and released with the Final SEIS (FSEIS) in April 2019. The AQTR is in Appendix E, and the analysis of the report is discussed in Chapter 4.2, in conjunction with the Draft Conformity Determination Statement. The Final Conformity Determination Statement will be made available to the public within the Errata to the LUPA/FEIS and released concurrently with the Record of Decision. The AQTR is new, but does not present significant new information (40 CFR 1502.9) that would require additional public review. One criteria pollutant (PM<sub>10</sub>) was found to be in exceedance in the planning area. The supplemental information is not significant, because PM<sub>10</sub> emission levels have been relatively stable since 1996, as discussed on page 3.2-12 and exhibited in Figure 3.2-3 of the DSEIS. The FSEIS did not find a significant difference in PM<sub>10</sub> emissions as exhibited in Appendix A, 3.2-1. Thus, the AQTR provides new information, but does not change the analysis of the land use plan amendment, nor the impacts for the proposed action and other alternatives. Since there is no significant finding in the AQTR that would result in a change to the proposed LUPA, the BLM will continue to implement the 1995 Mojave Desert Planning Area, Federal Particulate Matter PM<sub>10</sub> Attainment Plan and 1997 Fugitive Dust/PM<sub>10</sub> Emissions Control Strategy for the Mojave Desert Planning Area within the WMRNP Planning Area.

## ***Consultation and Coordination—Section 106***

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** Similarly, in response to the Tribes' comments regarding the inadequacy of BLM's Section 106 consultation efforts, BLM merely stated that "the agency has reviewed the requests to ensure that all of the requested parties are included on the mailing lists, for future communications." (Id. at 1-7.) This flippant response ignores the fundamental purpose of Section 106 consultation, which is to promote in-person, government-to-government discussion between federal agencies and Native American tribes. Inclusion on a mailing list is not a means of fulfilling this duty.

### ***Colorado River Indian Tribes***

#### ***Dennis Patch***

**Issue Excerpt Text:** The FSEIS incorrectly states that BLM has conducted government-to-government consultation with the Tribes. (FSEIS, App. F.) As outlined in our June 13, 2018 letter, the BLM has failed to make the requested acknowledgement of the Tribes' government-to-government consultation policy, and as a result, has failed to meet on a government-to-government level with the Tribal Council of the Colorado River Indian Tribes. This error must be remedied before the BLM can approve the proposed Project.

#### **Summary:**

The BLM did not adequately meet the requirements of Section 106 consultation and failed to meet in a government-to-government capacity with the Colorado River Indian Tribes (CRIT).

#### **Response:**

The BLM adequately and lawfully consulted with the CRIT when preparing the WMRNP FSEIS. As noted on page 6-2 of the FSEIS, tribal concerns are given consideration in the plan amendment



alternatives and in the implementation of the PA. The BLM formally invited 14 federally recognized Indian tribes (including the CRIT) and four non-federally recognized tribal organizations to consult and coordinate on the WEMO Plan EIS/plan amendment and the WMRNP, as provided in the Executive Memorandum of April 29, 1994, Executive Order 13175, and Sections 101 and 106 of the National Historic Preservation Act (NHPA).

All of the Indian tribes and tribal organizations were invited to be consulting parties, as provided in 36 CFR Part 800, the implementing regulations for Section 106 of the NHPA. Consistent with policy, the BLM notified and formally requested consultation with Indian tribes at the earliest stages of the project planning and review by letter on November 17, 2011, and has formally reiterated requests to consult in all subsequent correspondence. The BLM formally notified Indian tribes of its intent to develop a PA for the Project and invited the tribes to participate by letter on December 19, 2014. The BLM Field Managers and staff have actively responded to all requests to meet with tribal leaders and staff throughout project review and have met at BLM and tribal offices. Tribal representatives also participated in the consultation to develop the PA and the Historic Properties Management Plan between April and October 2016. Since the PA was signed in 2015, ten Consulting Parties meetings have been held to discuss implementation of the PA stipulations. The BLM will continue government-to-government consultation with Indian tribes, including the CRIT, and will coordinate with tribal organizations throughout the implementation of the PA. See the discussion in the “Tribal Consultation” paragraph found in Section 6.1, *Consultation*, of the FSEIS (pp. 6-1–6-2).

## ***Best Available Information—Pacific Crest Trail***

### ***Pacific Crest Trail Association***

#### ***Benjamin Barry***

**Issue Excerpt Text:** LUPA, Appendix E, Regulatory Framework and Regional Background Information. The first section of this appendix lists GIS layers used for the online mapping tool, as well the source they were obtained from. We protest that the Pacific Crest Trail is not listed in this source; further, it is exceptionally concerning to us that PCT data has not been analyzed. The data source shown for analysis is “National Trails (Recreational and Historical) (Source: BLM)”. Although National Recreation Trails, National Historic Trails and National Scenic Trails are all designated by the same Act, they all have different data sets and the nature and purposes for each one differs significantly. This major omission is another example of insufficient analysis on part of the BLM in this plan. This LUPA should be rewritten and re-released for public comment.

#### **Summary:**

The FSEIS failed to use the best available geographic information systems (GIS) data to represent and analyze impacts on the Pacific Crest Trail (PCT).

#### **Response:**

The CEQ’s regulations implementing NEPA require that agencies use information that is of “high quality” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best

available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The lack of “Scenic” from the types of National Trails listed in Appendix E was a typographical error. The BLM used appropriate GIS data to represent and analyze the PCT. The BLM used its internal GIS datasets to represent the Pacific Crest National Scenic Trail in the planning area.

The BLM State Office dataset was developed in coordination with a field office interdisciplinary team and represents the BLM’s approved geospatial location information for the Pacific Crest National Scenic Trail. The BLM relied on and continues to rely on high-quality information and the best available data in preparation of the WMRNP FSEIS.

## ***Best Available Information—Desert Tortoise***

### ***Defenders of Wildlife***

***Jeff Aardahl***

**Issue Excerpt Text:** Defenders, the Council, and CNPS demonstrate, below, that BLM failed to use the best information relative to the management of off-highway vehicle use and livestock grazing that was available from the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife, and professional literature up until the time that the draft plan and DSEIS was published in January 2018 and final plan and SFEIS was published in April of 2019. Desert tortoise: With regard to the status of the desert tortoise in the WEMO Plan area, BLM relied on a single reference from the USFWS dated February 2014, Status of the desert tortoise and its critical habitat. However, an updated status report on the species and its critical habitat was issued by the USFWS in 2018. The significant new and relevant information in this 2018 status report are described below under the reference summary for U.S. Fish and Wildlife Service 2018. In addition, in its June 2018 comment letter on the Draft Supplemental Environmental Impact Statement for the proposed Project, the Council provided updated information from the USFWS and other scientific sources and citations to the BLM on the status and trend of the Mojave desert tortoise in the West Mojave Recovery Unit (please see pages 47-68 and 68-91 of June 13, 2018 comment letter to BLM from the Desert Tortoise Council). The Council did this to assist BLM with its NEPA compliance regarding the Affected Environment and Environmental Consequences sections of the FSEIS and plan amendment. However, in the FSEIS, BLM did not incorporate this information or conduct a revised analysis of direct, indirect, and cumulative effects to the desert tortoise, designated critical habitat, habitat needed for linkages, and other desert tortoise habitat using this information.

### ***Defenders of Wildlife***

***Jeff Aardahl***

**Issue Excerpt Text:** BLM’s failure to obtain and use this 2018 report on the status of the desert tortoise and its Critical Habitat has rendered its analysis of the effects of off-highway vehicle use and livestock grazing outdated and seriously deficient. BLM’s analysis fails to consider the implications on ongoing injury and mortality of off-highway vehicle use on desert tortoise population viability in the plan area, which the USFWS confirms through annual line distance sampling and reports has now dropped below the minimum viable density of 3.9/km<sup>2</sup> to 2.8/km<sup>2</sup> as of 2014. Furthermore, this decline in density, systematically documented through monitoring beginning in 2004, is ongoing and, according to the Allison and McLuckie (2018): “Declining adult densities through 2014 have left the Western Mojave adult numbers at 49% and in the Eastern Mojave at 33% of their 2004 levels. Such steep declines in the density of adults are only sustainable if there were suitably large improvements in reproduction and juvenile growth and survival. However, the proportion of juveniles has not increased anywhere since 2007, and in these two recovery units the proportion of juveniles in 2014 has declined to 91% and 77% of their representation in 2004, respectively.”

**Summary:**

The BLM failed to incorporate up-to-date, best available information on desert tortoise in the FSEIS and failed to consider this information in its effects analysis.

**Response:**

The CEQ regulations implementing NEPA require that agencies use information that is of “high quality” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM has reviewed the suggested 2018 status report to determine if the information is substantially different from the information considered and cited in the WMRNP FSEIS. While the 2018 report documents continued declines in tortoise populations from 2014–2017, the 2018 status report does not provide additional information that would result in effects outside the range of effects already discussed in the WMRNP FSEIS (see pp. 3-60 through 3-62). See the discussion of effects specific to desert tortoise on pages 4-94 through 4-97; page 4-101 for impacts from PA-V and PA-VII; Section 4.4.2.5, *Indirect Impacts to Desert Tortoise*; and page 4-114 for specific mitigation measures related to desert tortoise.

***National Conservation Lands******Pacific Crest Trail Association******Benjamin Barry***

**Issue Excerpt Text:** LUPA, Appendix D, Analysis of Management Situation The only mention of the PCT in this appendix is the acknowledgement that it exists in the Jawbone and Middleknob subregions and that there are occasional conflicts between trail users and motorized users in the Jawbone Subregion. The PCT is one of the original congressionally designated National Scenic Trails under the National Trails System Act and should be provided with a high level of analysis that is commensurate with the litany of policy and management guidance provided. In particular, we are concerned very few of the referenced policies or management guidance are exemplified in section D.1 Legislation and Policy. This is further example that the PCT has not been adequately analyzed or accounted for; we suggest adding the following items to this section and reanalyzing their effect on the Pacific Crest Trail: - National Trails System Act (1968) - PCNST Comprehensive Management Plan - BLM Manual 6280.

***The Wilderness Society******Alison Flint***

**Issue Excerpt Text:** Protestors also protest Planning Amendment I - referred to as “PA I” - which would change the existing California Desert Conservation Area Plan language that limits the WEMO route network to existing routes of travel as of 1980, as it applies to Mojave Trails National Monument. See, e.g., FSEIS Table 2.1-1; TWS/CalWild June 14, 2018 Comments at 20-21, 30-33. Instead, BLM has replaced it with language that would provide that “use will be ‘restricted to designated routes of travel.’” See FSEIS at 2-5.

This approach permits BLM to designate additional routes without complying with the Proclamation’s restrictions to use of roads, as noted above. Further, BLM failed to even consider a reasonable alternative that would leave the existing plan language in place, see FSEIS Table 2.3-1 (PA I consistent across alternatives) - an approach that would have had the added benefit of aiding compliance with the Monument Proclamation’s planning requirements. Failure to consider such an alternative violates NEPA’s requirement to “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action. 40 C.F.R. § 1502.14(a).

### **Summary:**

The BLM failed to adequately analyze impacts on National Scenic Trails (PCT) and did not consider a reasonable alternative consistent with existing management for the Mojave Trails National Monument.

### **Response:**

The BLM manages the Pacific Crest National Scenic Trail under the National Trails System Act and associated plans and policy, including the Comprehensive Management Plan and BLM Manual 6280. Consistent with the National Trails System Act, the BLM will continue to allow only non-motorized, non-mechanized use on the PCT. The WMRNP FSEIS analyzes potential impacts on the PCT from the designation of motorized routes and seeks to minimize impacts by minimizing motorized crossings of the trail to routes necessary to facilitate connectivity across federal lands (pp. 4-141 and 4-181 through 4-182).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the WMRNP and that address resource issues identified during the scoping period. The WMRNP FSEIS analyzed five alternatives, which are described in Section 2.2, *Descriptions of the No Action and Four Action Alternatives*. The analysis in the WMRNP FSEIS covers a range of alternatives varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration. The impacts of alternatives, including the No Action Alternative and four action alternatives, were specifically discussed under each resource in Chapter 4. All alternatives comply with the Mojave Trails National Monument Proclamation’s specific direction with respect to routes, including that OHV use in the monument shall be permitted only on roads existing as of February 12, 2016, and that the BLM has prepared a transportation plan that designates the roads and trails where OHV, non-motorized, and non-mechanized use will be permitted.

## ***NEPA—Cumulative Effects***

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** Because the FLPMA requirement that BLM’s management of public lands be coordinated and ‘harmonious’ extends to those management obligations of other federal agencies, including national parks, 43 U.S.C. 1712 (c)(9), BLM must fully consider impacts to Joshua Tree National Park and Mojave National Preserve and their resources. Here, BLM failed to adequately consider impacts to National Park resources particularly in considering proposed plan amendments PA-I which fails to provide any meaningful constraint to future ORV use across the planning area putting additional pressure on the boundaries of Joshua Tree National Park and Mojave National Preserve from unconstrained ORV use and unlawful off-route activities encouraged by the lack of constraints in the BLM management.

***Center for Biological Diversity******Lisa Belenky***

**Issue Excerpt Text:** BLM failed to properly address cumulative impacts from ORV use and grazing as well as other permitted activities on sensitive resources in the FSEIS although the Court specifically found its earlier cumulative impacts analysis deficient and that BLM must reassess these impacts on remand. *CBD v. BLM*, 746 F. Supp. 2d at 1098. Moreover, cumulative impacts from ORV use in light of ongoing and future impacts of persistent drought, increased temperatures, and climate change to resources of the desert were not adequately addressed in the FSEIS.

***Defenders of Wildlife******Jeff Aardahl***

**Issue Excerpt Text:** Protest Statement: The BLM failed to provide an adequate and accurate analysis of the cumulative effects of each alternative to the density/viability of desert tortoise populations in the Western Mojave Recovery Unit under current conditions or in the future (Action Alternatives). Regarding designated Critical Habitat for the desert tortoise, the BLM failed to provide an analysis of the cumulative effects of each alternative, including baseline information, on the quality and quantity of the physical and biological features essential for the survival and recovery of the tortoise, how these features would change, and whether these features would be able to perform their function of providing habitat for a viable population of desert tortoises with implementation of BLM's Project and plan amendment. Defenders and the Council demonstrate, below, that BLM failed to comply with 40 CFR Section 1508.7, BLM's Manual H-1790-1, and the document it references, *Considering Cumulative Effects Under the National Environmental Policy Act (CEQ 1997)*.

**Summary:**

The BLM failed to adequately analyze the cumulative effects of the land use plan amendment:

- on desert tortoise and other sensitive resources;
- in light of changes in climate in the planning area; and
- on the adjacent Joshua Tree National Park and Mojave National Preserve.

**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 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 fully 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 considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions.

Cumulative impacts are addressed in Section 4.15, *Cumulative Impact Analysis*, which identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impact analysis for each affected resource. To address changes since the 2006 WEMO Plan EIS and requirements in the Court's Summary Judgment and Remedy order, the BLM updated the list of actions considered in the analysis, the affected resource information against which the impacts were evaluated, the assumptions on growth resulting from the plan, and relevant cumulative impacts analyses for resources and resource uses.

Additionally, the BLM considered the National Park/Preserve Plans when looking broadly at the other Federal actions that fall within the defined geographic scope of the cumulative analysis area. As noted on page 4-237 of the FSEIS, the WEMO Planning Area is bordered on all sides by other jurisdictions and travel management in these adjacent areas is managed through various management plans, general plans, and regulations. Cumulative impact issues considered with respect to these adjacent jurisdictions include maintaining continuity of access across jurisdictional boundaries; maintaining access (where appropriate) to private lands, approved facilities, and recreational opportunities outside of the WEMO Planning Area; and managing unauthorized use, including trespass onto adjacent jurisdictions. The National Parks and National Preserves that border the WEMO Planning Area include Sequoia, Joshua Tree, and Death Valley National Parks and the Mojave National Preserve. The Sequoia and Kings Canyon National Park General Management Plan and Comprehensive River Management Plan was authorized in 2007. The Death Valley National Park General Management Plan and Mojave National Preserve General Management Plan were both authorized in April 2002. The Joshua Tree General Management Plan currently is being developed. These Federal lands generally provide specific designated access routes to and through the parks onto adjacent public and private lands, consistent with park goals. The BLM shares responsibility for the management of OHV use occurring in the planning area. BLM is only responsible for BLM administered lands and works in concert with the National Park Service and other land management agencies to manage OHV use occurring across jurisdictional boundaries.

The cumulative impacts discussion includes an analysis of all potentially affected resources, including: Geology and Soils (pp. 4-248 through 4-251), Water and Water Quality (pp. 4-251 through 4-254), Areas of Critical Environmental Concern and Other Conservation Areas (pp. 4-271 through 4-272), Riparian and Upland Vegetation (pp. 4-272 through 4-275), Special Status Plants (p. 4-275), Common Wildlife (p. 4-275), Sensitive Wildlife Species and Desert Tortoise (pp. 4-275 through 4-278), and Natural Communities (pp. 4-278 through 4-279). Where appropriate, the BLM's impact analysis also differentiates the relative magnitude of cumulative impacts among the various management alternatives through specific quantitative (where data were available) or qualitative analyses.

Information on effects from changes in climate on biological and other resources in the planning area, as well as the interaction of these changes with the management alternative, are provided in Section 4.2.2, *Greenhouse Gases* (pp. 4-25 through 4-34).

## ***NEPA—Impacts Analysis: Grazing***

### ***Defenders of Wildlife***

#### ***Jeff Aardahl***

**Issue Excerpt Text:** BLM is obligated to analyze the impacts of livestock grazing under provisions of NEPA; absent such analysis, the SFEIS is wholly deficient. BLM must analyze the impacts of livestock grazing on the desert tortoise and its Critical Habitat, the BLM Sensitive Mohave ground squirrel and its habitat; desert bighorn sheep and its habitat within the Ord Mountain Allotment, and Special Status Plant Species throughout the plan area. The impact analysis for desert bighorn sheep needs to address competition for water, forage and space, and transmission of diseases from domestic livestock to desert bighorn sheep. Lastly, BLM has failed to adopt specific CMAs from the DRECP amendments to the CDCA Plan specific to desert bighorn sheep. Once the impact analysis is complete, BLM is required to develop specific impact avoidance and minimization measures to achieve not only the biological goals and objectives of the TMA and the WEMO Plan as a whole, but also to comply with BLM's statutory obligation to conserve threatened and endangered species, and BLM's management policy for Special Status Species as per Manual 6840.

**Summary:**

The BLM failed to analyze impacts from livestock grazing on the desert tortoise, the Mohave ground squirrel, and the desert bighorn sheep species and their habitat. Additionally, the BLM failed to adopt Conservation and Management Actions (CMAs) from the DRECP amendments to the California Desert Conservation Area (CDCA) Plan specific to desert bighorn sheep.

**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 WMRNP FSEIS.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving the issuance of a 10-year grazing lease), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Impacts on the Mohave ground squirrel and desert bighorn sheep from grazing are discussed throughout the FSEIS, and more specifically in Section 4.4.2, *Wildlife Resources*, and specifically on pages 4.4-42 (at pp. 4-98 through 4-99 and pp. 4-275 through 4-276). Impacts on Mohave ground squirrel from grazing were discussed in the 2005 WEMO Plan EIS on pages 4-98 through 4-99, 4-145, 4-151, and 4-162, and served as the basis for analysis in the FSEIS. In addition, the BLM states in the 2005 WEMO Plan EIS that the impacts on desert tortoise habitat from grazing are very similar to impacts on Mohave ground squirrel, because they share nearly the same areas of habitat (p. 4-151). Therefore, impacts on Mohave ground squirrel habitat, or “key population centers” as referred to in the FSEIS, are similar or the same as grazing impacts on desert tortoise habitat.

The BLM is required to consider the best available data when conducting the NEPA analysis and acquired and evaluated GIS layers related to potential impacts on Mohave ground squirrel and incorporated that information into the revised route network in Alternative 5. Route designations take into consideration the designation criteria for important Mohave ground squirrel areas. Surgical designation changes were considered with regard to Mohave ground squirrel to incorporate route-specific public comments where appropriate.

Livestock grazing is an authorized use under the CDCA Plan, as amended by the 2006 WEMO Plan and the 2016 DRECP. The California Desert District Office and Barstow and Ridgecrest Field Offices have consulted with the USFWS, including formal consultations on the 2006 WEMO Plan Amendment and the 2016 DRECP Plan Amendment regarding the continued existence of the desert tortoise and modification of critical habitat. The USFWS made a determination that livestock grazing in the WEMO Planning Area would not jeopardize the continued existence of the desert tortoise or result in adverse modification of critical habitat.

All of the current grazing leases include the grazing strategies contained in the 2006 WEMO Plan as terms and conditions to those grazing leases under USFWS concurrence. Recent grazing lease renewals were issued under the authority of Section 402(c)(2) of FLPMA as amended.

The BLM fully considered DRECP CMA conformance for potential impacts on desert bighorn sheep from grazing. CMAs that are applicable with respect to grazing and potential impacts on desert bighorn sheep are CONS-BIO-IFS-6, CONS-BIO-IFS-7, and CONS-BIO-IFS-8. The conformance is demonstrated in Appendix H. The BLM has also evaluated and established conformance with these CMAs in the FSEIS utilizing the best data available. Land use planning decisions incorporated resource information and applied avoidance and minimization measures where appropriate for potential impacts on desert bighorn sheep. CMAs that apply to non-BLM grazing activities will be required to conform, and as such will be covered in the permit renewal.

## ***NEPA—Response to Public Comments***

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** The response to comments 2.2-4 ignores several commenters and states that “Comments opposed to the Plan Amendments generally did not provide additional information regarding the analysis; therefore, no changes were made to the Draft SEIS.” Appendix I-10. However, comments noted that the SDEIS provided no information about the basis for the proposed change stating only that the “use of this strategy” “has come under review” (id. at 2-10). Specifically, the Center stated: “BLM should provide all of the documentation from the past 12 years that the ‘strategy’ and permit system has been in place- with R-5 and R-50 remaining closed and more clearly explain the alleged need to change management in this area.” And yet, the FSEIS provides no additional information—it appears BLM simply ignored this comment in violation of NEPA.

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** The Conservation Groups submitted a 30-page expert report (Technical Memorandum: Review of Hydrology and Water Resources, prepared by Dr. Tom Myers) regarding ORV impacts to soils and surface hydrology and related issues in 2015 and reincorporated that report into comments submitted in 2018. That expert report pointed out many shortcomings in the SDEIS and made recommendations for BLM to improve its identification and analysis of impacts to soils and surface hydrology. The response to comments does not even mention this expert report, violating NEPA’s instruction to respond to “any responsible opposing view which was not adequately discussed in the draft statement.” 40 C.F.R. § 1502.9(b). Appendix I-60 to I-61. BLM cannot reasonably argue that Dr. Myers’ expert report was not a “responsible opposing view.” Most importantly, the substance of his report is not addressed. The failure to engage with Dr. Myers’ report violates 40 C.F.R. § 1502.9(b).

### **Summary:**

The BLM failed to assess, consider, and respond to public comments received on the Draft Supplemental Environmental Impact Statement (DSEIS).

### **Response:**

After preparing a draft EIS and before preparing a final EIS, the BLM is required to, among other things, request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected (40 CFR 1503.1).



The BLM must assess and consider all comments received and respond to public comments by either (1) modifying alternatives, including the proposed plan; (2) developing and evaluating alternatives not previously given serious consideration; (3) supplementing, improving, or modifying analysis; (4) making factual corrections; and (5) explaining why comments do not warrant further response (40 CFR 1503.4 and BLM Handbook H-1601-1, p. 23).

Substantial changes to the proposed action or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR 1502.9(c)). In compliance with NEPA, the BLM considered all public comments submitted on the DSEIS. The BLM complied with 40 CFR 1503.1 and 40 CFR 1503.4 by soliciting comments from the public and by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix I, *Responses to Comments on the Draft Supplemental Environmental Impact Statement*, presents the BLM's responses to all substantive comments.

In Appendix I, Comment 2.3-7 Comments on the sufficiency of analysis of PA V, describes why there was a change made to the Rand Permit system. The BLM used the public scoping process to obtain public input for this change. The impacts of PA V, including the No Action Alternative and three action alternatives, were specifically discussed under each resource in Chapter 4. The change from a required permit system to an intensively managed limited designated route network would free up staff members that would have solely dedicated to the administration of a permit program. These staff members would be able to carry out and oversee efforts as outlined in the areas TMP such as route signing, public outreach, trail maintenance, and restoration. These efforts would result in a more broad based approach to the effective management of public lands.

Additionally, the requirements of a person to pay a fee for the use of the federal recreational lands within the Rand Mountains-Fremont Valley Management Areas is a violation of the Federal Lands Recreation Enhancement Act (FLREA) (PL 108-447). FLREA prohibits the charging of standard or expanded amenity fees for dispersed areas, for persons who are driving through Federal recreation lands, or for parking or picnicking along roads and trails. (Sec. 803 (d) (1)).

As noted in Appendix I, in the responses to Comment 4.9-9 and Comment 4.4-2, the BLM considered and incorporated additional GIS and resource information related to soils where appropriate. During the revisions to the DSEIS, the BLM reviewed the "Technical Memorandum: Review of Hydrology and Water Resources" authored by Dr. Tom Myers. The BLM determined that the memorandum did not present new information that could be used effectively to make resource decisions and/or analyze environmental consequences and, therefore, did not include it in the FSEIS analysis. The BLM found that any relevant and/or opposing viewpoints within the study were already considered in the route designation decision-making process, and in all cases the data used by the BLM were more effective for decision-making than those presented in the memorandum. In addition, the memorandum makes unclear statements such as:

- "This improved understanding allows one to interpret the effects of land management on recharge and runoff even if that management is not specifically ORV related" (p. 4)
- "PA I through V are same for each alternative, and do not have specific impacts to land resources" (p. 4)
- "The BLM should add an alternative that would minimize the impacts. This would be accomplished by closing routes that have a threshold, or trigger, for damage." (p. 4)

These unclear statements, among others, and many citations/references lacking a coherent connection to the land use plan and the types of use being authorized negatively affect the credibility of the memorandum. The memorandum makes suggestions to utilize thresholds and triggers, which was already completed for each alternative being analyzed. Only five of the citations are specifically related to OHV uses and the latest of those studies was published in 2002.

Also, the memorandum fails to connect research analysis and data to make conclusive statements about the impacts from OHV and grazing uses. The singular data table presented in the memorandum is based on erodibility factors and contains data approximately 10 years older (2007) than those used in the FSEIS. Additionally, the air, soil and water sections in Chapters 3 and 4 were updated in 2017 and 2018 by a BLM state ecologist to include and reflect the latest research and data available. One of these includes the utilization of an updated erodibility factors figure and data analysis within the project planning area. The BLM relied on high-quality information and the best available data when analyzing impacts in the FSEIS.

## ***Range of Alternatives—Travel Management***

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** The BLM should have, but did not, propose any alternative to PA-I that would in some way continue the goal of limiting the overall size and impact of motorized routes and the route network on the Desert—the failure to do so fails to follow the CDCA Plan and violates FLPMA.

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** BLM failed to consider any action alternatives for proposed plan amendment - PA-IV that would minimize the impacts from additional ORV use on Koehn, Cuddeback, and Coyote lakebeds. Specifically, BLM failed to consider closing all of the identified lakebeds to ORV use and not designating any routes in these lakebeds to protect resources (including air quality), or any alternatives that would minimize impacts and support the CDCA Plan goals and FLPMA directives.

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** BLM failed to adequately address a meaningful range of alternatives particularly for PA-I, PA-III, and PA-IV. The FSEIS provides no alternative for PA-I and only fully considers one action and no action alternative for PA-III, PA-IV, and PA-VII—this is insufficient and violates NEPA where alternatives to minimize the impacts of these proposed plan amendments could easily be formulated and alternatives were proposed by the public but ignored by BLM.

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** Therefore the FSEIS acknowledges that the proposed alternative will still allow significant disturbance and impacts of precious springs, seeps and riparian areas in the west Mojave Desert despite the fact that routes within 100 meters of these important springs, seeps, riparian areas and wash roads could be closed or rerouted outside the resources to simply prevent impacts. Because BLM failed to consider an alternative that would reduce significant impacts to protect these rare water resources, the FSEIS is inadequate.

### ***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** Cuddeback Lake is wholly included in an ACEC for the desert tortoise established to protect federally designated desert tortoise critical habitat.[...] The FSEIS and BLM's previous drafts may have mistakenly assumed that dry lake beds are not habitat for desert tortoise, however tortoises have been documented to traverse dry lake beds within a matrix of desert tortoise habitat.

***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** Coyote Lake is also wholly included in an ACEC for the desert tortoise established to protect federally designated desert tortoise critical habitat and BLM provides no analysis of how opening the lake bed area to ORV use would minimize impacts. Specifically, BLM failed to show that designating Coyote lakebed as an area open to ORV use could minimize impacts to the ACECs and designated critical habitat.

***Center for Biological Diversity***

***Lisa Belenky***

**Issue Excerpt Text:** Cuddeback Lake is also wholly within the Conservation Area established for the Mojave ground squirrel, a state listed threatened species. It is almost wholly included in a large Unusual Plant Assemblage (UPA) - Western Mojave Desert Mojave Saltbrush Assemblage (FSEIS at Figure 3.4-2), and also supports a population of a very rare plant, the desert cymopterus (*Cymopterus deserticola*), which is a BLM sensitive species. The process BLM used to designate Cuddeback Lake as an area open to off-road travel is unclear and should not have been included in this route designation process. Further, BLM has failed to show that designating Cuddeback lakebed as an area open to ORV use could minimize impacts to the ACECs, designated critical habitat, conservation area, or the UPA.

**Summary:**

The WMRNP FSEIS fails to consider an adequate range of alternatives for the plan amendments, including an alternative that would reduce significant impacts on water resources and an alternative that would close dry lakebeds to ORV use.

**Response:**

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)), but not every possible alternative to a proposed action needs to be analyzed. “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.’” BLM NEPA Handbook, H-1790-1, at 50 (citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981); see also 40 CFR § 1502.14.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the WMRNP and that address resource issues identified during the scoping period. The BLM used the scoping process to obtain public input into the development of alternative parameters for travel management allocations to be considered under each plan amendment.

As noted on page 1-6 under the Purpose and Need for Plan Amendment Decisions, “The CDCA Plan amendment being considered for the West Mojave Planning Area in this FSEIS only applies to those areas that are categorized as open or limited OHV use”, and does not apply to open OHV areas. The BLM did not consider open areas, in which OHV use may occur anywhere within the open area (as compared to use occurring only on designated open or limited use routes) in its request for scoping nor was it required to do so. Open area designation was accomplished in the CDCA Plan of 1980, as were many other land use designations. There was no need to consider here alternatives that address open areas merely because a member of the public requests the land use be considered. That determination is within the sole discretion of the BLM, not the public. Additionally, the BLM notes on page 1-7 that, “In general, the purpose and need for these amendments is to:

- Conform to current TTM-related regulations and guidance;
- Provide a framework for future management of the transportation network;
- Update specific access parameters that are currently established in the CDCA Plan; and
- Update specific grazing parameters that are currently established in the CDCA Plan.”

The WMRNP FSEIS analyzed five alternatives, which are described in Section 2.2, *Descriptions of the No Action and Four Action Alternatives*. The alternatives analyzed in the WMRNP FSEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

The impacts of PA IV, including the No Action Alternative and the action alternatives, were specifically discussed under each resource in Chapter 4. Impacts on Koehn, Coyote, and Cuddeback Lake were discussed under all resources in Chapter 4. Opening only the lakebed itself will provide for motorized (OHV Open, OHV Limited, or OHV Closed), non-motorized, and non-mechanized recreation uses including camping, land sailing, filming, stargazing, photography, and OHV use, but will be monitored to ensure that cross-country use does not spill over into the limited use critical tortoise habitat by use of signs, outreach, and other implementation strategies. If signs are not enough, measures such as barriers may be implemented.

The BLM considered a reasonable range of alternatives in the FSEIS and water resources were fully considered for impacts in full compliance with NEPA. The analysis first considered resource triggers to prevent unnecessary and immitigable impacts on water resources. The resources triggers for water resources include:

- Route disturbance exceeds area disturbance parameters for watershed, soils, air quality, vegetation
- Route within 50 feet of riparian resources and/or riparian areas
- Route passes within 300 feet of a spring
- Route parallel to and predominantly within a desert wash

The impacts of alternatives, including the No Action Alternative and four action alternatives, were specifically discussed under each resource in Chapter 4. The dry lakebeds do not contain suitable habitat for Mohave ground squirrel, desert tortoise, desert cymopterus, or the Mojave Desert Saltbrush Assemblage; therefore, these resources were not included in the analysis of direct, indirect, or cumulative impacts for these resources. The dry lakebeds do not include the primary constituent elements for desert tortoise critical habitat, so direct impacts on designated critical habitat also were not included in these analyses. The potential impacts on water resources are discussed on pages 4-36, 4-38–4-39, 4-40, 4-43–4-44, and 4-46–4-57. Alternatives 2, 4, and 5 have avoidance and minimization measures applied, which reduce impacts to less-than-significant levels for water resources and dry lakebeds.