



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

**SunZia Southwest
Transmission Project Right-of-
Way Amendment
Final Environmental Impact
Statement and Proposed
Resource Management Plan
Amendment**

April 21, 2023

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Contents

Acronyms	ii
Introduction	1
Protesting Party Index	1
FLPMA – Consistency with the National Wildlife Refuge System Improvement Act of 1997	3
FLPMA – Unnecessary and Undue Degradation	6
NEPA – Impacts Analysis	7
NEPA – Range of Alternatives.....	10
NEPA – Reasonably Foreseeable Future Actions	13
National Historic Preservation Act – Public Involvement	14
National Historic Preservation Act – Section 106 Consultation -Tribal Consultation	16

Acronyms

Term	Definition
ACHP	Advisory Council on Historic Preservation
BLM	Bureau of Land Management
CCP	2000 Sevilleta National Wildlife Refuge Comprehensive Conservation Plan
CFR	Code of Federal Regulations
DEIS	draft environmental impact statement
EIS	environmental impact statement
FAA	Federal Aviation Administration
FLPMA	Federal Land Policy and Management Act
GHG	greenhouse gas
Improvement Act	National Wildlife Refuge System Improvement Act of 1997
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NWF	National Wildlife Refuge
NWR	National Wildlife Refuge
PA	Programmatic Agreement
ROW	Right-of-Way
Sevilleta NWR	Sevilleta National Wildlife Refuge
SunZia FEIS/PRMPA	SunZia Southwest Transmission Project Right-of-Way Amendment Final Environmental Impact Statement and Proposed Resource Management Plan Amendment
TCPs	Traditional Cultural Properties
USFWS	U.S. Fish and Wildlife Service

Introduction

The Bureau of Land Management (BLM) New Mexico State Office released the SunZia Southwest Transmission Project Right-of-Way (ROW) Amendment Final Environmental Impact Statement and Proposed Resource Management Plan Amendment (SunZia FEIS/PRMPA) on February 17, 2023. The BLM received nine protest letters during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons held standing to protest. Of the nine letters received, six met these criteria. Three letters were dismissed from consideration due to lack of standing. Three of the letters had valid protest issues. The BLM documented the responses to the valid protest issues in the protest resolution report. The decision for each protest was recorded in writing along with the reasons for the decision.

After careful review of the report by the BLM’s Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM New Mexico State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM’s website; no changes to the PRMPA were necessary. The decision was sent to the protesting party by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM’s response to the protests.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-NM-SZ-EIS-23-01	Terry Finefrock	Individual	Dismissed – No Standing
PP-NM-SZ-EIS-23-02	Kristen Sorensen	Lazy B Ranch LLC	Dismissed – No Standing
PP-NM-SZ-EIS-23-03*	Kristen Sorensen	Lazy B Ranch LLC	Dismissed – No Standing
PP-NM-SZ-EIS-23-04	Robin Silver	Center for Biological Diversity	Denied
	–	Lower San Pedro Watershed Alliance	Denied
	–	Cascabel Conservation Association	Denied
	–	Friends of Oracle State Park	Denied
PP-NM-SZ-EIS-23-05	Jamie Rappaport Clark	Defenders of Wildlife	Denied
PP-NM-SZ-EIS-23-06	Sandra Noll	Individual	Dismissed – Comments Only

Letter Number	Protester	Organization	Determination
PP-NM-SZ-EIS-23-07	William Doelle, John Welch	Archeology Southwest	Denied
PP-NM-SZ-EIS-23-08	Mary Ruff	Protect our Rio Grande	Dismissed – Comments Only
PP-NM-SZ-EIS-23-09	Janice Havlena	Archeology Southwest	Dismissed – Comments Only

*Duplicate

FLPMA – Consistency with the National Wildlife Refuge System Improvement Act of 1997

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The conservation organizations protest the proposed plan amendment because it fails to comply with Federal Land Policy and Management Act (FLPMA) requirements and because the environmental review provided in the FEIS is inadequate. The plan amendment is wrong because its purpose is to enable and authorize a new alignment for the right-of-way that will cross the Sevilletta National Wildlife Refuge (NWR) which had been avoided in the earlier right-of-way approval. Moreover, the amendment is wrong because it allows a very-large DC line to cross the National Wildlife Refuge despite the fact that the U.S. Fish and Wildlife Service has not provided a valid compatibility determination and despite the fact that doing so would violate the purpose of the refuge and the stipulations of the Warranty Deed.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The proposed plan amendment fails to address the need for compatibility with protection of National Wildlife Refuge (NWR) resources. FLPMA’s coordination and consistency provisions regarding public land planning and management extend to other federal departments and agencies. 43 U.S.C. § 1712(c)(9). The rerouting of the proposed larger DC line includes a variety of federally administered lands including those designated for the NWR. In its management of public lands BLM is charged with maintaining environmental quality as a whole, in a manner that contributes to the protection of those lands and resources for the enjoyment and benefit of current and future generations. The proposed Plan Amendments would violate FLPMA for several reasons including because they will contribute to the degradation of resources and their values within the NWR in terms of air quality, noise and other impacts.

Center for Biological Diversity

Robin Silver

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 wildlife refuges, 43 U.S.C. § 1712 (c)(9), BLM must fully consider impacts to NWR resources. Here, BLM failed to adequately consider impacts to NWR resources particularly that the proposed plan amendment is intended not only to accommodate a rerouting into the NWR but would also allow a larger DC line with more conductors to be constructed than the right-of-way approved in 2015.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: Because there is no compatibility determination regarding the impacts of allowing the new right-of-way to cross the NWR, adopting the plan amendment would also violate the National Wildlife Refuge System Improvement Act of 1997 which requires that a new use of a national wildlife refuge or expansion, renewal, or extension of an existing use of a national wildlife refuge cannot be permitted unless the use is determined to be compatible with the purposes for which the Refuge was established.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to provide adequate information and documentation regarding the existing grant terms in the NWR which BLM relies on in its

decision making. The BLM’s selection of a preferred alternatives must not take place without an opportunity for public comment on statements by the Grantor and the Grantee of the Sevilleta land transfer Warrantee Deed about whether and how the establishment of new commercial uses by the Applicant supports “the purposes of sound wildlife management”...We protest the violation by the BLM and USFWS of the Code of Federal Regulations requirement that an EIS must contain a description of the manner and extent to which a proposed action will [future tense] be reconciled with an approved plan by a governmental agency.

Defenders of Wildlife

Jamie Rappaport Clark

Issue Excerpt Text: The FEIS wrongly concludes that a compatibility determination is not required for transmission lines to cross Sevilleta NWR that will result in impacts to refuge lands outside of the two existing rights-of-way. The Service is required to conduct a compatibility determination to comply with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act).

Defenders of Wildlife

Jamie Rappaport Clark

Issue Excerpt Text: “The USFWS Handbook, 603 FW 2.10, provides an exception under which compatibility requirements may not be applicable. The exception applies to pre-existing rights such as easements. Where reserved rights provide that we must allow certain activities, we should not prepare a compatibility determination, but rather should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the Refuge.” This statement is in error and Defenders protests it. The Manual’s exception does not apply to this proposal because it constitutes an expanded use that will have impacts on roughly 140 acres of refuge lands outside of the existing rights-of-way...

Taken together, these impacts trigger the requirement to conduct a compatibility determination for these expanded uses. ...The EIS’s explicit acknowledgment of the permanent impacts the Preferred Alternative will have on refuge resources is dispositive that this is an expanded use.

Summary:

The BLM fails to explain how the SunZia FEIS/PRMPA is consistent with the National Wildlife Refuge System Improvement Act of 1997, as required by FLPMA. Protesters assert that the SunZia FEIS/PRMPA specifically violates the National Wildlife System Improvement Act of 1997 by:

- Failing to submit a valid compatibility determination from the U.S. Fish and Wildlife Service (USFWS);
- Violating the purpose of the refuge and the stipulations of the warranty deed; and
- Allowing degradation of environmental resources and their values within the Sevilleta National Wildlife Refuge (Sevilleta NWR) resulting in unsound management.

Response:

Contrary to the protestors’ arguments, the BLM’s proposed plan amendments, as analyzed in the SunZia FEIS/PRMPA, satisfy the requirements under FLPMA to coordinate its review with the USFWS, among other state and local lands, regarding non-BLM managed lands and to consider the environmental impacts of the plan amendments as associated with the SunZia proposal on non-BLM managed lands. Section 202(c)(9) of FLPMA requires that the BLM “coordinate the land use inventory, planning, and management activities of or for [public] lands with the land use planning and management programs of other Federal departments and agencies and of the States and local

governments within which the lands are located.” BLM’s implementing regulations further define the BLM’s role in coordinating its planning efforts with other Federal agencies, state and local governments, and federally recognized Indian tribes (43 CFR 1610.3-1) and in considering the consistency between proposed plan amendments and adopted plans of other Federal agencies (43 CFR 1610-3.2). In accordance with these requirements, the BLM has coordinated closely with USFWS, as well as other Federal agencies, state and local governments, and Indian tribes, and given consideration to state, local, and other Federal plans that are germane to the development of the plan amendments proposed and analyzed in the SunZia FEIS/PRMPA. In particular, and as detailed below, Sections 1.6 and AID-17 describe the BLM’s coordination with the USFWS as it relates to Sevilleta NWR, USFWS’s management responsibilities and evaluation of SunZia’s proposal to utilize existing easements through Sevilleta NWR, and how the BLM’s plan amendments to allow for the location of the proposed amendment to SunZia’s ROWs are consistent with applicable laws, regulations, and local plans (SunZia FEIS/PRMPA, pp. 1-7 through 1-8 and 3-347 through 3-355). The commenters’ suggestion that the BLM’s plan amendment is inconsistent with the USFWS’s management obligations for Sevilleta NWR ignores the fact that USFWS, as a cooperating agency, has participated in the development of the SunZia FEIS/PRMPA and expressed its intention to rely on the FEIS to evaluate the proposal to cross Sevilleta NWR. Moreover, as described below, the SunZia FEIS/PRMPA describes how USFWS intends to satisfy its obligations under the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), policy directives in USFWS Service Manual (603 FW 2), and other directives (SunZia FEIS/PRMPA, pp.1-5 through 1-8).

The SunZia FEIS/PRMPA adequately describes the BLM’s coordination with the USFWS and the USFWS’s responsibilities relating to SunZia’s proposal, which may occur as a result of the BLM’s approval of the proposed plan amendment. In particular, the SunZia FEIS/PRMPA reflects the USFWS’s interpretation of applicable statutory authority and guidance relating to SunZia’s proposal to cross Sevilleta NWR, as discussed in Sections ES.9, 1.4.3, 1.5.3, 1.6.3, 2.9.3, AID-17, and 4.3 of the SunZia FEIS/PRMPA (pp. ES-3, ES-12 through ES-13, 1-5, 1-6, 1-7 through 1-8, 2-39, 3-347 through 3-355, and 4-7). The USFWS is currently evaluating this proposal from SunZia in accordance with part 603 FW 2.10. The SunZia FEIS/PRMPA acknowledges the USFWS role as it relates to SunZia’s proposal to use existing easements through Sevilleta NWR and that its review is guided by the 2000 *Sevilleta National Wildlife Refuge Comprehensive Conservation Plan* (CCP) and applicable laws, regulations, and policies (pp. ES-12 through ES-13, 1-5, 1-7 through 1-8, 2-39, 3-347 through 3-355, and 4-7). As stated in the CCP, decisions made within the CCP are guided by the established purposes of the refuge, the goals and compatibility standards of the System, and other Service policies, plans, and laws directly related to refuge management (SunZia FEIS/PRMPA p. 1-7). As described in the SunZia FEIS/PRMPA, it is the USFWS’s responsibility to ensure that SunZia’s proposal relating to Sevilleta NWR is consistent with the priorities and mandates as outlined by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (SunZia FEIS/PRMPA, pp. ES-3, 1-5, 1-6, 1-7 through 1-8, 3-347 through 3-355, and 4-7). Furthermore, the SunZia FEIS/PRMPA indicates the USFWS will evaluate SunZia’s proposal to utilize easements held by Tri-State Generation and Transmission Association, Inc. and El Paso Electric Company for consistency with applicable law, regulation, and policy, including, but not limited to, the terms of the easements and the 1972 warranty deed. These obligations belong to USFWS and not the BLM. The commenters’ suggestion that the BLM failed to comply with the USFWS or to independently review USFWS statutory obligations in considering whether the proposed land use plan amendments associated with SunZia’s proposal to amend the ROW grant is inaccurate. The BLM satisfied its obligation by coordinating with the USFWS regarding the proposed plan amendment that could lead to the potential use of Sevilleta NWR and relying on USFWS’s information regarding the management of Sevilleta NWR.

Accordingly, in developing the SunZia FEIS/PRMPA, the BLM fully complied with all applicable statutes, regulations, and policies, as required by FLPMA. Accordingly, these protests are denied.

FLPMA – Unnecessary and Undue Degradation

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The conservation organizations protest the BLM’s failure to recognize the need for minimization, avoidance of unnecessary and undue degradation from the proposed plan amendment and associated amendments to the right-of-way to public land resources including species and habitats due to habitat fragmentation, loss of habitat, edge effects, and loss of habitat connectivity.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: By failing to recognize the substantial change in the primary purpose of the SunZia project and new information about the availability of the Southline Transmission Project, BLM’s selection of a route through the southern portions of New Mexico and Arizona would cause unnecessary and avoidable adverse impacts to the Sevilleta NWR and to the main objectives of the Cascabel BLM Ecosystem Management Plan.

Summary:

The BLM is in violation of FLPMA because the SunZia FEIS/PRMPA would result in “unnecessary and undue degradation” of public lands by:

- Failing to recognize the need for minimization and avoidance of undue degradation due to habitat fragmentation, loss of habitat, edge effects, and loss of habitat connectivity;
- Providing an inadequate environmental review that fails to address the impacts on Sevilleta NWR resources and habitats; and
- Selecting a route that causes unnecessary and avoidable adverse impacts on Sevilleta NWR and the Cascabel BLM Ecosystem Management Plan.

Response:

As described below, the analysis in the SunZia FEIS/PRMPA supports a finding that the proposed plan amendments will not lead to unnecessary or undue degradation of public lands and is considering appropriate measures to minimize, mitigate, or avoid impacts on public lands and resources. The BLM understands and complied with its management obligations under Section 302(b) of FLPMA to “take any action necessary to prevent unnecessary or undue degradation of the lands.” The SunZia FEIS/PRMPA provides for the balanced management of the public lands in the planning area and adequately analyzes the potential environmental impacts associated with the proposed plan amendments and SunZia’s proposal. The SunZia FEIS/PRMPA also identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands, including measures to minimize, mitigate, or avoid environmental impacts on habitat fragmentation; loss of habitat; edge effects; loss of habitat connectivity; as well as impacts on specially designated lands like Areas of Critical Environmental Concern and NWR. The proposed plan amendments would not authorize any use of public lands that would result in unnecessary or undue degradation.

The SunZia FEIS/PRMPA specifically analyzes the potential impacts on sensitive time periods and habitat fragmentation and considers design features to address these impacts (SunZia FEIS/PRMPA, pp. 3-94 through 3-99, C-5). Impacts on biological resources analyzed in the 2013 FEIS/PRMPA for the SunZia Southwest Transmission Project for the entirety of the project and considered in the 2015 Record of Decision, are described in Sections 3.6 and 4.6 of the 2013 SunZia FEIS/PRMPA (2013

SunZia FEIS/PRMPA, pp. 3-73 through 3-136 and 4-63 through 4-116). The 2023 SunZia FEIS/PRMPA incorporates by reference and tiers to the 2013 analysis and also discloses impacts on the San Pedro River from the proposed project components SunZia is seeking approval of, including access roads and temporary work areas (SunZia FEIS/PRMPA, pp. 3-69 through 3-74). The SunZia FEIS/PRMPA Chapter 3, AIB-14 discloses impacts on species during sensitive time periods and potential habitat fragmentation (SunZia FEIS/PRMPA, pp. 3-94 through 3-99). The reader is referred to AIB-15, *Wildlife Corridors*, for further information about how the project may impact wildlife corridors and movement in the analysis area (SunZia FEIS/PRMPA, pp. 3-99 through 3-103). Design features that are planned for the design, construction, and operations of the SunZia FEIS/PRMPA to address impacts on species and habitat are detailed in Table C-1, *Design Features for the Proposed Project Components* (SunZia FEIS/PRMPA, p. C-5). This analysis and consideration of design features and other measures ensures SunZia’s proposed amendments to the ROW, as well as the associated plan amendments, will not cause unnecessary or undue degradation.

The SunZia FEIS/PRMPA also discusses conservation measures for impacts on the San Pedro River and bird habitat conservation areas, such as the Luna County Grasslands Bird Habitat Conservation Area and the Lower San Pedro River Important Bird Area. These measures are included in Table C-3 of the Biological Resources Conservation Measures for the Proposed Project Components (SunZia FEIS/PRMPA, pp. C-13 through C-16).

As stated in the SunZia FEIS/PRMPA Chapter 1, Section 1.6.3, and Chapter 3, AID-17, the Sevilleta NWR management direction and potential impacts on the NWR have been analyzed and assessed (SunZia FEIS/PRMPA, pp. 1-7 through 1-8 and 3-347 through 3-355). Additionally, the SunZia FEIS/PRMPA has been revised to ensure that the Sevilleta NWR reclamation plan includes a long-term monitoring and adaptive management approach for reclamation effectiveness, as determined necessary by the USFWS (SunZia FEIS/PRMPA, pp. 3-347 through 3-355). The BLM also considered and addressed the Cascabel BLM Ecosystem Management Plan in FEIS Chapter 3, AID-13, *Existing and Future Land Uses* (SunZia FEIS/PRMPA, pp. 3-309 through 3-321). The BLM’s analysis of impacts associated with the alternatives and consideration of mitigation measures to address impacts, including impacts on specific resources or specially designated areas such as Sevilleta NWR, satisfies the requirements of FLPMA to ensure the proposals considered through the SunZia FEIS/PRMPA will not result in “unnecessary or undue degradation of the lands.” Accordingly, these protests are denied.

NEPA – Impacts Analysis

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to adequately address and evaluate impacts to NWR lands and resources both within and outside of the existing, small transmission corridor other than noting that approximately 140 acres within the NWR would be disturbed but no conformity determination has been made.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: By failing to utilize updated data and information on public lands resources, BLM is violating FLPMA’s inventory provision. The FEIS is deficient in failing to provide adequate baseline information as of 2022 when this new NEPA process began—including changed circumstances and new information.

Center for Biological Diversity***Robin Silver***

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to address currently known and reasonably foreseeable future FAA lighting and visibility requirements for towers and lines in the vicinity of airports, such as the San Manuel Airport in Arizona, and also where tower structures exceed 200 feet in height. Impacts from the FAA lighting requirements are not adequately identified and analyzed in the FEIS and mitigation measures were not fully addressed.

Center for Biological Diversity***Robin Silver***

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to analyze greenhouse gas (“GHG”) emissions embedded in the manufacturing and transport of all components of the proposed transmission project and associated connected actions.

Archaeology Southwest***John Welch and William Doelle***

Issue Excerpt Text: Absent specifications, in the FEIS or PA, of where, how, by whom, under what circumstances, and in accord with what time frames historic properties and cultural resources will be avoided and the adverse effects of SunZia will be minimized, it is not possible for BLM to execute a record of decision based on the 2023 FEIS or demonstrate attendance to FLPMA standards.

Summary:

The BLM has violated the National Environmental Policy Act (NEPA) by not taking a “hard look” in its analysis of impacts on Sevilleta NWR lands and resources in the SunZia FEIS/PRMPA. The BLM failed to fully analyze greenhouse gas (GHG) emissions or cultural/historic properties in its analysis. Additionally, the BLM did not rely on the best available information when analyzing Federal Aviation Administration (FAA) lighting and visibility requirements in the vicinity of airports or utilize updated data and information on public lands resources. Therefore, the analysis is flawed.

Response:

Contrary to the protestors’ arguments, the SunZia FEIS/PRMPA demonstrates that the BLM has taken a “hard look” at the impacts on Sevilleta NWR and other resources. The SunZia FEIS/PRMPA also adequately analyzes the GHG emissions associated with the proposed plan amendments associated with SunZia ROW amendments, as well as the impacts on historic properties. 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 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 of the SunZia FEIS/PRMPA provides the necessary basis to make informed land use plan-level decisions. Chapter 1, Section 1.6.3 and Chapter 3, AID-17 of the SunZia FEIS/PRMPA

address the Sevilleta NWR management direction and analyze potential impacts on the NWR (SunZia FEIS/PRMPA, p. 1-7 through 1-8 and 3-347 through 3-355). Appendix A of the SunZia FEIS/PRMPA includes maps that show the locations of tower structures and their proximity to ecologically sensitive areas within the Sevilleta NWR. Sections 3.4.34 and 4.3 in the SunZia FEIS/PRMPA provide detailed information about the impacts on Sevilleta NWR and reiterate the USFWS's consistency and compliance requirements necessary for the management of the NWR (SunZia FEIS/PRMPA, pp. 3-349 through 3-355 and 4-7). Consistent with NEPA, the BLM has taken a hard look at the impacts on Sevilleta NWR associated with the proposed plan amendments and the SunZia proposal.

The 2023 SunZia FEIS/PRMPA provides necessary updates to the 2013 analysis for the proposed project components SunZia is seeking approval of (SunZia FEIS/PRMPA, pp. 2-12 through 2-28, 3-138 through 3-139, 3-336 through 3-339). Appendix A, *Maps*, sources from ESRI ArcGIS Online dated 03/26/2022, which was used to update the 2023 SunZia FEIS/PRMPA; therefore, this analysis is in line with FLPMA's inventory provision (SunZia FEIS/PRMPA, Appendix A).

FAA lighting requirements and mitigation measures are identified and analyzed in the SunZia FEIS/PRMPA in relation to civilian airports and flight paths in Section 3.3.49.1 (SunZia FEIS/PRMPA, pp. 3-149), noting that the projects would be required to comply with FAA regulations.

An analysis of the total GHG emissions over the 75-year life of the SunZia project, including direct emissions from the construction of access roads, work areas, and the transmission line is included in Table 3-58 in the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, Chapter 3, AID-1, p. 3-162). Additionally, Sections 3.2 and 4.2 of the 2013 Final EIS include a detailed analysis of the SunZia FEIS/PRMPA in terms of climate and air quality measures (2013 SunZia FEIS/PRMPA, pp. 3-2 through 3-22 and 4-6 through 4-23). Although the analysis in the SunZia FEIS/PRMPA is focused on the ROW amendment actions, revisions to Section 3.4.2 have been made to acknowledge the potential cumulative impacts from wind projects and the potential offset of fossil fuel-fired electric generating sources (SunZia FEIS/PRMPA, pp. 3-158 through 3-163). Moreover, AID-1 also discusses the reasonably foreseeable future environmental trends based on the Intergovernmental Panel on Climate Change's Fifth Assessment Report based on a range of Representative Concentration Pathways, which account for natural net emissions from natural processes and land uses (SunZia FEIS/PRMPA, pp. 3-154 through 3-164). Thus, the EIS has considered the GHG emissions embedded in the manufacturing and transport of all components of the proposed transmission project and associated connected actions to the extent possible.

Sections 3.8 and 4.8 of the 2013 Final EIS, as well as AIB-20, AID-10, and AID-11 of the SunZia FEIS/PRMPA, specifically analyze the impacts on cultural and archaeological resources, as well as National Historic Trails (2013 SunZia FEIS/PRMPA, pp. 3-146 through 3-199 and 4-122 through 4-147; SunZia FEIS/PRMPA, pp. 3-121 through 3-125, 3-259 through 3-272, and 3-273 through 3-285). As described in the SunZia FEIS/PRMPA, the BLM, through consultation with consulting parties and Indian tribes, is satisfying the requirements of Section 106 of the National Historic Preservation Act (NHPA) through a Programmatic Agreement (PA) that was originally executed in 2014 and recently amended in 2023. Stipulation I of the PA sets forth the steps for Section 106 compliance, including considering the potential effects associated with the SunZia project on historic properties listed on or eligible for the National Register of Historic Places, and details the process for resolving any adverse effects on historic properties. While not a publicly available document, the amended PA was developed in consultation with the Arizona and New Mexico State Historic Preservation Officers, appropriate tribes, and other consulting parties, as described in Sections 5.3 and 5.4.1 of the SunZia FEIS/PRMPA (pp. 5-3 through 5-6). Although the PA provides the alternate process for Section 106 compliance, the BLM did provide an analysis and discussion of impacts on cultural resources and historic properties in the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, pp. 3-

121 through 3-125, 3-259 through 3-272, and 3-273 through 3-285). Therefore, the BLM has analyzed the potential impacts on historic properties and cultural resources and will ensure appropriate measures seek to avoid, minimize, or mitigate adverse effects on such resources as discussed in the SunZia FEIS/PRMPA or through the process set forth in the amended PA.

The BLM complied with the NEPA requirement 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)) in the SunZia FEIS/PRMPA. Accordingly, these protests are denied.

NEPA – Range of Alternatives

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include, but are not limited, to the following...Failing to consider a true “no project” alternative that would result in no project being built.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: Failing to address less impactful alternatives for transmitting additional wind energy from New Mexico that were identified in scoping comments but ignored in the DEIS, FEIS and proposed plan amendment. BLM’s proposed plan amendment is based on inadequate NEPA analysis of alternatives and thereby also violates FLPMA because BLM has failed to consider any siting alternatives in Arizona, in violation of FLPMA’s minimization requirements and the UUD standard and NEPA’s alternatives requirements. BLM failed to adequately address a meaningful range of alternatives.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to conduct valid analyses of the No Action alternative. We protest all portions of the 2023 EIS that base analyses of the No Action alternative on the assumption that if the 2023 SunZia Amendments are not granted, the Project would be constructed under the terms of the 2013 EIS and the 2015 Record of Decision. The fundamental changes that have taken place during the past decade render this to be an invalid assumption.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to follow the federal policy of co-locating the proposed transmission project with existing linear infrastructure to the highest degree practicable. The conservation organizations pointed out in comments that SunZia would only be 37% co-located with existing powerline corridors in Arizona, and that feasible route alternatives would be up to 100% co-located with existing powerline corridors in Arizona.

Archaeology Southwest***John Welch and William Doelle***

Issue Excerpt Text: FLPMA requires BLM to manage public lands “in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” (43 U.S.C. § 1701(a)(8)). The 2023 FEIS fails to adequately consider reasonable alternatives, especially collocation of the SunZia lines with existing linear infrastructures that would have avoided all adverse impacts to the San Pedro Valley. BLM needlessly restricted analyses to the route specified in the SunZia right-of-way application, failing to serve the public interest through a detailed assessment (or requirements for an independent third-party assessment) of the legitimacy of the purpose and need for SunZia, most especially in conjunction with Southline and other options for co-location of SunZia lines within existing industrial rights-of-way that avoid the San Pedro Valley. ...The unequivocal, common sense requirement embedded in NEPA, NHPA, and related authorities is for BLM to take a hard look at every proposed land use or alteration before approving or authorizing that action. BLM has failed to take this hard look.

Summary:

The BLM failed to analyze a reasonable range of alternatives as required by NEPA. The BLM failed to consider:

- An alternative that includes collocating the proposed transmission project with existing linear infrastructure to avoid impacts on San Pedro Valley;
- An alternative that considers siting in Arizona, therefore violating the Unnecessary and Undue Degradation standard; and
- A true “No Action” alternative that would result in no project being built.

Response:

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

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action. “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’...Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable...” (BLM NEPA Handbook, H-1790-1, at p. 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’s range of alternatives to the proposed action based on the purpose and need of the SunZia FEIS/PRMPA was reasonable and considered all the relevant information. Here, the BLM’s purpose and need focused on SunZia’s proposal to amend the current ROW authorization to include proposed project components, i.e., access roads and temporary work areas, outside of the existing ROW grant, localized route modifications, a new substation location, and a reroute of Segment 4 in New Mexico (SunZia FEIS/PRMPA, pp. 1-1 through 1-5). The SunZia FEIS/PRMPA addressed the proposed action and alternatives (including a No Action alternative) carried forward for detailed analysis, which are described in Chapter 2 (SunZia FEIS/PRMPA, pp. 2-8 through 2-30). The alternatives

analyzed in the SunZia FEIS/PRMPA were developed based on input from the public via scoping, as well as discussions with cooperating agencies as described in Section 1.1 of the SunZia FEIS/PRMPA (pp. 1-2 through 1-3). Additional alternatives were proposed during scoping and the public comment period for the SunZia FEIS/PRMPA. Section 2.6 of the SunZia FEIS/PRMPA documents each proposal, the BLM's consideration of the proposal, and justification for its elimination from detailed analysis (SunZia FEIS/PRMPA, pp. 2-29 through 2-30).

Section 6.6.3 of the BLM NEPA Handbook provides criteria for eliminating alternatives from detailed analysis, as summarized in Section 2.6 of the SunZia FEIS/PRMPA (pp. 2-29 through 2-30). Public and agency input received during the scoping process was taken into consideration during the development of alternatives and can be found in Appendix I of the SunZia FEIS/PRMPA.

The Energy Policy Act of 2005 Section 368 Energy Corridor Review Final Report Regions 1-6 (2022) identifies siting principles suggested to be included in any BLM or U.S. Forest Service land use planning effort. Section 2.4 of the report includes General Siting Guidelines to improve corridor placement during land use planning efforts that include aligning with existing infrastructure. These and other factors in the report are recommended to promote consistency and efficacy in corridor placement and use. This report is the only Federal policy providing corridor co-location guidance regarding land use planning, and it is unclear what other guidance the protestors are referencing.

BLM is considering two alternative routes under the Proposed Action for Component 3, Segment 4 with various combinations of sub-routes that would co-locate these SunZia lines with existing linear infrastructure, as discussed in Section 2.4.3 of the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, pp. 2-16 and 2-17). Alternative Routes 2 and 3, shown in Figures 2-3 and 2-4, respectively, of the SunZia FEIS/PRMPA (pp. 2-21 and 2-22) would co-locate the ROW within existing transmission line corridors that pass through National Wildlife Refuge System land. These alternative routes are being considered by BLM.

The BLM understands and complied with its management obligations under Section 302(b) of FLPMA to “take any action necessary to prevent unnecessary or undue degradation of the lands.” The SunZia FEIS/PRMPA provides for the balanced management of the public lands in the planning area and adequately analyzes the potential environmental impacts associated with each alternative. Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield.” Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. BLM developed the alternatives analyzed in the SunZia FEIS/PRMPA in part to meet FLPMA's multiple use policy. FLPMA's multiple use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses in the alternatives analyzed in the SunZia FEIS/PRMPA, which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary and undue degradation.

All alternatives considered in the SunZia FEIS/PRMPA, as described in Chapter 2 (SunZia FEIS/PRMPA, pp. 2-1 through 2-54) provide an appropriate balance of uses on public lands. All alternatives allow some level of uses presented in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Regarding siting in Arizona, Section 2.7.1, *Agency Preferred Alternative* (SunZia FEIS/PRMPA, p. 2-30 and 2-31) considers localized route modifications in Arizona. These route modifications are described in detail in Section 2.4.1, *Component 1: Localized Route Modifications* (SunZia FEIS/PRMPA, p. 2-12). These route modifications in Arizona are being considered by BLM; therefore, is not a violation of FLPMA's

minimization requirements or the undue or unnecessary degradation standard. Additionally, BLM's purpose and need for the action, as described in Section 1.4.1 of the SunZia FEIS/PRMPA (pp. 1-4 through 1-5) is to respond to the FLPMA ROW application submitted under Title V of FLPMA to modify the existing ROW grant through localized modifications. An alternative prescribing that the existing ROW grant be rerouted through existing linear infrastructure would not meet the purpose and need of the action in question.

As discussed in Section 2.5 of the SunZia FEIS/PRMPA (pp.2-28 through 2-29), the BLM adequately considered a No Action alternative under which the amended ROW for the project would not be granted, the Socorro RMP would not be amended, and the ROW grant issued in 2016 would remain valid. The 2016 ROW was authorized via a grant (Serial Number NM-114438) to allow for the operation, maintenance, and termination of two 500-kilovolt transmission lines with a term for 50 years followed by decommissioning, subject to a new grant of renewal. This 2016 grant is valid and existing. Under the No Action Alternative, the SunZia Transmission Line would still be built as it was authorized under the 2015 SunZia Record of Decision and 2016 ROW grant.

The BLM considered a reasonable range of alternatives including a No Action alternative in the SunZia FEIS/PRMPA in full compliance with NEPA. Accordingly, these protests are denied.

NEPA – Reasonably Foreseeable Future Actions

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The FEIS fails to address new information and changed circumstances since the initial right-of-way was issued including other transmission lines approved in this area after the earlier right-of-way was issued.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: Failing to analyze the reasonably foreseeable connected actions associated with injecting a very high volume of 45% capacity intermittent New Mexico wind energy at a single substation in central Arizona, with most of that energy ultimately being destined to California electricity markets.

Center for Biological Diversity

Robin Silver

Issue Excerpt Text: The inadequacies in the environmental review required by NEPA for the plan amendment and amendments to the right-of-way include...Failing to acknowledge new information associated with the approval of the competing Southline Transmission Project, which is now available to fulfill the Project objectives explicitly stated in SunZia's 2013 and 2023 final Environmental Impact Statements.

Summary:

The BLM did not acknowledge new information or changed circumstances, including transmission lines and ROW agreements that were issued in 2022. Additionally, BLM did not adequately address cumulative impacts associated with past, present, and future actions such as high-volume wind energy and subsequent transmission of the collected wind energy as it pertains to reasonably foreseeable development.

Response:

Contrary to the protesters’ arguments, the BLM did identify and analyze new information or changed circumstances in the cumulative impacts, including reasonably foreseeable future actions, consistent with the requirements of NEPA. CEQ regulation 40 CFR 1508.1(aa) defines reasonably foreseeable as “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.” These activities must be considered in the analysis of cumulative impacts. CEQ’s regulations define “cumulative impacts” as those “effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 CFR 1508.1(g)(3)). These actions must be described within the geographic scope and timeframe of the analysis. Per the BLM NEPA Handbook (H-1790-1), “reasonably foreseeable future actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” Section 3.2.2 of the SunZia FEIS/PRMPA (p. 3-4) indicates the BLM is tiering its cumulative impacts analysis of reasonably foreseeable activities to the 2013 SunZia FEIS (BLM 2013), but also updating its supporting information for the analysis for the proposed project components. BLM analyzed reasonably foreseeable activities under each resource analyzed in brief and in full in Chapter 3, *Affected Environment and Environmental Consequences* (SunZia FEIS/PRMPA, pp. 3-1 through 3-388). The first subsection under the Affected Environment for each resource section is called *Reasonably Foreseeable Future Environmental Trends and Planned Actions*, and this provides an analysis of the reasonably foreseeable actions and environmental trends for consideration in the cumulative impact analysis for that resource, which considers changed circumstances since the initial ROW was issued.

Additionally, *The Reasonably Foreseeable Future Environmental Trends and Planned Actions Technical Report* was published in 2021 and is available on the SunZia BLM ePlanning page (<https://eplanning.blm.gov/eplanning-ui/project/2011785/570>). This report provides an inventory and presentation of reasonably foreseeable environmental trends and planned actions that were considered in the cumulative impact analysis of the SunZia FEIS/PRMPA including other transmission lines approved or planned within the spatial and temporal boundaries of the project components, such as the Southline Transmission Line Project and proposed wind energy projects, such as the Great Divide Wind Project and the Western Spirit Wind project.

The BLM adequately analyzed reasonably foreseeable actions in the SunZia FEIS/PRMPA. Accordingly, these protests are denied.

National Historic Preservation Act – Public Involvement

Archaeology Southwest

John Welch and William Doelle

Issue Excerpt Text: In particular reference to mandatory public involvement, BLM has failed, per 36 CFR 800.2(d)(1), to “seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties.” In vain we have searched our SunZia documents and BLM’s websites for any record of the NHPA-mandated public involvement (beyond NEPA scoping opportunities and NHPA consultations with state officials and agency counterparts) in considering the effects and impacts on cultural resources promised by this complex, intrusive, controversial, and landscape-transforming project that will destroy hundreds of cultural resources. Nowhere in the FEIS or related records do we find BLM attendance to the mandate to provide the public—not merely the consulting parties—with project- and context-specific information essential for enabling the public to

assist and advise BLM in how to meet mandates to identify, evaluate, assess, and avoid or reduce impacts and effects. ...BLM failure in this regard appears to be symptomatic of and to precipitate from BLM failures to attend, at a minimum, to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (1983) and the ACHP Section 106 Archaeology Guidance (2009).

Summary:

The BLM failed to adequately involve the public during the planning process by not providing adequate information related to the proposed project's potential impacts on cultural resources for the public to comment upon, which is a violation of the NHPA and does not align with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (1983) and the Advisory Council on Historic Preservation (ACHP) Section 106 Archaeology Guidance (2009).

Response:

The BLM is complying with the procedural requirements of Section 106 of the NHPA and other applicable cultural resource laws as it relates to the proposed ROW grant application and the proposed land use plan amendments, including seeking to involve the public. In 2014, the BLM, along with the required signatories, executed a PA for the SunZia project approved in 2015, which set forth the alternative procedures for compliance with Section 106 (SunZia FEIS/PRMPA pp. 5-5 through 5-6). Consistent with the BLM's coordination and communication with the signatories to the PA, Indian tribes, other consulting parties, and the public, the BLM proposed amendments to the PA to cover the proposed changes to the ROW grant and project. On January 5, 2023, the required signatories executed the amended PA (SunZia FEIS/PRMPA pp. 5-5 through 5-6).

The amended PA represents the alternate process for Section 106 compliance, but the BLM still provided opportunities for public involvement through the NEPA process. The Section 106 implementing regulations at 36 CFR 800.8(2)(d)(3) and 800.8(a) allow an agency to use NEPA procedures to satisfy the public involvement requirements of Section 106 in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. BLM's NEPA Handbook (H-1790-1) provides BLM's procedures for public involvement. The BLM has identified the following phases during EIS/RMPA development for formal public involvement: 1) the scoping period, 2) during the public comment period after the release of the Draft EIS/RMPA, and 3) during the protest period after the release of the FEIS/PRMPA. During these phases, the BLM sought input regarding historic properties consistent with the Section 106 and NEPA processes.

The scoping period for the SunZia EIS/RMPA began upon publication of the Notice of Intent on June 4, 2021, and ended on July 6, 2021, to solicit public comments and identify issues to be addressed in the SunZia Draft EIS/RMPA. These issues were captured in the 2021 Scoping Report for the project, available on the BLM's ePlanning website (<https://eplanning.blm.gov/eplanning-ui/project/2011785/570>) and were also incorporated into the SunZia Draft EIS/RMPA. A 90-day public comment period following publication of the SunZia Draft EIS/RMPA began upon Notice of Availability on April 29, 2022. During this time, the SunZia Draft EIS/RMPA was made available to the public to review and provide comments. The BLM also held three public meetings during which questions related to the SunZia Draft EIS/RMPA, including the associated Section 106 process and the PA, could be asked and were addressed by the BLM.

As described above, the BLM adequately provided opportunities public involvement relating to the SunZia FEIS/PRMPA planning effort and is satisfying its Section 106 responsibilities through the amended PA. Accordingly, these protests are denied.

National Historic Preservation Act – Section 106 Consultation -Tribal Consultation

Archaeology Southwest

John Welch and William Doelle

Issue Excerpt Text: BLM is well aware of its consultation and coordination obligations to Tribes. These obligations include but are not limited to Executive Order 13175 (Consultation and Coordination with Tribes), Executive Order 13007 (Indian Sacred Sites...), and the 2021 Joint Secretarial Order 3403 (Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters...). BLM is obligated to integrate these Tribal consultation duties into NEPA and NHPA compliance processes. Again, BLM’s decision to pursue NEPA and NHPA compliance concurrently does not alleviate BLM obligations to include the identification and assessment of likely impacts to cultural resources in the FEIS. This is especially relevant in the context of the unexplained delays in the historic property identification, evaluation, and adverse effect avoidance processes and consultations required by NHPA and the Section 106 process, as prescribed in the NHPA implementing regulations at 36 CFR 800. The 2023 FEIS by which the BLM proposes to proceed with the preferred alternative that is the subject of this Protest does not include evidence of either meaningful consultation with affected Tribes or evidence of BLM assessment of specific impacts of the proposed action on cultural resources.

Archaeology Southwest

John Welch and William Doelle

Issue Excerpt Text: In the NHPA Section 106 process, “Consultation means the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information” (36 CFR 800.16(f)). The FEIS presents no evidence that BLM has shouldered this burden or attempted in any way to reach agreement with Tribes. In particular, the FEIS did not and could not have met these important standards because the BLM has issued the FEIS in advance of any serious investigation or assessment of the multiple affirmations by multiple Tribes regarding historic properties possessing “religious and cultural significance to Indian tribes [that] may be eligible for listing in the National Register of Historic Places” (see NHPA Section 101(d)(6)(A)), which requires that Federal agencies, in carrying out their Section 106 responsibilities, consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The evidence at the core of this prong of our Protest is the absence in the 2023 FEIS and in all other NEPA and NHPA records available to Archaeology Southwest of any indication of BLM attendance to the concerns voiced by multiple Tribes concerning the use by SunZia of the San Pedro Valley as an industrial corridor.

Archaeology Southwest

John Welch and William Doelle

Issue Excerpt Text: BLM has failed to listen to the affected Tribes and, more importantly, to act in any way responsive to their concerns or to reach agreement with the Tribes. BLM’s April 2022 draft environmental impact statement (DEIS) says, “No TCPs or sacred sites were identified within the analysis area during the previous consultation for the 2013 FEIS (BLM 2013:3-184, 3-195). No new data are available for this Draft EIS” (page 219). This claim is revealed as duplicitous in light of the fact that BLM has not engaged in meaningful consultations with Arizona Tribes in recent years, nor has BLM conducted or required a TCP inventory for the SunZia impact area. In this regard and in all matters relating to its obligations to consult with and coordinate with Tribes on the Arizona portion of SunZia, BLM has failed to follow applicable law and policy.

Summary:

The BLM violated Section 106 of the NHPA by failing to adequately consult with tribes by not identifying and assessing potential impacts on cultural resources in the FEIS/PRMPA for tribes to consider and by not providing opportunity for meaningful tribal consultation. The BLM also failed to identify cultural landscapes and historic properties possessing religious and cultural significance to tribes that may be impacted by the proposed project despite Tribes communicating concerns regarding these places during the FEIS/PRMPA planning process, which is a violation of Section 106 of the NHPA.

Response:

Contrary to the protestor’s arguments, the BLM continues to adequately engage in tribal consultation to identify and consider the effects on historic properties of religious and cultural significance to Indian tribes, including cultural landscapes. The NHPA requires Federal agencies, as part of the NHPA Section 106 process, to consult with Indian tribes that attach religious and cultural significance to historic properties potentially affected by an undertaking (54 United States Code [U.S.C.] 302706; 36 CFR 800.2(c)(2)(ii)). The regulations implementing NHPA Section 106 require Federal agencies to make a “reasonable and good faith effort” to identify historic properties within the area of potential effect in part through consultation with Indian tribes (36 CFR 800.4(b)). The BLM’s tribal consultation efforts are broader than the identification of historic properties: “The NHPA Section 106 standard only applies to the agency’s effort to consult with Indian tribes regarding historic properties of religious and cultural significance in the context of NHPA Section 106 and not the other specific and general authorities that require tribal consultation on a government-to-government basis” (BLM Manual 1780 Tribal Relations, H-1780-1, A2-1). It is BLM policy under FLPMA and the NEPA analysis to provide “an early opportunity for tribes to help inform BLM decisions with the potential to affect their interests through both formal consultation and serving as cooperating agencies” (BLM Handbook H-1780-1, p. IV-2).

While the BLM manager must give tribal concerns and preferences due consideration and make a good faith effort to address them as an integral part of the decision-making process, final decisions may not always conform with the preferences and suggestions of the tribes. In these cases, BLM must notify the tribe of final plan decisions, including an explanation for why the plan was or was not able to accommodate particular tribal concerns (BLM Handbook H-1780-1, p. IV-7).

Here, the BLM conducted government-to-government consultation with tribal governments throughout the development of the SunZia FEIS/PRMPA, as summarized in Sections 5.3 and 5.4 of the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, pp. 5-3 through 5-6). Extensive tribal consultation was conducted for the initial ROW application and in support of the first EIS process from 2009 through 2015 and this consultation continued during this planning effort. The BLM initiated formal consultation for this undertaking with 29 tribes on December 7, 2020. Consultation with interested tribes continued throughout the planning process, including additional communications and report distributions, as described in the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, pp. 5-4 and 5-6).

The BLM complied with NEPA’s requirement to analyze the environmental impacts on cultural resources and resources of Native American concern in the SunZia FEIS/PRMPA and engaged in a reasonable and good-faith effort to identify historic properties, including Traditional Cultural Properties (TCPs). The BLM describes its process for identifying all known previous cultural inventories and historic properties in the SunZia FEIS/PRMPA (SunZia FEIS/PRMPA, pp. 3-260 through 3-268 and p. 3-122). Further, the BLM is satisfying its Section 106 responsibilities through a PA, which was originally executed in 2014 prior to the BLM’s approval of the SunZia ROW and most recently amended to reflect the proposed amendments to the SunZia ROW. Prior to the execution of the 2014 PA and the 2023 amended PA, the BLM engaged in consultation with Indian

tribes and invited Indian tribes to sign the PA as described in the 2013 SunZia FEIS/PRMPA (pp. 5-6 through 5-7) and the 2023 SunZia FEIS/PRMPA (pp. 5-3 through 5-5). Stipulation I of the executed PA stipulates a process of consulting with Indian tribes regarding the identification of historic properties including TCPs relating to the ROW, proposed amended ROW, and as associated with the proposed plan amendment, and resolution of adverse effects on historic properties. The 2015 PA is available as Appendix B in the 2015 SunZia Record of Decision available on BLM's ePlanning website for the previous planning effort (<https://eplanning.blm.gov/eplanning-ui/project/2013584/570>). The 2023 amended PA is not publicly available, but can be provided upon request. Also, as described in the SunZia FEIS/PRMPA, the BLM continues to provide annual reports as required by the PA to consulting parties and tribes, which have included updates on the ROW amendment NEPA process and updates on implementation of the PA (SunZia FEIS/PRMPA, p. 5-6).

The BLM adequately consulted with tribal governments regarding the SunZia FEIS/PRMPA. Accordingly, these protests are denied.