

Director's Protest Resolution Report

**Chevron Energy Solutions
Lucerne Valley Solar Project
Plan Amendment
California Desert Conservation Area Plan**

October 5, 2010



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Reader's Guide

How do I read the Report?

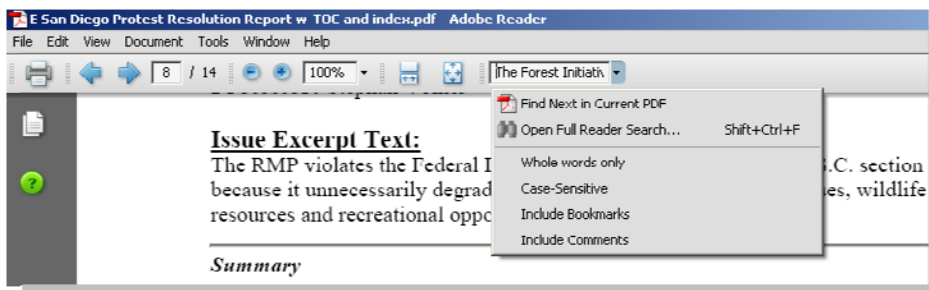
The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's response to the summary statement.

Report Snapshot

Issue Topics and Responses			
NEPA	Topic heading	Submission number	Protest issue number
Issue Number:	PP-CA-ESD-08-0020: 10	Protesting organization	
Organization:	The Forest Initiative		
Protester:	John Smith	Protester's name	Quotation taken from the submission
Issue Excerpt Text:	Rather than analyze these potential impacts, as required by the National Environmental Policy Act, the BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.		
	General statement summarizing the issue excerpts (optional)		
Summary	There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.		
Response	The BLM's response to the summary statement or issue excerpt if there is no summary		
	Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved....		

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

APP	Avian Protection Plan	FLPMA	Federal Land Policy and Management Act of 1976
BLM	Bureau of Land Management	KOP	Key Observation Points
CDCA	California Desert Conservation Area	MUC	Multiple-Use Class
CESA	Cumulative Effects Study Area	NEPA	National Environmental Policy Act of 1969
DEIS	Draft Environmental Impact Statement	RMP	Resource Management Plan
EIS	Environmental Impact Statement	SR	State Route
FEIS	Final Environmental Impact Statement	USFWS	U.S. Fish and Wildlife Service
		VRI	Visual Resource Inventory
		VRM	Visual Resource Management

Protesting Party Index

Protester	Organization	Submission Number	Determination
James Harvey	Homestead Valley Community Council	PP-CA-LUCERNE- 10-01	Dismissed- Incomplete
Robyn Purchia	International Brotherhood of Electrical Workers Local 477	PP-CA-LUCERNE- 10-02	Denied- Issues Comments
Chuck Bell	Lucerne Valley Economic Development Association	PP-CA-LUCERNE- 10-03	Denied-Issues Comments
Michael Boyd	Californians for Renewable Energy	PP-CA-LUCERNE- 10-04	Dismissed- Incomplete

Issue Topics & Responses

NEPA

Impact Analysis

Issue Number: PP-CA-Lucerne-10-02-16

Organization: International Brotherhood of Electrical Workers, Local 477

Protester: Robyn Purchia

Issue Excerpt Text:

Despite the importance of assessing water demand and supply for projects in the CDCA and numerous public comments requesting clarification on the issue, the BLM failed to justify the Applicant's underestimated water demand and identify a specific water source. It just assumes that if the Applicant obtains water from an off-site source, the Project will not impact water supplies. This is nonsensical. The BLM cannot ignore the impacts using limited surface and groundwater will have on desert hydrology, local residents and wildlife that depend on these water surfaces.

Response

The BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the RMP-A/EIS. The BLM analyzed the available data that led to an adequate disclosure of the potential environmental consequences of the preferred alternative and other alternatives. As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequence of the alternatives to enable the decisionmaker to make an informed decision.

The FEIS provides a reasonable estimate of water demand at Section 3.5.2.3, utilizing an expected scenario of two washings annually, at approximately 5,000 gallons each washing. No other water use is expected onsite other than for the washings. Regarding the impact of the proposed plan amendment on water supply, the FEIS states that water supply would be affected in that “[t]he water obtained for both construction and operations would be from a permitted off-site source; therefore, it would not decrease the total water supply in the Proposed Action area but would reduce the amount available for other uses” (FEIS p. 4.5-4). That is, although wells would not be drilled for this project, available offsite water that is used for this project would be unavailable for other uses, thus reducing the overall available water for other uses in the area. Water for panel washing would be provided through a contract with one of the large industrial companies or municipal water companies that have high capacity wells and water systems (FEIS p. ES-9). The FEIS also states, regarding hydrology, that “the primary drainage channels within the site would be left intact and sheet flow would still occur through the remainder of the site. This type of flow pattern alteration would not alter the overall flow pattern for the area and would not contribute cumulatively to changes in flow patterns or drainages in the area” (FEIS p. 4.5-6). FEIS Section 4.15 describes impacts to social and economic conditions. FEIS Section 4.6.3 describes effects that may occur on wildlife.

Cumulative Impact Analysis

Issue Number: PP-CA-Lucerne-10-03-24

Organization: Lucerne Valley Economic Development Association

Protester: Chuck Bell

Issue Excerpt Text:

Figure 3.18-1: The Cumulative Projects Map shows a "Cumulative Effects Study Area" (CESA) boundary within a 6 mile "buffer" radius from the project site. However it shows other proposed project locations outside said "buffer". A complete and adequate cumulative impact analysis needs to show and assess all the proposed projects within the larger Lucerne Valley area that is affected. Some of the renewable projects listed may no longer be considered. The ones not shown - all with applications currently being processed by the County and/or BLM - are 2 "First Solar" PV's west on Hwy 18 and another adjacent to Barstow Rd. - Granite Wind west of Barstow Rd. (with DEIR/FEIS issued) - Next-Era's PV in n. Lucerne Valley - plus the proposed 29 Palms Marine Base expansion into a major portion of Lucerne/Johnson Valleys northeast of the Chevron site. All these projects will have significant cumulative effects on our community.

Response

The BLM thoroughly explained its consideration and analysis of cumulative effects of the plan amendment in Section 5.0 of the FEIS. The cumulative impact analysis in the FEIS considered the present effects of past actions, to the extent that they are relevant, as well as effects of current and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The analysis took into account the incremental effect of the proposed amendment when considered in context with other foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. Section 3.18 of the FEIS describes projects that have "the potential to contribute to the cumulative effect on the environment" and, thus, form the basis of a meaningful cumulative impact analysis (FEIS p. 3.18-2).

The First Solar projects were considered too distant from the plan amendment area to have any measurable cumulative effects. The Marine Base expansion was not considered because no details on the proposed uses for the expanded military area are available, which would be necessary to analyze cumulative impacts. The information presented in the FEIS is therefore sufficient for the BLM to make an informed decision.

Additional information on the BLM's consideration of cumulative effects is provided in Appendix N of the FEIS ("BLM Response to Comment"), in response to public comments 020 and 023 (p. N-8 and pp. N-9 and N-10, respectively).

Federal Land Policy and Management Act

Multiple Use Class

Issue Number: PP-CA-Lucerne-10-02-3

Organization: International Brotherhood of Electrical Workers, Local 477

Protester: Robyn Purchia

Issue Excerpt Text:

The conversion of the Planning Area into a single industrial use fails to strike a controlled balance between higher intensity uses and protection of public lands in contravention of the CDCA's prescribed management goals for Multiple Use Class M (moderate use) lands.

Issue Number: PP-CA-Lucerne-10-02-9

Organization: International Brotherhood of Electrical Workers, Local 477

Protester: Robyn Purchia

Issue Excerpt Text:

The Planning Area is designated Class M. In evaluating whether the Plan should be amended, BLM failed to assess whether the proposed Plan Amendment ensures a controlled balance on Class M lands, as required by FLPMA and the CDCA Plan. Specifically, the EIS failed to analyze all of the Project's impacts on desert resources and propose feasible measures that would mitigate damage to those resources it did identify as impacted.

Summary

The proposed plan amendment is inconsistent with the Multiple Use Class M designation of the CDCA plan.

Response

As the proposed plan amendment/FEIS states, the location of the proposed Lucerne Valley Solar Plant facility includes land that is classified as Multiple-Use Class (MUC) - M (Moderate Use) in the CDCA Plan. The MUC - M lands are specifically identified as being compatible with energy development and transmission: "Multiple-Use Class M ... is based on a controlled balance between high intensity use and protection of public lands. This class provides for a wide variety of present and future uses such as mining, livestock grazing, recreation, energy, and utility development" (CDCA Plan, p. 13).

The CDCA Plan provides guidance concerning the management and use of BLM lands in the California Desert while balancing other public needs and protecting resources. The CDCA Plan contemplates industrial uses, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p. 95). The CDCA Plan expressly provides that solar generation facilities within areas designated as MUC - M "may be allowed after NEPA requirements are met" (CDCA Plan, p. 15). The CDCA Plan specifically cites energy development and transmission as a "paramount national priority" to consider in balancing use and protection of resources (CDCA Plan, p. 6). The proposed plan amendment would allow the solar use only on the proposed project site and will not result in any changes in land use designations or authorized land uses anywhere else in the CDCA. The proposed land use plan amendment to be made by the BLM is a site identification decision only (FEIS, p. 4.9-2).

The CDCA Plan states that solar power facilities may be allowed within MUC - M areas after NEPA analysis is complete and requires that newly proposed power generation facilities that are not already identified in the CDCA Plan be considered through a plan amendment process (CDCA Plan, pp. 15 and 95). For MUC - M lands, the authorized officer is directed to manage for a controlled balance of higher intensity uses and protection of public lands values (FEIS, p. 4.9-2). The EIS that accompanies the proposed plan amendment acts as the mechanism for complying with NEPA requirements. Because solar power facilities are an allowable use of the land as it is classified in the CDCA Plan, the proposed action does not conflict with the CDCA Plan. However, the CDCA Plan also requires that newly proposed power sites that are not already included within the Plan be added to the Plan through the plan amendment process. The Lucerne Valley Solar Plant site is not currently included within the CDCA Plan, so a plan amendment is required to include the site as a recognized element with the CDCA Plan.

The CDCA's NEPA requirements have been met in the analysis contained in the DEIS and FEIS. The proposed plan amendment, and the corresponding analysis of the proposed plan amendment with respect to the requirements contained within Chapter 7 of the CDCA Plan, is provided within the FEIS. As the FEIS states in Section 4.9, “[t]he Proposed Action ... would not conflict with either the Energy Production and Utility Corridor Element or the MUC M designation of the CDCA Plan.” Section 4.9 of the FEIS describes in detail why the proposed site location for the project meets the Multiple Use Class guidelines consistent with the CDCA Plan.

Therefore, the proposed plan amendment is consistent with the Multiple-Use Class designations in the CDCA Plan.

Fish, Wildlife, Plants, Special Status Species

Issue Number: PP-CA-Lucerne-10-02-14
Organization: International Brotherhood of Electrical Workers, Local 477
Protester: Robyn Purchia

Issue Excerpt Text:

Because the BLM will impact golden eagle foraging habitat, it is required by law to consult with the USFWS before approving the Project. Failure to do so is a clear violation of the CDA Plan.

Issue Number: PP-CA-Lucerne-10-02-30
Organization: International Brotherhood of Electrical Workers, Local 477
Protester: Robyn Purchia

Issue Excerpt Text:

However, the BLM did not propose any mitigation measures to reduce impacts to golden eagle foraging habitat in the FEIS, nor did it indicate that it had consulted with the USFWS.

Summary

The BLM has failed to consult with the USFWS regarding impacts of the proposed action on the golden eagle and failed to address and mitigate impacts to its foraging habitat.

Response

The BLM has coordinated its efforts closely with the USFWS in regard to determination and mitigation of impacts of the proposed action on the golden eagle.

On August 26, 2010, the BLM California State Director sent a memorandum to the Regional Director, USFWS, requesting USFWS review “of the likelihood of take of an eagle that reflects the outcomes of the discussions between our staffs to date” for fast track renewable energy projects. The USFWS Regional Director replied in a memorandum dated September 15, 2010, stating, “As a result of subsequent discussions between the Service and the Bureau, the Service concurs with your determinations on the wind projects and where take is unknown for the majority of the solar projects.” For Chevron Lucerne Valley, the BLM determined a “take unlikely, no avian protection plan (APP)” was necessary. While the USFWS concurred that an avian protection plan (APP) is not required for golden eagle protection, they have recommended that an APP is developed by the applicant. Thus, the BLM will require that the applicant prepare an APP within six months of initiating project construction (see the BLM’s Record of Decision, Required Actions).

The BLM acknowledges potential impacts of the Proposed Action to birds, including northern harrier, prairie falcon, golden eagle, red-tailed hawk, and any other migratory bird species (FEIS p. 4.6-21). Impacts to golden eagle foraging habitat would account for a small portion of their hunting range, and as such are not thought to be significant (FEIS p. 4.6-22).

Social, Economic Interests

Issue Number: PP-CA-Lucerne-10-03-9

Organization: Lucerne Valley Economic Development Association

Protester: Chuck Bell

Issue Excerpt Text:

Rated generating capacity vs. actual production is a major issue with desert solar projects. The net benefit is likely marginal. Energy/C02 emissions/etc. required for making panels, structures, construction, etc. - plus the consumption of 516 acres of public land (@11 ½ acres/MW) - plus the additional loss of "multiple use" on the mitigation/compensation land-compared to other energy sources-need to be assessed from a more global perspective. If “the purpose of the NEPA process is to weight the varying benefits and losses for proposed projects” – the FEIS needs a more quantifiable cost/benefit analysis.

Response

As noted in FEIS Appendix N-62, “Cost benefit is not a primary consideration in BLM’s decision making process which places more emphasis on the traditional resource areas such as biological, water, air, and cultural resources. The level of information in the FEIS is adequate for BLM decision makers to make an informed decision.” Executive Order 12866 of September 30, 1993, which states, “Agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating,” does not apply to Federal agencies’ non-regulatory efforts, such as this plan amendment/EIS.

Visual Resource Management

Issue Number: PP-CA-Lucerne-10-02-22

Organization: International Brotherhood of Electrical Workers, Local 477

Protester: Robyn Purchia

Issue Excerpt Text:

The FEIS lacks the level of detailed analysis, however, to support the BLM's conclusion that the Project area should be designated as VRM Class IV. Specifically, there is no indication in the DEIS or FEIS that the BLM considered State Route ("SR") a County designated and State-eligible scenic highway, and the strong public interest in maintaining the visual integrity of the area. The BLM must consider these factors in assigning a VRM Class to the Project site.

Response

The Proposed Plan Amendment/FEIS does provide a detailed description of the process used and variables considered to derive an Interim Visual Resource Management Class IV designation. The procedures used are described in Section 3.12 (FEIS pp. 3.12-1–3.12-2) with specific applications to the proposed project area in Section 3.12.2 (FEIS pp. 3.12-12–3.12-14) in accordance with BLM Manual M-8400, *Visual Resource Management*, and handbooks H-8410, *Visual Resource Inventory*, and H-8431, *Visual Resource Contrast Rating*. (The Visual Contrast Rating form is available as part of the project record.)

In general, the Visual Resource Inventory measures three factors (scenic quality, sensitivity level, and distance zones [visibility]) and serves as the baseline for analysis. The Lucerne Valley VRI ratings for each of these factors are identified on page 3.12-13 of the FEIS. Comparison of the visual values reveals a VRI Class IV designation. This value is taken into consideration when determining the appropriate VRM Class designation. It is recommended that the defined rating unit of the project area receive an Interim VRM Class IV designation. BLM Manual M-8400, *Visual Resource Management*, specifically states that final VRM Classes may or may not reflect the inventory classes.

To analyze the effects of the proposed plan amendment on visual resources, the BLM identified multiple Key Observation Points (FEIS, Section 4.12.2; pp. 4.12-1–4.12-2 and Figure 3.12-5, Key Observation Points). General considerations for defining a KOP included angle of observation, number of viewers, length of time the project is in view, relative project size, season of use, and light conditions. Specific KOPs (KOP #2, #3) were identified along State Route 247 in both eastbound and westbound directions (FEIS table 4.12-1, Character Photographs and Key Observation Points).

To analyze the proposed plan amendment and the existing situation, a Visual Contrast Rating was developed and considered the basic features including landform/water, vegetation, and structures in relation to the basic elements to include line, form, color, and texture of the proposed Action (FEIS Section 4.12.3.3; pp. 4.12-9–4.12-12). The effects of the Proposed Action to these elements are described on pages 4.12-9 through 4.12-12. Of specific note is that the Proposed Action would be visible from an eligible state scenic highway (SR 247) at less than a quarter mile away. KOPs #2 and #3 show views of the site from SR 247 (Old Woman Springs

Road). The SR 247 is not officially designated as a scenic highway by California Department of Transportation. The Proposed Action would not result in an adverse effect from these views due to the short duration of the project's visibility while traveling SR 247 (FEIS p. 4.12-10).