

*Director's Protest Resolution Report*

**McCoy Solar Energy  
Project Plan Amendment  
California Desert Conservation Area Plan**

March 13, 2013



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## Reader's Guide

### *How do I read the Report?*

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

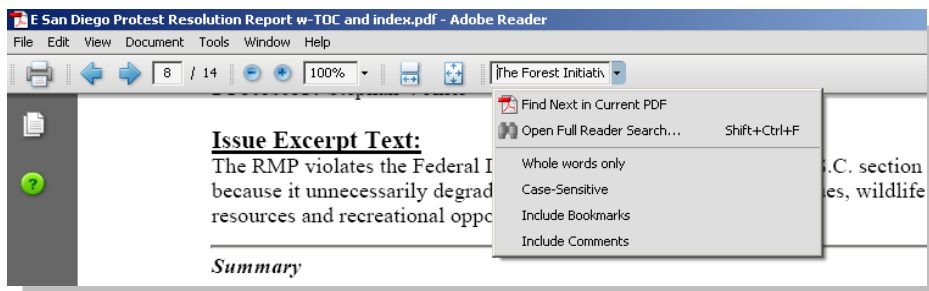
### **Report Snapshot**

The diagram shows a report layout with several sections and callouts:

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

### *How do I find my Protest Issues and Responses?*

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



## List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	GIS	Geographic Information Systems
APD	Application for Permit to Drill	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	MOU	Memorandum of Understanding
BMP	Best Management Practice	MSEP	McCoy Solar Energy Project
BO	Biological Opinion	MW	Megawatt
BSPP	Blythe Solar Power Project	NEPA	National Environmental Policy Act of 1969
CAA	Clean Air Act	NHPA	National Historic Preservation Act of 1966, as amended
CEQ	Council on Environmental Quality	NOA	Notice of Availability
CDCA	California Desert Conservation Area	NOI	Notice of Intent
CDFW	California Department of Fish and Wildlife (formerly CDFG)	NRHP	National Register of Historic Places
CDFG	California Department of Fish and Game (now CDFW)	NSO	No Surface Occupancy
CFR	Code of Federal Regulations	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
COA	Condition of Approval	PA	Plan Amendment
CSU	Controlled Surface Use	PPA	Power Purchase Agreement
CWA	Clean Water Act	RFDS	Reasonably Foreseeable Development Scenario
DM	Departmental Manual (Department of the Interior)	RMP	Resource Management Plan
DOI	Department of the Interior	ROD	Record of Decision
EA	Environmental Assessment	ROW	Right-of-Way
EIS	Environmental Impact Statement	SHPO	State Historic Preservation Officer
EO	Executive Order	SO	State Office
EPA	Environmental Protection Agency	T&E	Threatened and Endangered
ESA	Endangered Species Act	USC	United States Code
FEIS	Final Environmental Impact Statement	USGS	U.S. Geological Survey
FLPMA	Federal Land Policy and Management Act of 1976	VRM	Visual Resource Management
FO	Field Office (BLM)	WA	Wilderness Area
FWS	U.S. Fish and Wildlife Service	WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

**Protesting Party Index**

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Delfino, Kim; O’Shea, Helen; Miller, Sally; Friedman, Sarah K.	Defenders of Wildlife; Natural Resources Defense Council; Sierra Club; The Wilderness Society; Audubon California	PP-CA-McCoy-13- 01	Denied – Issues, Comments
Belenky, Lisa T.	Center for Biological Diversity	PP-CA-McCoy-13- 02	Denied – Issues, Comments
O’Donnell, Isabel	Briggs Law Corporation on behalf of Californians for Renewable Energy and La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee	n/a	Dismissed – Letter postmarked after January 22, 2012 deadline.
Kracov, Gideon	Gideon Kracov Attorney Office on behalf of Laborers International Union of North America, Local Union No. 1184	n/a	Dismissed – Letter postmarked after January 22, 2012 deadline.
Patch, Wayne, Sr.	Colorado River Indian Tribes	n/a	Dismissed – Letter postmarked after January 22, 2012 deadline.

## Issue Topics and Responses

### NEPA

#### *Purpose and Need*

**Issue Number:** PP-CA-McCoy-13-01-3

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Indeed, the FEIS states that BLM only analyzed alternatives "that responded to the purpose and need for the proposed project and are otherwise reasonable." (FEIS, Chapter 1-2). This narrow approach resulted in BLM giving serious consideration to and analyzing only one project at one location, driven entirely by the applicant's right of way application.

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**Issue Number:** PP-CA-McCoy-13-01-4

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

The purpose and need is flawed. The purpose and need statement, and the proposed action, are inconsistent with the applicant's only current power purchase agreement for the site, which is for 250

megawatts ("MW"). BLM has chosen to support a project of up to 750 MW simply because that is what the applicant proposed. Even assuming the purpose and need should be tailored to the applicant's request, the purpose and need statement-as well as the proposed action BLM contemplates approving should have been for a 250 MW project, which was analyzed as one of the alternatives, but not selected by BLM as the proposed action. Put simply, the only factually correct "need" is for a 250 MW project, commensurate with the only existing power purchase agreement the applicant holds, as noted above.

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**Issue Number:** PP-CA-McCoy-13-02-16

**Organization:** Center for Biological Diversity

**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

Narrowing the purpose and need to such an extent that the BLM failed to adequately address a meaningful range of alternatives. Particularly given the company is also now planning to develop the adjacent Blythe project which should have been considered together in the alternatives analysis.

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#### *Summary*

The statement of purpose and need is too narrow, and therefore inappropriately narrows the consideration of alternatives.

The statement of purpose and need is inconsistent with the applicant's current power purchase agreement (PPA).

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## ***Response***

In accordance with the National Environmental Policy Act of 1969 (NEPA), the BLM has broad discretion to identify the agency's purpose and need for action. 40 CFR 1502.13. The BLM's guidance directs, to the extent possible, the BLM to construct its purpose and need statement to conform to existing laws, regulations, decisions, and policies. BLM NEPA Handbook H-1790-1 at 6.2. Section 1.2 of the McCoy Plan Amendment (PA)/Final Environmental Impact Statement (FEIS) details the Federal orders and mandates which formed the basis for the purpose and need statement. McCoy PA/FEIS, pp. 1-2 to 1-3.

Section 1.2 of the McCoy PA/FEIS states that the BLM manages public lands for multiple uses for future generations taking into account potential renewable and non-renewable sources, in accordance with §103(c) of the Federal Land Policy and Management Act of 1976 (FLPMA). McCoy PA/FEIS, p. 1-2. As a result, the Secretary of the Department of the Interior, through the BLM, is authorized to respond to the right-of-way (ROW) application on public lands for the proposed McCoy Solar Energy Project (MSEP). The BLM's NEPA Handbook notes that "the purpose and need statement for an externally generated action must describe the BLM purpose and need, not an applicant's or external proponent's purpose and need." 40 CFR §1502.13. The BLM's statement of purpose and need in the McCoy PA/FEIS is in response to a specific ROW request on BLM-managed lands. The range of alternatives developed in the McCoy PA/FEIS are accordingly based on the BLM's purpose and need statement.

In short, the BLM's stated purpose and need does not, as suggested by the Protesters, focus on the objectives of the applicant. Rather, the purpose and need for action was triggered by the application. In turn, the scope of the alternatives considered was a product of the BLM's mandates of the FLPMA and the statutory and policy mandates addressing the management and policy objectives for renewable energy development on public lands. As discussed in the next response, the BLM did consider a range of alternatives beyond the details in the application, including the use of other technologies and different locations both on and off public lands. Such an approach is reasonable and consistent with the requirements of NEPA and FLPMA.

On the issue of consistency with the PPA, section 1.3 of the McCoy PA/FEIS notes that "the Applicant proposes to construct, operate, maintain, and decommission a solar PV electric generating facility composed of two units." (McCoy PA/FEIS, p. 1-3). The first unit is expected to have a capacity of up to 250 megawatts (MW), while the second unit will have a capacity of up to 500 MW, for a total of 750 MW for both units. The proposed action for the MSEP called for a project up to 750 MW, not 250 MW. While the original PPA for McCoy Solar was approved for 250 MW, this does not determine the range of alternatives that can be considered for approval. The BLM's stated purpose and need focused on a range of MW outputs, ranging from 250 MW up to 750 MW requested by the Applicant. A reduced acreage alternative for a 250 MW solar PV energy generating facility was analyzed in detail (Alternative 2). Alternate sites that could accommodate up to 250 MW were not analyzed in detail because of the limitations described in section 2.9.2.1.1 of the McCoy PA/FEIS. Current BLM policy does not allow the issuance of a Notice to Proceed for any construction until a signed PPA has been proven to the BLM, but nothing precludes the BLM from analyzing or approving an alternative for which the Applicant does not yet have a PPA.

## *Range of Alternatives*

**Issue Number:** PP-CA-McCoy-13-01-11

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

### **Issue Excerpt Text:**

Because of its overly narrow purpose and need statement, the BLM, which initially considered several alternatives, including those on private and public lands, prematurely and improperly refused to analyze several reasonable alternatives. BLM dismissed potentially viable private land alternatives because it assumed consolidation of numerous parcels would be technically and economically infeasible (FEIS, Chapter 2.9.2.1.1). Even more troubling is BLM’s narrow consideration of alternative locations (or the proposed project, namely those within eastern Riverside County and within 20 miles of the Colorado River Substation under construction by SCE. BLM also improperly dismissed a 3,400 acre private land alternative called the Palo Verde Mesa Solar Project Site (which would not require consolidation) because it was the subject of a conditional use permit for a 486 MW photovoltaic project. The holder of the real estate rights for the Palo Verde Mesa site was and continues to seek a partner to develop the site (see attached DEIS comment letter from Barbara Schussman to BLM).

Also absent from its consideration and analysis was disturbed private lands, and especially a combination of private and adjacent public lands, throughout the California Desert in areas such as Imperial County, near Blythe, and the Antelope Valley. Lands in these areas are generally more disturbed, have lower biological or conservation value and are considered by our organizations as suitable alternatives to public lands with intact biological communities and higher biological resource values. BLM inappropriately restricted its consideration of lands to areas within the eastern Riverside County area.

BLM also failed to consider and analyze a conjunctive use alternative involving a combination of private and public lands) especially those with lower biological resources values (such as an alternative that incorporated public lands in combination with private land, e.g., the Palo Verde

Mesa Solar Project Site.). BLM did not consider such an alternative because of its too-narrow statement of purpose and need, i.e., the alternative was not entirely on public land) which conflicts with the BLM’s NEPA handbook which says the "purpose and need statement for an externally generated action must describe the BLM purpose and need, not an applicant’s or external proponent’s purpose and need." BLM NEPA Handbook H-1790-1 (Jan. 2008) at 35.

BLM likewise did not consider an alternative which looked at locating the project in whole or in part on lowest-sensitivity portions of immediately adjacent public lands already controlled by the applicant, i.e., the adjacent proposed Blythe solar project. The proposed Blythe solar project, which does not have a current power purchase agreement, was originally slated to develop approximately 1,000 MW using solar thermal technology. It was acquired by the applicant prior to the issuance of the Final EIS. It is our belief, that although the site contains some sensitive and unique habitat features, there are areas of the site with lower habitat value would be suitable for development.

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**Issue Number:** PP-CA-McCoy-13-01-8

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

### **Issue Excerpt Text:**

The alternatives considered and analyzed do not constitute a reasonable range. In defining a reasonable range of alternatives, NEPA requires consideration of alternatives "that are practical or feasible" and not just "whether the proponent or applicant likes or is itself capable of carrying out a particular alternative." Even "an alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the FEIS if it is reasonable." Council on Environmental Quality, Forty Most Asked Questions; 40 C.F.R §§ 1502.14, 1506.2(d).

BLM clearly only analyzed alternatives that met the purpose and need for the action, namely public lands under BLM jurisdiction and only those associated with a right of way application filed by the applicant. As a result, the BLM essentially foreclosed serious



consideration of meaningful alternatives during the formulation of the final project and decision, in violation of NEPA, and focused its attention on only one site.

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**Issue Number:** PP-CA-McCoy-13-02-17  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

Failing to analyze a range of appropriate project alternatives including distributed generation and off-site alternatives on previously disturbed or degraded lands.

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**Issue Number:** PP-CA-McCoy-13-02-5  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

NextEra's Genesis solar project sustained significant impacts after a rain event last year, because it is also inappropriately sited on an area with dissected fan on an alluvial floodplain. The FEIS fails to evaluate a proposed action that moves the developed portion of the project out of the dissected fan landscape to avoid impacts to desert species habitat and project infrastructure. By reducing the western portion of the project further on the west side or siting it elsewhere (for example on to adjacent agricultural lands), many of the significant impacts to biological resources, hydrological processes and air quality could be avoided.

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**Issue Number:** PP-CA-McCoy-13-01-6  
**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California  
**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

The preferred alternative violates BLM Policy. Section 6.6.3 of the BLM NEPA Handbook contains

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criteria to be used in identifying alternatives to be carried forward for detailed analysis. BLM's preferred alternative and proposed actions are inconsistent with this policy according to one of the criteria, i.e., criterion #4, implementation that is remote or speculative.

The proposed action is speculative because the only contract for the output of the project is a power purchase agreement with Southern California Edison Company ("SCE") for 250 MW. As noted above, BLM proposes to approve a project for up to 750 MW, based solely on the applicant's stated purpose and need. It would be implausible for the project applicant to construct an additional 500 MW solar facility without obtaining a power purchase agreement covering the full amount of power. The proposed project of up to 750 MW, in the absence of a power purchase agreement greater than 250 MW, is speculative and uncertain.

Moreover, the large generator interconnection application ("LGIA") between SCE, the developer and the California Independent System Operator ("CAISO") is also for a 250 MW project, making transmission likewise speculative. Furthermore, SCE has indicated to the California Public Utilities Commission ("CPUC") in its request to not hold a 2012 Renewable Energy Portfolio Standard ("RPS") Solicitation" for large-scale renewable energy projects that it intends to dedicate its efforts to small-scale renewable energy projects in order to comply with the many legislatively- and CPUC adopted programs establishing procurement goals from smaller renewable generators.

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**Issue Number:** PP-CA-McCoy-13-02-7  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

The FEIS fails to mention the current power purchase agreement (PPA) for this project is only for 250 MW. Based on that fact alone, the reduced acreage alternative (Alternative 2) should be the proposed action. This alternative also significantly reduces the impacts to biological resources, hydrological resources and decreases the air quality issues.

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## *Summary*

The BLM failed to analyze a range of reasonable alternatives. The BLM did not consider:

- A private land alternative which would consolidate parcels;
- A distributed generation alternative;
- A disturbed private lands alternative;
- An alternative on lower quality public lands or a combination of lower-quality public and private lands; or
- An alternative that moves the developed portion of the project out of a dissected alluvial fan.

The preferred/proposed alternative violates NEPA because it is speculative and uncertain.

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## *Response*

The BLM's purpose and need for the proposed action defines the range of alternatives to be considered. The BLM must analyze a range of reasonable alternatives, but is not required to analyze in detail every possible alternative or variation. According to the Council of Environmental Quality (CEQ) regulations for implementing NEPA, an agency may eliminate alternatives from detailed study with a brief discussion of the reasons for having been eliminated. 40 CFR 1502.14(a). For example, an alternative may be eliminated from detailed study if it is determined not to meet the proposed action's purpose and need; determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible. BLM NEPA Handbook, H-1790-1 at 6.6.3.

As discussed in the previous response, the BLM's purpose and need was reasonably focused on responding to the application in accordance with FLPMA's multiple-use mandate and other Federal statutory and policy directives regarding the development of renewable energy on public lands. The McCoy PA/FEIS considered a range of reasonable alternatives to the proposed action designed to meet the BLM's purpose and need for action. The McCoy PA/FEIS identified three build alternatives, including a reduced acreage alternative for a facility of up to 250 MW, and one no action alternative. However, the BLM also analyzed numerous other alternative technologies and site locations, but eliminated these potential alternatives from further consideration in accordance with 40 CFR § 1502.14(a), BLM Instruction Memorandum 2011-059, and BLM NEPA Handbook, H-1701 at 6.6.3. Section 2.9.1 of the McCoy PA/FEIS lists the six criteria used to eliminate alternatives from further analysis. Many of the alternatives brought up in protest were eliminated from detailed study following the McCoy Draft PA/EIS. Reasons for elimination are described below; many of these were also described in section 2.9 of the PA/FEIS. (McCoy PA/FEIS, pp. 2-58 to 2-66).

The private land alternatives were not considered for detailed analysis for several reasons. As described in section 2.9.2.1.1, "no private parcels or combinations of parcels of sufficient size were available that met the Applicant's minimum project requirements." (McCoy PA/FEIS, p. 2-59). A real-estate specialist was brought in by the Applicant, at the request of the BLM, to

evaluate the minimum requirement of 1,500 acres for a 250 MW project. As stated in the PA/FEIS, the parameters for the search for an alternative site looked for: a contiguous, or nearly so, available acreage; listed or advertised for sale or lease sites in the November-December 2011 timeframe; within 20 miles of the Colorado River Substation (CRS); and close proximity to a gen-tie line option. Sixty-eight individual private parcels were examined that were available for sale or lease. However, the largest contiguous block of land was approximately 858 acres and was owned by four different land owners; this was below the minimum requirement of 1,500 acres for the MSEP. The BLM found that in the evaluation of private lands near the proposed site, the alternative areas were insufficient to meet the needs of the MSEP.

In regards to the Palo Verde Mesa Solar Project, Riverside County is currently considering an application for a 486 MW solar PV facility on that site. Potentially suitable areas currently in use or proposed for other solar energy projects were precluded from further analysis as reasonable alternatives for the MSEP, but included as reasonably foreseeable development in the cumulative impacts analysis (see Chapter 4). The cumulative scenario in section 4.1.5 of the McCoy PA/FEIS identified the Palo Verde Mesa site as one where further development was reasonably expected to occur. Because the Palo Verde Mesa Solar Project site is under consideration as a separate, independent project, it does not represent a viable alternative for the MSEP. (McCoy PA/FEIS, p. 2-60). Likewise, the Blythe Solar Power Project (BSPP) site was precluded from further analysis because it is under consideration as a separate project. Although the BSPP changed ownership to the Applicant, it is a distinct and separate project from the MSEP, and the BLM is awaiting a revised application for the area (see section 5.4 of this Protest Report). The BSPP was also considered as reasonably foreseeable development in the cumulative impact analysis.

Of the public land alternatives, the “MSEP project site is located within the area designated as the Riverside East SEZ, signifying that the MSEP site and the surrounding area is preferred for large-scale solar energy development based on its environmental and technical suitability for such development.” (McCoy PA/FEIS, p. 2-60). There are other BLM-administered lands that were excluded from further analysis because of special designations, such as wilderness areas or Areas of Critical Environmental Concern. Within the public land options, the issue of using degraded lands was considered but no viable options were found. (McCoy PA/FEIS, pp. 2-61 to 2-62) The Wiley Wells Water Point site was discussed as a potential site, but its historical use as a formerly used defense site (FUDS) and its location was not suitable for the BLM’s consideration of this application. Other parcels of disturbed lands were also examined, although none of these parcel or parcel groupings were available for lease or sale and did not fit the minimum requirements discussed earlier in section 2.9.2.1.1 of the McCoy PA/FEIS.

In regards to a distributed generation alternative, the BLM eliminated a distributed generation alternative from detailed analysis because “it would not meet the BLM’s purpose and need to respond to an application for a utility-scale PV generation facility. Further, while the BLM recognizes the importance of distributed generation, reports show that a combination of distributed generation, utility-scale solar projects and other efforts will be needed to meet established goals for renewable energy development in California.” McCoy PA/FEIS, p. 5-18. Additionally, distributed generation does not meet Federal statutory and policy directives to evaluate and facilitate the siting of utility-scale solar energy development on public lands. See

McCoy PA/FEIS, p. 5-18 (citing, e.g., Secretarial Order 3285A1).

In regards to avoidance of dissected alluvial fans, the Applicant made numerous revisions to the western boundary of the project site between the Draft EIS and the Final EIS. These revisions and modifications to the site layout were to help reduce the impacts of the constructed site on the dissected alluvial fans located at the base of the Palen McCoy Mountains. This resulted in a further reduced proposed action that achieved the balance between the Applicants' needs and the protection of resources. The resulting boundary changes have provided for almost one mile of undisturbed area, bisected by desert dry wash woodlands and other rare habitat types along the western edge of the project. This will allow for a larger area for desert tortoise habitat and reduce impacts to the rare habitat in that area.

The proposed alternative as presented in the McCoy PA/FEIS is not speculative or uncertain. The alternatives evaluated in the EIS were developed to respond to the purpose and need (including the proposed alternative) and never specified a limitation to the amount of energy that would be developed by the proposed action. As outlined in section 1.2.1 of the McCoy PA/FEIS, the purpose and need for this EIS is to respond to the application "for a ROW grant to construct, operate, maintain, and decommission a solar photovoltaic (PV) facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable federal laws. ... Taking into account BLM's multiple use mandate, the BLM will decide whether to approve, approve with modification(s), or deny issuance of a ROW grant to the Applicant for the proposed MSEP. The BLM's action also will include consideration of a concurrent amendment of the CDCA Plan." McCoy PA/FEIS, p. 1-2.

In short, the BLM did consider a reasonable range of alternatives, including potential alternative technologies and site locations that were eliminated from further analysis.

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### *Cumulative Impacts Analysis*

**Issue Number:** PP-CA-McCoy-13-01-15

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Analysis of cumulative impacts. The FEIS lacks a sufficient analysis of the effects of cumulative land uses within the region affected by the project and the CDCA generally. It is insufficient to simply identify

existing and reasonably foreseeable activities - the effects of these activities, combined with the proposed McCoy solar project, on sensitive public lands and their resources, needs to be fully analyzed. Such an analysis is especially important with regard to certain sensitive lands and resources including Limited Use Class lands; Lands with Wilderness Characteristics; sensitive plant communities such as microphyll woodland; and the numerous special status species such as the desert tortoise, Mojave fringe-toed lizard, burrowing owl and golden eagle.

## **Summary**

The McCoy PA/FEIS lacks sufficient analysis of the effects of cumulative land uses within the region affected by the project and the California Desert Conservation Area (CDCA) generally. The PA/FEIS identified existing and reasonably foreseeable activities but did not analyze the effects of these activities, combined with the proposed MSEP, on sensitive lands and resources.

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## **Response**

The McCoy PA/FEIS provided detailed analyses of cumulative impacts for all resource areas. As noted in Chapter four, the cumulative impacts analysis section adhered to CEQ guidelines to “rigorously explore and objectively evaluate” the impacts of the alternatives. McCoy PA/FEIS, p. 4.1-1. These analyses are summarized in Table 4.1-1 and described in detail at the end of each resource section of Chapter 4 (see, for example, section 4.2.7, on p. 4.2-18 of the McCoy PA/FEIS for the detailed cumulative impact analysis for air quality, or section 4.4.7, on pp. 4.4-21 to 4.4-28 of the McCoy PA/FEIS for the detailed cumulative impact analysis for wildlife).

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## **Connected Actions**

**Issue Number:** PP-CA-McCoy-13-01-14

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Blythe Solar Project is a connected action and should be considered in a single environmental document. As we stated in our comments on the DEIS, NEPA’s implementing regulations explain that agencies should consider connected, cumulative, and similar actions in the same environmental impact statement. “Connected actions” must “be considered together in a single EIS.” Likewise, cumulative actions “which when viewed with other proposed actions have cumulatively significant impacts should be discussed in the same impact statement.” 40C.F.R. § 1508.25(a)(2). Similar, reasonably foreseeable actions also should be considered together in the same environmental review document when the actions “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or “geography,” and the “best way to assess adequately [their] combined impacts or reasonable alternatives” is to consider them together. 40 C.FR § 1508.25(a)(3).

The applicant purchased the Blythe project prior to the issuance of the DEIS for the McCoy project, and (per conversations with the applicant, and the BLM) the applicant plans to convert the Blythe project from solar thermal to photovoltaic technology, which will trigger a new environmental review of the project. Per the project website, the BLM is currently waiting for a revised application from the applicant. It is our belief that these two projects which are immediately adjacent) and will share a common owner, technology, transmission, roads and related infrastructure, should certainly be viewed as a connected action and analyzed in a single environmental document. Any difference in timing is because the applicant has not submitted a revised application. Viewing these two projects as a connected action, or a single project, would enable the BLM to properly engage in coordinated and cohesive planning which would best serve conservation objectives.

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**Issue Number:** PP-CA-McCoy-13-02-6

**Organization:** Center for Biological Diversity

**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

The FEIS fails to collectively analyze the two

adjacent project areas that NextEra now controls - this MSEP site and the adjacent Blythe solar site. The Blythe site was originally permitted as a solar thermal, trough technology and a supplemental NEPA document - a supplemental EIS - is required in order to assess the impacts of any redesign to accommodate the change the technology to solar photovoltaic project. Because further environmental review for the Blythe site is required, the Record of Decision for this proposed project should be suspended and the two projects should be considered together in the updated NEPA process. Only by reviewing the projects together can the agency adequately identify and capitalize on the beneficial efficiencies in infrastructure and reductions in environmental impacts that can be gained by analyzing these two projects in tandem. By

coordinating projects layouts (MSEP and Blythe Solar Energy Project) both projects could be designed to avoid the ecologically and hydrologically important dissected fan area as identified in BLM's Northern and Eastern Colorado Plan (NECO) while still meeting renewable energy goals. In addition, another adjacent site is currently under application by EDF Renewable Energy (formerly EnXco) for a large-scale solar development. The adjacency of these projects would benefit from a coordinated development plan for all three to prevent a "wall" of solar projects cutting off wildlife connectivity in the area and altering downslope hydrology etc. At a minimum, a coordinated analysis of the NextEra-owned proposed projects is necessary instead of a project-by-project "piecemeal" approach.

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### ***Summary***

The proposed MSEP and purportedly proposed BSPP are to be sited on adjacent parcels, will share a common owner, technology, transmission, roads and related infrastructure, so should be viewed as a connected action and analyzed in a single environmental document.

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### ***Response***

The proposed MSEP and BSPP are not “connected actions” as that term is contemplated under NEPA. Instead, the BSPP, as approved and authorized by ROW grant, represents a project that may have cumulative impacts in association with the proposed MSEP. The BLM articulated in the McCoy PA/FEIS this distinction in the BLM’s response to comments on the McCoy draft PA/DEIS, as follows:

“The BSPP and MSEP are distinct projects and not connected actions or similar actions under the regulations implementing NEPA; the impacts of each of these projects are considered together only in the cumulative context. Section 6.5.2.1 of the BLM’s NEPA Handbook explains that connected actions “are those actions that are ‘closely related’ and ‘should be discussed’ in the same NEPA document. (40 CFR 1508.25 (a)(1)). Actions are connected if they automatically trigger other actions that may require an EIS; cannot or will not proceed unless other actions are taken previously or simultaneously; or if the actions are interdependent parts of a larger action and depend upon the larger action for their justification.” (40 CFR 1508.25 (a)(i), (ii), (iii)).” FEIS, page 5-19. The BSPP project has completed the NEPA process and Solar Trust of America, the previous applicant, had already begun construction. The BSPP is in fact an approved project, and thus considered in the baseline for the MSEP EIS and has been included in the cumulative effects analysis. While the BSPP is adjacent to the proposed MSEP and could share a transmission ROW, each project is independent of the other. While NextEra now owns the BSPP, at this time, NextEra has not yet submitted an updated or revised application for the

BSPP site. The BLM, however, has considered in the McCoy PA/FEIS the potential cumulative environmental effects of other energy project proposals within the CDCA, and the BSPP was included in this analysis as an existing approved project, pursuant with the NEPA. If NextEra, or another project proponent, submits a revised or amended SF 299 application for the BSPP site, the BLM will complete the required NEPA documents that will include analyses based on conditions at that time, per applicable law, regulation, and policy in effect at that time.

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### **Federal Land Policy and Management Act**

**Issue Number:** PP-CA-McCoy-13-02-12  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

The proposed plan amendment is not consistent with FLPMA which requires BLM to prevent unnecessary or undue degradation of public lands. 43 U.S.C §

1732(b). The BLM has failed to show that it is necessary to approve the proposed large-scale solar industrial project on this site and that there are no other suitable alternative sites within the CDCA or that there is any reason not to adopt Alternative 2 which would significantly reduce impacts to public lands resources.

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### ***Response***

The FLPMA’s “multiple-use” mandate charges the BLM with managing the public lands and their various resource values so that they are utilized to best meet the present and future needs of the American people. As directed by Secretarial Order 3285A, the BLM has identified renewable energy projects on federally managed lands as a priority use of the lands it manages. Consideration of the proposed renewable energy project on public lands is consistent with this direction.

When considering whether to approve the MSEP, the BLM considered a range of alternatives, including a reduced acreage alternative, a reconfigured gen-tie access route alternative, a no-action alternative, and the proposed alternative. Potential effects of all of the alternatives are analyzed in the Chapter 4 of the McCoy PA/FEIS. The BLM may select a preferred alternative for a variety of reasons, including the agency’s priorities, in addition to the environmental considerations discussed in the EIS. Accordingly, the BLM has selected the preferred alternative based on both environmental considerations discussed in the McCoy PA/FEIS and agency priority, as discussed above. This approach is consistent with FLPMA.

As described in section 4.1.7 of the McCoy PA/FEIS, the terms and conditions applicable to all public land ROWs are described in FLPMA §505 and include measures to minimize damage and otherwise protect the environment. The Secretary may prescribe additional terms and conditions as necessary. The environmental consequences analysis in the McCoy PA/FEIS identifies impacts and mitigation measures to reduce or avoid impacts and prevent unnecessary or undue degradation of the public lands as required by FLPMA §302. These measures will be required as terms and conditions of the ROW grant if approved. McCoy PA/FEIS, pp. 4.1-15 to 4.1-16.

Mitigation measures are described in detail in Chapter 4 of the McCoy PA/FEIS and a summary of all mitigation measures can be found in Appendix M.

In regards to other suitable sites, a variety of potential sites were considered as alternatives to the MSEP but not carried forward for one or more of the reasons described in sections 2.9.1 and 2.9.2. McCoy PA/FEIS, pp. 2-58 to 2-59. For more information on alternatives eliminated from consideration, please see page 8 of this protest resolution report.

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### ***California Desert Conservation Area (CDCA)***

**Issue Number:** PP-CA-McCoy-13-02-8  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

Although the project is in an area identified as a SEZ, the adoption of a plan amendment to allow a large-scale industrial facility on MUC class L lands is inappropriate. Under the CDCA Plan, Multiple-use Class L (Limited Use) protects sensitive, natural, scenic, ecological, and cultural resources values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished." CDCA Plan at 13 (emphasis added).

While the CDCA Plan does allow for amendments to the plan to accommodate solar energy production where appropriate, and this area was identified as a SEZ, the environmental review for this project shows that clearly this site is inappropriate and that the site configuration, particularly the western portion of the project, will maximize impacts to surrounding public lands and resources due to fragmentation and edge effects. The proposed project is a high-intensity, single use of resources that will displace all other uses and that will significantly diminish (indeed, completely destroy) over 4,400 acres of desert tortoise habitat and destroy habitat for nesting migratory and non-migratory birds and rare plants and crucial dissected fan topography among other direct and indirect impacts of the proposed project.

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### ***Summary***

The CDCA plan amendment to permit a large-scale industrial facility on Multiple-Use Class Limited (MUC-L) lands is inappropriate because it will allow significant impacts to surrounding public lands and resources.

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### ***Response***

The siting of solar development within lands designated Multiple-Use Class Limited (MUC-L) is consistent with the CDCA Plan. The CDCA Plan contemplates industrial uses analogous to the solar energy development analyzed, including utility ROWs outside of existing corridors, power plants, utility facilities, and transmission. CDCA Plan, pp. 93 to 95. The CDCA Plan also expressly provides for solar generation facilities within areas designated as Multiple-Use Class Limited, stating that wind and solar development "may be allowed [on such lands] after NEPA



requirements are met.” CDCA Plan, p. 15. The CDCA Plan provides guidance concerning the management and use of the BLM lands in the California Desert while protecting resources and balancing other public needs. 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.

Applicable guidelines from the CDCA Plan for MUC-L lands are included in Table 3.10-2 of the McCoy PA/FEIS (p. 3.10-5). Rows 6, 7, and 7a of Table 3.10-2 specifically address electrical generation, transmission, and distribution facilities. The BLM has complied with all guidelines for management, use, development, and protection of the resources and public lands within the CDCA, as articulated in the McCoy PA/FEIS. The extent to which the proposed Project has been located and designed to avoid sensitive resources is addressed throughout the PA/FEIS, and the consideration of the Project’s consistency with the CDCA Plan MUC-L requirements is provided in section 4.10, Lands and Realty. In short, the CDCA Plan MUC-L permits the BLM to amend the CDCA Plan for specific proposals, including solar energy development facilities as contemplated here, and the BLM has met all of the procedural requirements in considering a CDCA Plan Amendment.

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## Wildlife

**Issue Number:** PP-CA-McCoy-13-01-12

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Absence of a Biological Opinion from the FWS in the FEIS. The FEIS does not include a biological opinion for the project which, according to the FEIS, will be included in the Record of Decision (“ROD”) for the proposed project and CDCA Plan amendment. We consider a biological opinion an essential component of an FEIS because it provides the public with an independent assessment of the effects of a proposed federal action on listed species and their habitat. We rely on biological opinions in our review and assessment of the adequacy of the analysis in a FEIS. This is especially relevant for this project because of the impact of this project combined with other projects on the threatened desert tortoise. Furthermore, our organizations believe that BLM cannot comply with NEPA without receiving a biological opinion from the FWS under ESA Section 7(a)(2), and incorporating its findings into the NEPA analysis.

**Issue Number:** PP-CA-McCoy-13-01-18

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

BLM’s failure to adopt, for this project, the desert tortoise conservation recommendations contained in biological opinions from the FWS for other solar energy projects in the eastern Riverside County region constitutes a violation of the ESA. Conservation recommendations in several biological opinions called for protection of desert tortoise habitat and linkages associated with “dissected fans” as mapped by BLM in the Northern and Eastern Colorado Plan amendments to the CDCA Plan in 2002. Furthermore, in a letter to BLM containing comments on the DEIS, dated August 23, 2012, FWS recommended the Reduced Acreage Alternative because it would minimize impacts to the desert tortoise by excluding higher quality habitat within Unit 2 of the proposed project. Although BLM analyzed such an alternative in the FEIS, its rejection of that alternative for the proposed project constitutes a violation of Section 7(a)(1) of the ESA.

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**Issue Number:** PP-CA-McCoy-13-01-20  
**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California  
**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**  
BLM's failure to adopt the Reduced Acreage Alternative as the proposed project violates its national policy for wildlife habitat in general and special status species in particular, given that the proposed project conflicts with the conservation recommendations of the FWS contained in various biological opinions for other solar energy projects within the McCoy Wash region and eastern Riverside County in general. As discussed immediately above, FWS consistently recommends in those biological opinions that solar energy development avoid the BLM-designated Dissected Fans landforms in order to promote regional connectivity and gene flow among desert tortoise populations.

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**Issue Number:** PP-CA-McCoy-13-02-22  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**  
The FEIS incorrectly concludes that "development and operation of the Project is not expected to disturb the foraging of any eagle pairs within 10 miles of the Project site" (FEIS at 4.4-17) based on several factors including "Comparable or better foraging opportunities are expected to be available within the surrounding areas" (ibid). However, no surveys on prey base were identified in the EIS, so that conclusion is unsubstantiated in the data presented.

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**Issue Number:** PP-CA-McCoy-13-02-4  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**  
The FEIS fails to address the issue of dissected fans landscape and all of the biological benefits that the dissected fan landscape provides to desert tortoise and other desert wildlife, including rare and common migratory birds, and its hydrological processes values to downstream habitats.

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## ***Summary***

The PA/FEIS does not include a biological opinion (BO) for the project, stating that the BO will be included in the Record of Decision (ROD). The public relies on the BO in reviewing and assessing the adequacy of the analysis in the FEIS. Furthermore, the BLM cannot comply with NEPA without receiving a BO from the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA) Section 7(a)(2).

The BLM's rejection of the reduced acreage alternative violates Section 7(a)(1) of the ESA and BLM's national policy for wildlife habitat because the proposed project conflicts with the conservation recommendations of the FWS contained in the BOs for other solar energy projects within the region, specifically the protection of dissected fans.

The conclusion that "development and operation of the Project is not expected to disturb the foraging of any eagle pairs within 10 miles of the project site," McCoy PA/FEIS, p. 4.4-17, is not substantiated by the data presented.

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## ***Response***

The BLM submitted a Biological Assessment (BA) and a request for formal ESA Section 7 consultation on the proposed project to the FWS on February 14, 2012, in accordance with the requirements of the ESA. Following review of the BA, the FWS is expected to issue a BO that will specify reasonable and prudent measures that must be implemented for any protected species. However, it is important to note that a BO is not required if the conclusion is not likely to affect a listed species. Section 7 does not require the BLM, as the consulting Federal Agency, to submit the BO for public review and comment under NEPA, nor does it require the BLM to include the BO with the FEIS. The BO will be included as an Appendix to the ROD, and compliance with all measures it contains will be required to implement the Project. For more information regarding the BLM's compliance with the requirements of ESA Section 7 consultation, see section 5.2.1 of the McCoy PA/FEIS.

The BLM's preferred alternative does not violate Section 7(a)(1) of the ESA or the BLM's national policy for wildlife habitat. There is no requirement in the ESA or the BLM's national policy for wildlife habitat to adopt conservation measures from the BOs for other solar energy projects. The BO issued by the FWS will be specific to the MSEP, and the Project will be required to comply with conservation measures from the site-specific BO.

In regards to eagle foraging, section 5.2.2 of Appendix C in the McCoy PA/FEIS discusses potential disturbance to golden eagle foraging behavior. The conclusion that "development and operation of the Project is not expected to disturb the foraging of any eagle pairs within 10 miles of the project site" is supported by the data provided in the biological surveys of the project area. As described in Appendix C, desert cottontails, and two species of ground squirrel were detected on the Project site during biological surveys, but no concentration areas were noted, and avian point counts on the Project site suggest that golden eagles do not use the area for foraging. Additionally, the habitat that will be disturbed or removed is not unique or limiting on the landscape, and represents only a small percentage of the area with a 10-mile radius of known eagle nest centers. McCoy PA/FEIS, pp. C-258 to C-259.

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## **Wildlife Mitigation**

**Issue Number:** PP-CA-McCoy-13-01-21

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O'Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Compensatory habitat requirements. Acquisition and management of the required compensatory habitat for various special status species is required, but BLM's proposed performance requirements are inadequate to

ensure these actions will be done in a timely manner, that the required suitable habitat in the appropriate acreage is available and can be acquired, and that such habitat will be in the affected region.

Under the proposed mitigation measures for desert tortoise, for example, the performance date for compensatory habitat acquisition, or in-lieu fee deposit, is 18-months following ground-disturbing activities. This poses the real possibility that the required compensation measures will not be met if such lands are unavailable for acquisition within the

region. This concern was recently confirmed with regard to the Ivanpah Solar Electric Generating System ("ISEGS") project, where the developer concluded the compensatory lands were not available in the region. As a result, funds to satisfy the compensatory habitat requirement were deposited into the in-lieu fee account of the California Department of Fish and Wildlife, and subsequent credit for habitat acquisition ongoing in the Western Mojave was improperly deemed sufficient to mitigate the serious adverse impacts of the ISEGS project, located in the northeastern Mojave region.

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**Issue Number:** PP-CA-McCoy-13-02-14  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

The mitigation ratio of 1:1 desert tortoise habitat is far too low and does not provide any mitigation for indirect impacts or fragmentation impacts due to the proposed industrial-scale solar project in this remote location nearby wildlands and the McCoy Mountains.

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**Issue Number:** PP-CA-McCoy-13-02-9  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

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**Issue Excerpt Text:**

The FEIS fails to provide numerous plans that are crucial for the public to evaluate for adequacy of proposed mitigation. For example, the following plans are not included in the FEIS: A Desert Tortoise Relocation/Translocation Plan; a Raven Monitoring and Control Plan; an Avian and Bat Protection Plan; a Burrowing Owl Mitigation Plan; a Biological Resources Mitigation, Implementation, and Monitoring Plan; a PAR for Mojave Fringe-toed Lizard compensation (FEIS at 4.4-28); and the Desert Kit Fox Management Plan (FEIS at 4.4-27). For example, absent the Desert Tortoise Relocation/Translocation Plan, it is unclear how many tortoises will be "taken", exactly where they are proposed to be moved (other than "immediately west of the solar plant site" (FEIS at 4.4-12), the conservation status of the translocation lands to assure that tortoises will not be moved more than once, the compliance with the Revised Desert Tortoise Recovery Plan' (2011), which recommends that translocations occur in conserved areas with depleted or extirpated populations (at pg. 36). The FEIS fails to evaluate if the proposed conservation area is in fact depleted. It fails to require that desert tortoise be translocated only once. It fails to require that disease testing be done on both the translocated and host tortoises. It fails to require that the translocated, host and control population be monitored. Desert tortoise translocation in general has a poor track record, even as the population of this threatened species continues to decline.

***Summary***

The 1:1 mitigation ratio for desert tortoise habitat is too low and does not provide any mitigation for indirect impacts or fragmentation impacts.

The performance date for compensatory desert tortoise habitat acquisition, or in-lieu fee deposit, is 18-months following ground-disturbing activities. The required compensation measures might not be met if such lands are unavailable for acquisition within the region.

The FEIS fails to include the following mitigation plans: a Desert Tortoise Relocation Translocation Plan; a Raven Monitoring and Control Plan; an Avian and Bat Protection Plan; a Burrowing Owl Mitigation Plan, a Biological Resources Mitigation, Implementation, and Monitoring Plan, a Property Analysis Record (PAR) for Mojave Fringe-toed Lizard compensation, and the Desert Kit Fox Management Plan.

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## ***Response***

The FEIS provides several measures to offset direct and indirect effects to tortoises and their habitat, including the application of APM BIO-1 through APM BIO-4, and the implementation of Mitigation Measures WIL-1 through WIL-4. See Appendix M for a Summary of these measures.

As discussed in the response to comments, the Project site supports mostly medium to low-quality desert tortoise habitat. In order to meet the FWS requirements to mitigate desert tortoise impacts, compensation lands will support higher quality habitat than is currently available on the solar plant site. As a result, 1:1 compensation, as required by the FWS, is sufficient to mitigate effects to desert tortoise habitat. McCoy PA/FEIS, p. K-29. APM BIO-4 specifically addresses fragmentation, stating that compensation lands “should be part of a larger block of lands that are either already protected or planned for protection” and “the parcels should be connected to occupied desert tortoise habitat or in sufficiently close proximity to known occupied tortoise habitat such that an unencumbered genetic flow is possible.” McCoy PA/FEIS, p. M-32.

In regards to the date for compensatory habitat acquisition, the Applicant will be allowed to defer land acquisition to 18 months after the start of ground-disturbing activities only if mitigation security has been posted. This ensures that land acquisition costs, or in-lieu fees, will be paid by the Applicant. In-lieu fees can be paid to the National Fish and Wildlife Foundation (NFWF) Renewable Energy Action Team (REAT) account, or to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the BLM AO and California Department of Fish and Wildlife, formerly CDFG) (CDFG), (McCoy PA/FEIS, pp. 4.4-34 to 4.4-35). In-lieu fees can be used for either land acquisition or habitat improvement; both are considered acceptable by the FWS.

In regards to the mitigation plans listed by the protestor, section 4.4.8 describes the mitigation measures that the Applicant will be required to implement, including the specific requirements for preparation of wildlife mitigation plans. The mitigation plans identified in this section must be submitted to the appropriate agencies for review and approval prior to construction, but there is no requirement to include them in the FEIS. All mitigation plans, once approved by the appropriate agencies, will be part of the project administrative record.

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## **Vegetation**

**Issue Number:** PP-CA-McCoy-13-01-24

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Rare plant compensation requirements are insufficient. Compensatory requirements for loss of rare plants and their habitats, although addressed in the FEIS, are based on a flawed-approach. Under the proposed mitigation, rare plant habitat compensation would be based on actual "habitat occupied" as

documented in field surveys. Amount of habitat occupied by such plant species at any given time is dependent on a variety of environmental factors including precipitation, soil moisture, ambient air temperature and season. The amount of suitable habitat for such species on a project site far exceeds the habitat actually occupied at any given time.

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**Issue Number:** PP-CA-McCoy-13-02-10  
**Organization:** Center for Biological Diversity  
**Protestor:** Lisa Belenky

**Issue Excerpt Text:**

In addition, the FEIS fails to identify that a PAR must also be done for the rare plant compensation.

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### ***Summary***

Rare plant habitat compensation requirements are insufficient due to the fact that compensation would be based on actual habitat occupied as documented in field surveys, and a PAR was not completed/documentated in the McCoy PA/FEIS.

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### ***Response***

The protestor raises a concern regarding the compensatory requirements outlined in Mitigation Measure VEG-10. Specifically, the protester is concerned that compensation is based solely on actual habitat occupied as documented in field surveys, which fails to actually capture occupied areas at any given time, due to varying environmental factors such as precipitation, soil moisture, ambient air temperature and season. As discussed in Appendix C-1, the field surveys followed a protocol that was agreed upon and approved by the BLM, the CDFW and the FWS. (McCoy PA/FEIS pp. C-27 to C-29). These protocols are consistent with the BLM's Survey Protocols Required for NEPA and ESA Compliance for BLM Special Status Plant Species (BLM 2009) and CDFW's protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFG 2009). The botanical survey data collected to date adequately describe baseline conditions in the Project area and the McCoy PA/FEIS provides adequate mitigation for anticipated effects to rare plants in the planning area.

In regards to the need to include a PAR, the McCoy PA/FEIS does include a mitigation measure (as part of Mitigation Measure VEG-10) that states, "Upon identification of the compensation lands, the Applicant shall conduct a PAR or PAR-like analysis to establish the appropriate amount of the long-term maintenance and management fund to pay the in-perpetuity management of the compensation lands. The PAR or PAR-like analysis must be approved by the BLM AO before it can be used to establish funding levels or management activities for the compensation lands" (McCoy PA/FEIS, p. 4.3-34).

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### **Wilderness Characteristics**

**Issue Number:** PP-CA-McCoy-13-01-28  
**Organization:** Defenders of Wildlife, Natural

Resources Defense Council, The Wilderness Society,  
Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

For the proposed McCoy Solar Energy Project, the proposed action in the FEIS would direct preparation of a "wilderness characteristics mitigation plan" that requires off-site mitigation through activities in the nearby Palen-McCoy and Big Maria Mountains Wilderness Areas. The mitigation activities "may include":

- Removal and restoration of approximately 15 miles of unauthorized vehicle routes;
- Conversion of approximately 3 miles of vehicle route into a hiking trail;
- Installation of vehicle barriers and signing along publicly accessible portions of the wilderness boundaries; and/or
- Development of a visitor education and information program aimed at reducing illegal vehicle access into the areas.

However, none of these measures are specifically required and no other options were presented to mitigate impacts to lands with wilderness characteristics.

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**Issue Number:** PP-CA-McCoy-13-01-30

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Under Manual 6320 (Considering Lands with Wilderness Characteristics in the BLM Land Use

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Planning Process), BLM's consideration should include both managing for wilderness characteristics as a priority over other uses and emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; and this should "contain a full range of reasonable alternatives."

6320.06.A.2. In the Proposed Amendment and FEIS, BLM did not evaluate a full range of alternatives to mitigate impacts to LWC, which would have included:

- Acquisition of a comparable amount of land within designated wilderness (i.e., inholdings) in proximity to the project or within designated wilderness areas within the Eastern Riverside County Region.
  - Management of surrounding lands with wilderness characteristics (i.e. those directly outside the Riverside East SEZ that are adjacent to this project and depicted on the attached map) to actively protect and enhance wilderness characteristics.
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**Issue Number:** PP-CA-McCoy-13-01-33

**Organization:** Defenders of Wildlife, Natural Resources Defense Council, The Wilderness Society, Sierra Club, Audubon California

**Protestor:** Kim Delfino, Helen O’Shea, Sally Miller, Sarah Friedman, Garry George

**Issue Excerpt Text:**

Simply identifying mitigation measures, without analyzing the effectiveness of the measures violates NEPA. Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be ... A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA."

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## ***Summary***

The McCoy PA/FEIS violated BLM Manual 6320 because it did not evaluate a full range of alternatives to mitigate impacts to wilderness characteristics. The McCoy PA/FEIS violated NEPA because it did not analyze the effectiveness of the mitigation measures to protect wilderness characteristics. None of the mitigation measures identified in the wilderness characteristics mitigation plan are specifically required.

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## ***Response***

The McCoy PA/FEIS has not violated BLM Manual 6320. Manual 6320 does not require the BLM to analyze a range of alternatives to mitigate impacts, as suggested by the protestor. Under manual 6320 “the NEPA document used to support the land use plan (or land use plan amendment or revision) decision shall contain a full range of reasonable alternatives to provide a basis for comparing impacts to wilderness characteristics and to other resource values or uses” BLM Manual 6320.06.A.2.d. The McCoy PA/FEIS compares four alternatives, including a reduced acreage alternative, a reconfigured gen-tie access route alternative, a no-action alternative, and the proposed alternative. Under two of the four alternatives (Alternative 2 and Alternative 4), there would be no impacts to lands with wilderness characteristics. This constitutes a reasonable range of alternatives for comparing impacts to wilderness characteristics.

BLM Manual 6320 also states that:

[c]onsidering wilderness characteristics in the land use planning process may result in several outcomes, including, but not limited to: (1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; [or] (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics....

BLM Manual 6320.06.A. Under the proposed alternative, other multiple uses would be emphasized while applying mitigation measure (MM) LWC-1. In response to protest, this mitigation measure has been modified since the FEIS; all changes will be included in the ROD. Under the modified MM LWC-1, the Applicant will be required to make a not-to-exceed payment of \$251,000 to fund mitigation before any ground disturbance occurs in the area inventoried to have wilderness characteristics, and the work shall be completed no later than 18 months from the commencement of construction for the relevant portion of Unit 2.

The BLM has fully complied with the requirements of NEPA as it relates to analyzing the potential direct, indirect, and cumulative impacts to wilderness characteristics associated with the alternatives in the McCoy PA/FEIS. McCoy PA/FEIS, p. 4.16-1. The BLM also has met its NEPA obligations to consider mitigation measures that reduce impacts to lands with wilderness characteristics. The McCoy PA/FEIS states that “the implementation of Mitigation Measure LWC-1 [would] not avoid impacts related to lands with wilderness characteristics on the Project site, but would offset impacts to wilderness areas near the Project by restoring and/or enhancing routes, trails, and other resources within designated wilderness areas in proximity to the project site.” McCoy PA/FEIS, p. 4.16-4. This level of analysis is appropriate for a land use plan amendment.