

*Director's Protest Resolution Report*

**Calico Solar Project  
Plan Amendment**

**California Desert Conservation Area Plan**

October 20, 2010



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## Reader's Guide

### How do I read the Report?

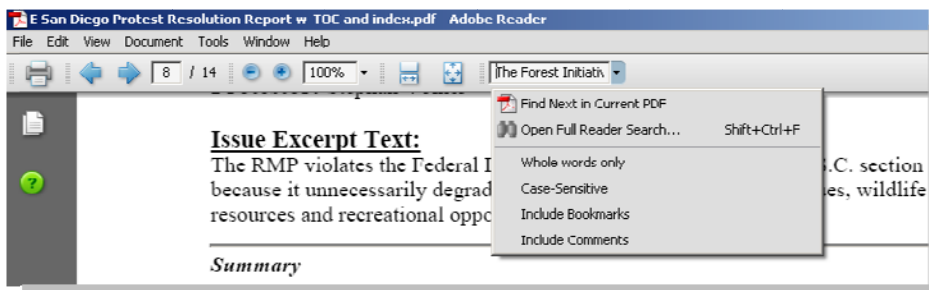
The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's response to the summary statement.

### Report Snapshot

<b>Issue Topics and Responses</b>			
<b>NEPA</b>	Topic heading	Submission number	
			Protest issue number
<b>Issue Number</b>	PP-CA-ESD-08-0020	10	
<b>Organization:</b>	The Forest Initiative		Protesting organization
<b>Protester:</b>	John Smith		
		Protester's name	
			Quotation taken from the submission
<b>Issue Excerpt Text:</b>			
	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)
<b>Summary</b>			
	There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.		
<b>Response</b>			
	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*

ACEC	Area of Critical Environmental Concern	NEPA	National Environmental Policy Act of 1969
ASLW	Assistant Secretary for Land and Water Resources	NHPA	National Historic Preservation Act of 1966, as amended
BLM	Bureau of Land Management	NRHP	National Register of Historic Places
CDCA	California Desert Conservation Area	NRCS	Natural Resources Conservation Service
CEC	California Energy Commission	RMP	Resource Management Plan
CEQ	Council on Environmental Quality	ROD	Record of Decision
CFR	Code of Federal Regulations	ROW	Right-of-Way
DEIS	Draft Environmental Impact Statement	SHPO	State Historic Preservation Office
DNA	Determination of NEPA Adequacy	WMP	West Mojave Plan
EIS	Environmental Impact Statement		
ESA	Endangered Species Act		
FEIS	Final Environmental Impact Statement		
FLPMA	Federal Land Policy and Management Act of 1976		

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Patrick C. Jackson	Individual	PP-CA-Calico-10-01	Denied-Comments
Kim Delfino	Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Center for Biological Diversity, The Wilderness Society (Defenders of Wildlife et al.)	PP-CA-Calico-10-02	Denied-Issues Comments
Cynthia Burch	BNSF Railway	PP-CA-Calico-10-03	Denied-Issues Comments
Loulena Miles	California Unions for Reliable Energy (CURE) and William Perez	PP-CA-Calico-10-04	Denied-Issues Comments
Michael Connor	Western Watersheds Project	PP-CA-Calico-10-05	Denied-Issues Comments

## *Issue Topics & Responses*

### NEPA

#### *Range of Alternatives*

**Issue Number:** PP-CA-CALICO-10-0002-4

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The purpose and need statement is too narrow. BLM considers the purpose and need as responding to the applicant's right of way application under Title V of the FLPMA. (FEIS at 1-5). It is focused on meeting the objective of the applicant (FEIS at 1-4) and on amending the CDCA Plan for this specific project, thus essentially foreclosing serious consideration of meaningful alternatives during the formulation of the final decision. See National Parks Conservation Assn. v. BLM, 586 F.3d 735 (9th Cir. 2009). The Parties commented on the DEIS in this regard, strongly advocating that BLM comply with NEPA by analyzing a range of alternatives that would contribute to achieving the national and state goals for generation and distribution of electrical energy from renewable sources. In preparing the FEIS, BLM considered a relatively large number of alternatives (i.e., 25) but prematurely dismissed all but three for further analysis. (FEIS at Ch.2)

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**Issue Number:** PP-CA-CALICO-10-0002-5

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The dismissal of private land alternatives is contrary to the requirements of NEPA, yet BLM has systematically dismissed all private land alternatives for all the “fast-track” renewable energy projects proposed in the CDCA, and failed to carry any of them forward for analysis on the ground that it has no jurisdictional authority. BLM based its dismissal of private land alternatives on the conclusion that they would be contrary to BLM's perceived purpose and need for the proposed project, which is to respond to the application for a right of way under Title V of FLPMA. Based on BLM's rationale for dismissing private land alternatives from analysis under NEPA, it is reasonable to conclude that private land alternatives will never be carried forward to analysis under NEPA for any project. This is clearly a violation of NEPA.

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**Issue Number:** PP-CA-CALICO-10-0002-6

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

**Issue Excerpt Text:**

In its search for and consideration of potential alternative locations for the proposed project, BLM appeared to take an overly narrow approach by searching for sufficient land in essentially one contiguous block that could accommodate the size of the project proposed by the applicant. This approach is perplexing because the Stirling dish-engine technology proposed for the Calico project is highly modular, unlike other solar-thermal technologies that rely on large-scale integrated arrays of mirrors, heat transfer devices and powerplants. The Stirling dish-engine technology is therefore suited to smaller tracts of land rather than large contiguous blocks. Furthermore, BLM's purpose and need rationale referred to the needs of the applicant in meeting their obligations under a power purchase agreement with the local utility company, a contractual matter not involving BLM or its management responsibilities under FLPMA. A power purchase agreement is a contractual matter between the project applicant and a potential purchaser of the electrical power, and is not relevant to BLM's analysis or its authority to render a decision for the proposed project.

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**Issue Number:** PP-CA-CALICO-10-0005-6

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

**Issue Excerpt Text:**

Western Watersheds Project protests that the BIM has eliminated from detailed study alternatives that would avoid or minimize impacts to biological resources or avoid or minimize impacts to public lands. Locating the project on private lands would obviously minimize impacts to public land resources. Despite NEPA's mandate to consider reasonable alternatives not within the jurisdiction of the lead agency, the BLM dismissed this alternative from detailed study on the grounds that the analysis of impacts would not define issues or provide a basis for choice in a manner any different than the No Action Alternative. But given the size of the project, there will be cumulative effects from constructing the project on private lands that cannot possibly be the

same as “no action”. BLM also argues that the applicant would have to buy the land and acquire multiple parcels which would be costly and time-consuming. But by this token, the BLM will never consider private land alternatives for projects? This is not in keeping with the spirit or intent of NEPA.

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**Issue Number:** PP-CA-CALICO-10-0005-7  
**Organization:** Western Watersheds Project  
**Protester:** Michael Conner

**Issue Excerpt Text:**

In order to address impacts to LWCF acquisitions and donated lands, the BLM has contrived Alternative 3. Western Watersheds Project protests that this is not a reasonable alternative since it compensates for the loss of impacts to the acquired and donated lands by increasing the project footprint and thus drastically increasing impacts on other resources.

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***Summary***

The proposed Plan Amendment/FEIS does not evaluate a reasonable range of alternatives.

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***Response***

In accordance with the National Environmental Policy Act, the Bureau of Land Management has discretion to specify the underlying purpose and need to which the agency is responding in proposing the alternatives for the proposed action (40 CFR 1502.13). The BLM's guidance requires the BLM to construct its purpose and need for the action to conform to existing decisions, policies, regulation, or law (BLM NEPA Handbook H-1790-1 p. 35).

The purpose and need for the proposed action defines the range of alternatives to be considered. The action alternatives are developed to respond to the problem or opportunity that is presented (in this case, the application), and to provide a basis for eventual selection of an alternative in a decision. Tying the purpose and need to the decision to be made establishes the scope of NEPA review, clearly explains the decision to be made to the public, sets expectations, and focuses the NEPA analysis. The BLM must analyze a range of reasonable alternatives but is not required to analyze in detail every possible alternative or variation. According to CEQ regulations for implementing NEPA, an alternative may be eliminated from detailed study if, for example, it is determined not to meet the proposed action's purpose and need, its implementation is speculative or remote, or it is technically or economically infeasible (BLM NEPA Handbook H-1790-1 p. 38).

The Final Environmental Impact Statement considered a range of reasonable alternatives to the proposed action designed to meet the BLM's legal responsibilities and its purpose and need for action. The purpose and need for the proposed action was described as a response to the Calico FLPMA right-of-way application for a solar energy facility on public land (FEIS Section 1.2) With respect to the BLM land use plan decision, a non-public land alternative would not be within the range of reasonable alternatives to the proposed planning action because the BLM has no decision authority with regard to non-BLM-administered lands. Nevertheless, to help inform the BLM land use plan decision, the BLM considered offsite locations for utility-scale solar development on non-BLM-administered lands.

As explained in the FEIS, these alternative locations were eliminated from detailed study:

- The BLM considered a Private Lands Alternative, but eliminated this alternative from detailed study because its implementation is remote and speculative (FEIS Section 2.9.1). The northern portion of the Private Lands Alternative consists of approximately 64 parcels with 27 separate landowners, and the southern portion consists of approximately 45 parcels with 22 separate landowners. The highly fragmented land ownership pattern makes development of this alternative impractical. This alternative is also ineffective in meeting the BLM’s purpose and need to respond to the application for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands. According to page 2-47 of the FEIS, “A private land alternative is not a reasonable alternative to the BLM since analysis in this EIS of such an alternative, over which BLM has no discretionary approval authority, would not present an analysis of impacts in a form that would define issues or provide a basis for choice in a manner any different than the No Action Alternative, which is fully considered in this document.”
- The BLM considered alternatives outside the jurisdiction of the BLM but did not carry them forward for detailed analysis. CEQ regulations state that an agency’s analysis in an EIS should include reasonable alternatives not within the jurisdiction of the lead agency (40 CFR 1502.14(c)). According to BLM guidance, such circumstances would be an exception and limited to the broadest, most programmatic EISs that would involve multiple agencies (BLM NEPA Handbook H-1790-1 p. 49; FEIS p. 3-2). Because the Plan Amendment is a site-specific analysis and not a programmatic EIS, and for other reasons described in the FEIS, these types of alternatives are identified but are not carried forward for full evaluation for BLM purposes in this FEIS. Table 2-13 on page 2-50 of the FEIS lists all of the alternatives that were considered, but eliminated from detailed analysis, and the rationale for elimination.

Alternative 3, the Avoidance of Donated and Acquired Lands Alternative, (FEIS Section 2.5) is a reasonable alternative because it responds to the purpose and need for the agency and because it is practical and feasible from a technical and economic standpoint. This alternative would occupy approximately 7,050 acres, which is a smaller footprint than the proposed action’s 8,230 acre footprint.

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### *Impact Analysis*

**Issue Number:** PP-CA-CALICO-10-0004-14  
**Organization:** CURE and William Perez  
**Protester:** Loulena Miles

**Issue Excerpt Text:**

The potential for wind-driven impacts on the area immediately downwind of the Planning Area is a significant effect on soil resources that BLM failed to evaluate. Additionally, the BLM should have

conducted specific efforts to evaluate impacts to soils as a result of the Proposed Plan Amendment. Without this analysis the Proposed Plan Amendment is not consistent with the CDCA Plan.

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**Issue Number:** PP-CA-CALICO-10-0005-13  
**Organization:** Western Watersheds Project  
**Protester:** Michael Conner



**Issue Excerpt Text:**

Despite the potential significance of these impacts to bighorn sheep, the FEIS simply concludes “Impacts on Nelson’s bighorn sheep foraging habitat would be unavoidable.” FEIS at 4-71. Yet, despite this conclusion, the FEIS fails to propose mitigation measures such as the adoption of additional conservation areas or construction of land bridges to compensate for impacts to connectivity.

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**Issue Number:** PP-CA-CALICO-10-0005-15

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

**Issue Excerpt Text:**

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Fails to Take NEPA’s Requisite “Hard Look” at Impacts to White-margined Beardtongue and Other Rare Plants.

“The only apparent threats to white-margined beardtongue are construction within the utility corridor north of Pisgah Crater and at the Pisgah electrical substation and off-road travel within the occupied habitat in washes draining the Cady Mountains.” WMP at 4-79. This is the area where the project is located so it thus provides important habitat for the white-margined beardtongue. The conservation strategy adopted in the WMP is to conserve habitat on public lands defined as “All known occurrences in washes south of Cady Mountains. Known occurrences within the proposed Pisgah Crater ACEC.” WMP at 2-51. Further, the

WMP adopted a take limit for habitat “Take would be allowed for maintenance of existing facilities within the BIM utility corridor and on private land within its range. Limited to 50 acres of occupied and potential habitat.” WMP at 2-51. The FEIS fails to quantify the project’s impacts to white-margined beardtongue impacts in reference to the 50 acre-threshold. The FEIS fails to quantify cumulative white-margined beardtongue loss since the West Mojave Plan ROD was signed.

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**Issue Number:** PP-CA-CALICO-10-0005-8

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

**Issue Excerpt Text:**

Western Watersheds Project Protests That The CDCA Plan Amendment FEIS Fails to Take NEPA’s Requisite “Hard Look” at Impacts to Desert Tortoise. Although the species has been listed for over 20 years and desert tortoise populations are declining throughout its range, the preferred alternative will impact a very large number of federal and state listed desert tortoises. The FEIS estimates that over 340 adult and juveniles will be directly or indirectly impacted by the project. Western Watersheds Project protests that the FEIS fails to analyze the significance of the desert tortoise population at the project site and the importance of the habitat there in the light of the population declines that have occurred throughout the region.

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***Summary***

The FEIS does not adequately analyze the impacts of the proposed Plan Amendment, including impacts to Nelson’s bighorn sheep, white-margined beardtongue, and desert tortoise.

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***Response***

The BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Plan Amendment FEIS. 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 NEPA, at the environmental consequences of the alternatives to enable the decisionmaker to make an informed decision.

With regard to additional points raised by protesters, the FEIS analyzes the impacts of the proposed Plan Amendment on Nelson’s bighorn sheep in Section 4.3 and includes measures to mitigate those impacts. The FEIS states, “The BLM would require the implementation of project-specific mitigation measures by the Applicant to address potential impacts on Nelson’s bighorn sheep. These measures would include monitoring construction activities and halting construction if bighorn sheep come within 500 feet of any construction activity. Impacts on

Nelson’s bighorn sheep foraging habitat would be unavoidable, but would be minimized and mitigated through the implementation of project-specific mitigation measures” (FEIS p. 4-71). Additionally, mitigation measure BIO-23 specifically addresses Nelson’s bighorn sheep (FEIS p. 4-186). The boundaries of the agency Preferred Alternative were developed after extensive consultation with Federal and State regulatory agencies with responsibilities for management of biological and cultural resources. Accordingly, the north boundary of the project footprint has been redesigned to avoid 1,770 acres of habitat for desert tortoises, bighorn sheep, and rare plants (FEIS p. ES-4).

The FEIS discusses the impacts to white-margined beardtongue pages 4-46 and 4-80. All onsite occurrences would be avoided with the establishment of specially designated Environmentally Sensitive Areas on the project site (FEIS p. 4-46). These Environmentally Sensitive Areas, totaling 6.65 acres, protect rare plants by excluding development within the area of the Plan Amendment (FEIS p. 2-28). Section A of BIO-12 will further mitigate impacts to white-margined beardtongue (FEIS pp. 4-134 to 138).

Wind-driven transport of sand has the potential to impact habitat for white-margined beardtongue. The FEIS states, “Under existing conditions the fine sediment from the mountain ranges is redistributed to adjacent dunes by prevailing winds. The presence of the various erosion control structures and aboveground facilities on the project site (e.g., SunCatchers, perimeter fencing) would likely alter the wind-driven transport of sand across the site to downwind habitat within the adjacent Pisgah ACEC. Although available data are insufficient to quantify this potential impact, the blow-sand habitats within the ACEC are supported by sediment transport processes within the ACEC, so the Proposed Action is not considered likely to result in habitat degradation that would reduce the quality of white-margined beardtongue habitat farther east, where the majority of known occurrences are located. The CEC commissioned a geomorphic assessment of the Calico Solar project site (PWA Philip Williams & Associates, Ltd. 2010). In general this report concluded that water-borne sediment deposition was more important as a sand source than was wind borne deposition on the project site. Based on this conclusion and on the examination of aerial photographs, BLM concludes that this same general conclusion holds for the sand habitat in the Pisgah ACEC (which is downwind of the project site)” (FEIS p. 4-46).

In addition, the FEIS discusses the White-margined Beardtongue Avoidance and Minimization Measures, which include Offsite Sand Transport Monitoring and Management. The Measures will include a White-margined Beardtongue Impact Avoidance and Minimization Plan.

The FEIS discusses the existing condition of the desert tortoise and its habitat in Chapter 3 (FEIS pp. 3-33–3-35) and analyzes the impacts of the proposed Plan Amendment on the desert tortoise and its habitat pages 4-48 to 4-58 and 4-76. The FEIS analyzes the cumulative impacts of the proposed Plan Amendment on pages 4-100 to 4-102 and 4-111. The BLM’s revised Biological Assessment (BLM 2010c), and Supplemental Biological Assessment (BLM 2010d) provide further information regarding the potential impacts on desert tortoises (FEIS Appendix H).

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## *Supplemental Environmental Impact Statement*

**Issue Number:** PP-CA-CALICO-10-0002-8

**Organization:** Defenders of Wildlife et al.

**Commenter:** Kim Delfino

### **Issue Excerpt Text:**

Over the period of time during which the DEIS and FEIS were being prepared and released for public review, the applicant in conjunction with the BLM, U.S. Fish and Wildlife Service and California Energy Commission, obtained new information about the Desert Tortoise, its connectivity habitat with designated Critical Habitat Units, and potential movement corridors. Project modifications intended to reduce impacts to these resources were developed after the DEIS and were disclosed in the FEIS along with the proposed plan amendment, allowing for only a 30 day public review and protest. The significant new information should have been disclosed in a supplemental DEIS along with additional time for public review and comment prior to BLM announcing a proposed decision on the proposed project in the FEIS. Such disclosure and public review would have stimulated greater attention to on and off-site alternatives that would have provided opportunities for more meaningful and effective impact avoidance and minimization strategies. This shortcoming in the NEPA process was driven by the arbitrary date of December 31, 2010 for a final project decision tied to eligibility for obtaining American Recovery and Reinvestment Act funding through the U.S. Department of Energy.

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**Issue Number:** PP-CA-CALICO-10-0004-18

**Organization:** CURE and William Perez

**Commenter:** Loulena Miles

### **Issue Excerpt Text:**

The BLM determined on August 25, 2010, in consultation with the California State Historic Preservation Office, that it will be necessary to conduct additional testing to determine whether there are unidentified resources on the Project that are eligible for the National Register of Historic Places. Also, after the release of the FEIS, the BLM further revealed that the subsurface testing would be conducted using mechanical excavation. This new proposal “will have a significant impact on the environment in a manner not previously evaluated and considered.”

This record clearly demonstrates that BLM failed to take a “hard look” at cultural resources within the Planning Area as required by NEPA. In the absence of evidence, the only reasonable conclusion that could be drawn from the impact analysis provided is that BLM should not act at all in order to avoid significant adverse impacts to cultural resources. Moreover, due to the dramatic changes in BLM’s analysis of the impacts to cultural resources, the BLM must recirculate its analysis. A supplemental EIS must be prepared if the agency makes “substantial changes” in the proposed action that are relevant to environmental concerns, or if there are “significant new circumstances or information” relevant to environmental concerns and bearing on the proposed action or its impacts.” “If a change to an agency’s planned action affects environmental concerns in a different manner than previous analyses, the change is surely “relevant” to those same concerns.”

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## ***Summary***

The BLM should prepare a Supplemental EIS to allow the public additional time for review and comment on significant new information presented in the FEIS concerning desert tortoise habitat and cultural resources.

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## ***Response***

The BLM made no substantial changes to the proposed Plan Amendment/DEIS and no significant new circumstances or information was identified that would substantially affect the BLM decision. A supplemental EIS, as defined by the CEQ regulations 40 CFR 1502.9, is not warranted. According to the BLM NEPA Handbook, the agency may use a Determination of NEPA Adequacy to evaluate new circumstances or information prior to issuance of a decision to determine whether the preparation of supplemental analysis is necessary (BLM NEPA Handbook

H-1790-1 p. 22). As discussed in Appendix C of the FEIS, the BLM reviewed the changes to the proposed action and additional resource information, and determined that supplementation is not required (FEIS pp. C-7 to C-8).

The BLM determination was made in consultation with the California State Historic Preservation Office and the Advisory Council on Historic Preservation and stated that because additional cultural resource analysis on the project site will occur, a Supplemental EIS is not necessary. The analysis provided in the FEIS is adequate to support the Plan Amendment decision and the continuation of analysis in the area does not represent a substantial change to the Plan Amendment decision. During the excavation phase of construction, there will be an analysis of the first 20 centimeters of soil of any known archaeological site. The BLM will perform the analysis to determine whether additional information requires a revision of the eligibility status of the site for the National Register of Historic Places.

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### ***Baseline Data***

**Issue Number:** PP-CA-CALICO-10-0004-12

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

### **Issue Excerpt Text:**

BLM May Not Approve the Plan Amendment Because It Fails to Protect the Soil Resources Within the Planning Area.

Approval of the Proposed Plan Amendment will have long-term significant impacts onsite and offsite to desert soils in the Planning Area. Desert pavement and cryptobiotic crusts are critical resources that stabilize the desert soil and prohibit fine particle transport in the winds and storm water flows from the Planning Area. Despite being informed of these resources, BLM failed to establish the extent of desert pavement and cryptobiotic crusts as part of the baseline environmental conditions in the Planning Area. Because these important features were not surveyed or acknowledged, BLM did not adequately analyze or mitigate significant impacts to resources in and adjacent to the Planning Area

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### ***Response***

Before beginning the land use plan revision process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and type of data necessary to support informed management decisions. The BLM consulted on the analysis and the incorporation of available data into the proposed Plan Amendment/FEIS with its cooperating agencies and other agencies with jurisdiction or expertise. The FEIS describes the affected environment of the amendment site with regard to soils and topography in Section 3.7.4.

Current soil survey data is limited in much of the Mojave Desert due to its low potential for agricultural use. The Natural Resources Conservation Service is conducting soil mapping in the project vicinity, but results are not currently available. Soil association level for the project area is derived from the State Soil Geographic Soil Database. Two primary soil associations would be affected by project construction: the Carrizo-Rositas-Gunsight and the Nickel-Arizo-Bitter associations (FEIS p. 3-85). The baseline data provided in Chapter 3 and various appendices in the proposed Plan Amendment/FEIS are sufficient to support the environmental impact analysis

of the plan amendment. Although the BLM realizes that new data are constantly being generated and could always be gathered, the available baseline data used in the analysis provides the necessary basis to make an informed decision regarding the plan amendment.

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### *Clarifications*

**Issue Number:** PP-CA-CALICO-10-0003-10

**Organization:** BNSF Railway

**Protester:** Cynthia Burch

**Issue Excerpt Text:**

Based on the evidence received at the CEC evidentiary hearings, which are incorporated herein by reference, the issuance of the proposed right-of-way to Calico Solar and the approval of the CDCA amendment may adversely affect BNSF's ability to operate consistent with these laws, regulations and standards. Moreover, an approval of the CDCA amendment would require the BLM Desert District Manager to make a threshold determination that the proposed CDCA amendment is in accordance with applicable laws and regulations. CDCA Chapter 7. Because the FEIS does not include all applicable laws, regulations, plans and policies, that threshold determination cannot be made.

See Extracts of relevant testimony, attached hereto. Table 3-33 must therefore be augmented with the following: Federal: CFR; Title 49, Transportation, Part Federal regulations concerning rail safety. 209 to Part 244, Federal Railroad Administration. Federal: Federal Railroad Safety Act of 1970 FRSA granted the Federal Railroad (FRSA) Administration rulemaking authority over all areas of railroad safety. Rail Safety Improvement Act of 2008 RSIA reserves to the FRA the sole and exclusive Right, among other things, to control and Regulate rail signals and crossings and related Technology BNSF General code of Operating Rules Federally-regulated rules governing

Operation of railroads, with a focus on safety

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**Issue Number:** PP-CA-CALICO-10-0003-8

**Organization:** BNSF Railway

**Protester:** Cynthia Burch

**Issue Excerpt Text:**

The FEIS list of Applicable Laws, Regulations, Plans and Policies relating to Traffic and Transportation is incomplete.

FEIS Table 3-33, Traffic and Transportation Laws, Regulations, Plans and Policies, fails to include a number of applicable laws, regulations plans and policies relating to rail.

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**Issue Number:** PP-CA-CALICO-10-0005-5

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

**Issue Excerpt Text:**

In the FEIS, the BLM has adopted Alternative 1a as the preferred alternative. If the BLM decides to approve the ROW grant, the BLM will also amend the CDCA Plan as required by the ROW. FEIS at C-4. Presumably then, the BLM's proposed action for the CDCA plan amendment is to allow solar development on 6,215 acres in the project area. Or is it? What happens if the subsequent BLM ROD for the ROW modifies the size of the ROW? Western Watersheds Project protests that the FEIS is unclear in not specifying what acreage would be subject to land use modification to allow solar development under the land use plan amendment.

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### *Summary*

The FEIS is unclear as to what acreage of the CDCA Plan would be subject to amendment, and does not include all applicable laws, regulations, plans, and policies relating to traffic and transportation.

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### *Response*

Describing the agency Preferred Alternative, the FEIS in Section 2.3.5 states, "The land use

plan amendment would be the same as what is described for the Proposed Action adjusted for project footprint.” As stated in Section 2.3, the project footprint is 6,215 acres; Figure 2.6 displays the agency Preferred Alternative.

The laws and regulations referred to by the protester, with respect to traffic and transportation, relate to the Federal Railroad Administration. Its authority and rail safety are not directly applicable to the BLM or BLM approval of the proposed Plan Amendment to allow solar energy development at the project site. Nevertheless, the BLM shares the protester's interest in the safe administration and operation of railroads.

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

**Comment Number:** PP-CA-CALICO-10-0005-18

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

#### **Issue Excerpt Text:**

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Violates FLPMA.

The Federal Land Policy Management Act (FLPMA) guides the BLM's management and uses of public lands. 43 U.S.C. § 1732(a) directs that these lands be managed under principles of multiple use and sustained yield. The plan amendment will eliminate multiple use on 6,215 acres of public lands in the CDCA and will create a *de facto* industrial zone. Western Watersheds Project protests that the adoption of the proposed plan amendment will change the multiple-use character of these lands which currently provides habitat for the threatened desert tortoise, rare and sensitive plants, bighorn sheep, and Mojave fringe-toed lizards in favor of a single use that will completely displace other uses on the proposed site.

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#### ***Response***

The proposed Plan Amendment is consistent with the BLM multiple-use and sustained-yield mandate pursuant to FLPMA.

FLPMA (Section 103(c)) defines “multiple use” as the management of the public lands and their various resource values so the public lands are used in a combination that will best meet the present and future needs of the American people. Accordingly, the BLM is responsible for the complicated task of striking a balance among the many competing uses that can occur on public lands. The BLM multiple-use mandate does not require that all uses be allowed on all areas of the public lands. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses, which may involve tradeoffs among competing uses.

The CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands and requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a project site be considered through the plan amendment process. The Plan outlines a framework for balancing use and protection in the context of the entire CDCA, but recognizes that certain sites will ultimately strike the balance depending on relevant factors. Energy development and transmission is specifically cited in the CDCA Plan as a “paramount national priority” to consider in striking that balance (CDCA Plan, p. 13). Further, the Plan identifies industrial uses analogous to the proposed project, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission



(CDCA Plan, p.95). The CDCA Plan states that solar power facilities may be allowed within MUC – L and MUC – M areas after NEPA analysis is complete. Further, the CDA Plan 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).

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### *Multiple Use Class*

**Issue Number:** PP-CA-CALICO-10-0004-10

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

**Issue Excerpt Text:**

The BLM also provided no evidence that the proposed destruction of cultural resources is consistent with only allowing “lower-intensity, carefully controlled multiple use of resources” and that the action ensures “that sensitive values are not significantly diminished” on Class L lands, as required by the CDCA Plan.

The Project’s conversion of the Planning Area into a single-use industrial site is inconsistent with FLPMA’s multiple use mandate and CDCA’s balancing mandate for Class M and Class L lands.

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**Issue Number:** PP-CA-CALICO-10-0004-15

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

**Issue Excerpt Text:**

Contrary to the State Director, the Proposed Plan Amendment is Inconsistent with the CDCA Plan The State Director’s interpretation of the CDCA Plan is severely flawed. According to FEIS, the CDCA Plan allows the use of the Planning Area for solar generation through the Plan’s approval of solar generating facilities within the Multiple -Use Classes M and L BLM is in error. Renewable generation is only conditionally allowed for Class M and L lands under the CDCA Plan. According to the CDCA Plan, renewable energy generation is an allowed use within Class M where BLM strikes a balance between the use and the protection of the public lands. Renewable energy generation is only allowed in Class L lands where BLM has first ensured that the proposed amendment will not significantly diminish the natural, scenic, ecological and cultural values. The EIS identifies significant unavoidable impacts to a number of biological resources. The industrialization of the Planning Area will

significantly diminish the natural, scenic, and cultural values of these lands and fails to strike the balance between usage of the land and preservation of the resources. The Plan Amendment cannot be approved because solar generation that doesn’t balance resource protection with usage of the is not consistent with class M or L lands under the CDCA Plan

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**Issue Number:** PP-CA-CALICO-10-0004

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

**Issue Excerpt Text:**

The Planning Area is primarily designated Class M and also contains 208 acres of Class L lands under the CDCA Plan. 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. The BLM also failed to assess the proposed Plan Amendment’s impact on sensitive resource values and to ensure that such values are not significantly diminished on Class L lands, as required by FLPMA and the CDCA Plan.

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**Issue Number:** PP-CA-CALICO-10-0004-8

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

**Issue Excerpt Text:**

In all, the California Energy Commission estimated that 194 tortoises will die if the Project is approved. The FEIS for the Project does not address this finding or these significant affects.

In light of the findings of the California Energy Commission and independent experts, BLM may not approve the Plan Amendment to allow the wholesale destruction of the biological resources within the Planning Area. Such approval would be inconsistent with the CDCA Plan’s moderate and limited use designations for the Planning Area.

### ***Summary***

The proposed Plan Amendment is inconsistent with the Multiple-Use Class designations of the CDCA Plan.

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### ***Response***

The proposed Plan Amendment is consistent with the Multiple-Use Class designations in the CDCA Plan.

The CDCA Plan provides guidance concerning the management and use of BLM-administered 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 specifically cites energy development and transmission as a “paramount national priority” to consider in balancing use and protection of resources (CDCA Plan, p. 13). The proposed Plan Amendment would allow the solar use only on the proposed project site. Furthermore, the proposed Plan Amendment identifies and analyzes sensitive resources and values, and even though the Preferred Alternative is on MUC – M lands only, the BLM has ensured that the proposed Plan Amendment will not significantly diminish sensitive MUC – L values by way of design features, mitigation, and monitoring to reduce impacts, as described in Section 4.3.4 of the FEIS.

As the proposed Plan Amendment/FEIS states, the location of the proposed Calico Solar Project facility includes land that is classified as Multiple-Use Class (MUC) L (Limited Use) and M (Moderate Use) in the CDCA Plan. Approximately 97 percent of the project site is currently designated as MUC – M. Two areas that contain approximately 208 acres (3 percent) of the project site at the northern boundary adjacent to the foothills of the Cady Mountains are designated as MUC – L. However, the agency Preferred Alternative, a modified version of the Proposed Action, is restricted to land classified as MUC – M. Class M lands are specifically identified as being compatible with energy development and transmission as stated, “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 states that solar power facilities may be allowed within MUC – L and MUC – M areas after NEPA analysis is complete, and requires 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). In Class L designation areas, the authorized officer is directed to use his or her judgment in allowing for consumptive uses by taking into consideration the sensitive natural and cultural values that might be degraded. For Class M lands, the authorized officer is directed to manage for a controlled balance of higher intensity uses and protection of public lands values (FEIS Section 4.18). The EIS that accompanies this proposed Plan Amendment acts as the mechanism for complying with NEPA requirements.

The BLM has met NEPA requirements in the analysis contained in the DEIS and FEIS. 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



newly proposed power generation and transmission sites that are not already included within the Plan be added to the Plan through the plan amendment process. The Calico Solar Project 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 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.

In the 1980 CDCA Plan Record of Decision, the Assistant Secretary for Land and Water Resources discussed the remaining major issues in the final CDCA Plan before he approved it (CDCA ROD, p. 10 *et seq.*). One of the remaining major issues was the allowance of wind, solar, and geothermal power plants within designated Class L lands (CDCA ROD, p. 15). The ROD recognized, “These facilities are different from conventional power plants and must be located where the energy resource conditions are available. An EIS will be prepared for individual projects.” The recommended decision, which was ultimately approved, noted, “Keep guidelines as they are to allow these power plants if environmentally acceptable. Appropriate environmental safeguards can be applied to individual project proposals which clearly must be situated where the particular energy resources are favorable.” The ASLW approved the allowance of wind, solar, and geothermal power plants on designated Class L lands in the CDCA. The Secretary of the Interior concurred on December 19, 1980.

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### *Conformance with the California Desert Conservation Area Plan*

**Issue Number:** PP-CA-CALICO-10-0002-9

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

#### **Issue Excerpt Text:**

The Proposed CDCA Plan Amendment and FEIS do not comply with FLPMA's clear mandates, including 43 U.S.C. §§ 701(a)(8), 1732(b), 1781(b), in numerous respects, including the following: A. The proposed CDCA Plan amendment and project have not been analyzed in the context of the CDCA and the CDCA Plan. Although specific management principles and guidelines are contained in the CDCA Plan, they have not been applied to either the proposed amendment or project. Nor have landscape level issues and management objectives been considered in evaluating these proposals or in selecting meaningful alternatives to them. Specifically, the analysis of proposed plan amendment and project have not been adequately analyzed in the context of FLPMA's mandate for the CDCA: “... to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality. FLPMA Sec. (b)”.

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### ***Response***

The proposed Plan Amendment is consistent with the specific management principles and guidelines listed in the CDCA Plan.

The CDCA Plan itself recognizes that plan amendments such as the proposed Plan Amendment may occur, and outlines a process to approve or deny these amendments (CDCA Plan, pp. 119-122). The management principles listed are “multiple use, sustained yield, and maintenance of environmental quality contained in law” (CDCA Plan, p. 6). These principles were the basis for the BLM's development of the proposed Plan Amendment. The CDCA Plan also lists management approaches to be used to resolve conflicts. These approaches are designed to help

achieve the goals of allowing for the use of desert lands and resources while preventing their undue degradation or impairment, and responding to national priority needs for resource use and development “both today and in the future, including such paramount priorities as energy development and transmission, without compromising basic desert resources...[and] erring on the side of conservation in order not to risk today what we cannot replace tomorrow” (CDCA Plan, p. 6). The CDCA Plan conceives of balancing use and protection in the overall context of the entire CDCA, but recognizes that certain sites will strike the balance in favor of protection or use depending on relevant factors. The CDCA Plan management principles section specifically cites energy development and transmission as a paramount national priority to consider in striking that balance (CDCA Plan, p. 6).

The CDCA Plan is specifically referenced and analyzed throughout the proposed Plan Amendment and FEIS. The CDCA Plan was initially prepared to and continues to provide guidance concerning the use of the California Desert public land holdings while balancing other public needs and protecting resources. Amendments to the CDCA Plan can be site-specific or global depending on the nature of the amendment. In the case of the proposed Plan Amendment, the amendment is site-specific, but considers the larger context of the CDCA and its plan. The CDCA Plan originally contemplated amendments and has been amended several times to include industrial uses analogous to the solar use analyzed by the proposed Plan Amendment, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission within the broader CDCA context (CDCA Plan, p. 95). The BLM has the discretion, based on its expertise, to determine whether a plan amendment adheres to the principles of multiple use, sustained yield, and maintenance of environmental quality.

As the FEIS states in Section 3.9.3.2, “All CDCA land-use actions and resource management activities must meet the multiple-use guidelines within the Plan...” The proposed Plan Amendment adheres to the management principles and guidelines in the CDCA Plan and considers the broader CDCA context. The CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands and requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a project site be considered through the plan amendment process (FEIS Section 1.6). As the FEIS states, the sole purpose of this amendment is to allow power generation and transmission on the Calico Solar Project site. This amendment is limited geographically to only the Calico Solar Project site, and further, by the accompanying right-of-way grant application. This amendment applies only to the area analyzed and will not result in any changes in land use designations or authorized land uses anywhere else in the CDCA plan area. The CDCA Plan is specifically mentioned and analyzed frequently throughout the proposed Plan Amendment and FEIS. Therefore, the BLM has analyzed the plan amendment in the context of the CDCA and the CDCA Plan management principles and guidelines.

As noted in the response to comments on the DEIS, the CDCA Plan was adopted in 1980 and has since been amended many times. Frequently, long-range plans that cover large geographic areas, such as the California Desert, are living documents intended to provide overall land use planning guidance and general regulation; more detailed land use information is provided through amendments, special area plans, or other more focused planning documents. Former BLM California State Land Director James B. Ruch, in his 1999 letter presenting the CDCA Plan, as

amended, stated, “The California Desert Plan encompasses a tremendous area and many different resources and uses. The decisions in the Plan are major and important, but they are only general guides to site-specific actions.”

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### **Cultural Resources**

**Issue Number:** PP-CA-CALICO-10-0004-23

**Organization:** CURE and William Perez

**Protester:** Loulena Miles

#### **Issue Excerpt Text:**

The preparation of a land use management plan is a federal undertaking within the meaning of Section 106 of the NHPA. In this case, BLM has opted to use a Programmatic Agreement to comply with its Section 106 obligation. A Programmatic Agreement may not be used to improperly defer an agency's Section 106 Obligations. BLM has improperly deferred the preparation of the Programmatic Agreement until after the issuance of the Record of Decision for the proposed action. To date, BLM has failed to, (1) identify historic properties within the Planning Area; (2) determine which of these properties would be eligible for listing in the National Register; or (3) identify measures to avoid and minimize any adverse effects on eligible resources. BLM may not approve the Plan Amendment until it has made a good faith effort to comply with Section 106 of the NHPA.

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#### ***Response***

The BLM has complied with Section 106 of the National Historic Properties Act. “Historic Properties” are, as described in the NHPA, those sites that have been determined eligible for the National Register of Historic Places. The BLM has conducted cultural resource work for the project in accordance with the BLM National Programmatic Agreement (1997), Advisory Council on Historic Preservation, and BLM Handbook 8100 for identifying Cultural Resources. Discussion in the FEIS in Section 3.5.6.5 refers to the National Programmatic Agreement rather than one developed for the proposed action.

As noted in Section 4.5.1 of the FEIS, following completion of a survey and site recordation of the planning area, “three sites were determined to be eligible because the sites have the potential, under Criterion (d) of the NRHP, to have yielded, or may be likely to yield, information important in prehistory or history (36 CFR 60.4)” (p. 4-216). When the BLM determined that these three historic properties would be adversely affected by the development in the area proposed by the applicant, other alternatives were considered (see Section 4.5.2 of the FEIS).

The BLM, “[a]fter extensive consultation with Federal and state regulatory agencies with responsibilities for management of ...cultural resources” as well as Indian tribes and other consulting parties to the Section 106 process, developed an alternative (the agency Preferred Alternative) designed to avoid the properties with a 400-foot buffer, eliminating the effect of development and the need to mitigate the effect (FEIS p. ES-4 and Sections 2.3 and 4.5.2.2). Prior to this, the BLM had been consulting on the development of a programmatic agreement for the project and a draft Agreement had been submitted for review. However, once the project was redesigned to avoid effects to the three historic properties, the BLM determined that a project PA was no longer required. As a result, the BLM proceeded to conclude the Section 106 process by consulting with SHPO on the BLM determinations of eligibility and findings of effect.

After the FEIS was published, the BLM, in continual consultation with the California SHPO, other agencies, Indian tribes, and consulting parties, determined the potential indirect effects to Historic Route 66 should be reconsidered and that additional testing may be needed to support the eligibility determinations of some of the sites and to assess the potential for subsurface discoveries in the project area. As such, the BLM determined that these issues warranted the need for a project PA. Although a PA must be signed before the ROD, as allowed for in 36 CFR 800.4(b)(2), the agency may defer final identification and evaluation of historic properties if specifically provided for in the PA. A PA can be used where a project and its effects are complex and perhaps not completely or fully knowable prior to the ROD. The BLM is deferring addressing some of these questions until after the ROD. The PA for this project was signed by the California SHPO on September 22, 2010; it documents the BLM process as described under Section 106 of the NHPA.

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### ***Fish, Wildlife, Plants, Special Status Species***

**Issue Number:** PP-CA-CALICO-10-0002-12

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

#### **Issue Excerpt Text:**

The proposed action conflicts with the CDCA Plan for conservation of the White-margined Beardtongue, a BLM Sensitive Species. The Record of Decision for the West Mojave Plan Amendments to the CDCA Plan, dated March 13, 2006, approved Alternative B which states “This alternative consists of those elements of Alternative A that are applicable to, and that could be implemented on, BLM-administered public lands. It is applicable to public lands only. This ROD approves Alternative B.”

The elements of Alternative A pertaining to conservation of the White-margined Beardtongue that are applicable to and that could be implemented on public lands include a 50 acre loss or “take” of occupied and suitable habitat for this species. This provision is in addition to establishment of the Pisgah Area of Critical Environmental Concern located adjacent to the proposed project site. (Final Environmental Impact Report and Statement for the West Mojave Plan, January 2005).

Under Alternative A, authorized “take” of the White-margined Beardtongue includes: 1) Maintenance of existing facilities within the BLM utility corridor and on private land within the range of the species, and 2) Limit of 50 acres of occupied and potential habitat. Habitat conserved for this species includes 1) All known occurrences in washes south of the Cady Mountains, and 2) Known occurrences within the proposed Pisgah Crater Area of Critical

Environmental Concern. Since the West Mojave Record of Decision stated that elements of Alternative A that were applicable to and could be implemented on public lands, the 50 acre habitat loss threshold applies under Alternative B. The proposed Calico Project would therefore exceed West Mojave Plan's 50 acre limit for the loss of White-margined Beardtongue habitat.

BLM described Alternative B as follows in the Final Environmental Impact Report and Statement for the West Mojave Plan: “All aspects of this alternative's conservation strategy would be as described for Alternative A, except as specifically noted below (see foldout Map 2-15). These include Alternative A's motorized vehicle access network, livestock grazing and education programs, and all proposed CDCA Plan Amendments. Multiple use class changes proposed by Alternative A would apply to this alternative except for the following: 1) Two parcels of BLM land within the North Edwards Conservation Area would not be removed from the LTA disposal zone and reclassified from U to M and 2) Several scattered parcels of BLM land in the San Gabriel Mountains foothills and within the Los Angeles County SEAs (Table 2-4) would not be removed from the LTA disposal zone and reclassified from U to M.” Clearly, the proposed action is contrary to BLM's conservation commitments for the White-margined Beardtongue.

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**Issue Number:** PP-CA-CALICO-10-0002-13

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The Proposed CDCA Plan Amendment and FEIS Does Not Comply with BLM Manual 6840: Special Status Species Management, for the following reasons:

A. The proposed action would result in the destruction of approximately 6,215 acres of occupied suitable habitat for the threatened Desert Tortoise, which is inconsistent with the BLM's obligation to conserve and/or recover listed species and the ecosystems on which they depend so that ESA protections are no longer needed.

B. The proposed action would result in the destruction of approximately 6,215 acres of habitat utilized by BLM Sensitive Species including the White-margined Beardtongue, Mojave Fringe-toed Lizard, Burrowing Owl, Loggerhead Shrike, Bendire's Thrasher, LeConte's Thrasher, and Golden Eagle.

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**Issue Number:** PP-CA-CALICO-10-0002-15

**Organization:** Defenders of Wildlife et al.

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The Proposed CDCA Plan Amendment and FEIS does not Comply with BLM Manual 1745: Introduction, Transplant, Augmentation and Reestablishment of Fish, Wildlife and Plants, for the following reasons as contained in the 1745 Manual:

A. All proposed introductions, transplants, reestablishments, or augmentation/restocking shall be in conformance with management direction and decisions in an applicable Resource Management Plan (RMP) (see BLM Manual Sections 1601 and 1622). .....

B. NEPA compliance is required before introductions, transplants and reestablishments can be approved.

C. Quarantine procedures must comply with all Federal and State regulations, restrictions, and requirements governing the release of disease free organisms and the importation of exotic plants and animals into the U.S.

D. Interested and affected State and Federal agencies, private landowners, and other individuals and organizations must be notified through identified processes of possible introductions, transplants, and reestablishments during the planning and NEPA review processes.

E. Public participation is required. Parties potentially affected by introductions transplants, or reestablishments, must be given the opportunity to be involved in the public participation process outlined

in BLM Manual Section 1614. Potentially affected parties include adjacent State, Federal, and private landowners, other interested groups, and individuals.

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**Issue Number:** PP-CA-CALICO-10-0005-10

**Organization:** Western Watersheds Project, Michael

**Commenter:** Michael Conner

**Issue Excerpt Text:**

Western Watersheds Project protests that the proposed plan amendment contravenes the biological goals for the WMP Plan. The March 2006 WMP ROD includes "Goal 3: ensures genetic connectivity among tortoise populations, both within the West Mojave Recovery Unit, and between this and other recovery units." The FEIS does not explain how the proposed plan amendment will be consistent with this biological goal. Desert tortoises require linkage habitat to maintain connectivity. Although the FEIS recognizes that the project would impact connectivity, the proposed mitigations do not address how the loss of linkage habitat will be mitigated. The agency preferred alternative has a marginal reduction in the size of the project footprint. While this might provide some kind of potential movement corridor for wildlife, if the habitat fragments that remain are not contiguous and are not large enough to maintain viable desert tortoise populations it will not function as linkage habitat. Western Watersheds Project protests that the FEIS undertakes no analysis of the degree of fragmentation, viability of the fragmented populations, nor does it establish if the potential movement corridor is viable linkage habitat for desert tortoise.

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**Issue Number:** PP-CA-CALICO-10-0005-20

**Organization:** Western Watersheds Project

**Protester:** Michael Conner

**Issue Excerpt Text:**

Western Watersheds Project Protests That The CDCA Plan Amendment/FEIS Does Not Comply with the Land Use Plan and BLM Policy. BLM Handbook 1745 -Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife, and Plants -requires that "Decisions for making introductions, transplants, or reestablishments should be made as part of the land use planning process (see BLM Manual Section 1622). Releases must be in conformance with approved RMPs. A Land Use Plan Amendment must be prepared for proposed releases if management

direction is not provided in the existing Land Use Plan (see BLM Manual Section 1617, emphasis added).” The FEIS describes a draft translocation plan that will result in large-scale movement and translocation of desert tortoises. There is no consideration in the California Desert Conservation

Area Plan as amended by the WMP Plan for desert tortoise translocations on this scale. Western Watersheds Project protests that a plan amendment is required to allow translocation in compliance with BLM policy.

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### ***Summary***

The proposed Plan Amendment is not consistent with BLM Manual 6840, BLM Manual 1745, and the West Mojave Plan Amendments to the CDCA Plan.

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### ***Response***

The BLM Manual 1745 (1992) provides guidance for the introduction, transplant, augmentation, and re-establishment of fish, wildlife, and plant species. Translocation of a species, as is being proposed for desert tortoises on this project, is not specifically addressed in Manual 1745. Furthermore, Manual 1745 references land use planning manual sections that have been removed. In November 2000, the BLM removed Manual Sections 1614, 1617 and 1622 and issued Manual 1601. Manual Section 1601 (2000) explains that site-specific plans (e.g., habitat management plans) are implementation-level decisions rather than planning decisions. The BLM's translocation plan for this project is considered an implementation or activity plan, rather than an element of the land use plan, and therefore is not subject to protest. As stated on FEIS page G-91, “Impacts to special status plant species are discussed in Section 4.3.2, Direct and Indirect Impacts. The mitigation measures that address project-related impacts to special-status plant species have been revised and can be found in Section 4.3.4, Mitigation, Project Design Features, BMPs, and Other Measures. In addition, when developing the Record of Decision for the proposed Calico Solar Project and CDCA Plan Amendment, the BLM may consider the Staff Assessment/DEIS Conditions of Certification, additional Conditions of Certification from the Supplemental SA, and other mitigation measures developed by the BLM and other regulatory agencies.”

The proposed Plan Amendment/FEIS is not contrary to the BLM's conservation commitments in the West Mojave Plan Amendments. Although the 50-acre habitat-lost threshold is a provision found in the Preferred Alternative in the EIS for the West Mojave Plan, the BLM decided to adopt Alternative B. The Preferred Alternative was the combined BLM/Habitat Conservation Plan proposal; the 50-acre limit only applied to the private lands. Alternative B was the BLM-only proposal, so the aspect of the Preferred Alternative pertaining to private lands was not adopted as a decision. Please refer to Table 2-33 in the West Mojave Plan EIS, page 2-242. Under Alternative B, the BLM-only alternative which was adopted, the anticipated take is determined as “unknown”; that is, the 50-acre limit clearly does not apply.

The boundaries of the agency Preferred Alternative were developed after extensive consultation with Federal and State regulatory agencies with responsibilities for management of biological and cultural resources. Accordingly, the north boundary of the project footprint has been redesigned to avoid 1,770 acres of habitat for desert tortoises, bighorn sheep, and rare plants. The south boundary was also modified so that no cultural resources eligible for listing on the

National Register of Historic Places would be adversely affected (removal of 245 acres from the Proposed Project footprint) (FEIS p. E-4). FEIS page 4-97 states, “Much of the West Mojave Planning Area is still undeveloped and retains its native vegetation communities. These undeveloped lands provide important linkages between suitable habitats; provide opportunities for migration, dispersal, genetic exchange, and adaptation to climate change (i.e., shifts in ranges over time); and support the viability of interconnected metapopulations.”