

*Director's Protest Resolution Report*

**Blythe Solar Power Project  
Plan Amendment**

**California Desert Conservation Area Plan**

October 22, 2010



**Contents**

***Reader’s Guide*..... 3**

***List of Commonly Used Acronyms* ..... 4**

***Protesting Party Index* ..... 5**

***Issue Topics & Responses*..... 6**

***NEPA*..... 6**

***Range of Alternatives*..... 6**

***Impact Analysis* ..... 7**

***Federal Land Policy and Management Act* ..... 8**

***Multiple Use Class* ..... 8**

## Reader's Guide

### How do I read the Report?

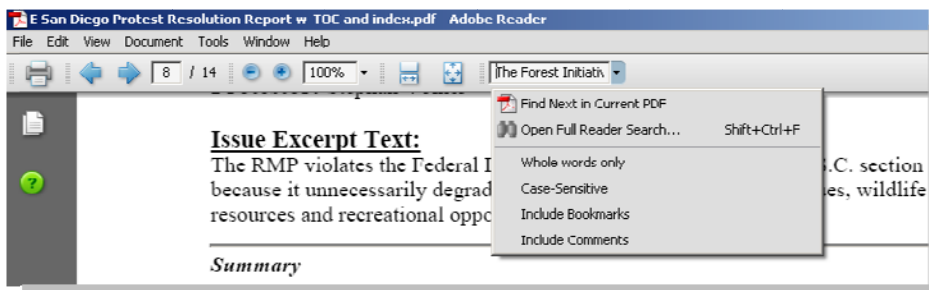
The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's response to the summary statement.

### Report Snapshot

<b>Issue Topics and Responses</b>			
<b>NEPA</b>	Topic heading	Submission number	
<b>Issue Number</b>	PP-CA-ESD-08-0020	10	Protest issue number
<b>Organization:</b>	The Forest Initiative		Protesting organization
<b>Protester:</b>	John Smith		Protester's name
<b>Issue Excerpt Text:</b>	Quotation taken from the submission		
	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*

ASLW	Assistant Secretary of Lands and Mineral	EIS	Environmental Impact Statement
BLM	Bureau of Land Management	FEIS	Final Environmental Impact Statement
BSPP	Blythe Solar Power Project	FLPMA	Federal Land Policy and Management Act of 1976
CDCA	California Desert Conservation Area	MUC	Multiple Use Class
CEQ	Council on Environmental Quality	NEPA	National Environmental Policy Act of 1969
CDFG	California Department of Fish and Game	ROD	Record of Decision
CFR	Code of Federal Regulations	ROW	Right-of-Way
DEIS	Draft Environmental Impact Statement	USFWS	U.S. Fish and Wildlife Service

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Kim Delfino	Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, The Wilderness Society (Defenders of Wildlife et al.)	PP-CA-Blythe-10-01	Protest Withdrawn
Lisa Belenky	Center for Biological Diversity	PP-CA-Blythe-10-02	Denied-Issues Comments
Michael Boyd	Californians for Renewable Energy	PP-CA-Blythe-10-03	Dismissed- Incomplete
Alfredo Acosta Figueroa	La Cuna de Azlan Sacred Sites Protection Circle	PP-CA-Blythe-10-04	Dismissed- Incomplete

## *Issue Topics & Responses*

### NEPA

#### *Range of Alternatives*

**Issue Number:** PP-CA-BLYTHE-10-0002-20

**Organization:** Center for Biological Diversity

**Protester:** 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. 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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#### ***Summary***

The proposed plan amendment/FEIS does not include consideration of a reasonable range of alternatives, including off-site alternatives utilizing private land.

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#### ***Response***

In accordance with NEPA, the BLM has the discretion to specify the underlying purpose and need to which the agency is responding when 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. 6.2). The BLM's guidance further explains that for externally generated actions (such as a right-of-way application), the purpose and need must describe *the BLM's* purpose and need, and not that of the applicant. (Id.) In the case of a right-of-way application, then, the BLM's action is to respond to the application by granting the right-of-way, granting the right-of-way with modifications (including alternative locations), or denying the right-of-way.

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 aids in establishing the scope of NEPA review, clearly explaining the decision to be made to the public, setting expectations, and focusing the NEPA analysis. While the BLM must analyze a range of reasonable alternatives, it is not required to analyze every possible alternative or variation in detail. According to CEQ regulations for implementing NEPA, an alternative may be eliminated from detailed study if it is determined not to meet the proposed action's purpose and need; it is determined to be unreasonable given the BLM's mandates, policies, and programs; its implementation is speculative or remote; or, it is technically or economically infeasible (BLM NEPA Handbook H-1790-1 p. 6.6.3).

The FEIS considered a range of reasonable alternatives to the proposed action that were 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 Blythe Solar Power Project (BSPP) FLPMA ROW application for a solar energy facility on public land (FEIS, p.1–3). In

order to respond to the ROW application, the BLM had to consider whether to amend the CDCA Plan. This consideration was necessary because the CDCA plan requires the BLM to undertake a plan amendment process when a proposed renewable energy project is to be located on a site not already identified in the plan as available for such development. As such, the BLM's land use plan decision is limited to whether to identify the project site as available for a solar energy facility. With respect to the BLM's 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's land use plan decision, the BLM considered off-site locations for utility-scale, solar development on non-BLM administered lands, including the East of Lancaster Alternative, the El Centro Alternative, the Johnson Valley Alternative, and the Chuckwalla Valley Alternative. These alternatives and the rationale for why they were eliminated from further analysis are discussed on pages 2-27 to 2-30 in the FEIS.

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### *Impact Analysis*

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

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

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

Failing to adequately identify and analyze the likely impacts to desert tortoise and its habitat from the project including direct, indirect and cumulative impacts. The FEIS (at 4.8-7) states that "All of the action alternatives would affect a small portion of critical habitat." Yet a description of the actual amount of critical habitat for the desert tortoise is not identified in the FEIS, and the SA-DEIS originally stated that no critical habitat would be affected by the proposed project. Impacts to critical habitat are not addressed in the compensatory mitigation requirements (FEIS at 4.21-15). While the FEIS identifies a mitigation ratio of 1:1 for desert tortoise habitat outside of critical habitat, it does not provide any mitigation for indirect impacts identified on 13,850 acres (FEIS at 4.21-13) or fragmentation impacts due to the proposed industrial-scale solar project in this location surrounded by wildlands and adjacent to a wilderness area. The Center suggests that the mitigation should be at least 2:1 to account for the edge-effects and fragmentation of habitat in this area. Additionally the FEIS identifies the "total desert tortoise compensatory mitigation - Mitigation Measure Bio-12" for the proposed action as 7,02 (sic) acres (FEIS at 4.21-15).

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### *Response*

The BLM adequately identified and analyzed the likely impacts to desert tortoise and its habitat from the proposed plan amendment (FEIS Section 4.21). Before beginning the plan amendment process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions for the proposed plan amendment. The BLM consulted with its cooperating and other agencies on the analysis and the incorporation of available data into the proposed plan amendment/FEIS. As a result of these actions, the BLM gathered the necessary data for making a reasoned choice among the alternatives analyzed in detail in the proposed 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 what is considered to be a hard look, as required by NEPA, at the environmental consequences of the alternatives to inform the public and to enable the decision maker to make an informed decision.

The statement on page 4.8-7 of the FEIS referred to by the protesting party was in error. In fact, there is no desert tortoise critical habitat in the project area, as shown in Figure 31 (FEIS p. A-37). As discussed in Section 4.21.2, the BLM has identified habitat within the project area as low-to-moderate in quality (see also FEIS Figure 30, p. A-36). Mitigation of indirect impacts to desert tortoise will occur through the implementation stepped-down plans, such as a raven management plan and a noxious weed management plan.

Table 4.21-2 also contains a typographical error. The number 7,02 should read 7,027. These errors will be noted in the errata of the plan amendment and project Record of Decision.

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

### ***Multiple Use Class***

**Issue Number:** PP-CA-BLYTHE-10-0002-7

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

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

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. While the CDCA Plan does allow for amendments to the plan to accommodate solar energy production where appropriate, the environmental review for this project shows that clearly this site is inappropriate and that the site configuration 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 7,000 acres of desert tortoise habitat and destroy habitat for Nelson's bighorn sheep and many rare plants among other direct and indirect impacts of the proposed project.

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### ***Summary***

The proposed plan amendment is inconsistent with the Multiple Use Class-L designation of the California Desert Conservation Area plan.

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### ***Response***

The proposed plan amendment is consistent with the Multiple-Use Class - Limited (MUC-L) designation.

As the FEIS states, the location of the proposed Blythe Solar Power Project facility is on lands classified as MUC-L (Limited Use) in the CDCA Plan. The CDCA Plan contemplates 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 (CDCA Plan, p. 95). The CDCA Plan expressly provides for solar generation facilities within areas designated as Multiple Use Class - Limited. The Plan states that solar development “may be allowed after NEPA requirements are met” (CDCA Plan, p. 15). The Environmental Impact Statement for the Blythe Solar Power Project that accompanies the proposed plan amendment acts as the mechanism for complying with those NEPA requirements



(FEIS p. 4.8-5). The BLM has met those 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.

In the CDCA Plan Record of Decision (ROD), the Assistant Secretary for Land and Water Resources (ASLW) discussed the major issues remaining before approving the final CDCA Plan. (CDCA ROD p. 10, et seq.) One of the remaining major issues was the allowance of wind, solar, and geothermal power plants within designated MUC-L lands (CDCA ROD, p. 15). The ROD recognized that “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 allowance of wind, solar, and geothermal power plants on designated Class L lands in the CDCA was approved by the ASLW and concurred with by the Secretary of the Interior on December 19, 1980.

As stated in the FEIS, the reason for the amendment is to specifically allow a solar power generation project on the identified site. This amendment and the overall amendment process are consistent with the implementation of the CDCA Plan. The proposed CDCA plan amendment will not change the MUC-L designation within the overall boundary of the CDCA. The CDCA Plan requires that newly proposed power sites that are not already included within the plan be added through the plan amendment process. Because the Blythe Solar Power Project site is not currently included in the CDCA Plan, a plan amendment is required in order for the site to be recognized as an element in the CDCA Plan. The CDCA Plan provides guidance concerning the management and use of the BLM lands in the California Desert while balancing other public needs and protecting resources. The CDCA Plan specifically cites energy development and transmission as of “paramount national priority” to consider in balancing use and protection of resources (CDCA Plan, p. 13).

As the FEIS points out, “[i]n Class L designations, the authorized officer is directed to use his judgment in allowing for consumptive uses by taking into consideration the sensitive natural and cultural values that might be degraded” (FEIS p. 4.8-3). Section 4.8.7 of the FEIS describes how the proposed site location for the Blythe Solar Power Project meets MUC-L guidelines in the CDCA Plan.

The proposed plan amendment identifies and analyzes sensitive resources and values, and the BLM has ensured that the plan amendment will not significantly diminish sensitive values by the adoption of appropriate design features, mitigation, and monitoring.

With respect to specific resources identified by protesting parties, the FEIS states the following:

“In all MUC areas, all state and federally listed species and their critical habitat will be fully protected. In addition, actions which may jeopardize the continued existence of federally listed species will require consultation with the U.S. Fish and Wildlife Service. As discussed in Section 4-21, Wildlife Resources, the desert tortoise, which is listed as

federally and state threatened, would be affected by the proposed BSPP, Reconfigured Alternative, or the Reduced Acreage Alternative. As specified in the [CDCA Plan, Wildlife] guideline, BLM has initiated formal consultation with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act. BLM has worked with the Energy Commission, USFWS, CDFG, and applicant to develop protection and compensation measures for the desert tortoise, which include stringent avoidance measures, the full level of compensation required by USFWS for this category of tortoise habitat, and enhancement and protection measures in other areas. Therefore, the proposed project and its alternatives would comply with the guideline to provide full protection to the species” (FEIS p. 4.8-7).

“The proposed BSPP, Reconfigured Alternative, or the Reduced Acreage Alternative, including the mitigation measures associated with these actions, would involve habitat manipulation to improve habitat (such as tortoise fencing along roads and project boundaries) and introduction of native species (through the translocation of tortoises). Introduction of native species is permitted in Class L areas, and habitat manipulation is allowed subject to environmental assessment, as is done within this EIS. Therefore, the proposed project and its alternatives would be in conformance with these guidelines..... Therefore, this guideline is applicable to these actions but is allowed subject to conformance with state and federal laws in MUC L” (FEIS p. 4.8-8).

“Those species that are likely to occur on the BSPP [including Nelson's bighorn sheep] would be protected under a number of mitigating measures meant to avoid, minimize, or compensate for impacts from the project. These mitigating measures include: BIO-1, BIO-2, BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, BIO-8, BIO-9, BIO-10, BIO-11, BIO-12, BIO-13, BIO-15, BIO-16, BIO-17, BIO-18, BIO-20, BIO-21, BIO-23, BIO-24, BIO-25, BIO-26, BIO-27, BIO-28; discussed in detail in Appendix G of this FEIS” (FEIS p. 4.8-8).

“In all MUC areas, all state and federally listed [plant] species will be fully protected. In addition, actions which may jeopardize the continued existence of federally listed species will require consultation with the U.S. Fish and Wildlife Service. As evaluated in Section 4-17, Vegetation Resources, no federally or state listed plants would be impacted by proposed BSPP, Reconfigured Alternative, or the Reduced Acreage Alternative” (FEIS p. 4.8-6).

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