

*Director's Protest Resolution Report*

**Las Vegas RMP/Silver State  
Solar South Project EIS  
and  
FSEIS/Plan  
Amendment**

February 14, 2014



Contents

Reader’s Guide..... 3  
List of Commonly Used Acronyms ..... 4  
Protesting Party Index..... 5  
Issue Topics and Responses..... 6  
NEPA ..... 6  
    Purpose and Need..... 6  
    Range of Alternatives..... 8  
    Impacts Analysis ..... 14  
    Segmentation of NEPA Analysis ..... 20  
FLPMA and Plan Conformance..... 21  
Administrative Procedure Act..... 25  
Areas of Critical Environmental Concern (ACEC) ..... 26  
Special Status Species..... 32  
Endangered Species Act (ESA) Section 7 Interagency Cooperation..... 34  
Visual Resources Management (VRM) ..... 36  
Special Recreation Management Act (SRMA) Impacts Analysis ..... 38  
Wildlife Impacts Analysis..... 40

## 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**

**Issue Topics and Responses**  
NEPA

Topic heading

Submission number

Issue Number: PP-CA-ESD-08-0020-10

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

**Issue Excerpt Text:**

Direct quote taken from the submission

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.

**Summary**

General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

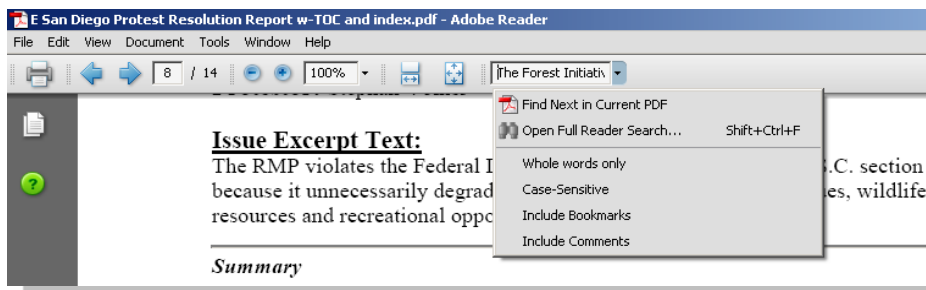
**Response**

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

### *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

<b>ACEC</b>	Area of Critical Environmental Concern	<b>IB</b>	Information Bulletin
<b>BA</b>	Biological Assessment	<b>IM</b>	Instruction Memorandum
<b>BLM</b>	Bureau of Land Management	<b>ISEGS</b>	Ivanpah Solar Electric Generating Station
<b>BO</b>	Biological Opinion	<b>KOP</b>	Key Observation Points
<b>CEQ</b>	Council on Environmental Quality	<b>MW</b>	Megawatt of electricity
<b>CFR</b>	Code of Federal Regulations	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>DEIS</b>	Draft Environmental Impact Statement	<b>OHV</b>	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>PRMPA</b>	Proposed Resource Management Plan Amendment
<b>DOI</b>	Department of the Interior	<b>RMP</b>	Resource Management Plan
<b>EA</b>	Environmental Assessment	<b>ROD</b>	Record of Decision
<b>EIR</b>	Environmental Impact Report	<b>ROW</b>	Right-of-Way
<b>EIS</b>	Environmental Impact Statement	<b>SRMA</b>	Special Recreation Management Area
<b>EPA</b>	Environmental Protection Agency	<b>T&amp;E</b>	Threatened and Endangered
<b>ESA</b>	Endangered Species Act	<b>USACE</b>	US. Army Corps of Engineers
<b>FEIS</b>	Final Environmental Impact Statement	<b>USC</b>	United States Code
<b>FSEIS</b>	Final Supplemental Environmental Impact Statement	<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>USGS</b>	U.S. Geological Survey
<b>FO</b>	Field Office (BLM)	<b>VRM</b>	Visual Resource Management
<b>FWS</b>	U.S. Fish and Wildlife Service	<b>WA</b>	Wilderness Area
<b>GIS</b>	Geographic Information Systems	<b>WSA</b>	Wilderness Study Area

**Protesting Party Index**

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Peter J. Kirsch on behalf of Clark County, Nevada	Kaplan Kirsch & Rockwell	PP-NV-Silver State-01	Denied; issues and comments
Edward L. LaRue	Desert Tortoise Council	PP-NV-Silver State-02	Denied; issues and comments
Kristin McMillan	Las Vegas Metro Chamber of Commerce	PP-NV-Silver State-03	Dismissed; comments only
Ken Freeman	Individual	PP-NV-Silver State-04	Dismissed; comments only
Thomas D. Driggs on behalf of The Primadonna Company	Cotton, Driggs, Walch, Holley, Woloson & Thompson	PP-NV-Silver State-05	Dismissed; comments only
Helen O'Shea	Natural Resources Defense Council	PP-NV-Silver State-06	Denied; issues and comments
Sarah K. Friedman	Sierra Club	PP-NV-Silver State-07	Denied; issues and comments
Michael J. Connor	Western Watersheds project	PP-NV-Silver State-08	Denied; issues and comments
Kim Delfino	Defenders of Wildlife	PP-NV-Silver State-09	Denied; issues and comments
Lisa T. Belenky	Center for Biological Diversity	PP-NV-Silver State-10	Denied; issues and comments
Shaun Gonzales	Individual	PP-NV-Silver State-11	Denied; issues and comments
Kevin Emmerich and Laura Cunningham	Basin and Range Watch	PP-NV-Silver State-12	Denied; issues and comments

## Issue Topics and Responses

---

### NEPA

#### Purpose and Need

---

**Issue Number:** PP-NV-SilverState-13-06-3

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

BLM has acted arbitrarily and capriciously by developing a purpose and need statement so narrow as to limit consideration of a true range of reasonable alternatives.

Significantly, the purpose and needs statement fails even to reference, let alone to include, BLM's statutory, regulatory and policy responsibilities for managing the public lands and their resources in a sustained-yield, multiple use manner, and especially those responsibilities related to conservation and recovery of the desert tortoise through protection of its habitat and the ecosystems upon which it depends. As such, the purpose and need statement of the FSEIS fails to satisfy applicable legal requirements and to help ensure that the proposed project is an environmentally acceptable project that can not only be permitted but constructed without unnecessary delays.

---

**Issue Number:** PP-NV-SilverState-13-07-4

**Organization:** Sierra Club

**Protester:** Sarah Friedman

**Issue Excerpt Text:**

BLM states that its purpose and need in analyzing the proposed project is to respond to the project proponent's application for a

right of way to construct, operate, maintain and decommission a solar generation power plant and ancillary facilities. This purpose and need statement fails to even reference BLM's statutory, regulatory and policy responsibilities for management of public lands and their resources in a sustained-yield, multiple-use manner, and especially those responsibilities related to conservation and recovery of the desert tortoise through protection of its habitat and ecosystems upon which it depends. As such, the purpose and need statement of the FSEIS fails to satisfy applicable legal requirements and to help ensure that the proposed project is an environmentally acceptable project.

---

**Issue Number:** PP-NV-SilverState-13-08-3

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

But the BLM is also responding to an ACEC nomination in this FSEIS. The need to respond to the ACEC nomination should have been incorporated into the purpose and need statement itself and not relegated to some subsidiary process consequent to granting a ROW application.

The BLM has defined its purpose and need simply to process a ROW application rather than presenting a purpose and need statement that reflects the larger multiple use mandates of FLPMA and the BLM's duty to avoid unduly degrading public lands. In doing so, it has ensured that other means of achieving renewable energy goals that better

protect and conserve important public resources are ignored and not evaluated.

---

**Issue Number:** PP-NV-SilverState-13-09-5

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM has acted arbitrarily and capriciously by developing a purpose and need statement so narrow as to limit consideration of a true range of reasonable alternatives.

---

Significantly, the purpose and needs statement fails to include BLM's statutory, regulatory and policy responsibilities for management of public lands and their resources in a sustained-yield, multiple use manner, and especially those responsibilities related to conservation and recovery of the desert tortoise through protection of its habitat and ecosystems upon which it depends.

**Summary:**

The BLM has arbitrarily and capriciously developed a Purpose and Need statement that only considers the needs of the applicant and ignores the BLM's statutory obligations to management of public lands for sustained yield and multiple use, especially as related to its responsibilities for conservation and recovery of the desert tortoise, its habits and ecosystems.

---

**Response:**

As stated in the Appendix D (FSEIS D-100) response to comments, "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. The BLM's purpose and need was reasonably focused on responding to Silver State's 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. Further, the Final Supplemental EIS/PRMPA includes a BLM Preferred Alternative of 250 MW AC in capacity, with a reduction in size, construction duration, and required related infrastructure."

"Underlying this statement is BLM policy, as set forth in Instruction Memorandum 2011-059 (issued Feb. 7, 2011): "The purpose and need statement as a whole describes the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action. The purpose and need statement in a NEPA document for a renewable energy right-of-way application must describe the BLM's purpose and need for action, not the applicant's interests and objectives (BLM NEPA Handbook Section 6.2). The applicant's interests and objectives, including any constraints or flexibility with respect to their proposal, help to inform the BLM's decision and cannot be ignored in the NEPA process. The applicant's interest and objectives should be described in the NEPA document (e.g., in the background section or in the project description). This information will help determine which alternatives are analyzed in detail through the NEPA process and may also provide a basis for eliminating some alternatives from detailed analysis.

"For most renewable energy projects the BLM's purpose and need for action will arise from the BLM's responsibility under the Federal Land Policy and Management Act (FLPMA) to respond

to a right-of-way application requesting authorized use of public lands for a specific type of renewable energy development. The purpose and need statement should also describe the BLM’s authorities and management objectives with respect to renewable energy and public lands. Additionally, offices should include a description of the BLM’s decision(s) to be made as part of the purpose and need statement to help establish the scope of the NEPA analysis (BLM NEPA Handbook Section 6.2). In responding to a right-of-way application the BLM may decide to deny the proposed right-of-way, grant the right-of way, or grant the right-of-way with modifications. In accordance with the right-of-way regulations, modifications may include modifying the proposed use or changing the route or location of the proposed facilities (43 CFR 2805.10(a)(1)).”

The purpose and need statement of the PRMP/FSEIS properly described the purpose and need of the BLM, not that of the applicant. The BLM purpose and need was appropriate i.e., to respond to the applicant’s application under Title V of FLPMA (43 USC 1761) for a right-of-way (ROW) grant to construct, operate, maintain, and decommission a photovoltaic solar energy project on public land. The need for the action was based on authorities promoting renewable energy development (see Executive Order 13212, the Energy Policy Act of 2005, and Secretarial Order 3285A1).

As part of the analysis, the BLM determined that the proposed solar project and associated right-of-way would require amendment of the Las Vegas RMP. This land use planning consideration is a necessary component of the BLM’s response to the right-of-way application in this instance because the BLM must undertake a plan amendment process when a proposed renewable energy project is not compatible with one or more land use plan decisions in that RMP. As such, the BLM’s land use plan decision, including designation of an ACEC, included appropriate alternatives that met the BLM’s purpose and need.

---

### Range of Alternatives

---

**Issue Number:** PP-NV-SilverState-13-02-12

**Organization:** Desert Tortoise Council

**Protester:** Edward LaRue

**Issue Excerpt Text:**

In its assessment of the DSEIS, the USFWS explained that only the No Action Alternative would provide for and maintain suitable connectivity linking tortoise populations to the north and south of the proposed Project. USFWS then advised the BLM, “If this is not possible, we ask BLM to create and select a new alternative that will minimize impacts by preserving a protected corridor of undisturbed desert tortoise habitat between the Silver State

North project and the suitable desert tortoise habitat west of the Lucy Gray Mountains.” Rather than follow USFWS’ informed recommendation, the BLM’s current preferred alternative is still situated within this corridor, and the FSEIS has not identified a new alternative that would avoid this linkage.

---

**Issue Number:** PP-NV-SilverState-13-06-4

**Organization:** Natural Resources Defense Council

**Protester:** Helen O’Shea

**Issue Excerpt Text:**

Inadequate Range of Alternatives BLM has arbitrarily eliminated reasonable alternatives from the analysis of alternatives in this NEPA process. The new alternative



presented in the FSEIS is BLM's response to concerns and comments regarding the impact of the proposed project and the alternatives considered on the desert tortoise, which is listed as threatened under the Endangered Species Act ("ESA"), and its habitat at this particular location. This new alternative is for a 250 MW facility, in contrast to the 350 MW facility that was previously considered. BLM provided no justification or rationale for its decision to only consider and analyze an alternative for a 250 MW facility rather than something of a smaller scale and it failed to identify any smaller or different alternative(s) specifically designed to maintain the existing desert tortoise population, and the key habitat linkage for this species that connects its populations to the north in Nevada with those to the south in California.

---

**Issue Number:** PP-NV-SilverState-13-06-6  
**Organization:** Natural Resources Defense Council  
**Protester:** Helen O'Shea

**Issue Excerpt Text:**

To the extent that the agency considered alternative locations for the proposed project, it limited its consideration to areas of public land that could accommodate a 350 MW project only. And, BLM never considered and analyzed alternative locations on public or private lands that would have avoided the significant adverse impacts to the desert tortoise and its habitat on the proposed project site.

By rejecting other locations for the proposed project, BLM has foreclosed opportunities to analyze and ultimately choose sites for the project that would potentially have far fewer and less severe impacts on public land resources. BLM's failure to search for and analyze alternative project locations,

especially in light of the significant adverse impacts to the desert tortoise and its habitat in the Ivanpah Valley from existing and planned development, is a violation of NEPA, and, as discussed elsewhere in this protest, a violation of the agency's national policy for management of Special Status Species.

---

**Issue Number:** PP-NV-SilverState-13-06-7  
**Organization:** Natural Resources Defense Council  
**Protester:** Helen O'Shea

**Issue Excerpt Text:**

BLM has provided no rationale for its failure to solicit public comment on a project of smaller size, less than 250 MW, that would have provided for a larger desert tortoise habitat linkage that could support multiple desert tortoise home ranges, as recommended by our organization in our comments on this proposal and also by the U.S. Fish and Wildlife Service in their November 16, 2012 comments. BLM failed to analyze an alternative that would have maintained habitat linkage of sufficient width to accommodate at least two desert tortoise home range widths, as recommended by the USFWS in its comment letter on the supplemental draft EIS for the proposed project. Given the acknowledged importance of addressing the habitat needs of the tortoise and the failure of the 250 MW project to adequately address those needs, BLM has acted arbitrarily and capriciously by limiting its consideration of a smaller utility-scale project alternative solely to a 250 megawatt facility.

---

**Issue Number:** PP-NV-SilverState-13-07-6  
**Organization:** Sierra Club  
**Protester:** Sarah Friedman

**Issue Excerpt Text:**

BLM did not solicit public comment on a project configuration that would have provided for a larger habitat linkage that could support multiple home ranges for the desert tortoise. BLM's failure to identify such an alternative(s) contradicts BLM regulations for achieving public land health: "(H)abitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species. [6] The ecological importance of the habitat linkage to the east of the project site has been well-known to the BLM and the public for at least 2 years and was reinforced in the USFWS' comments to the SDEIS and confirmed in the Biological Opinion for his Project.

---

**Issue Number:** PP-NV-SilverState-13-07-9  
**Organization:** Sierra Club  
**Protester:** Sarah Friedman

**Issue Excerpt Text:**

BLM inappropriately rejected any California locations simply because the applicant currently had several projects planned in California. The FSEIS also states: "(I)n the absence of this Project, other renewable energy projects may be constructed to meet State and Federal mandates and those projects would have similar impacts in other locations." Given the recognized importance of the Ivanpah Valley for desert tortoise and other resources and the number of renewable energy proposals on disturbed land in California vying for power purchase

agreements, we find it difficult to believe that other locations would have similarly significant impacts. BLM acted arbitrarily and capriciously when it concluded that absent the proposed project, other similar projects at other locations would have similar impacts without identifying and analyzing those specific alternative project locations.

By rejecting other locations based on faulty or missing information, BLM has foreclosed opportunities to analyze and choose locations for the proposed project that would potentially have far fewer and less severe impacts on public land and the resources on those lands.

---

**Issue Number:** PP-NV-SilverState-13-08-10  
**Organization:** Western Watersheds Project  
**Protester:** Michael Connor

**Issue Excerpt Text:**

In failing to consider a range of reasonable alternatives that would have helped define the issues and provide a clear basis for choice among options by the decisionmaker and the public, the BLM's preferred alternative appears arbitrary. The BLM should have considered alternatives including alternative technologies or alternative sites that would allow the project to proceed without impacting desert tortoises and other important resources. In failing to consider these alternatives, BLM has also failed to respond to public concern.

---

**Issue Number:** PP-NV-SilverState-13-08-5  
**Organization:** Western Watersheds Project  
**Protester:** Michael Connor

**Issue Excerpt Text:**

In our scoping comments and comments on the DSEIS we asked the BLM to consider a number of alternatives to both the plan amendment and the ROW issuance. These are:

(1) Las Vegas RMP Plan Amendment Alternatives

(a) No Development Alternative. This would amend the Las Vegas RMP to make the entire project area unavailable for energy development.

(b) Desert Tortoise Conservation Alternative. This would amend the Las Vegas RMP to comply with conservation recommendations made by the USFWS in its Biological Opinion<sup>1</sup> for the ISEGS project to make the entire project area unavailable for energy development and would designate the area as an ACEC or addition to the existing DWMA to conserve desert tortoises and preserve essential connectivity within the Ivanpah Valley.

USFWS 2011. Biological Opinion on BrightSource Energy's Ivanpah Solar Electric Generating System Project, San Bernardino County, California [CACA-48668, 49502, 49503, 49504] (8-8-10-F-24R) issued June 10, 2011.

(2) ROW Issuance Alternatives

(a) No Action Alternative as is required by NEPA.

(b) Public lands that are not desert tortoise habitat.

(c) A private lands alternative under which the project is built on private lands.

(d) A green energy alternative that would use distributed energy such as “roof top” solar and other technologies to avoid the need for construction of a power plant.

As we explained, full analysis of these alternatives will clarify the need for the proposed project, provide a baseline for identifying and fully minimizing resource conflicts, facilitate compliance with the BLM’s FLPMA requirement to prevent the unnecessary and undue degradation [sic] of public lands and its resources, and provide a clear basis for making an informed decision. The BLM has simply ignored these proposed alternatives.

---

**Issue Number:** PP-NV-SilverState-13-08-6  
**Organization:** Western Watersheds Project  
**Protester:** Michael Connor

**Issue Excerpt Text:**

The DSEIS includes a new alternative that would establish a 31,859-acre ACEC combined with construction of a 250 MW power plant (BLM Preferred Alternative) and an alternative that would establish a 30,912-acre ACEC combined with construction of a 350 MW power plant (Alternative D) but it has failed to consider the reasonable and logical alternative of amending the land use plan to designate the entire project area as an ACEC that is unavailable for energy development.

---

**Issue Number:** PP-NV-SilverState-13-08-7  
**Organization:** Western Watersheds Project  
**Protester:** Michael Connor

**Issue Excerpt Text:**

BLM has also failed to consider any other alternative sites or alternative ways of generating power such as a distributed energy alternative that would avoid sacrificing more of these valuable public lands or would further the recovery and conservation of the listed desert tortoise. The BLM dismisses these other alternatives on the grounds that they were “not viable and did not meet BLM’s purpose and need” FSEIS at 2-2. But as we discussed above, the BLM has so overly narrowed its purpose and need statement that only constructing a power plant in the project area or taking no action will meet it.

---

**Issue Number:** PP-NV-SilverState-13-08-17  
**Organization:** Western Watersheds Project  
**Protester:** Michael Connor

**Issue Excerpt Text:**

We recommend BLM select the ‘No Action’ alternative to avoid reducing the width of the existing corridor. If this is not possible, we ask BLM to minimize impacts to the linkage by creating and selecting a new alternative that would protect a corridor of undisturbed desert tortoise habitat between the Silver State North project and the Lucy Gray Mountains. This corridor should be wide enough to accommodate multiple desert tortoise ranges, spanning up to several times the desert tortoise lifetime utilization area.

---

**Issue Number:** PP-NV-SilverState-13-09-10  
**Organization:** Defenders of Wildlife  
**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM has provided no rationale for not soliciting public comment on a project of smaller size that would have provided for a larger desert tortoise habitat linkage that could support multiple desert tortoise home ranges, as recommended by our organization and also the U.S. Fish and Wildlife Service in their comments on the project. BLM failed to err on the side of caution by not analyzing an alternative that would have maintained habitat linkage of sufficient width to accommodate at least two desert tortoise home range widths, as recommended by the USFWS in its comment letter on the SDEIS for the proposed project.

---

**Issue Number:** PP-NV-SilverState-13-09-12  
**Organization:** Defenders of Wildlife  
**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM has acted arbitrarily and capriciously by not seeking and analyzing an alternative or alternatives to the proposed project that would resolve adverse impacts to the desert tortoise, its habitat and the key remaining habitat linkage in the Ivanpah Valley, directly contradicting its regulations for public land and rangeland health relative to federally listed species.

---

**Issue Number:** PP-NV-SilverState-13-09-6  
**Organization:** Defenders of Wildlife  
**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM has arbitrarily eliminated other reasonable alternatives from the analysis. The new alternative presented in the FSEIS was BLM's response to concerns and comments regarding the impact of the proposed project and the alternatives on the desert tortoise and its habitat at this particular location. This single new alternative is for a 250 MW facility, in contrast to the previous 350 MW facility.

BLM provided no justification or rationale for its decision to only consider and analyze an alternative for a 250 MW facility, and it failed to identify any new alternative(s) specifically designed to maintain the existing desert tortoise population, and the

key habitat linkage for this species that connects its populations to the north in Nevada with those to the south in California.

---

**Issue Number:** PP-NV-SilverState-13-09-8  
**Organization:** Defenders of Wildlife  
**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM's failure to search for and analyze alternative project locations, especially in light of the significant adverse impacts to the desert tortoise and its habitat in the Ivanpah Valley from existing and planned development, is a violation of NEPA, and an arbitrary and capricious decision that also led BLM to violate its national policy for management of Special Status Species.

---

**Summary:**

The BLM has analyzed an inadequate range of alternatives by arbitrarily eliminating reasonable alternatives from analysis, including alternative project locations in Nevada and also California, smaller project size, habitat protection and linkage for the desert tortoise, different technologies, and distributed energy, among others.

---

**Response:**

The BLM did consider other alternatives, which were discussed but not analyzed in detail in DEIS section 2.2.3. These include alternative technology (concentrating solar power); alternative locations on BLM land, including public lands in California; alternative project design; alternative project size; and restrictions on power delivery (DSEIS pages 2-5 through 2-8).

*Non-Public Land Alternative:* A non-public land alternative would not be within the range of reasonable land use planning alternatives because the BLM's land use planning authority is limited to public lands, and because such an alternative would not meet the agency's purpose and need as it would not be responding to the application for the solar energy project on BLM lands. BLM IM 2011-059, National Environmental Policy Act Compliance for Utility-Scale Renewable Energy Right-of-Way Authorizations, supports this approach, stating that "The BLM will not typically analyze a non-Federal land alternative for a right-of-way application on public lands because such an alternative does not respond to the BLM's purpose and need to consider an application for the authorized use of public lands for renewable energy development."

The BLM reviewed the action as proposed and considered a full range of alternatives within the context of the purpose and need. The BLM agrees that a renewable energy future includes striking a balance between renewable energy development and the needs of threatened and endangered species. Working under the multiple-use mandate, the BLM strives to balance innumerable resources protection issues and respond to the Nation's demands for energy and various mineral needs. The majority of land use allocations have some impacts to cultural and natural resources, including archaeological and historical resources, native vegetation, and (often) wildlife; management plans are designed to minimize and mitigate potential negative impacts. Chapter 4 of the FSEIS details protective measures associated with each of the proposed alternatives.

In that respect, the preferred alternative in the FSEIS best resolves public and agency concerns with regard to both project size (overall project footprint is the smallest of all analyzed action alternatives) and desert tortoise habitat connectivity. This reduced footprint mitigates impact to other resources, while satisfying the BLM's Purpose and Need.

---

### Impacts Analysis

---

**Issue Number:** PP-NV-SilverState-13-02-7

**Organization:** Desert Tortoise Council

**Protester:** Edward LaRue

**Issue Excerpt Text:**

Without providing its rationale in the FSEIS for doing so, the BLM ignored the U.S. Fish and Wildlife Service's (USFWS) 2012 recommendation that the No Action Alternative was the best alternative to maintain the linkage that provides the most reliable connectivity between adjacent populations in Nevada and California. This determination was first revealed in 2011 (USFWS 2011), reiterated in 2012 (USFWS 2012), and is now being ignored by the BLM in its 2013 FSEIS analysis. Of the alternatives included in the FSEIS, only the No Action Alternative, preserving the existing 2.0-mile wide corridor, would come close to the minimum 2.8-mile wide corridor USFWS judges necessary to provide for viable connectivity.

---

**Issue Number:** PP-NV-SilverState-13-06-10

**Organization:** Natural Resources Deense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

The desert tortoise impact analysis contained in the FSEIS and associated biological resources technical report is additionally deficient because the U.S. Geological Survey desert tortoise occurrence and movements studies and their associated reports are not included or not yet available. These studies, led by Dr. Nussear, are reported to have been initiated or underway in the spring season of 2012. We protest BLM's publication of the FSEIS in the absence of these studies and the relevant information they are intended to provide regarding desert tortoise linkage habitats and movements in the Ivanpah Valley.

---

**Issue Number:** PP-NV-SilverState-13-06-11

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

BLM has also failed to sufficiently analyze and disclose the environmental benefits of the No Action alternative to Special Status Species and their habitats on the proposed project site. BLM downplayed the benefits of the No Action option by stating that, "[i]n the absence of this Project, other renewable energy projects may be constructed to meet State and Federal mandates and those projects would have similar impacts in other locations." FSEIS, p. 4-29. The benefits of this option to the threatened desert tortoise and its habitat, including the remaining key habitat linkage in the northern Ivanpah Valley, were omitted from the analysis.

---

**Issue Number:** PP-NV-SilverState-13-06-12

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

Also absent from the analysis of the No Action alternative was how it would contribute to the conservation and recovery of this species and thereby enable BLM to comply with its ESA obligations under Section 7(a)(1) to further the conservation and recovery of the desert tortoise through protection of its ecosystem. BLM acted arbitrarily and capriciously when it concluded that, absent the proposed project, other similar projects at other locations would have similar impacts. Simply put, ELM cannot and has not supported this

statement because of its failure to identify and analyze alternative project locations.

---

**Issue Number:** PP-NV-SilverState-13-06-23

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

In contrast, BLM concluded that impacts to vegetation communities at the nearby Ivanpah SEGS project site which is located in the same valley would be permanent, directly contradicting its analysis of the duration of the impacts resulting from the instant proposed project. In the FEIS for the Ivanpah SEGS project, BLM stated: "In the Mojave Desert ecosystem the definition of permanent impacts needs to reflect the slow recovery rates of its plant communities." Recovery rates from disturbance in these systems depend on the nature and severity of the impact. For example, creosote bushes can resprout a full canopy within five years after damage from heavy vehicle traffic (Gibson et al. 2004), but more severe damage involving vegetation removal and soil disturbance can take from 50 to 300 years; complete ecosystem recovery may require over 3,000 years (Lovich and Bainbridge 1999). In this analysis, an impact is considered temporary only if there is evidence to indicate that pre-disturbance levels of biomass, cover, density, community structure, and soil characteristics could be achieved within 5 years. Ivanpah SEGS FEIS, p. 4.3-25.

---

**Issue Number:** PP-NV-SilverState-13-06-9

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

Analysis of impacts to Special Status Species is Inadequate 1) Desert tortoise. Although substantial information on desert tortoise occurrence and its habitat has been gathered and included in the FSEIS, studies on, and analysis of, the viability or functionality of the habitat linkage for this species that would remain after the project is constructed are inadequate or inconclusive in determining whether or not the linkage habitat that would remain post-construction would be sufficient in size and configuration to sustain a viable population of this species, which is necessary for gene flow among populations in designated desert tortoise conservation areas to the north (in Nevada) and south (in California). Indeed, BLM conceded, "current research does not indicate whether reductions in the width or configuration of the corridor compared to existing conditions would reduce or eliminate its ability to maintain the genetic linkage between populations north and south of the Project area." FEIS, p. 4-34.

As noted above, the USFWS commented on the SDEIS for this proposed project. That agency specifically addressed the desert tortoise habitat linkage issue and made recommendations for a minimum width needed to potentially sustain desert tortoises and provide for long-term gene flow between populations in critical habitat units located north and south of the proposed project. Its comments stated:

"We are concerned about habitat fragmentation and demographic and genetic isolation of desert tortoise populations within the Ivanpah Valley and recommend

that BLM select the 'No Action' alternative. Maintaining a robust population of desert tortoises within the Ivanpah Valley area is of particular importance because the habitat is already highly fragmented. Currently, the desert tortoise population within the Ivanpah Valley is only tenuously connected to the Ivanpah Critical Habitat Unit. This valley is a critical link between desert tortoise conservation areas in California and Nevada (Hagerty et al, 2011; Service 2012).

Only four potential linkages remain in Ivanpah Valley (USFWS 2011). The linkage between the Silver State North project and the Lucy Gray Mountains is the widest of these linkages and likely the most reliable for continued population connectivity (Service 2011). The effects on population demographics by constricting a linkage to a narrow corridor with a lower number of desert tortoises remain a concern. A single desert tortoise uses a lifetime utilization area of approximately 1.4 miles wide (Service 1994). Multiple lifetime utilization areas are necessary for desert tortoises to find mates, reproduce (demographics), and maintain populations during years of low habitat quality, periodic fire, and disease outbreak (stochastic events) (Beier et al (1/2008). For example, the diameter of two multiple lifetime utilization areas would be 2.8 miles wide; three would be 4.2 miles wide; and so on.

We recommend BLM select the 'No Action' alternative to avoid reducing the width of the existing corridor. If this is not possible, we ask BLM to minimize impacts to the linkage by creating and selecting a new alternative that would protect a corridor of undisturbed desert tortoise habitat between the Silver State North project and the Lucy Gray Mountains. This corridor should be wide enough to accommodate multiple desert tortoise ranges, spanning up to several



times the desert tortoise lifetime utilization area.

---

**Issue Number:** PP-NV-SilverState-13-09-18

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The desert tortoise impact analysis contained in the FSEIS and associated biological resources technical report is deficient because the USGS desert tortoise occurrence and movements studies and their associated reports are not included or not yet available. These studies, led by Dr. Nussear, are reported to have been initiated or underway in the spring season of 2012. We protest BLM's publication of the FSEIS in the absence of these studies and the relevant information they are intended to provide regarding desert tortoise linkage habitats and movements in the Ivanpah Valley.

---

**Issue Number:** PP-NV-SilverState-13-09-19

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

BLM has also failed to sufficiently analyze and disclose the environmental benefits of the no action alternative to Special Status Species and their habitats on the proposed project site. BLM downplayed the benefits of the no action alternative by stating, "In the absence of this Project, other renewable energy projects may be constructed to meet State and Federal mandates and those projects would have similar impacts in other locations." FSEIS, p. 4-29. The benefits of the no action alternative on the threatened desert tortoise and its habitat, including the remaining key habitat linkage in the northern Ivanpah Valley, were absent from the analysis. Also absent from the analysis of the no action alternative was how it would contribute to the conservation and recovery of this species and enable BLM to comply with its Endangered Species Act obligations under Section 7(a)(1) to further the conservation and recovery of the desert tortoise through protection of its ecosystem. BLM acted arbitrarily and capriciously when it concluded that absent the proposed project, other similar projects at other locations would have similar impacts. Simply put, BLM cannot and has not supported this statement because of its failure to identify and analyze alternative project locations.

---

***Summary:***

The BLM did not sufficiently analyze the environmental benefits of the No Action alternative in terms of how it would contribute to the conservation and recovery of the desert tortoise through protection of its ecosystem. Further, the FSEIS is deficient because it fails to include USGS desert tortoise occurrence and movement studies and their associated reports led by Dr. Nussear.

---

***Response:***

The SEIS fully assesses and discloses the environmental impacts of the Proposed ROW, RMP amendment and alternatives in Section 4.0 of the FSEIS. 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 throughout the planning effort. While preparing the proposed SEIS, the BLM consulted with, and used data from cooperating agencies with jurisdiction or expertise in that area, including but not limited to: Environmental Protection Agency, National Park Service – Mojave National Preserve, US Army Corps of Engineers, tribal governments, Clark County, and Nevada Department of Wildlife (SEIS Sec. 5.2). The BLM considered and used public input to refine its analytical approaches to planning. The interdisciplinary team that developed the Silver State Solar South Project documents used a systematic process to evaluate public input and comments during the planning process (FSEIS Sec. 5.1).

The purpose of the No Action alternative in BLM’s NEPA documents is to provide a baseline for effects of the “action” alternatives and to inform the analysis of those alternatives. Effects of not approving Silver State Solar South - or any project - on the site (the FSEIS “No Action” Alternative) were adequately disclosed throughout Chapter 4, by resource, e.g., for wildlife on 4-29 in 4.6.2.3: “Under this alternative, the BLM would not approve the Applicant’s ROW application and would not amend the RMP. The BLM would continue to manage land encompassing the Project area consistent with the existing RMP. Because there would be no amendment and no solar project approved for the site under this alternative, it is expected that the site would continue to remain in its existing condition with no new structures or facilities constructed or operated on the site. As a result, none of the impacts to wildlife resources from the proposed Project would occur.”

A Supplemental Biological Assessment (BA) was completed to provide additional information regarding project site changes as part of formal consultation between the BLM and the Fish and Wildlife Service (USFWS) under Section 7 of the federal Endangered Species Act (ESA). As a result of these actions, the BLM gathered all currently available and necessary data in order to analyze in detail the full range of alternatives in the proposed plan amendment/EIS. The BLM has taken a “hard look” as required by NEPA at the environmental consequences of the alternatives to inform the public and enable the decision maker to make an informed decision.

Following the Draft Supplemental EIS/PRMPA public comment period, concerns surrounding impacts to desert tortoise connectivity and other special status species led to the development of Alternative D (FSEIS Sec. 3.2.5) and the BLM Preferred Alternative (FSEIS Sec. 3.2.1). These additional alternatives consider modification of the tortoise habitat corridor and Project layout and identify management prescriptions for a portion of the nominated ACEC in accordance with 43 CFR Section 1610.7-2 - Designations of areas of critical environmental concern.

In response to the USFWS's comment memorandum and other concerns about potential impacts to desert tortoise habitat and jurisdictional waters, the Applicant developed iterations of a revised project layout which were reviewed by USFWS, BLM and USACE and refined based on agency feedback. Under the modified project proposal, which became the BLM Preferred Alternative, the connectivity corridor between the project footprint and the Lucy Gray Mountains would be approximately 1.39 miles wide at its narrowest point (USFWS 2012). After project construction, the linkage between habitat to the north and south would be approximately 3.65 miles long and between 1.39 and 2 miles wide (USFWS 2012). This remaining corridor would be wider and shorter than the corridors formed by Alternatives B, C, or D. In addition, Phase III of the project would be eliminated, avoiding impacts to a number of desert tortoises and preserving high-quality desert tortoise habitat to the south of the linkage.

In addition to decreasing the project size to widen the linkage corridor, the Applicant and BLM proposed mitigation actions identified in the USFWS's November 16, 2012 comment memorandum to help offset the impacts to the linkage. These actions include providing funding for: 1) a disease and genetic assessment of desert tortoises within the Large-Scale Translocation Site to determine whether the fence around the Large-Scale Translocation Site can be removed or realigned to improve connectivity; 2) if removal of the fence is determined to be infeasible due to the assessment of tortoise health, funding to fence Highway 93; 3) restoration of habitat near the site of the Silver State South Project; 4) law enforcement personnel to ensure that recreational users follow the proposed management actions within the new area of critical environmental concern; and 5) a U.S. G.S. study to monitor regional desert tortoise populations for changes in demographic and genetic stability and the viability of the linkage.

Movement studies are currently ongoing within and adjacent to the ROW Application Area with the goal of assessing desert tortoise movement through high-elevation passes in the Lucy Gray and McCullough mountains. These studies are also intended to further evaluate home range sizes within the immediate vicinity of the ROW application area prior to construction of the project. Following construction, ongoing monitoring of translocated desert tortoises and studies intended to assess the status of desert tortoises within the remaining corridor east of the project area and the Ivanpah Valley would occur (Ironwood Consulting 2012).

Additionally, the Applicant has agreed to fund a program, developed by the USGS and the BLM, to monitor regional desert tortoise populations for changes in demographic and genetic stability. The monitoring study will address genetic and demographic connectivity, changes in health status of populations in response to habitat changes, and the effects of climate and between-site habitat suitability on connectivity between populations. The monitoring strategy is designed to examine connectivity among pre-selected study sites in the Ivanpah Valley by monitoring genetic connectivity using a multifaceted approach.

The applicant-funded mitigation measures are presented in Appendix D (p. D-1); this biological funding has greatly increased confidence in desert tortoise disease status, population density and localized connectivity potential related to the proposed project area.

## Segmentation of NEPA Analysis

---

**Issue Number:** PP-NV-SilverState-13-08-27

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

One of the actions under consideration is the designation of an Area of Critical Environmental Concern (“ACEC”) to provide additional protection for the desert tortoise and its habitat in concert with approval of the project. The ACEC proposed in the FSEIS is substantially less than the one it states will be analyzed through amendments to the Las Vegas Resource Management Plan (40,180 acres). By approving this project, the BLM will tie its hands over creating a larger functional ACEC in the ongoing Las Vegas RMP. But the BLM should be addressing the conservation needs of the desert tortoise first. It should not be making piecemeal decisions but should either first complete the revision of the Las Vegas RMP to determine the conservation needs of desert tortoises and rare plant species and to determine appropriate locations for power plant development prior to approving this project or should include this project in its RMP revision process.

---

**Summary:**

BLM should not be making piecemeal decisions with respect to related projects outside the revision of the Las Vegas RMP.

---

**Response:**

The Basin and Range Watch submitted a nomination, referred to here as the Ivanpah Valley ACEC nomination, consisting of 89,599 acres of public land due to the area’s importance for several sensitive species (Silver State Solar South Final SEIS/PRMP Amendment, Appendix B, p. 14). The Ivanpah Valley ACEC nomination includes the acreage within the Piute El Dorado ACEC expansion scoping comments. The analysis of the Piute El Dorado ACEC expansion is part of the Las Vegas RMP revision process, and will not be impacted by the project footprint of

**Issue Number:** PP-NV-SilverState-13-08-32

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

In addition, the Las Vegas Field office has embarked on a revision of the Las Vegas RMP. Western Watersheds Project submitted scoping comments on February 28, 2010. In our comments we proposed that the BLM consider “an alternative that expands the boundaries of the Piute El Dorado Area of Critical Environmental Concern to match the proposed Desert Wildlife Management Area (“DWMA”) mapped in figure 9 of the 1994 Desert Tortoise Recovery Plan (see attached map). This will establish connectivity between the Primm and Ivanpah Valleys and ensure gene flow...” The proposed project and alternative configurations lie in this important area. Because the proposed project would constrain alternatives that have been proposed in the Las Vegas RMP revision planning process, the BLM must delay further processing of the project pending completion of the Las Vegas RMP revision.

the proposed Silver State Solar South project. Maps of the Piute El Dorado ACEC expansion area under consideration in the Las Vegas RMP revision will be publicly available upon release of the Draft RMP revision in 2014.

The BLM interdisciplinary team determined that a portion of the lands within the Ivanpah Valley ACEC nomination met the criteria for both relevance and importance, specifically for the Agassiz's desert tortoise and for white-margined penstemon (FSEIS/PRMPA, Appendix B, p. 15). As mentioned in the response to comments to the Draft SEIS/PRMP Amendment, "to include consideration of the ACEC nomination in the Draft Supplemental EIS/PRMPA required the exclusion of the ACEC from the Project footprint. The resulting ACEC does include a lower quantity of alluvial fan area, as noted. The recommendation to include an alternative that includes the ACEC but not the proposed Project would not be responsive to the ROW application. Such an effort would need to be pursued as a separate action unrelated to the proposed Project" (FSEIS/PRMPA, p. D-169).

The BLM-preferred alternative proposes designation of a 31,859-acre ACEC in order to provide for a desert tortoise connectivity corridor (FSEIS/PRMA, p. 2-3). A portion of the important white-margined penstemon habitat overlaps with the acreage for desert tortoise corridor within this proposed ACEC. The Congressional disposal area for the Southern Nevada Supplemental Airport contains 4,181 acres of the white-margined penstemon habitat around Roach Dry Lakebed. Populations within the disposal boundary were therefore not analyzed further for ACEC designation within this planning effort. The remaining penstemon habitat is located in a population around Jean Dry Lakebed and in Hidden Valley. The Ivanpah Valley ACEC nomination area does not include this entire population. BLM analyzed this population as a whole unit within the Jean Lake ACEC nomination (FSEIS/PRMPA, Appendix B, p. 15). The analysis of the Jean Lake ACEC nomination is part of the Las Vegas RMP revision process, and will not be impacted by the project footprint of the proposed Silver State Solar South project.

---

### ***FLPMA and Plan Conformance***

---

**Issue Number:** PP- NV-SilverState-13-06-18

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

The FSEIS and PRMPA for the Silver State South Solar Energy Project are Inconsistent and in Violation of the existing Las Vegas Resource Management Plan. The proposed project does not conform to the Las Vegas RMP regarding management of desert tortoise habitat. In that RMP, BLM committed to "[m]aintain functional corridors of habitat between areas of critical

environmental concern to increase the chance of long-term persistence of desert tortoise populations within the recovery unit" See Las Vegas Resource Management Plan, Objective AC-1.

However, the approval and construction of this proposed project will preclude BLM from achieving this objective. As documented in the FSEIS for the Project, the remaining habitat within the primary remaining habitat linkage in Ivanpah Valley would be adversely impacted by the proposed project and the BLM has stated that it does not know if the remaining, compromised habitat linkage would be sufficient to sustain a desert tortoise population necessary for genetic and

demographic connectivity among desert tortoise populations located north and south of the project site. BLM did not disclose this discrepancy with the Plan in the FSEIS for the Project.

---

**Issue Number:** PP- NV-SilverState-13-06-20

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

By processing the application for approval of the proposed project before completing the Las Vegas PRMPA, BLM will foreclose the option of the larger ACEC which would clearly have long-term conservation benefits for the desert tortoise and its habitat within the region, including lands proposed for development by the proponent. This foreclosure is a violation of BLM policy contained in Manual 6840 as well as NEPA. Furthermore, BLM has coupled the smaller ACEC with the alternative of approving the project. It should first address the conservation needs of the desert tortoise through an amendment to the Las Vegas Resource Management Plan and then turn its attention to determining what lands remain that could potentially provide for a solar energy project of utility scale.

---

**Issue Number:** PP- NV-SilverState-13-07-19

**Organization:** Sierra Club

**Protester:** Sarah Friedman

**Issue Excerpt Text:**

The FSEIS and PRMPA for the Project are Inconsistent and in Violation of the existing Las Vegas Resource Management Plan. The proposed project does not conform to the Las Vegas RMP regarding management of desert tortoise habitat. In that RMP, BLM

committed to "multi-functional corridors of habitat between areas of critical environmental concern to increase the chance of long-term persistence of desert tortoise populations within the recovery unit." However, the approval and construction of this proposed project will preclude BLM from achieving this objective. As documented in the FSEIS, the remaining habitat within the primary remaining habitat linkage in Ivanpah Valley would be adversely impacted by the proposed project and the BLM has stated that it does not know if the remaining, compromised habitat linkage would be sufficient to sustain a desert tortoise population necessary for genetic and demographic connectivity among desert tortoise populations located north and south of the project site. BLM did not disclose this discrepancy with the Plan in the FSEIS for the Project.

---

**Issue Number:** PP-NV-SilverState-13-08-25

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

As we discussed in our comments, the proposed project does not comport with the biological goals outlined in the 1998 Las Vegas RMP which includes "Maintain functional corridors of habitat between areas of critical environmental concern to increase the chance of long-term persistence of desert tortoise populations within the recovery unit." 1998 Las Vegas RMP Objective AC-1. BLM clearly does not know if the remaining, compromised habitat linkage would be sufficient to sustain a desert tortoise population necessary for genetic and demographic connectivity among desert tortoise populations located north and south of the Project and is proposing that a future study be done to determine this. These

conflicts with the objectives of the 1998 Las Vegas RMP are not disclosed in the FSEIS.

---

**Issue Number:** PP-NV-SilverState-13-08-31

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

The proposed project will compromise the biological goals outlined in the 1998 Las Vegas RMP which include “Maintain functional corridors of habitat between areas of critical environmental concern to increase the chance of long-term persistence of desert tortoise populations within the recovery unit.” The impacts of the proposed project and action alternatives on connectivity between desert subpopulations are reviewed in the USFWS letter dated November 16, 2012. We agree with the concerns expressed by USFWS in that letter. We hereby incorporate those comments, which are part of the record of the project, in their entirety by reference as part of this comment letter.

6 Letter from Ted Koch, State Supervisor, Nevada Fish and Wildlife Office, Reno re: Review of the Draft Supplemental Environmental Impact Statement for the Silver State South Solar Energy Project (First Solar LLC), Clark County, Nevada, dated November 16, 2012. File No. 84320-2011-CPA-0119. 85 pp.

---

**Issue Number:** PP-NV-SilverState-13-09-25

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

The FSEIS and PRMPA for the Silver State South Solar Energy Project are Inconsistent and in Violation of the existing Las Vegas Resource Management Plan. The Project does not conform to the Las Vegas Resource Management Plan regarding management of desert tortoise habitat. BLM has committed to:

“Maintain functional corridors of habitat between areas of critical environmental concern to increase the chance of long-term persistence of desert tortoise populations within the recovery unit.” See: Las Vegas Resource Management Plan, Objective AC-1.

However, the Project will preclude BLM from achieving this objective. As explained above and in the FSEIS for the Project, the remaining habitat within the primary remaining habitat linkage in Ivanpah Valley would be adversely impacted and the BLM has stated that it does not know if the remaining, compromised habitat linkage would be sufficient to sustain a desert tortoise population necessary for genetic and demographic connectivity among desert tortoise populations located north and south of the Project. BLM did not disclose this discrepancy with the Plan in the FSEIS for the Project.

---

**Summary:**

The Silver State project FEIS and proposed plan amendments are inconsistent with the 1998 Las Vegas Resource Management Plan, in violation of FLPMA. The project approval will preclude the BLM from achieving the biological goals of the LVRMP, and is a violation of BLM Manual 6840.

---

**Response:**

The Silver State project SEIS is designed to amend the 1998 Las Vegas RMP such that granting the proposed right-of-way application to implement the project will be compatible with the Las Vegas RMP, as amended. With regard to the desert tortoise conservation objectives of the existing Las Vegas RMP, the proposed amendment will not preclude achieving those objectives and is not in violation of Manual 6840 guidance. To the contrary, the FSEIS provides for conservation of desert tortoise by requiring the following, as directed at Manual 6840.1.E, Section 7(a)(1):

1. *“Developing and implementing activities that provide for the conservation and recovery of species...”* The SEIS details mitigation measures designed to protect biological resources, including the desert tortoise (see FSEIS Section 2.7, Table 2-3 and Table 2-4).
2. *“Undertaking actions designed to maintain the integrity of...federally designated critical habitat...”* No designated critical habitat is located in the proposed project area.
3. *“Ensuring that BLM actions are not likely to...destroy or adversely modify designated critical habitat...”*. As noted in the Silver State Solar South Biological Opinion (page 2):

“With one exception, the proposed actions would not occur within the boundaries of critical habitat of the desert tortoise or directly or indirectly affect the primary constituent elements of critical habitat. The one exception is that the Bureau and Silver State propose to use a portion of the Piute-Eldorado Critical Habitat Unit as an alternative site for translocation of desert tortoises, if needed”

Furthermore, connectivity of desert tortoise habitat between regional ACECs is maintained through the development of design features of the project and the proposed ACEC encompassing most of the Lucy Gray Mountains. The alternatives include designation of an ACEC that is designed to maintain connectivity between the Piute/Eldorado ACEC, Ivanpah Desert Wildlife Management Area in California, the South McCullough Wilderness and multiple use lands outside the ROW in Ivanpah Valley to the north.

“With the overall goal of maintaining connectivity, it is crucial to know if existing corridors actually provide the desired connectivity. Gene flow is the ultimate goal of habitat connectivity; however this is difficult to determine when studying desert tortoise due to their long generation time. With the use of modern technology (i.e., proximity detectors or GPS data loggers) specific data and inferences can be obtained to record animal to animal interaction. Ultimately, connectivity will be measured using the number and distribution of tortoise contacts through the corridor and can be compared to rates of tortoise contact and connectivity in open habitat.

“Silver State Solar Power South, LLC has contributed funding for these surveys. In total, these studies would serve as baseline for the future effectiveness monitoring program. Continuation of effectiveness monitoring program would be expected to meet the requirements of the USFWS translocation guidelines” (FSEIS Appendix G/Biological Resources Report 2012: p. 35-36).

The existing Las Vegas RMP, at AC-1, states “Manage a sufficient quality and quantity of desert tortoise habitat, which...will meet recovery plan criteria” (LVRMP 2-10). Given the current lack of information on what constitutes adequate desert tortoise connectivity, it is speculative to suggest that the proposed ACEC that will serve as habitat connectivity is insufficient.

---



## *Administrative Procedure Act*

---

**Issue Number:** PP--NV-SilverStated-13-01-41

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

### **Issue Excerpt Text:**

Ivanpah Airport.

One of the central aims of NEPA is to "inform the public that [the agency] has indeed considered environmental concerns in its decisionmaking process.,," The impacts analysis of the management prescriptions falls far short of what is required by NEPA and by BLM guidance as well.

There is no explanation or support for BLM's contradictory and changed findings

regarding the "importance value "for the proposed ACEC. In its initial evaluation of relevance and importance criteria, BLM determined that the proposed ACEC did not satisfy the "importance" requirement. Subsequently, BLM inexplicably reversed itself in the Draft SEIS for this Project and determined that the proposed ACEC does meet criteria for importance. It is a foundational principle of administrative decisionmaking that, when an agency changes its mind, it is required to explain itself so that the public, and if necessary, the courts, can understand the reason for the shift and evaluate it. BLM has made contradictory findings about whether the ACEC would properly satisfy the "importance" criteria required in 43 CFR 1610.7-2 without sufficient explanation or justification. This is the epitome of arbitrary and capricious decisionmaking.

---

### **Summary:**

BLM's revision of the Draft SEIS and contradictory findings regarding the proposed ACEC are arbitrary and capricious, and a violation of the principles of administrative decisionmaking.

---

### **Response:**

Appendix B of the FSEIS documents the relevance and importance criteria required under 43 CFR 1610.7-2 for considering designating an ACEC (Silver State South FSEIS, Appendix B). The ACEC was included because the "BLM interdisciplinary team determined that 40,180 of the 98,300 nominated acres in Nevada meet criteria for both relevance and importance" (Silver State South FSEIS, p. 2-12). Those determinations by the BLM interdisciplinary team were the only determinations regarding the ACEC that were made as part of this planning process. Discussions amongst BLM employees prior to the issuance of the Draft SEIS do not constitute an official determination by the BLM. The BLM cannot reverse a determination made prior to the Draft SEIS because none had been made.

---

## Areas of Critical Environmental Concern (ACEC)

---

**Issue Number:** PP-NV-SilverState-13-02-10

**Organization:** Desert Tortoise Council

**Protester:** Edward LaRue

### **Issue Excerpt Text:**

The Council believes that Table ES-2 on page ES-18 is remiss in indicating that the No Action Alternative would result in “No effects.” In fact, adopting the No Action Alternative would have the “Beneficial effect” of dismissing the threat of this solar Project to regional tortoise populations. As one of the environmental organizations promoting the new ACEC in Ivanpah Valley in 2011, irrespective of the proposed solar Project, we are dismayed to see that the FSEIS now identifies the establishment of a new ACEC as part of Alternative D. We believe that establishing the ACEC should be identified as part of the No Action Alternative. This same comment applies to Table ES-2 on page ES-24 for Special Management Areas.

---

**Issue Number:** PP-NV-SilverState-13-09-15

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

### **Issue Excerpt Text:**

BLM acted arbitrarily and capriciously by not analyzing a stand-alone alternative designating the project application area or the entire northern Ivanpah Valley region as a right of way exclusion area and designating the area as an Area of Critical Environmental Concern (“ACEC”) for conservation of the desert tortoise and its habitat. BLM acted improperly by considering and analyzing a smaller, less-

protective ACEC only in combination with an alternative allowing the project to be approved and constructed. In fact, such a larger ACEC nomination was submitted to BLM by the Desert Tortoise Council, Basin and Range Watch and the Desert Protective Council in 2011, specifically to address protection of the remaining desert tortoise populations and their habitats in the Ivanpah Valley. BLM is obligated to consider this nomination and address it as an amendment to the Las Vegas Resource Management Plan, and in a manner totally independent of additional solar energy project development.

---

**Issue Number:** PP-NV-SilverState-13-10-06

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

It is also unclear which ACEC design is actually part of the BLM’s Preferred Alternative (compare ACEC boundary in Figure 2-1 with Figure 2-2)—is this a mapping mistake? If so, which ACEC boundary is being proposed as the Preferred Alternative?

---

**Issue Number:** PP-NV-SilverState-13-10-08

**Organization:** Center for Biological Diversity

**Protester:** Lisa Belenky

### **Issue Excerpt Text:**

It is clear from comparing FSEIS Figures 2-1 and 2-2 with Appendix G, Section 6.5, Figure 6 that the proposed ACEC falls well

short of preserving a connectivity corridor between the northern end of the Lucy Gray Mountains and McCullough Pass to the north west of the proposed ACEC boundary. Without this connectivity, the tortoise corridors within the ROW Application area are essentially hollow, well-intentioned, but ineffective in providing for the maintaining connectivity needed for the tortoise and recovering viable long-term desert tortoise populations. The Ivanpah Valley and El Dorado Valley population would become increasingly isolated from one another, resulting in homogenization of the genetics and in-breeding decline. In addition, the ACEC boundary to the north east should be brought closer to the edge of Roach Lake to maintain important desert tortoise habitat there as well. In sum, to provide meaningful connectivity and robust protection for the desert tortoise population, the proposed ACEC boundaries should be expanded to include the known habitat in these additional areas to the northwest and northeast as shown on Figure 6 in Appendix G, Section 6.5, so that the maximum protection is provided.

---

**Issue Number:** PP-NV-SilverStated-13-01-16

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

BLM did not consider existing conditions and trends. Neither the ACEC Evaluation Report for the Silver State South FSEIS (the Silver State ACEC Evaluation Report) nor the FSEIS discussion of proposed management prescriptions addresses or discusses existing conditions or trends, such as the current degraded condition of the proposed ACEC area. Nor do they account for existing and proposed uses that may

conflict with the proposed management prescriptions. Because of its failure to consider these important factors, BLM has overestimated the viability of the proposed ACEC as a tortoise corridor and home range area.

---

**Issue Number:** PP-NV-SilverStated-13-01-18

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

Transmission lines provide extensive opportunities for ravens to perch in order to predate juvenile tortoises when they emerge from the ground, and are therefore incompatible with the protection and enhancement of tortoise habitat. As the ACEC is intended to provide "home range" for tortoises, locating it in the vicinity of multiple transmission lines, with more likely to be installed, is inconsistent with the resource priorities of the ACEC. Installation of new lines and maintenance of current ones also involves vehicle traffic on service roads, which could both fragment habitat and contribute to tortoise mortality.

---

**Issue Number:** PP-NV-SilverStated-13-01-19

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

Climate change models developed from the BLM's June 2013 Rapid Ecological Assessment for the Mojave Basin and Range show that areas with climatic conditions necessary for tortoises will contract sharply across their entire range. This contraction is

expected to essentially eliminate desert tortoises from most of the Ivanpah Valley (including the proposed ACEC) by 2060. In addition, the model predicts that a significant portion of the Ivanpah Desert Tortoise Critical Habitat Unit (CHU) is also projected to develop climatic conditions that would largely eliminate favorable tortoise habitat by 2060, including the area that connects Ivanpah Valley with the Ivanpah CHU. If neither the Ivanpah Valley nor the Ivanpah CHU will provide conditions within known tolerances for tortoises, a corridor connecting the two will be futile.

There is no evidence in the FSEIS that BLM considered whether designating this ACEC in a location projected to develop climatic conditions outside the known tolerances for tortoises within roughly a generation of tortoises could meaningfully contribute to genetic or demographic connectivity for the species. A better use of available conservation resources would focus on protecting areas where current populations of tortoises will continue to have suitable climatic conditions, and expanding protection into those areas where climatic conditions are expected to represent an expansion of the range for the tortoise.

---

**Issue Number:** PP-NV-SilverStated-13-01-21

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

The proposed ACEC location regularly experiences heavy off-highway vehicle (OHV) use, as indicated by the density of trails and high-speed race routes shown in Fig. 3 and in the FSEIS Fig. 4.11\_447. Over time, this has resulted in overwhelming habitat fragmentation and an extremely high

density of existing OHV routes and trails. In theory, the north-south corridor in the ACEC is to be protected so that tortoise may inhabit home ranges along the west side of the Lucy Gray mountains and head eastward at the north end of the mountains towards the McCullough Pass area. As illustrated in Fig. 3, however, not only is there an extremely dense set of OHV trails in the northern part of the ACEC, but as tortoises move out of the ACEC heading east, they encounter a flat valley managed as a special recreation area (the Jean Lake/Roach Lake Special Recreation Management Area) that is managed specifically for OHV use. This valley also features a dense network of trails.

---

**Issue Number:** PP-NV-SilverStated-13-01-22

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

Failure to give adequate consideration to current uses and trends is reflected in proposed management prescriptions that do not translate to protection of the ACEC as a desert tortoise corridor. The Evaluation Report acknowledges that "increased human use of the area for recreation and mining and increased demand for transmission utilities further threaten the function of the habitat corridor along the Lucy Gray mountains..." Yet, under the proposed management prescriptions listed in the FSEIS, use and maintenance of the extensive network of existing high-speed race routes and OHV trails within the ACEC will be allowed; the area will remain open to locatable and saleable mineral resource uses; it will be subject to location of new transmission lines in the established utility corridors; and depending on how BLM implements the

language of the management prescriptions, it may also be subject to construction of the flood control facilities and other ancillary facilities for the Ivanpah Airport. These existing and proposed uses illustrate the already intense development and recreation pressure on the area and provide further evidence that this ACEC must consider in the context of a broad regional planning process which the RMP revision process affords.

---

**Issue Number:** PP-NV-SilverStated-13-01-25

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

BLM has elected not to consider the entire proposed ACEC as described in the Basin & Range Watch nomination, but it has failed to account for the particular area it has chosen. BLM's only explanation is that the specific boundaries of the proposed ACEC are being analyzed in the Silver State South FSEIS because "approval of the ROW application could foreclose future options regarding the portion of the proposed ACEC that is within the Project footprint." This does not explain the ACEC boundaries: the project footprint is approximately 2500 acres; the proposed ACEC is over 31,000 acres.

---

**Issue Number:** PP-NV-SilverStated-13-01-27

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

Section 501 (a) of the Clark County Act defines a 155,000-acre Interstate Route 15

South Corridor (the 1-15 Corridor) that encompasses both most of the floor of the Ivanpah Valley and much of the proposed ACEC. The Act states that this entire corridor must be managed "in accordance with the Southern Nevada Public Land Management Act of 1988 (122 Stat. 2343) and this section. In turn, the purpose of the Southern Nevada Public Lands Management Act (SNPLMA) is "to provide for the orderly disposal of certain Federal lands in Clark County, Nevada ...." In particular, Section 4 of SNPLMA provides that: "Upon application by a unit of local government or regional governmental entity, the Secretary, in accordance with this Act and the Federal Land Policy Management Act of 1976, and other applicable provisions of law, shall issue right-of-way grants on Federal lands in Clark County, Nevada, for all reservoirs, canals, channels, ditches, pipes, pipelines, tunnels, and other facilities and systems needed for ... flood control management."

The proposed ACEC designation is inconsistent with, and BLM has failed entirely to acknowledge, this prior statutory management directive. While BLM can, of course, change its own management prescriptions, it cannot contravene the intent of Congress and the proposed ACEC does precisely that.

---

**Issue Number:** PP-NV-SilverStated-13-01-28

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

Section 501(a) of the Clark County Act and SNPLMA requires that BLM issue rights-of-way to Clark County for flood control management, and to issue other ROWs that may be required by other units of local or

regional government. Clark County has already applied for right-of-way grants in the ACEC for the Lucy Gray Modified Retention Facility and a temporary conveyor belt required for construction of the Modified Retention Facility. The proposed ACEC cannot be designated without contravening the statutory management directive in the Clark County Act to manage the lands "in accordance with SNPLMA."

---

**Issue Number:** PP-NV-SilverStated-13-01-31

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

In proposing to designate this ACEC, LVFO failed to recognize, much less reconcile, the many inconsistencies between the ACEC and Congressional, FAA, and local management plans in the massive area it proposes to designate as an ACEC as required by FLMPA Section 202. The area within the proposed ACEC has already received considerable land use attention by numerous federal agencies and Congress. Some examples illustrate the point that BLM has plainly ignored this history. Congress, the FAA and Clark County have each invested significant energy to set aside land and to plan for development of a new supplemental commercial airport. Congress directed the establishment of federal energy transportation corridors and BLM and the Department of Energy have identified a

multi-modal corridor. There already exist multiple transmission lines in this corridor, which has been designated so as to avoid the proliferation of transmission line corridors slicing through the Ivanpah Valley without regard to environmental concerns. All of these land use designations and uses - an airport, existing transmission lines, a transmission line corridor - fall within the proposed ACEC.

---

**Issue Number:** PP-NV-SilverStated-13-01-09

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

This large ACEC should be considered only in the regional planning process for the pending RMP Revision, and not in the more narrowly focused Silver State South SEIS. The ACEC is being designated to address a region-wide challenge (recovery and protection of the desert tortoise population), and will affect many stakeholders who did not participate in the Silver State South SEIS. In the FSEIS, BLM analyzed the impacts of the proposed solar project independently of its analysis of the impacts of the management prescriptions for the proposed ACEC. Therefore, in its decision document, BLM may approve the solar project but defer consideration of the ACEC to the RMP process without necessitating additional EPA documentation.

---

**Summary:**

The proposed ACEC does not provide adequate protection to the desert tortoise in terms of habitat connectivity and other needs; and protection from predation, human activities such as rights-of-way, and climate change. The ACEC should only be considered in the context of the regional planning process for the pending Las Vegas RMP revision.

---

***Response:***

As stated in the FSEIS response to comments:

“The BLM's responsibility for this EIS is to consider the right-of-way (ROW) application submitted by Silver State for the construction, operation, maintenance, and ultimate decommissioning of a solar photovoltaic project. The BLM's purpose and need for this project was reasonably focused on responding to Silver State's application in accordance with the Federal Land Policy and Management Act's (FLPMA's) multiple-use mandate and other Federal statutory and policy directives regarding the development of renewable energy on public lands. The action alternatives considered in this document satisfy the purpose and need in that they fulfill BLM's obligation to consider the ROW application, meet Federal renewable energy mandates and respond to impacts identified in the NEPA analysis.

“The BLM agrees that the Ivanpah Valley is critically important to desert tortoise connectivity. Since publication of the Draft Supplemental EIS/PRMPA, the BLM, in consultation with the USFWS, has worked with the Applicant to develop a new Project layout to minimize impacts by preserving a protected corridor of undisturbed desert tortoise habitat between the Project footprint and the Lucy Gray Mountains. This new layout, referred to as the BLM Preferred Alternative, would be 250 MWAC in capacity, with a reduction in size, construction duration, and required related infrastructure and allowing a connectivity corridor between the Project footprint and the Lucy Gray Mountains of approximately 1.2 miles wide at its narrowest point with most of the linkage having a width of 1.5 miles (Refer to Figure 2-1 in the Final Supplemental EIS/PRMPA). Although the USFWS estimates that linkages need to be at least 1.4 miles wide to accommodate a single desert tortoise home range, with multiple ranges for optimal functioning, current research does not indicate whether reductions in width or configuration would reduce or eliminate a tortoise' ability to maintain genetic linkages between populations” (FSEIS D-11, D-12).

In order to respond to the Silver State Solar South right-of-way application in a timely manner, the “BLM is analyzing...[an]...ACEC in this Supplemental EIS/PRMPA because approval of the ROW application could foreclose future options regarding the portion of...[an externally]... proposed ACEC that is within the Project footprint. [T]hat portion of the [externally] proposed ACEC not considered in this Supplemental EIS/PRMPA will be analyzed and considered in the LVFO RMP revision or the Desert Renewable Energy Conservation Plan currently in progress in California” (FSEIS, ES-2).

As discussed in the FSEIS, the proposed 31,859-acre ACEC meets the relevance and importance criteria for conservation of desert tortoise while providing for granting the ROW application. Other portions of the externally-proposed ACEC were found to not fully meet the relevance and importance criteria for desert tortoise and white-margined penstemon, which are the only ESA-listed species that could be significantly impacted by project implementation should the ROW application be granted.

See also FSEIS p. 1-7 and 2010 Final EIS section 1.4.2 (Relationship to State and Local Plans, Policies, and Programs). The Governor of Nevada conducted a consistency review of the proposed amendment to the Las Vegas Field Office RMP to identify any inconsistencies with state or local plans, policies or programs. No inconsistencies were identified by the Governor's office.

## *Special Status Species*

---

**Issue Number:** PP- NV-SilverState-13-06-21

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

The FSEIS and PRMPA for the Project are Inconsistent and in Violation of BLM Manual 1745 -Introduction, Transplant, Augmentation and Reestablishment of Fish, Wildlife and Plants. BLM Manual 1745 governs the introduction, transplant, augmentation and reestablishment of fish, wildlife and plants on public lands. It contains BLM policy, guidelines and procedures the BLM must follow concerning translocation of desert tortoises from the Project site to other public lands. These policies, guidelines and procedures require, inter alia, the preparation and approval of a tortoise relocation plan. We protest the protest BLM's preferred alternative and all of the project development alternatives because they all rely on translocation of desert tortoises onto public lands. In the absence of an approved translocation plan developed according to the requirements in BLM Manual 1745.

---

**Issue Number:** PP-NV-SilverState-13-08-34

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

Department of Interior policy as outlined in Secretarial Order 3283 clearly states, "The Department supports the permitting of environmentally responsible wind, solar, biomass, and geothermal operations and required electrical transmission facilities on the public lands." Secretarial Order 3283,

emphasis added. Yet, the BLM recognizes that the Silver State South would have unavoidable adverse environmental impacts including to desert tortoise. As discussed above and in the BLM's own FSEIS for the Project, the remaining habitat linkage in Ivanpah Valley would be adversely impacted and the BLM does not know if the remaining, compromised habitat linkage would be sufficient to sustain a genetic and demographic connectivity among desert tortoise populations located north and south of the Project. Because of the known threats this project poses it fails to meet DOI policy requiring environmentally responsible permitting of solar power plants.

---

**Issue Number:** PP-NV-SilverState-13-09-15

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

We protest BLM's preferred alternative and all of the project development alternatives because they rely on translocation of desert tortoises onto public lands in the absence of an approved translocation plan developed according to the requirements in BLM Manual 1745.

---

**Issue Number:** PP-NV-SilverState-13-11-19

**Organization:**

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

Both the FEIS and the Biological Opinion indicate that U.S. Geological Survey long-term efforts to monitor impact of the Silver State South Solar project on the viability of the genetic corridor east of the project (and



within the SRMA) could trigger consultation under the Endangered Species Act to identify additional remediation measures to address any decline in the viability of the corridor. According to the Biological Opinion (page 88): "Furthermore, we expect the monitoring to be conducted by the U.S. Geological Survey would allow detection of demographic or genetic instability and the long generation time and requirements for

re-initiation of formal consultation would allow for remediation of such effects." The FEIS and Biological Opinion fail to identify potential measures to remediate the effects of the decline in the corridor's viability, despite the significance of such a decline. The FEIS gives the reader a false impression that viable measures will be available even after the right-of-way is granted.

---

***Summary:***

The BLM has violated policies that protect desert tortoise habitat, migration, and translocation. These actions, coupled with increased impacts from OHV events, will set back efforts for recovery of the species.

---

***Response:***

As explained in the Department of Interior's Secretarial Order 3283, "The Department supports the permitting of environmentally responsible wind, solar, biomass, and geothermal operations and required electrical transmission facilities on the public lands. The Department recognizes that the development of renewable energy resources on the public lands will increase domestic energy production, provide alternatives to traditional energy resources, and enhance the energy security of the United States."

The BLM's Preferred Alternative in the FSEIS incorporates site layout modifications based on comments received during the Draft Supplemental EIS public comment period and through ongoing discussions with the U.S. Fish and Wildlife Service (USFWS) in order to reduce impacts to the desert tortoise. The BLM Preferred Alternative is smaller in area, has been designed to address concerns associated with desert tortoise connectivity corridor characteristics, and incorporates a 31,859-acre ACEC (Silver State Solar South Final SEIS/PRMP Amendment, p. 2-3). Table 2.4 of the FSEIS identifies mitigation measures proposed to address potential impacts to the desert tortoise.

The USFWS states in the conclusion to their Biological Opinion for the project, that the project "may impair connectivity to some degree in the linkage between the project site and the Lucy Gray Mountains, which is the most critical linkage remaining in the Ivanpah Valley. However, the average width of the remaining corridor can accommodate one lifetime desert tortoise utilization area throughout the length of the linkage. The Bureau and Silver State will fund and implement numerous measures to enhance connectivity and secure desert tortoise populations in the surrounding area, the U.S. Geological Survey will monitor demographic and genetic stability, and the Bureau will be required to re-initiate formal consultation if monitoring detects loss of stability. The long generation time of desert tortoises will allow the Bureau to take remedial actions if the U.S. Geological Survey detects degradation of demographic or genetic instability" (USFWS Biological Opinion for the Stateline Solar and Silver State Solar South Projects, September 30, 2013, pp. 85-86).

The USFWS estimates that linkages need to be at least 1.4 miles wide to accommodate a single desert tortoise home range, with multiple ranges for optimal functioning (Silver State Solar South Final SEIS/PRMP Amendment, p. D-12). “However, current research does not indicate whether reductions in the width or configuration of the corridor compared to existing conditions would reduce or eliminate its ability to maintain the genetic linkage between populations north and south of the Project area” (FSEIS, p. 4-34).

In regards to a desert tortoise translocation plan, the FSEIS Executive states that “All desert tortoises found during pre-construction surveys within the Project footprint would be translocated in accordance with a translocation plan to be approved by BLM and USFWS” (FSEIS p. ES-13). Subsequently, the desert tortoise translocation plan will be completed in consultation with the USFWS (USFWS Biological Opinion for the Stateline Solar and Silver State Solar South Projects, September 30, 2013, pp. 14-19).

The BLM Manual 1745 (1992) and BLM Nevada Instruction Memorandum 2008-044 provide 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 (for example, habitat management plans) are to be considered 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.

---

### **Endangered Species Act (ESA) Section 7 Interagency Cooperation**

---

**Issue Number:** PP-NV-SilverState-13-08-37

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

As a Federal agency, the BLM is bound by this policy independent of any review by the USFWS in a Biological Opinion. It is the BLM's job to seek to conserve listed species and to ensure that impacts are avoided and mitigated to the extent practicable. If the BLM had followed the recommendations of the 1994 Desert Tortoise Recovery Plan, the lands in question would be part of a designated ACEC. But it was BLM not USFWS that made that call. And now, the BLM seems to be attempting to move forward with a project that could severely

set back desert tortoise recovery efforts. This is a blatant violation of the BLM's obligations under the ESA.

---

**Issue Number:** PP-NV-SilverState-13-09-21

**Organization:** Defenders of Wildlife

**Protester:** Kim Delfino

**Issue Excerpt Text:**

Because the Bi-Op – which contradicts in significant ways the FWS's prior recommendations and findings concerning the project – was not issued until after the FSEIS was completed, the public has had no meaningful opportunity to address, in a NEPA comment process, the myriad serious

issues raised by the Bi-Op and its implications for the long-term survival and recovery of the tortoise. Accordingly, at bare minimum, before allowing this project to proceed, BLM should reopen public comment on the FSEIS so that a full airing of tortoise-related issues – especially relating to the viability of the corridor, the value of translocation, and cumulative impacts – may be accomplished in the manner that NEPA contemplates.

---

**Issue Number:** PP-NV-SilverState-13-11-19

**Organization:**

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

According to page 36 of the Biological Opinion for the Silver State South solar project, the U.S. Fish and Wildlife Service (USFWS) acknowledges that high-speed OHV events drawing hundreds of spectators have had an overall negative impact on the desert tortoise population in the action area, but admits these effects have not been fully evaluated. According to the Opinion, the OHV events "likely result in the death or injury of desert tortoises on occasion; we do not have definitive information on their effect on the regional density of desert tortoises but expect that they have led to an overall decrease in the number of individuals in this area." The Bureau of Land Management should consult with the Fish and Wildlife Service to evaluate the need for route closures within the SRMA, and evaluate these actions as part of the Silver State South FEIS.

---

***Summary:***

The BLM has not adequately incorporated the US Fish and Wildlife Service's biological opinion on the desert tortoise, and is moving forward with a project that will set back recovery efforts for this species.

---

***Response:***

In regards to efforts made by the BLM to seek to conserve the desert tortoise, a listed species, and to ensure that impacts are avoided and mitigated to the extent practicable, including the use of ACECs, please see the response to protest issue 10.1.

In regards to the Biological Opinion (BO), the BLM is not required to hold release of the FSEIS until after release of the BO. For authorizations requiring a BO, however, it is BLM policy to withhold issuance of a decision until the USFWS issues a BO, which the BLM can then consider and incorporate in its decision-making process. The BLM will include the BO in the Record of Decision for this Silver State Solar South Project and Las Vegas RMP Amendment.

Regarding the issue of high-speed OHV events that draw hundreds of spectators, the BLM requires a special recreation permit for each competitive organized OHV racing event within the Jean/Roach Lake SRMA, and completes a biological assessment and consults with the USFWS prior to each race event (Silver State Solar South FSEIS/PRMP Amendment, p. 3-36).

---

## Visual Resources Management (VRM)

---

**Issue Number:** PP-NV-SilverState-13-11-4

**Organization:**

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

The FEIS selection of a preferred alternative that changes the Visual Resources Management class as part of the proposed action is flawed because it fails to adequately consider the proposed action's impacts on significant populations of public lands users on the California side of the border. Figure 3.12-1 (page 3-41) of the FEIS contains maps of each action alternative's relationship to visual resource inventory classes in the project vicinity. In each map, public lands on the California side of the border do not have visual resource inventory classes identified. Separate maps produced by the Renewable Energy Action Team agencies in California for the Desert Renewable Energy Conservation Plan indicate that the lands are likely designated as Visual Resource Inventory Classes I and III, but this information is not presented in the FEIS.

---

**Issue Number:** PP-NV-SilverState-13-11-6

**Organization:**

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

Because the project will be visible to users of public lands in California (Figure 3.12-5, page 3-49), the BLM must fully evaluate impacts on visual resources there, and designate interim Visual Resource Management classes. Without consideration of these impacts, the decision to amend the

---

Las Vegas Resource Management Plan Visual Resource Management classes is based on incomplete information.

---

**Issue Number:** PP-NV-SilverState-13-11-7

**Organization:**

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

Sensitivity level rating analysis in Figure 3.12-3 (page 3-45) also does not include analysis of the proposed action's impacts on visual resources for users in the Mojave National Preserve and nearby wilderness areas located on the California side of the border.

---

**Issue Number:** PP-NV-SilverState-13-12-7

**Organization:** Basin and Range Watch

**Protester:** Kevin Emmerich

**Issue Excerpt Text:**

The FEIS fails to analyze the visual impacts the project would have to public lands on the California side of Ivanpah Valley. BLM failed to recognize Manual H-8410, Section V.D. which requires them to evaluate impacts to all BLM lands potentially impacted by the project. When a development spans over three square miles, VRM classifications can merge. Areas like the McCullough Mountains Wilderness area will have different BLM evaluated VRM classifications. Since the project will be visible from many of these views, it should be evaluated for its impacts to higher VRM classifications.

---

***Summary:***

The BLM has failed to adequately analyze visual impacts of the Project to public land users in California, the Mojave National Preserve and nearby wilderness areas.

---

***Response:***

Sections 3.12, 4.12, 4.19.3.12, and Appendix A of the FSEIS include information and analysis regarding visual resources. As explained in section 3.12, the region of influence for visual resources was “based on the viewshed analysis, which encompassed up to 15 miles (background distance zone) from the ROW application area” (FSEIS p. 3-38). This region of influence includes areas in California. Assessment of key observation points (KOP) is the methodology used to identify visual impacts to sensitive viewers in the area surrounding the proposed project, and KOPs are discussed in section 4.12.2.3 of the Silver State Solar South FSEIS/PRMP Amendment. Figures 4.12.1 through 4.12.4 display the KOP locations used for analysis, and as the maps show, several of the KOPs are located on the California side of Ivanpah Valley (FSEIS pp. 4-60 to 4-63). Appendix A-3 provides detailed information on each KOP, and demonstrates that the KOPs are located on both public and private lands. KOP 9 is located at the Mojave National Preserve Entrance (FSEIS Appendix A, p. 28). KOP 10 is taken from the Lucy Gray Mountains, which are located between the McCullough Mountains Wilderness and the Project. It is important to note that the Lucy Gray Mountains would largely screen views of the Project from the McCullough Wilderness area as illustrated on Figure 3.12-5 of the both the Draft and Final Supplemental EIS/PRMPA (FSEIS p. D-72).

The project must comply with the VRM Classification in which the project occurs. This compliance is determined based on the evaluation of contrast from KOPs. Effects are not assessed to adjacent VRM classes (FSEIS p. D-73).

---

## *Special Recreation Management Act (SRMA) Impacts Analysis*

---

**Issue Number:** PP-NV-SilverState-13-11-11

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

The cumulative impact of the Silver State South Solar project and new information regarding the importance of the desert habitat between Primm and the Lucy Gray Mountains to the desert tortoise may require more significant modifications to the SRMA and designated routes for the competitive OHV events that are not considered in the FEIS. Because these modifications would be prompted by removal of over 3.7 square miles of habitat for the Silver State South project, they are connected actions not fully evaluated in the FEIS.

---

**Issue Number:** PP-NV-SilverState-13-11-13

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

According to Section 3.11.1 of the FEIS (page 3-36), the SRMA is currently managed for intensive recreational activities in accordance with USFWS Biological Opinion 1-5-98-F-053. However, the FEIS also acknowledges that the issuance of the right-of-way and withdrawal of the project area from the SRMA will result in the relocation of OHV activities that could "increase adverse effects" on wildlife, including the desert tortoise, according to Table ES-2 (page ES-25). It is likely that these adverse effects will occur within the action area and SRMA. These adverse effects should be analyzed as a connected action, and appropriate amendments to the SRMA management prescriptions and routes should also be analyzed, particularly in light of new information regarding the

significance of the habitat connectivity corridor.

---

**Issue Number:** PP-NV-SilverState-13-11-21

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

The extension of the maintenance road so far east of the preferred alternative boundary in Figure 4.1104 is probably an artifact of previous project layouts that accommodated much larger solar arrays that extended further east. The preferred alternative was specifically reduced to avoid impacts on the habitat corridor, and the maintenance road should also be reduced in length consistent with the revised configuration. Consequently, the EIS should evaluate whether a new OHV route can be built to accommodate the competitive event.

---

**Issue Number:** PP-NV-SilverState-13-11-22

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

The BLM responds to a comment regarding the impact of the project on competitive event routes by indicating that the applicant will permit events to take place through the project area, referring the commenter to Figure 4.11-1 (Appendix 0, page 0-166). However, Figure 4.11.1 is a map of Alternative B, not the preferred alternative. Alternative B does include a cutout through the project area, but this cutout is not a part of the preferred alternative depicted in Chapter 2, as noted above.

---

**Issue Number:** PP-NV-SilverState-13-11-9

**Protester:** Shaun Gonzales

**Issue Excerpt Text:**

The amendment to the Jean Lake/Roach Lake Special Recreation Management Area will impact a key competitive OHV event route, and does not adequately identify

alternative routes in the FEIS. The FEIS should either identify alternative routes and complete Section 7 consultations necessary to evaluate the new routes' impacts, or specifically identify which routes and OHV events will be terminated as a result of the proposed action.

---

**Summary:**

The FSEIS does not adequately analyze impacts of the SRMA designation on alternate routes; the desert tortoise habitat corridor; and adverse effects to wildlife.

---

**Response:**

The Jean/Roach Lake SRMA was designated “for intensive recreation opportunities, including competitive OHV races (in accordance with the USFWS Biological Opinion 1-5-98-F- 053) and other recreational events, as well as dispersed recreational use and commercial activities” (BLM 1998). “Off road and other recreational activities would continue to be allowed, but their existing routes would be disrupted to varying degrees due to loss of access to the Project area. However, organized OHV races and dispersed OHV users would be allowed to use the access road through the Project site, minimizing disruption” (FSEIS page 4-55).

The FSEIS states that “removal of the SRMA designation within the Project footprint would change the policies under which the area is managed as it would no longer be managed as part of the SRMA. However, the Applicant has committed to allowing public access to the Lucy Gray Mountains (see Figure 4.11-1) so recreation opportunities could continue in other parts of the SRMA. This access would also be available to organized competitive OHV races, however these events require special recreation permits and separate NEPA documentation before the races are approved” (FSEIS, Appendix D, page 166). Total miles of affected competitive race routes is 2.0, as shown in Table 4.11-4 (FSEIS, page 4-52). Any potential effects of alternate recreation routes proposed for organized events would be conducted at the implementation level once event permits are applied for.

---

## Wildlife Impacts Analysis

---

**Issue Number:** PP- NV-SilverState-13-06-14

**Organization:** Natural Resources Defense Council

**Protester:** Helen O'Shea

**Issue Excerpt Text:**

Absence of a Biological Opinion. The FSEIS does not include a biological opinion for the project. We consider a biological opinion from the FSEIS 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 traditionally rely on biological opinions in our review and assessment of the adequacy of the analysis in a FEIS. The Service's biological opinion is especially relevant for this project because of its potential impacts combined with other existing, proposed and foreseeable projects on the threatened desert tortoise. Furthermore, we 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- NV-SilverState-13-07-14

**Organization:** Sierra Club

**Protester:** Sarah Friedman

**Issue Excerpt Text:**

The FSEIS fails to identify potential measures to remediate the deleterious effects of the corridor, if one were identified. The FSEIS gives the reader a false impression that there are actually viable remedies in this instance. The BLM should identify potential mitigation actions that would be required if monitoring indicates that the viability of the

connectivity corridor is jeopardized by the Project.

---

**Issue Number:** PP- NV-SilverState-13-07-18

**Organization:** Sierra Club

**Protester:** Sarah Friedman

**Issue Excerpt Text:**

BLM has inappropriately concluded that the effects of proposed project, including adverse impacts to desert tortoise connectivity, would be temporary. BLM failed to analyze and disclose the fact that the long-term productivity of the public lands would be permanently impaired.

---

**Issue Number:** PP-NV-SilverState-13-08-9

**Organization:** Western Watersheds Project

**Protester:** Michael Connor

**Issue Excerpt Text:**

In its November 16, 2012 letter, the USFWS recommended developing an alternative preserving a habitat corridor wide enough to support multiple desert tortoise lifetime utilization areas. The FSEIS has not even considered a configuration that would leave a habitat corridor with a width sufficient for the diameter of even two desert tortoise lifetime utilization areas.

---

**Issue Number:** PP-NV-SilverStated-13-01-37

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

BLM's analysis of the effects of the management prescriptions on the desert



tortoise – the very reason for the proposed designation of the ACEC – provides little useful information. It lists only 2 of the 19 management prescriptions as having impacts on tortoise that merit discussion. The first is the limitation of OHV use to existing routes and trails, which would "reduce the risk of collisions with desert tortoises and other wildlife." This limitation is curious indeed, since BLM states elsewhere that it does not anticipate a change in the intensity of OHV use in the ACEC. The analysis provides no explanation or documentation for this counterintuitive (or perhaps contradictory) conclusion, and in particular, fails to explain why continuing to allow OHV use on all existing trails and routes at the current level of intensity would "reduce the risk" of collisions with tortoises.

---

**Issue Number:** PP-NV-SilverStated-13-01-38

**Organization:** Kaplan Kirsch & Rockwell LLP

**Protester:** Peter Kirsch

**Issue Excerpt Text:**

---

**Summary:**

The BLM's analysis of the Project in the FEIS fails to provide a complete or accurate picture of the effects on wildlife.

---

**Response:**

*Absence of a Biological Opinion* - The Biological Opinion is the formal opinion of the FWS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat, and is not subject to the NEPA disclosure requirement. The FWS has issued a Biological Opinion which concludes that implementation of the plan would not likely jeopardize the continued existence of any listed species or adversely modify critical habitat. A copy of the Biological Opinion will be included in the ROD and is posted on the internet at:

[http://www.blm.gov/nv/st/en/fo/lvfo/blm\\_programs/energy/Silver\\_State\\_Solar\\_South.html](http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/Silver_State_Solar_South.html).

*Viability of the connectivity corridor* - BLM has proposed compensatory mitigation in the preferred alternative to compensate for the loss of desert tortoise habitat. "To compensate for

The second of the two management prescriptions expected to have an impact on desert tortoises is the avoidance of linear rights-of-way and exclusion of rights-of-way for sites greater than five acres. The extent of BLM's analysis of these limitations, which lie at the core of the proposed ACEC's purpose, is that they "would reduce the potential for future habitat fragmentation for all wildlife". BLM offers no discussion, analysis, or supporting documentation for its conclusion, nor does it acknowledge the extensive existing fragmentation in the proposed ACEC. Given the countervailing requirements for maintenance of existing transmission corridors, new transmission lines in the corridors, potential new roads to access mineral development, and the linear and large-site-type rights-of-way needed for the Ivanpah Airport, the BLM's conclusion is simply not plausible. Finally, BLM has not considered the impacts on surrounding areas if rights-of-way are disfavored or prohibited in the proposed ACEC and shifted to areas outside the ACEC.

desert tortoise habitat loss, the Applicant shall pay remuneration fees to the BLM to partially offset the potential adverse effects of the Project” (FSEIS, p. 2-38). The BLM will also work with the USFWS, the Desert Tortoise Recovery Office and various Nevada state agencies to determine if the removal of fencing in the Ivanpah Valley is practical to help alleviate corridor movement chokepoints for the Desert Tortoise (FSEIS, p. 2-38 to 39). BLM will require that the applicant conduct monitoring of the desert tortoise “analyzing demographic and genetic connectivity home range and distribution of tortoises in the area surrounding the Project area encompassing a 13,000-acre research area in the Ivanpah Valley in both California and Nevada” (SEIS, p. 2-38). That monitoring will help to inform the compensatory mitigation that is required of the applicant. That mitigation will “provide a benefit to the desert tortoise over time” and may include “habitat acquisition, population or habitat enhancement, increasing knowledge of the species’ biological requirements, reducing loss of individual animals, documenting the species’ current status and trend, and preserving distinct population attributes” (FSEIS, p. 2-38 to 2-39). The BLM has thus set forth a set of monitoring and mitigation requirements that are adaptable to the changing circumstances of the tortoise, and that can adjust to impacts that are currently unanticipated.

*Impairment of the long-term productivity of the public lands* - The BLM has disclosed that under the preferred alternative there would be permanent disturbance of 374 acres resulting from the construction of drainage structures located along the eastern edge of the solar arrays (FSEIS, p. 2-3). The BLM has noted the residual impacts of these drainage structures in the Affected Environment Chapter. “Residual effects on water resources or hydrology resulting from implementation of the proposed Project or alternatives include a reduction in groundwater availability for other uses in the Las Vegas Valley Water District; localized increases to sedimentation and scour in site drainages; a higher volume of concentrated storm water due to drainage structures; a potentially higher flood hazard, particularly due to the risk of detention basin collapse; and potentially altered drainage patterns due to the prevention of uninhibited channel migration within the site” (FSEIS, p. 4-23).

*Insufficient width of desert tortoise habitat corridor*- (Please refer to previous response under section 6.4- Impacts Analysis).

*Tortoise impacts from continued OHV activity* - Limiting OHV users to existing trails and routes will reduce the extent of OHV impacts in a given area. If the ACEC were alternatively open to OHV users, then OHV users would be free to ride across every square inch of the ACEC. By limiting OHV use in the ACEC to existing trails and routes BLM is concentrating that same intensity of OHV use in a much smaller area, reducing the footprint of OHV impacts and thereby lessening the chance that OHV users disturb desert tortoise and limiting ongoing habitat disturbance to areas that are already disturbed.

*Effects of linear rights of way* - BLM does not need to provide analysis to conclude that avoidance of linear rights-of-way “would reduce the potential for future habitat fragmentation for all wildlife”. Linear rights-of-way disturb habitat. Avoiding them would ipso-facto “reduce the potential for habitat fragmentation” within the ACEC. Consideration of how avoidance of linear rights-of-way within the ACEC might impact areas outside of the ACEC is beyond the scope of this analysis as BLM could only speculate as to what impact future linear rights-of-way projects might have in the surrounding area, and BLM is “not required to engage in speculation” as part of the NEPA analysis process (NEPA’s Forty Most Asked Questions, Question 18. CEQ).