



***Bureau of Land Management
Director's Protest Resolution Report***

**Final Programmatic Environmental
Impact Statement and Proposed
Resource Management Plan
Amendments for Utility-Scale
Solar Energy Development**

December 11, 2024

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Acronyms

<i>Term</i>	<i>Definition</i>
ACEC	Area of Critical Environmental Concern
AMI	area median income
AML	appropriate management level
AMS	Analysis of the Management Situation
APA	Administrative Procedure Act
ARMPA	Approved Resource Management Plan Amendment
AUM	Animal Unit Month
AZ	Arizona
AZGFD	Arizona Game and Fish Department
B&RW	Basin and Range Watch
BBS	Breeding Bird Survey
BCA	Backcountry Conservation Area
BLM	Bureau of Land Management
BLM Handbook H-1601	BLM Land Use Planning Handbook
BRW	Basin and Range Watch
CA	California
CAS	Comprehensive Administrative Strategy
CBD	Center for Biological Diversity
CEQ	Council for Environmental Quality
CFR	Code of Federal Regulations
CMP	comprehensive management plan
CO	Colorado
CPANP	Coalition to Protect America's National Parks
CPSV	Citizens to Protect Smith Valley
CRA	Congressional Review Act
CTGR	Confederated Tribes of the Goshute Reservation
CWA	Clean Water Act
dB	decibels
DOE	U.S. Department of Energy
DOJ	U.S. Department of Justice
DPEIS	Draft Programmatic Environmental Impact Statement
DRECP	Desert Renewable Energy Conservation Plan
DRMPA	Draft Proposed Resource Management Plan Amendments
DTC	Desert Tortoise Council
EA	Environmental Assessment
EDFR	EDF Renewables Development, Inc.
EIS	Environmental Impact Statement
EJ	Environmental justice
EO	Executive Order
ESA	Endangered Species Act
ESD	ecological site description
FEIS	Final Environmental Impact Report
FLPMA	Federal Land Policy and Management Act
FOI	Friends of the Inyo
FPEIS	Final Programmatic Environmental Impact Statement
FR	<i>Federal Register</i>
FWS	U.S. Fish and Wildlife Service
GHMA	general habitat management areas

GIS	Geographic Information System
HA	Herd Area
HMA	Herd Management Area
HQ	Headquarters
HUD	U.S. Department of Housing and Urban Development
IAM	Inventory, Assessment, and Monitoring
IAU	Inventory Analysis Units
IBA	Important Bird Area
IBLA	Interior Board of Land Appeals
IDFG	Idaho Fish and Game
IPaC	Information for Planning and Consultation
IPB	Indian Peaks Band of Paiutes
kV	kilovolt
LUP	land use plan
LWC	Land with Wilderness Characteristics
MBCA	Migratory Bird Conservation Act
MFP	Management Framework Plan
MFWP	Montana Department of Fish, Wildlife and Parks
MLRS	Mineral & Land Records System
MOU	Memorandum of Understanding
MTFWP	Montana Department of Fish, Wildlife and Parks
MW	megawatt
NAS	National Audubon Society
NCA	National Conservation Area
NCTWS	North Carolina Chapter of The Wildlife Society
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NHT	National Historic Trail
NLCS	National Lands Conservation System
NM	New Mexico
NMFS	National Marine Fisheries Service
NMW	New Mexico Wild
NOI	Notice of Intent
NPCA	National Parks Conservation Association
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NREL	National Renewable Energy Laboratory
NRHP	National Register of Historic Places
NRS	Nevada Revised Statute
NSHT	National Scenic and Historic Trail
NT	National Trails
NTS	National Trail System
NTSA	National Trails System Act
NV	Nevada
NWF	National Wildlife Federation
NWR	National Wildlife Refuge
ONDA	Oregon Natural Desert Association
OSNHT	Old Spanish National Historic Trail
OSTA	Old Spanish Trail Association
PDF	project design features
PEA	Programmatic Environmental Assessment

PEER	Public Employees for Environmental Responsibility
PEIS	Programmatic Environmental Impact Statement
PHMA	priority habitat management areas
POD	Plan of Development
PRMPAs	Proposed Resource Management Plan Amendments
PV	photovoltaic
R&I	relevant and important
R&PP	Recreation & Public Purposes Act
RCMAP	Rangeland Condition Monitoring Assessment and Projection
RCRA	Resource Conservation and Recovery Act
RFDS	Reasonably Foreseeable Development Scenario
RLUIPA	Religious Land Use and Institutionalized Persons Act
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROD	Record of Decision
ROW	right of way
SEIS	Supplemental Environmental Impact Statement
SEZ	solar energy zone
SFTS	State and Transition Models/Disturbance Response
SFTS	Smart from the Start Alternative
SHPO	State Historic Preservation Office
SNDO	Southern Nevada District Office
SO	Secretarial Order
SOI	Secretary of the Interior
SRMA	Special Recreation Management Area
SRMP	State's Resource Management Plan
SSS	Special Status Species
SUWA	Southern Utah Wilderness Alliance
SVRA	sensitive visual resource area
TCP	traditional cultural property
TDI	Terrestrial Development Index
THPO	Tribal Historical Preservation Officer
TNC	The Nature Conservancy
TWS	The Wilderness Society
U.S.C.	United States Code
UDWR	Utah Division of Wildlife Resources
UFBF	Utah Farm Bureau Federation
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
USS	Utility-Scale Solar Energy Development
USS FPEIS/PRMPAs	Final Programmatic Environmental Impact Statement and Proposed Resource Management Plan Amendments for Utility-Scale Solar Energy Development
UT	Utah
UUD	Unnecessary or Undue Degradation
VRM	Visual Resource Management
WGFD	Wyoming Game & Fish Department
WH&B	wild horses and burros
WLD	Wildlands Defense
WLP	Western Lands Project

WSP
WSR
WWP

2012 Western Solar Plan
wild and scenic river
Western Watersheds Project

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Introduction

The Bureau of Land Management (BLM) released the *Final Programmatic Environmental Impact Statement and Proposed Resource Management Plan Amendments for Utility-Scale Solar Energy Development* (USS FPEIS/PRMPAs) on August 30, 2024. The BLM received 163 unique protest letter submissions during the subsequent 30-day protest period, which ended on September 30, 2024. The USS FPEIS/PRMPAs would amend BLM land use plans in 11 states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. One hundred and three letters were complete and timely but were dismissed because the protesting parties who submitted the letters did not have standing to protest. The remaining 60 letters were complete and timely and were from parties who had standing to protest. Of those, 35 letters contained valid protest issues. One protesting party withdrew their letter from consideration under the protest resolution process. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the USS FPEIS/Resource Management Plan Amendment (RMPAs) were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Consistent with the *BLM Delegation of Authority Manual* (MS-1203 Delegation of Authority), resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protests.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-01	Jeremiah Hatcher	--	Dismissed: No Standing
PP-WO-USS-EIS-24-02	Tim Clute	--	Dismissed: No Standing
PP-WO-USS-EIS-24-03	Gerald Morris	--	Dismissed: No Standing
PP-WO-USS-EIS-24-04	Dan Tepper	--	Dismissed: No Standing
PP-WO-USS-EIS-24-05	Holly Merritt	--	Dismissed: No Standing
PP-WO-USS-EIS-24-06	Jackie Freeman	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-07	Eric Merritt	--	Dismissed: No Standing
PP-WO-USS-EIS-24-08	Carrie Miller	Rocky Mountain Back Country Horseman	Dismissed: No Standing
PP-WO-USS-EIS-24-09	Michael Hastie	--	Dismissed: No Standing
PP-WO-USS-EIS-24-10	Billy Berg	--	Dismissed: No Standing
PP-WO-USS-EIS-24-11	Damon Snow	--	Dismissed: No Standing
PP-WO-USS-EIS-24-12	Ben Longwell	--	Dismissed: No Standing
PP-WO-USS-EIS-24-13	Rick Peterson	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-14	Ted Thompson	--	Dismissed: No Standing
PP-WO-USS-EIS-24-15	Joseph Wright	--	Dismissed: No Standing
PP-WO-USS-EIS-24-16	Clint Willis	--	Dismissed: No Standing
PP-WO-USS-EIS-24-17	Robert Moody	--	Dismissed: No Standing
PP-WO-USS-EIS-24-18	Cindy Higbee	--	Dismissed: No Standing
PP-WO-USS-EIS-24-19	Taylor Nash	--	Dismissed: No Standing
PP-WO-USS-EIS-24-20	John Allred	--	Dismissed: No Standing
PP-WO-USS-EIS-24-21	Mark Stephens	--	Dismissed: No Standing
PP-WO-USS-EIS-24-22	Axel Dexter	--	Dismissed: No Standing
PP-WO-USS-EIS-24-23	Josie Merritt	--	Dismissed: No Standing

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-24	Joseph Smiley	--	Dismissed: No Standing
PP-WO-USS-EIS-24-25	Jackie Lyons	--	Dismissed: No Standing
PP-WO-USS-EIS-24-26	Beverly Ross	--	Dismissed: No Standing
PP-WO-USS-EIS-24-27	Jack Andrews	--	Dismissed: No Standing
PP-WO-USS-EIS-24-28	Wes Coons	--	Dismissed: No Standing
PP-WO-USS-EIS-24-29	Richard Gailey	--	Dismissed: No Standing
PP-WO-USS-EIS-24-30	Danny Couste	--	Dismissed: No Standing
PP-WO-USS-EIS-24-31	Joshua La Plante	--	Dismissed: No Standing
PP-WO-USS-EIS-24-32	Gerry Anderson	--	Dismissed: No Standing
PP-WO-USS-EIS-24-33	Myra Anders	--	Dismissed: No Standing
PP-WO-USS-EIS-24-34	Jake Tessmann	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-35	Randy Head	--	Dismissed: No Standing
PP-WO-USS-EIS-24-36	Dave Shafer	--	Dismissed: No Standing
PP-WO-USS-EIS-24-37	J Scott Holstine	--	Dismissed: No Standing
PP-WO-USS-EIS-24-38	Glenn France	--	Dismissed: No Standing
PP-WO-USS-EIS-24-39	Rick Habein	--	Dismissed: No Standing
PP-WO-USS-EIS-24-40	Roslyn Swanson	--	Dismissed: No Standing
PP-WO-USS-EIS-24-41	Dr. Trent Saxton	--	Dismissed: No Standing
PP-WO-USS-EIS-24-42	Darrel Skubinna	--	Dismissed: No Standing
PP-WO-USS-EIS-24-43	Kenny Calder	--	Dismissed: No Standing
PP-WO-USS-EIS-24-44	Linda Nichelmann	--	Dismissed: No Standing
PP-WO-USS-EIS-24-45	Josey Spencer	--	Dismissed: No Standing
PP-WO-USS-EIS-24-46	Daniel Berg	--	Dismissed: No Standing
PP-WO-USS-EIS-24-47	Jay Long	--	Dismissed: No Standing

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-48	Donald Ortmann	--	Dismissed: No Standing
PP-WO-USS-EIS-24-49	Eric Pomeroy	--	Dismissed: No Standing
PP-WO-USS-EIS-24-50	Brandi Griffith	--	Dismissed: No Standing
PP-WO-USS-EIS-24-51	Jason Paris	--	Dismissed: No Standing
PP-WO-USS-EIS-24-52	Katie Goidich	--	Dismissed: No Standing
PP-WO-USS-EIS-24-53	Lou Carnazzo	--	Dismissed: No Standing
PP-WO-USS-EIS-24-54	Isabella James	--	Dismissed: No Standing
PP-WO-USS-EIS-24-55	Nancy Helming	--	Dismissed: No Standing
PP-WO-USS-EIS-24-56	James Murph	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-57	Brenda Franks	--	Dismissed: No Standing
PP-WO-USS-EIS-24-58	Bruce Livengood	--	Dismissed: No Standing
PP-WO-USS-EIS-24-59	Pamela Rehurek	--	Dismissed: No Standing
PP-WO-USS-EIS-24-60	Penny Angel	--	Dismissed: No Standing
PP-WO-USS-EIS-24-61	Emma Potter	--	Dismissed: No Standing
PP-WO-USS-EIS-24-62	Jared West	--	Dismissed: No Standing
PP-WO-USS-EIS-24-63	Karen Cyjetkovich	--	Dismissed: No Standing
PP-WO-USS-EIS-24-64	Claire Cutler	Continental Divide Trail Coalition	Dismissed: Comments Only
	L Fisher		
PP-WO-USS-EIS-24-65	Roxane Perruso	The Overland Trail Cattle Company	Dismissed: Comments Only
PP-WO-USS-EIS-24-66	Gary Meyers	--	Dismissed: No Standing
PP-WO-USS-EIS-24-67	Shelby Edwards	--	Dismissed: No Standing
PP-WO-USS-EIS-24-68	Rita Heidkamp	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-69	Joyce Barishman	--	Dismissed: No Standing
PP-WO-USS-EIS-24-70	Karen Schrein	--	Dismissed: No Standing
PP-WO-USS-EIS-24-71	Bradley Johnson	--	Dismissed: No Standing

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-72	Parker D Manning	--	Dismissed: No Standing
PP-WO-USS-EIS-24-73	Judith Harker	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-74	Scott Sady	--	Dismissed: No Standing
PP-WO-USS-EIS-24-75	Elizabeth Woolsey	Stargazer Inn & Bristlecone General Store	Dismissed: No Standing
PP-WO-USS-EIS-24-76	Chelsea Mascari	--	Dismissed: No Standing
PP-WO-USS-EIS-24-77	Rebecca Johnson	Friends of Nevada Wilderness	Dismissed: No Standing
PP-WO-USS-EIS-24-78	Michael Fender	Citizens Against Nye Co Solar Farms Project	Dismissed: No Standing
PP-WO-USS-EIS-24-79	Natalie Wolff	--	Dismissed: No Standing
PP-WO-USS-EIS-24-80	Dwayne Jechart	Nevada Old Spanish Trail Association	Dismissed: No Standing
PP-WO-USS-EIS-24-81	Jeremy Nelson	--	Dismissed: No Standing
PP-WO-USS-EIS-24-82	Cora Johnson	Friends of Nevada Wilderness	Dismissed: Comments Only
PP-WO-USS-EIS-24-83	Cheri Boucher	Arizona Game and Fish Department	Denied
	Clayton Crowder	Arizona Game and Fish Department	
PP-WO-USS-EIS-24-84	Anthony Pedroni	NextEra Energy Resources, LLC	Dismissed: Comments Only
PP-WO-USS-EIS-24-85	Terry Camp	Utah Farm Bureau Federation	Denied
	ValJay Rigby		
PP-WO-USS-EIS-24-86	Brenda Dymond	--	Dismissed: No Standing
PP-WO-USS-EIS-24-87	Tamra Borchardt-Slayton	Indian Peaks Band of Paiutes	Denied
PP-WO-USS-EIS-24-88	Brigantia Nivatugena	--	Dismissed: No Standing
PP-WO-USS-EIS-24-89	P Swain	--	Dismissed: Comments Only

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-90	Chandra Rosenthal	Public Employees for Environmental Responsibility (PEER)	Denied
	John Hiscock		
	Laura Dumais		
	Kevin Emmerich	Basin and Range Watch	
	Laura Welp	Western Watersheds Project	
	Laura Cunningham		
	Philip Francis	Coalition to Protect America's National Parks	
	Mason Voehl	Amargosa Conservancy	
PP-WO-USS-EIS-24-91	Rose Strickland	--	Denied
PP-WO-USS-EIS-24-92	Matthew Harris	--	Dismissed: No Standing
PP-WO-USS-EIS-24-93	Cynthia Ruszczyk	--	Dismissed: No Standing
PP-WO-USS-EIS-24-94	Leslie Sonne	Citizens to Protect Smith Valley (Nevada)	Denied
PP-WO-USS-EIS-24-95	Sindy Smith	State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development	Denied
	Redge Johnson	Utah Public Lands Policy Coordinating Office	
	Dusty Monks	Utah Office of Energy Development	
PP-WO-USS-EIS-24-96	Abby Johnson	Great Basin Water Network	Dismissed: No Standing
	Kyle Roerink		
PP-WO-USS-EIS-24-97	Peter Sonne	--	Denied
PP-WO-USS-EIS-24-98	Darcy Shepard	--	Dismissed: No Standing
PP-WO-USS-EIS-24-99	Dan Hendrick	Clearway Energy Group, LLC	Denied
PP-WO-USS-EIS-24-100	Heather Gang	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-101	Christopher and Crystal DiPietro	--	Dismissed: No Standing
PP-WO-USS-EIS-24-102	Laura Cunningham	Western Watersheds Project	Denied
	Kevin Emmerich	Basin and Range Watch	
	Katie Fite	Wildlands Defense	
	Chandra Rosenthal	PEER	
	Anne Braunde	Albany County Conservancy	
PP-WO-USS-EIS-24-103	Rene Mendoza	--	Dismissed: No Standing

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-104	Maren Taylor	Solar Energy Industries Association	Dismissed: Comments Only
	Ben Norris		
	Sean Gallagher		
PP-WO-USS-EIS-24-105	Joseph Noll	--	Dismissed: No Standing
PP-WO-USS-EIS-24-106	Evan Sutton	--	Dismissed: No Standing
PP-WO-USS-EIS-24-107	Sue Williams	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-108	Mary Greene	American Clean Power	Dismissed: Comments Only
	Tom Vinson		
	Quintana Hayden		
PP-WO-USS-EIS-24-109	Amos Murphy	Confederated Tribes of the Goshute Reservation	Denied
PP-WO-USS-EIS-24-110	Gregg DeBie	The Wilderness Society	Denied
	Joshua Axelrod	Natural Resources Defense Council	
	Matt Kirby	National Parks Conservation Association	
PP-WO-USS-EIS-24-111	Susan Hatch	--	Dismissed: No Standing
PP-WO-USS-EIS-24-112	Jonathan Weissman	--	Dismissed: No Standing
PP-WO-USS-EIS-24-113	Michelle Cook	Humboldt County Board of Commissioners	Denied
PP-WO-USS-EIS-24-114	Andrew Frishman	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-115	Becky Campbell	Leeward Renewable Energy	Dismissed: Comments Only
	Omar Aboudaher		
	Rachel Jones		
PP-WO-USS-EIS-24-116	Pam Harrington	Lander County government	Dismissed: Comments Only
PP-WO-USS-EIS-24-117	Carrie Radomski	Town of Beatty, Nye County, Nevada	Denied
PP-WO-USS-EIS-24-118	Jackie Feinberg	Sierra Club	Denied
PP-WO-USS-EIS-24-119	Stephen Bloch	Southern Utah Wilderness Alliance	Denied
	Hanna Larsen		
PP-WO-USS-EIS-24-120	Jake Tibbitts	Eureka County, NV	Denied
PP-WO-USS-EIS-24-121	Kelly Carpenter	Wyoming Farm Bureau Federation	Dismissed: Comments Only
PP-WO-USS-EIS-24-122	Jeremy Drew	Churchill County, Nevada	Denied
	Jim Barbee		
PP-WO-USS-EIS-24-123	Andrew Haskin	Lyon County, Nevada	Denied
	Jeremy Drew		
PP-WO-USS-EIS-24-124	Margaret Burant	--	Dismissed: No Standing
PP-WO-USS-EIS-24-125	Manan Pancholi	--	Dismissed: No Standing

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-126	Jeremy Drew	White Pine County, Nevada	Denied
	Laurie Carson		
PP-WO-USS-EIS-24-127	Elizabeth Darby	--	Dismissed: Comments Only
PP-WO-USS-EIS-24-128	Tyler Meints	--	Dismissed: No Standing
PP-WO-USS-EIS-24-129	Alvin Marques	Ely Shoshone Tribe	Denied
PP-WO-USS-EIS-24-130	Ellie Brighton	Montana Stockgrowers Association	Dismissed: Comments Only
PP-WO-USS-EIS-24-131	Rachel Jones	Large-Scale Solar Association	Denied
	Shannon Eddy		
PP-WO-USS-EIS-24-132	Ellie Brighton	Montana Association of State Grazing Districts and Montana Public Lands Council	Dismissed: Comments Only
PP-WO-USS-EIS-24-133	Evon Hekkala	--	Dismissed: No Standing
PP-WO-USS-EIS-24-134	Mason Voehl	Amargosa Conservancy	Denied
PP-WO-USS-EIS-24-135	Megan Labadie	Nye County	Denied
PP-WO-USS-EIS-24-136	Vinson Guthreau	Nevada Association of Counties	Denied
PP-WO-USS-EIS-24-137	Patrick Donnelly	Center for Biological Diversity	Denied
PP-WO-USS-EIS-24-138	Karen Rimmer	Converse County, Wyoming	Denied
PP-WO-USS-EIS-24-139	Devon Muto	EDF Renewables Development, Inc.	Denied
PP-WO-USS-EIS-24-140	Jessica Hejny	--	Dismissed: No Standing
PP-WO-USS-EIS-24-141	Kevin DesRoberts	U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex	Withdrawn from consideration.
PP-WO-USS-EIS-24-142	William Helmer	Old Spanish Trail Association	Denied
PP-WO-USS-EIS-24-143	Andrew Zahn	--	Dismissed: No Standing
PP-WO-USS-EIS-24-144	Nancy Zahn	--	Dismissed: No Standing
PP-WO-USS-EIS-24-145	David Braun	--	Dismissed: No Standing
PP-WO-USS-EIS-24-146	Corin Zahn	--	Dismissed: No Standing
PP-WO-USS-EIS-24-147	Emily Cohen	Primergy Solar	Denied
PP-WO-USS-EIS-24-148	Lindsey Falconer	--	Dismissed: No Standing
PP-WO-USS-EIS-24-149	Shaaron Netherton	Friends of Nevada Wilderness	Denied

Letter Number	Protester	Organization	Determination
PP-WO-USS-EIS-24-150	Kari Hartmann	--	Dismissed: No Standing
PP-WO-USS-EIS-24-151	Kayla Browne	Friends of the Inyo	Denied
PP-WO-USS-EIS-24-152	Kirsten Eliassen	Gallatin Power Partners, LLC	Dismissed: Comments Only
PP-WO-USS-EIS-24-153	Alexander Pollak	--	Dismissed: No Standing
PP-WO-USS-EIS-24-154	Noah Link	--	Dismissed: No Standing
PP-WO-USS-EIS-24-155	Eric South	Wyoming Coalition of Local Governments	Dismissed: Comments Only
PP-WO-USS-EIS-24-156	Susan Suntree	--	Dismissed: No Standing
PP-WO-USS-EIS-24-157	Vera Smith	Defenders of Wildlife	Denied
PP-WO-USS-EIS-24-158	Nicholas Rhea	--	Dismissed: No Standing
PP-WO-USS-EIS-24-159	Roger Peet	--	Dismissed: No Standing
PP-WO-USS-EIS-24-160	Simone Griffin	BlueRibbon Coalition	Denied
PP-WO-USS-EIS-24-161	Jennifer Freeman	--	Dismissed: No Standing
PP-WO-USS-EIS-24-162	Mark Salvo	Oregon Natural Desert Association	Denied
PP-WO-USS-EIS-24-163	Wendy Schiff	Antelope Valley Conservancy	Dismissed: No Standing

FLPMA: Areas of Critical Environmental Concern

Defenders of Wildlife

Vera Smaith

Issue Excerpt Text: BLM failed to consider Defenders’ nomination for an Area of Critical Environmental Concern (ACEC). The Federal Land Policy and Management Act directs BLM to give priority to the designation and protection of ACECs. BLM regulations require BLM to identify and consider areas having potential for ACEC designation in the resource management planning process. Defenders of Wildlife submitted a nomination for a Mojave Desert Tortoise Linkage Area ACEC in April 2023 (exhibit 2). BLM failed to follow its statutory direction in not evaluating and considering the nomination in this PEIS. BLM also failed to identify the nomination in Section 2.3 of the PEIS and explain why it was not considered in the planning process. Recommendation: Evaluate the submitted ACEC nomination and exclude all qualifying acres from solar energy development.

Western Watersheds Project et al.

Laura Cunningham et al.

Issue Excerpt Text: The PEIS Violates FLPMA in Failing to Balance Development with the Designation of ACECs for Mojave Desert Tortoise and Greater Sage Grouse. Nominated ACECs were not analyzed: our greater sage grouse ACEC and Cactus Springs ACEC for Mojave desert tortoise crucial connectivity habitat. We ask for analysis of ACECs in our scoping comments in B&RW and WLP (2023) at 14; and WWP et al. 2024 comments on the draft PEIS at 11 and following.

The Wilderness Society et al.

Gregg DeBie et al.

Issue Excerpt Text: Also, “ACECs are intended to be a proactive land management decision to enhance management of important lands and resources, considered in the context of other management decisions that may affect those same lands and resources,” so BLM guidance “provide[s] a proactive pathway for managing relevant and important values that require special management attention when these values are identified outside of a resource management planning process.” Specifically, BLM may defer the evaluation of nominated ACECs “no later than during the next RMP or relevant RMP amendment process,” but rather than wait until the next RMP amendment process or until an overlapping solar application arrives, creating uncertainty for nominating parties and developers alike, BLM should proactively exclude the areas and commit to promptly evaluating their resource values to determine whether the special management criterion is met and interim management is merited. Then, depending on the results of the evaluation, BLM may either continue to exclude the lands or open them to solar application. Only prompt evaluation of nominated ACECs will prevent unnecessary or undue degradation and avoid disqualifying the lands from ACEC designation, while also ensuring nominated ACECs not meriting designation do not unreasonably impede solar development. When conducting the evaluation, BLM first must determine whether “the special management criterion is met” (i.e., existing management insufficiently “protect[s] and prevent[s] irreparable damage to the relevant and important values”), and if so, it “must” either initiate a plan amendment or provide interim management to protect those values. Here, the Final Solar PEIS will not adequately protect important resource values associated with nominated ACECs. For one, the PEIS does not establish a timeframe for evaluating the proposed ACECs and the lands will simply remain open to solar application. And two, deferring the ACEC evaluation until BLM receives an overlapping application risks skewing the evaluation in favor of utility-scale solar development that will unquestionably cause degradation of virtually any resource value meriting an ACEC designation.”

Amargosa Conservancy***Mason Voehl***

Issue Excerpt Text: BLM also failed to evaluate or designate any ACECs in the RMPA, despite having received numerous nominations for them across the 11 state planning area.

The Wilderness Society et al.***Gregg DeBie et al.***

Issue Excerpt Text: Exclusion Criterion No. 1 in the Final Solar PEIS proposes to exclude all ACECs identified in applicable RMPs, which we support, but the final solar plan should do more to protect previously nominated ACECs. As the Protesting Parties previously explained, the proposed exclusion fails to protect (1) ACECs nominated by the public outside of a land use planning process; and (2) ACECs that were being evaluated during prior land use planning processes that were paused, terminated, or otherwise not finished. The final solar plan should exclude all potential ACECs from solar development until such time as BLM evaluates their relevance and importance values and makes a preliminary determination to provide interim management protections or, for areas that do not qualify and are not otherwise excluded, open them to solar application. In response to our recommendation to exclude nominated ACECs until they are evaluated, BLM states that if “an ACEC nomination is received before an overlapping solar development application, [it] will determine whether it may be prudent to protect against the loss of potential [relevance and importance] values until such time as the BLM completes its evaluation of [those] values.” This approach fails to prioritize the identification and protection of ACECs, as required by FLPMA and BLM policy. To comply with FLPMA’s multiple use and sustained yield mandate and related duties to prioritize ACECs during land use planning and prevent unnecessary or undue degradation, BLM policy directs staff to “[p]resume that a potential ACEC that meets the relevance and importance criteria and also requires special management attention will be designated,” and to “implement temporary management in instances where nominated areas are evaluated outside of the resource management planning process and found to meet the relevance and importance criteria and require special management attention.”

Sierra Club***Jackie Feinberg***

Issue Excerpt Text: ACECs are “areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes.” In inventorying public lands and developing and revising land use plans, FLPMA directs BLM to “give priority” to ACECs including their designation and protection. Consistent with FLPMA’s mandate to prioritize the designation and protection of ACECs as well as to prevent UUD of public lands, our comments requested an expanded definition of exclusion 1 to also exclude nominated ACECs from utility- scale solar development until BLM evaluates their relevance and importance, and then either provides interim management pursuant to BLM Manual Section 1613 or, if the lands do not qualify as an ACEC and are not otherwise excluded, open them to solar application. This will provide more certainty to interested parties, avoid areas that are likely to present significant resource conflicts, and result in less community opposition. There are many examples where BLM has updated its inventories of public lands regarding ACECs in the time period since applicable land use plans were last revised, but failed to rely on that data in the Western Solar Plan. In 2014, BLM released a draft RMP and EIS for the Las Vegas and Pahrump field offices in southern Nevada that included an ACEC Evaluation Report. BLM evaluated 33 ACEC nominations and found 28 to meet the criteria for relevance and importance values. Due to decisions outside of the RMP revision process and the combination of some nominated ACECs, 23 areas were chosen to analyze as potential ACECs as part of the RMP revision. These analyses were never completed as the RMP revision was terminated in 2019. Despite maintaining this more current inventory and evaluation data for the Las Vegas and

Pahrump field offices than can be found in the applicable land use plans, the Western Solar Plan does not rely on this inventory and evaluation data. Approximately 50,000 acres of nominated ACECs found to meet the criteria for relevance and importance values are displayed as open to solar application on BLM’s proposed Western Solar Plan map.

Old Spanish Trail Association

William Helmer

Issue Excerpt Text: OSTA’s request to include an Old Spanish Trail ACEC in the Final PEIS was also completely ignored. OSTA’s letter states, p. 5: “The proposed Alternatives are all oriented towards placing industrial scale solar projects on millions of acres of BLM land, with very little exclusion criteria which has been validated in the field. A conservation Alternative needs to be developed in order to balance land use planning so that cultural landscapes, wildlife habitat, scenic vistas, and cultural resource protection will have a place in the rural West.” The proposed Old Spanish Trail ACEC which was nominated by BLM in the Draft Resource Management Plan/Environmental Impact Statement, Las Vegas and Pahrump Field Offices, 2014, should be Excluded along with other nominated ACECs. This provides the greatest protection for a National Historic Trail at the programmatic level.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The BLM failed to address the impacts of the proposed RMPAs on areas proposed as Areas of Critical Environmental Concern (ACECs) or recognized as Lands with Wilderness Characteristics (LWCs). While the extent of all proposed ACECs is unknown, BLM receives and is certainly aware of ACEC nominations. We are aware of one ACEC nomination which encompasses tens of millions of acres of sagebrush habitat which BLM has never evaluated, for example. There are also millions of acres of LWCs across the planning area that may not have been sufficiently inventoried by BLM and have not been addressed in the Final PEIS—siting utility scale solar projects on these lands would undermine these characteristics and cause unnecessary and undue degradation of public lands resources because alternative, less sensitive sites, are available. The proposed RMPAs should exclude areas proposed for protection and lands eligible for protection such as LWCs; and the BLM should use this RMPA process to evaluate pending nominations of ACECs and other administrative designations. Land allocations for solar must be considered in light of other uses for these public lands resources and to prevent unnecessary and undue degradation. The Center protests that the proposed RMPAs have not considered excluding these areas from development.

Summary:

Protestors stated that the BLM failed to evaluate in detail nominations for Areas of Critical Environmental Concern (ACECs) across the 11-state planning area or establish timeframes for doing so in the future. Additionally, protestors stated that the BLM failed to conduct timely evaluations of resource values associated with nominated ACECs and crucial habitat, thus failing to balance utility-scale solar development with resource protection. Finally, protesters stated that the BLM failed to conduct inventories for new lands with wilderness characteristics (LWCs) across the 11-state planning area, and therefore failed to properly consider management of and effects on these areas.

Response:

Section 202(c)(3) of the Federal Land Policy and Management Act (FLPMA) requires that the BLM give priority to the designation and protection of ACECs in the development and revision of land use plans (43 United States Code (U.S.C.) Section 1712(c)(3)). FLPMA defines ACECs as “areas within the public lands where special management attention is required...to protect and prevent irreparable

damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (Id. Section 1702(a)). The USS FPEIS/PRMPAs would exclude designated ACECs from solar development (Proposed Exclusion #1, USS FPEIS/PRMPAs p. 6-7). This exclusion criterion would update dynamically, meaning that a newly designated ACEC, by default, will automatically be excluded from solar development (USS FPEIS/PRMPAs, p. 6-6).

The BLM’s planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of RMPs and during amendments to RMPs, when evaluation and designation of ACECs are within the scope of the amendment (43 CFR 1610.7-2(b)). The Notice of Intent for public scoping for this planning process was published on December 8, 2022, in the *Federal Register* (87 FR 75284), the Notice of Availability for the *USS Draft Programmatic Environmental Impact Statement (DPEIS)/Draft Proposed Resource Management Plan Amendments (DRMPA)* was published in the FR on January 19, 2024 (89 FR 3687), and the Notice of Availability for the FPEIS/PRMPAs was published in the FR on August 30, 2024 (89 FR 70660). During public scoping in 2022, the BLM did not announce that it was accepting ACEC nominations. The potential plan amendments that were announced in the scoping period were those necessary to meet the purpose and need of this planning effort. The evaluation and designation of ACECs is outside the scope of this planning process (43 CFR 1610.4-1-4-9).

On June 10, 2024, the BLM’s Conservation and Landscape Health Rule (often called the Public Lands Rule) (89 FR 40308) went into effect. The rule codified existing policies for the identification and consideration of areas nominated for an ACEC designation. Although ACEC evaluation and designation are not within the scope of the proposed land use plan amendments associated with the USS FPEIS/PRMPAs, the regulations provide for consideration of ACEC proposals received outside of the planning process (43 CFR 1610.7-2(i)). Under that provision, the BLM has discretion to determine when it will evaluate whether the area has relevant and important values and needs special management attention, including by deferring the evaluation to an upcoming planning process (43 CFR 1610.7-2(i)).

Consistently with its regulations and policy, the BLM determined that it was not appropriate to evaluate nominations for ACECs in detail as part of this programmatic solar-planning process. Sensitive resources in areas nominated as ACECs may be protected under other exclusion criteria, and the BLM may review areas nominated as ACECs during site-specific project reviews or during future land use planning efforts. As noted in Section 5.16.1.1 (USS FPEIS/PRMPAs, p. 5-141), “ACECs (special designations) are excluded from solar application... ACECs are designated at the BLM field office level through the BLM’s land use planning process to protect the relevant and important values within these areas.” In the future, when the BLM is evaluating an ACEC nomination that overlaps with a proposed solar project, the BLM will evaluate the ACEC nomination and solar project application consistently with 43 CFR 1610.7-2(i) and BLM’s ACEC Manual 1613. Where a solar development application overlaps an ACEC nomination, the BLM has discretion to process the solar application and concurrently evaluate impacts on potential relevant and important (R&I) values. The BLM will determine whether it may be prudent to protect against the loss of potential R&I values until such time as the BLM completes its evaluation of those values (USS FPEIS/PRMPAs, p. M-13).

Refer to the *FLPMA: Inventories* section in this Protest Resolution Report for information on inventory and consideration of LWCs in the 11-state planning area.

The BLM properly applied its discretion when it decided not to consider the designation of nominated ACECs in the USS FPEIS/PRMPAs and instead deferred the consideration of nominated ACECs to subsequent land use planning processes. Therefore, this protest issue is denied.

BLM Regulations: Planning

Eureka County, NV

Jake Tibbits

Issue Excerpt Text: Eureka County shares the concerns and comments of other counties and states regarding the 2024 Solar Plan violation of FLPMA and planning regulations including 43 CFR 1601 because it is landscape level, centralized planning being developed and approved by National Headquarter in excess of allowable or practicable geographic scope. We consistently and specifically commented on this throughout the process including verbal comments at cooperating agency meetings and written comments in December 2023 on the Administrative Draft EIS, in April 2024 on the public Draft EIS, and in July 2024 on the Administrative Draft Final EIS. In 2016, BLM sought to finalize new 43 CFR 1601 planning regulations dubbed “Planning 2.0” that would have eliminated the current planning regulations local administrative and local geographic focus of land use planning and replace with centralizing all planning authority in the BLM’s Washington D.C. headquarters and allowing centralized land use planning efforts to have potentially unlimited geographic scope. In March 2017, Congress explicitly struck down the BLM’s Planning 2.0 rule through the Congressional Review Act (CRA) and provided clear Congressional intent that BLM planning is to be done at the local level and BLM is prohibited from centralized land use planning from BLM headquarters. The countermand of Planning 2.0 precluded BLM from any land use planning “rule that is substantially the same” as Planning 2.0, “unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.” 5 U.S.C. § 801(b)(2). The land use planning process for the 2024 Solar Plan are clear violation of Congress’ mandate. We insist BLM prepare all solar land use plan amendments consistent with BLM’s planning regulations at 43 CFR Section 1601.0-4 at the Field Office level with oversight and final plan approval provided by the State Director and implementation and with buy-in at the local level. This requires a supplemental EIS to be completed for BLM administered lands within Nevada.

Churchill County, Nevada

Jeremy Drew and Jim Barbee

Issue Excerpt Text: As previously conveyed in its April 18, 2024 comment letter (including attachment 3, “Churchill County Concern with BLM Multi-State Planning Efforts”), the County was and remains extremely concerned with the 11-state planning area for this effort and the Final EIS and Proposed RMPA. It was well intentioned by the BLM to make solar planning “consistent” across western states. However, the fact is that the resources, land uses, and local conditions are NOT consistent across western States. The County believes the planning area violates 43 CFR, Section 1610 as well as Congressional direction provided under the Congressional Review Act specific to the BLM’s previous Resource Management Planning Rule (Planning 2.0 Rule).

Lyon County, Nevada

Andrew Haskin and Jeremy Drew

Issue Excerpt Text: As previously conveyed in its April 18, 2024 comment letter (including attachment 3, “Lyon County Concern with BLM Multi-State Planning Efforts”), the County was and remains extremely concerned with the 11-state planning area for this effort and the Final EIS and Proposed RMPA. It was well intentioned by the BLM to make solar planning “consistent” across Western states. However, the fact is that the resources, land uses, and local conditions are NOT consistent across Western states. The magnitude of the planning area resulted in significant data gaps, mapping errors, inadequate impact analysis as well as inadequate consideration and engagement with state and local governments including this County. The County believes the planning area violates 43 CFR, Section 1610 as well as Congressional direction provided under the Congressional Review Act specific to the BLM’s previous Resource Management Planning Rule (Planning 2.0 Rule).

White Pine County, Nevada***Jeremy Drew and Laurie Carson***

Issue Excerpt Text: As previously conveyed in its April 10, 2024 comment letter (including attachment 3, “White Pine County Concern with BLM Multi-State Planning Efforts”), the County was and remains extremely concerned with the 11-state planning area for this effort and the Final EIS and Proposed RMPA. It was well intentioned by the BLM to make solar planning “consistent” across western states. However, the fact is that the resources, land uses, and local conditions are NOT consistent across western States. The magnitude of the planning area resulted in significant data gaps, mapping errors, inadequate impact analysis, as well as inadequate consideration and engagement with state and local governments including this County. The County believes the planning area violates 43 CFR, Section 1610, as well as Congressional direction provided under the Congressional Review Act specific to the BLM’s previous Resource Management Planning Rule (Planning 2.0 Rule).

Converse County, Wyoming***Karen Rimmer***

Issue Excerpt Text: Under Planning Rule 2.0, the BLM sought to amend the “Responsibilities and Plan Boundaries” to “explain the responsibilities for preparing or amending a resource management plan to acknowledge that planning areas may extend beyond traditional BLM administrative boundaries such as Field Offices or States.” Id. The BLM also sought to replace references to “Field Manager” with “responsible official” as the BLM official responsible for developing resource management plans and amendments and replace references to “State Director” to “deciding official” as the BLM official responsible for supervisory review, including plan approval. Id. Congress held hearings concerning Planning Rule 2.0 and heard extensive testimony about the change in the scale of planning boundaries and decision-making authority and its potential impacts on local participation. Then, on January 30, 2017, Congress exercised its authority to strike down Planning Rule 2.0 under the Congressional Review Act. Further, Congress prohibited the BLM from issuing a new rule that was substantially the same as what they had proposed in Planning Rule 2.0. In other words, the BLM is unable to propose a rule that would expand the jurisdictional boundary of plan amendments from field offices and states.

Converse County, Wyoming***Karen Rimmer***

Issue Excerpt Text: In this Plan Amendment, the BLM is not seeking to propose a rule that would expand the jurisdictional boundary and authority for plan amendments, it is simply “undertaking a macro- scale evaluation” without expressed authority. (See PDEIS ES-1, ES-2, ES-10, 1-1, 1-3 and PFEIS ES-1, 1-16). Regardless of the framing of the Plan Amendment as “landscape-scale” or “macro-scale,” the effort runs counter to the clear direction provided by Congress when they struck down Planning Rule 2.0. The actions by Congress removed any remaining controversy surrounding what the proper geographic scale should be for resource management plan amendments. Further, Congress’s striking down of Planning Rule 2.0 removed any controversy that could have otherwise been argued before the judiciary to challenge the expansion of geographic scope and decision-making authority. It is clear that land allocation decisions for solar development are more appropriately identified and analyzed at the state, local Resource Management Plan or project level and this west-wide programmatic National Environmental Policy Act (NEPA) analysis to create land designations for solar development is inadequate and unnecessary at this broad landscape level.

Nevada Association of Counties***Vinson Guthreau***

Issue Excerpt Text: We continue to insist that this 11 state RMPA effort being led out of BLM headquarters runs contrary to precedence set by congress in its decision to strike down Planning 2.0 in 2017. The PEIS / RMPA violates BLM planning regulations because it is being developed and

approved by National Headquarters, independent of the BLM's State and District administrative authorities and boundaries, and in excess of allowable or practicable geographic scope. We do not believe that this consolidated effort has been adequate in addressing the widely varied ecosystems, socioeconomics, land use characteristics, or a multiplicity of other factors across the 11-state planning area. Not only do we believe this effort being led out of the national office is in direct opposition to Congressional intent to localize such planning efforts, but we also believe that the more nationalized the planning effort, the more political it tends to be in nature. 43 CFR § 1601.0-4 clearly states that BLM land use plans, plan revisions, and plan amendments, as well as supporting NEPA review, will be prepared at the Field Office level.

Nevada Association of Counties

Vinson Guthreau

Issue Excerpt Text: The BLM's planning regulations provide no alternative to the above allocation of planning responsibilities and authorities; the regulations are clear that planning is a locally driven BLM process overseen by the State Director. While the State Director has the authority to expand the planning area beyond the administrative boundary of a single Field Office, the fact that land use plans will be prepared by Field Managers clearly indicates that regional planning efforts are constrained geographically and are under a State Director's authority. We do not believe that the 11 BLM State Directors have been consulted and have all agreed to the scope of this planning area. The role of BLM's national Headquarters (HQ) in planning is restricted to developing national level planning policy and guidance; under the regulations, BLM's HQ does not prepare or approve land use plans or accompanying NEPA documents. Contrary to these planning regulation requirements, the Utility-Scale Solar Energy Development PEIS /RMPA's "lead office," according to the eplanning website, is "HQ-300;" Field Manager(s) are not preparing the RMPA and accompanying PEIS as required. Moreover, the State Directors of the 11 states composing the planning area are not providing supervisory review and do not have approval authority over the PEIS /RMPA. This violates the BLM's planning regulations, referenced above. In short, because the BLM's central HQ is both preparing and will approve the plan amendment and accompanying NEPA analysis, BLM's HQ has exceeded its authority under the planning regulations and usurped land use planning from local and state BLM discretion.

Nevada Association of Counties

Vinson Guthreau

Issue Excerpt Text: The 11-state Utility-Scale Solar PEIS /RMPA, developed by and approved by National HQ, therefore violates FLPMA (43 U.S.C. §§ 1701-1785), 43 CFR § 1601.0-4, 43 CFR § 1610.1(b) and Joint Resolution, Pub. L. No. 115-12 (2017). It therefore also violates the BLM's planning criteria: "The BLM will prepare RMP amendments in compliance with FLPMA, the Endangered Species Act, NEPA, the National Historic Preservation Act, and all other applicable laws, regulations, Executive Orders, and BLM policies." PEIS p. 1-9, 27-29. We insist that the BLM should prepare land use plans and plan amendments consistent with BLM's planning regulations at 43 CFR Section 1601.0-4 at the Field Office level with oversight and final plan approval provided by the State Director.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Humboldt County has repeatedly stated in comments on previous drafts of the PEIS/RMPA that BLM's centralized, west-wide planning effort for utility-scale solar violates BLM's own planning regulations, which provide that land use plans must be developed by Field Managers, at the Field Office level, with the oversight of the State Director. See 43 C.F.R. § 1601.0-4(c); see also Humboldt County Administrative Final PEIS/RMPA Comments at Row 3; Humboldt County Draft PEIS/RMPA Comments at *2-3; Humboldt County Administrative Draft PEIS/RMPA Comments at *15-17. The County protests BLM's unlawful decision to proceed with

the PEIS/RMPA at this west-wide scale, directed by BLM headquarters. Indeed, BLM’s protest regulations confirm that land use planning cannot take place, as with the PEIS/RMPA, at the headquarters level. The regulations state that a land use plan protest must include “reasons for protesting the State Director’s decision.” 43 C.F.R. § 1610.5-2(a)(2)(v) (emphasis added). The PEIS/RMPA gives no evidence that it was a decision of the Nevada State Director-or, for that matter, the State Director of any of the 11 states implicated in the PEIS/RMPA. BLM argues, in its response to comments, that its “land use planning regulations allow planning at any appropriate geographic scale.” PEIS/RMPA at M-2. For support, it cites the direction in 43 C.F.R. § 1610.1(b) that “[a] resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area” and its Land Use Planning Handbook, which states that “State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.” Id.; see also BLM, Land Use Planning Handbook at 14. BLM states that the planning area for the PEIS/RMPA was “defined in coordination with relevant BLM state directors.” Id. But BLM headquarters defining a broader planning area in coordination with state directors is not what the regulation commands. Instead, the regulation explicitly lodges responsibility for authorizing a broader area with the State Director. As we have repeatedly stated, we see no indication in any version of the PEIS/RMPA or in BLM’s responses to comments that any State Director authorized the 11-state planning area.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: BLM also relies on FLPMA’s command that the Secretary of the Interior develop, maintain, and revise land use plans. See id. at M-2 (citing 43 U.S.C. § 1712(a)). But in the regulations cited above, the Secretary delegated that authority. And the Supreme Court has made clear that once a cabinet officer has delegated authority, the officer cannot resume that power without amending the delegating regulation: where “regulations of the Attorney General delegated certain of his discretionary powers to the Board of Immigration Appeals and required that Board to exercise its own discretion on appeals in deportation cases... so long as the Attorney General’s regulations remained operative, he denied himself the authority to exercise the discretion delegated to the Board even though the original authority was his and he could reassert it by amending the regulations.”¹ *Nixon v. United States*, 418 U.S. 683, 695-96 (1974). Here, the Secretary has delegated land use planning to Field Officers supervised by State Directors, has not reserved planning authority to herself, and BLM has not amended its land use planning regulations to return that delegated power to the Secretary.

Summary:

Protestors stated that the USS FPEIS/PRMPAs are inconsistent with FLPMA, the Congressional Review Act, BLM regulations, and BLM policy because they are a Headquarters-led, west-wide proposed plan developed without express concurrence or authorization by State Directors to analyze the broader planning area.

Response:

FLPMA directs the Secretary of the Interior (SOI) to

develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses” (43 U.S.C. 1712(a)).

BLM’s land use planning regulations allow planning at any appropriate geographic scale and can encompass several field offices and/or states, as necessary (43 CFR 1610.1; BLM Handbook H-1601-1, p. 14).

The BLM Land Use Planning Handbook (BLM Handbook H-1601) defines the various scales of planning that may occur and explicitly notes that planning and decision-making may vary geographically and that planning on a variety of scales may be required. This variation in scales is often used to help the BLM “understand priority resource issues, tailor decisions to specific needs and circumstances, and analyze cumulative impacts” (BLM Handbook H-1601-1, p. 14).

Although the SOI has delegated land use planning authority to BLM Field Managers and State Directors through regulation (43 CFR 1601.0-4), this delegation does not preclude a supervisor of the delegee (including the BLM Director) from exercising that authority themselves, as is the case with the USS FPEIS/PRMPAs. The BLM prepared the USS FPEIS/PRMPAs consistently with the BLM’s existing authority under FLPMA and the BLM planning regulations. This planning effort does not violate the Congressional Review Act nor Congress’s resolution of disapproval (Pub. L. 115-12) regarding the BLM’s “Planning 2.0” regulations (81 FR 89580) because the BLM is implementing the planning regulations in effect and is not issuing a new rule. The planning area for the USS FPEIS/PRMPAs was defined in coordination with relevant BLM State Directors and includes 11 western states experiencing increasing shared interest in solar energy development. This planning area is appropriate because it facilitates consistency across states in the west and updates the approach taken in the BLM’s 2012 Western Solar Plan. As described in Section 7.3 of the USS FPEIS/PRMPAs, the BLM headquarters office has coordinated with BLM State and Field Offices throughout this planning effort, including about the scope of the planning effort.

The USS FPEIS/PRMPAs analyze potential environmental effects over a broad geographic and time horizon in order to inform this planning decision. Programmatic environmental analysis is appropriate under NEPA for actions that have common impacts, subject matter, and technology (40 CFR 1502.4(b) (2022), 1501.11 (2024))¹. The planning-level decisions analyzed in and supported by this Programmatic EIS will provide the basis for future project specific utility-scale solar energy development decisions. Specific regional and local environmental concerns will be thoroughly reviewed during a project-specific NEPA review as solar projects are proposed within the planning area. The requirements and process for these subsequent decisions are discussed in Section 1.1.5 (USS FPEIS/PRMPAs pp. 1-10–1-11).

The USS FPEIS/PRMPAs’ planning and analysis area is consistent with FLPMA and BLM’s planning regulations. Accordingly, this protest issue is denied.

¹ The USS FPEIS/PRMPAs was prepared consistently with the CEQ NEPA regulations that were effective at the time that the BLM initiated its NEPA review in December 2022. The BLM is aware of the November 12, 2024, decision in *Marin Audubon Society, et al. v. Federal Aviation Administration, et al.*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BLM has nonetheless elected to follow those regulations at 40 CFR Parts 1500–1508, in addition to the Department of the Interior’s regulations implementing NEPA at 43 CFR Part 46, to meet the agency’s obligations under NEPA, 42 U.S.C. Sections 4321 et seq. The BLM will comply with NEPA and applicable regulations in reviewing implementation actions.

Consultation Requirements

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: BLM also failed to adequately coordinate the RMPA with other Federal departments and agencies as required. In particular, while Appendix H is intended as a coordinating plan with other agencies, it fails to include any measures to coordinate with the U.S. Fish and Wildlife Service. Ash Meadows National Wildlife Refuge has the potential to be significantly impacted by the RMPA, and yet there are no protective measures in place for Ash Meadows, no special mitigations for possible impacts to the Refuge, nor even a disclosure that the Refuge will be affected by the RMPA. This is particularly true due to the groundwater consumption that will necessarily follow the land use allocations for solar in the Amargosa River watershed.

Rose Strickland

Issue Excerpt Text: The BLM violates FLPMA by not coordinating with the National Park Service or the US Fish and Wildlife Service on utility-scale solar developments on NV public lands which may violate both Park and Refuge Management Plans, by failing to disclose adverse impacts of these developments, and failing to provide protections in its Proposed Plan against light pollution to the Park and de-watering of the Refuge.

Indian Peaks Band of Paiutes

Tamra Borchardt-Slayton

Issue Excerpt Text: Despite its obligations, the BLM did not consult with IPB during the environmental review for the RMPA. Our cultural and spiritual resources remain throughout Pine Valley and the West Desert, not just in the sections on what is now state land. See Sections 2.1.1.6, 4.3, 4.12, 4.18, 6.2. The BLM’s failure to consult with IPB violates FLPMA and the Council on Environmental Quality’s regulations on tribal consultation during National Environmental Policy Act (NEPA) proceedings. This does not comply with the Biden Administration’s policies on tribal consultation.^{1 2} Therefore, in addition to non FLPMA compliance, the agency has not accomplished the “Hard Look” at the likely impacts required via NEPA.^{3 4} The comments on the draft EIS show multiple entities demanding that BLM give due consideration to indigenous interests.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: In 2021, the U.S. Department of the Interior entered into an interagency Memorandum of Understanding (MOU) to increase collaboration with Indigenous Tribes and improve the protection and accessibility of sacred sites on federally-managed lands. The MOU acknowledged that while a sacred site is defined as a “specific, discrete, narrowly delineated location,” the agencies recognize “the critical role of Tribes and Native Hawaiian organizations in defining the term” and that these sites “often occur within a larger landform or are connected through physical features or ceremonies to other sites or a larger sacred landscape.” Therefore, federal agencies were instructed to “consider these broader areas and connections.” Our comments urged BLM to meaningfully consult with interested Tribes to identify the location and appropriate scope of the Tribal Interest Areas to be excluded under exclusion 17. The agencies that signed the sacred sites MOU have acknowledged that early and meaningful Tribal involvement is “especially critical” during land use planning processes and “provisions related to access and protection of sacred sites that are incorporated into land use plans may be more durable than other types of decisions.” Information obtained from Tribal engagement and maintained as part of BLM’s inventory of public lands must be relied on in the development and revision of land use plans through the agency’s requirements under FLMPA. As mentioned previously, the purpose and need

for the updated Western Solar Plan includes identifying areas where solar development is likely to encounter significant resource conflicts and excluding those areas at the outset, so as to direct solar applications toward areas that would result in a more rapid deployment of renewable energy. While it is critically important for BLM to respect individual Tribes' wishes to not publicly disclose particular Tribal Interest Areas, there are also a number of publicly-available areas of interest to Tribes that are displayed as partially open to solar application on the proposed Western Solar Plan map. It is currently unclear whether these areas fall under exclusion 17 or if these are areas that would be open to solar application.

Summary:

Protestors claimed that the BLM violated FLPMA and NEPA by:

- Failing to adequately coordinate with other Federal agencies, including with the National Park Service (NPS) and U.S. Fish and Wildlife Service (USFWS), not fostering consistency with those Federal agencies' management plans, and not considering effects and minimization measure to lands and resources under those Federal agencies' jurisdictions, including the Ash Meadow National Wildlife Refuge.
- Failing to meaningfully consult with interested Tribes to identify the location and appropriate scope of Tribal Interest Areas to be excluded from solar development and, specifically, failing to adequately consult with the Indian Peaks Band of Paiutes.

Response:

As described in Chapter 7 of the USS FPEIS/PRMPAs, the BLM engaged in robust consultation with cooperating agencies throughout development of the plan. There is no requirement for how BLM must involve a particular cooperating agency in the development of a land use planning and NEPA document. The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. The BLM worked with cooperating agencies to develop and adopt a Memorandum of Understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)).

The BLM provided opportunities for all cooperating agencies to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft of the USS PEIS/RMPAs, and identification of issues and data during scoping and during the public comment period. Chapter 7 and Appendix D of the USS FPEIS/PRMPAs describes government-to-government consultation, coordination with BLM State and Field Offices, agency consultation, and cooperating agency engagement during the planning effort. The BLM coordinated with the 78 cooperating agencies listed in Section 7.5, *Cooperating Agencies*, to solicit their review and comments on key portions of the DPEIS and FPEIS. As stated in this section, all cooperating agency comments were considered and addressed to the extent appropriate and possible and will continue to be considered through preparation of the Record of Decision (ROD) (USS FPEIS/PRMPAs, pp. 7-10–7-12).

NPS and USFSW were both cooperating agencies in this planning process, and the USS FPEIS/PRMPAs incorporate provisions designed to mitigate impacts of potential future solar projects on lands and resources managed by these agencies. In developing the USS FPEIS/PRMPAs, the BLM considered important conservation areas, including national parks and national wildlife refuges in the planning area. The USS FPEIS/PRMPAs identify *Areas of Special Coordination*, and Design Feature PW-29 states that the BLM will coordinate with NPS when reviewing any solar project application within 25 miles of national parks, national monuments, and other NPS-managed lands (USS FPEIS/PRMPAs, p. H-8, B-8). Resources that will be considered through the coordination include

dark night skies, visitor access points, and other ecological and cultural features. Other designated areas are excluded from solar development under the USS FPEIS/PRMPAs, such as ACECs, designated critical habitat for listed species, and National Conservation Lands (USS FPEIS/PRMPAs, Table 6-2). Under Design Feature PW-30, if a proposed project is within 10 miles of USFWS National Refuge System Lands, project developers, in coordination with the BLM and USFWS, will consider the proposed project's potential impacts on refuge resources and determine appropriate mitigation (USS FPEIS/PRMPAs, p. B-9). These design features and Areas of Special Coordination ensure that the BLM considers these resources during project-specific review.

USS FPEIS/PRMPAs Section 7.2 and Appendix D describe the BLM's robust consultation with federally recognized Tribes during the planning and NEPA process. The BLM sent letters to more than 240 Tribes, chapters, and bands—including the Paiute Indian Tribe of Utah and Indian Peaks Band of Paiutes—during the planning process, sharing information about the BLM's plans, inviting them to participate in the process, and offering to engage in government-to-government consultation. As described in Section 2.1.16, *Exclusion Criteria under the Action Alternatives*, certain resource exclusions remain unmapped, including traditional cultural properties and sacred sites, due to informational sensitivity. Lands would be excluded if they were to satisfy any one of the exclusion criteria, as written, regardless of whether they are reflected on maps within the FPEIS (USS FPEIS/PRMPAs pp. 2-20–2-21). Under Exclusion #17, Tribal Interest Areas would be excluded, but are only partially mapped due to informational sensitivity. The BLM would evaluate any Tribal Interest Areas and additional cultural and Tribal resources during project-specific review under NEPA and National Historic Preservation Act (NHPA) Section 106 consultation. Because the locations of future projects are unknown at this time, the effects on cultural and Tribal resources and historic properties in the planning area were analyzed at the programmatic level. The exclusions and design features in the USS FPEIS/PRMPAs are intended to minimize impacts on cultural and Tribal resources and historic properties, and these resources will be further considered during project-specific review. The BLM would consider potential and known cultural resources under project-specific undertakings in compliance with NEPA and NHPA Section 106.

The BLM's analysis of potential impacts of utility-scale solar energy development on terrestrial and wetland plant communities and habitats is described in Section 5.4 (USS FPEIS/PRMPAs, pp. 5-28–5-71) and on water resources in Section 5.20 (USS FPEIS/PRMPAs, pp. 5-179–5-186). Potential impacts on specific water resources, including in the Amargosa River watershed and any wildlife refuges, would be considered in detail during project-specific review.

The BLM properly involved all cooperating agencies, Tribes, and other agencies in the development of the USS FPEIS/PRMPAs and properly considered the programmatic effects from the proposed land use plan amendments. Accordingly, this protest issue is denied.

FLPMA: Inventories

Sierra Club

Jackie Feinberg

Issue Excerpt Text: In its Analysis of the Management Situation (AMS), updated in February 2019, BLM determined that the field office's special designation management decisions were "outdated" as neither of the existing 1980s-era land use plans governing the field office addressed ACECs (and other special designations) despite FLPMA's mandate to prioritize ACEC designation and protection. Given the applicable land use plans did not address ACECs and contain no ACEC designations, these plans cannot be considered to contain current inventories or the best available data for the Western Solar Plan when the BLM's 2019 AMS for the Cedar City Field Office included ACEC inventories and evaluations.

Sierra Club***Jackie Feinberg***

Issue Excerpt Text: Our comments further detailed some, but not all, BLM field offices with outdated land use plans but updated LWC inventory data. The Kingman, AZ field office RMP was last revised in 1995, yet following the submission of community-inventoried LWCs in 2015 and 2017 the field office began to update BLM’s own LWC inventory as directed by BLM Manual 6310.49. Due to these more recent inventories, the 1995 RMP clearly cannot be considered the best available data for LWCs in the Western Solar Plan.

The Wilderness Society et al.***Gregg DeBie et al.***

Issue Excerpt Text: Exclusion Criterion No. 3 in the Final Solar PEIS proposes to exclude LWC only in the event an applicable RMP “establishes protection” for those lands. As the Protesting Parties previously commented, this exclusion falls short because (1) many RMPs are years or even decades out of date and, as a result, many inventoried LWC are not recognized, let alone protected, in those plans; and (2) numerous community-proposed LWC await evaluation by BLM and are neither recognized nor protected by RMPs. The final solar plan should exclude all inventoried LWC irrespective of any management direction in outdated RMPs, and also exclude all community-identified LWC until BLM evaluates their wilderness values. In response to our recommendation to exclude all inventoried LWC and community-proposed LWC, BLM made “[n]o change” because “[c]ompleting an inventory of all [LWC] in the 11-state planning area is beyond the scope of this planning effort, the purpose of which is to broadly identify lands available for solar application using currently available information and data.” This response misses the point entirely. The Protesting Parties did not ask BLM to inventory any LWC as part of this planning process, but simply to exclude any inventoried LWC that are not protected by existing RMPs and to exclude community-proposed LWC until BLM evaluates their wilderness qualities and determines next steps. While we agree with BLM that updating LWC inventories is outside the scope of this planning process, we do not agree that the Final Solar PEIS adequately protects LWC as required by FLPMA and agency guidance. Consistent with FLPMA, and “[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands.” BLM must also conduct timely evaluations of relevant community-submitted data and new information related to LWC, then make its findings and updated inventory available to the public “as soon as practicable after completion.” And during land use planning, BLM must “[c]onsider the benefits that may accrue to other resource values and uses as a result of protecting wilderness characteristics” and, if needed to protect those values, designate the LWC “as right-of-way exclusion areas” and/or “[e]xclude or restrict with conditions for certain commercial uses.” The wide range of resources and values commonly associated with LWC include opportunities for solitude or primitive and unconfined recreation, wildlife habitat and connectivity, and scientific, educational, historic, and scenic values, among others. Also, numerous LWC are adjacent to or near designated wilderness, wilderness study areas, and other intact landscapes, so protecting LWC would ensure consistent management direction and provide ecological and social benefits across larger areas.

Sierra Club***Jackie Feinberg***

Issue Excerpt Text: Sierra Club raised the issue in DEIS comments, recommending that BLM modify exclusion 3 to exclude all BLM-inventoried lands with wilderness characteristics (LWCs) as well as all community-identified LWC until BLM evaluates them. BLM is required by FLPMA to inventory LWCs, as one of the multiple use resources and values of public lands, on a continuing basis. BLM Manual 6310 instructs the agency to maintain and update its inventory of wilderness resources as necessary on public lands “regardless of past inventory”, including when new wilderness characteristics information is submitted by the public. BLM is then obligated by FLPMA, as stated

previously, to rely on this inventory when developing and revising land use plans. Consistent with this direction as well as to prevent UUD of public lands, our draft Western Solar Plan comments requested BLM to modify the exclusion 3 description to also exclude all BLM- inventoried LWCs and furthermore to also exclude all community-identified LWCs until they can be evaluated as per BLM Manual 6310. This will provide more certainty to interested parties by avoiding areas that are likely to present significant resource conflicts, and result in less community opposition. While the proposed Western Solar Plan’s design features positively encourage project developers “to the maximum extent practicable...avoid, minimize, or compensate for impacts on the values of...LWCs” and directs project developers to conduct LWC inventories if no current assessment exists, these stipulations will not advance the purpose and need of the Western Solar Plan to identify “areas of BLM-administered lands where proposals for solar energy development are anticipated to encounter fewer resource conflicts.” Nor do these design features relieve BLM from its responsibility under FLPMA to rely on the current inventory of public lands when revising land use plans.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: In 2022, President Biden issued Executive Order No. 14072, “Strengthening the Nation’s Forests, Communities, and Local Economies,” aiming to inventory, conserve, and restore old growth and mature forests on federal lands. As required by the Executive Order, BLM released its old growth inventory in April 2023, which documented 8 million acres of old growth forests and woodlands and over 12 million acres of mature forests on BLM-administered lands. Following the completion of that inventory, the Executive Order directed BLM to institutionalize “climate-smart management and conservation strategies that address threats to mature and old-growth forests.” Consistent with that direction and FLPMA’s requirements to prevent UUD and to rely on the current inventory of public lands in the revision of land use plans, our draft Western Solar Plan comments requested for BLM to modify the description for exclusion 18 to also “use this inventory and subsequent guidance to identify and exclude old growth emphasis areas, or priority old growth areas, consisting of all existing old growth forest and a strategic amount of mature forest to effectively meet scientifically-determined old growth targets and sustain these ecosystems on public lands.” This will provide more certainty to interested parties, avoid areas that are likely to present significant resource conflicts, and result in less community opposition. Nearly all applicable BLM land use plans were last revised prior to the completion of the 2023 old growth and mature forests inventory, yet BLM failed to rely on this current inventory in revising the Western Solar Plan as directed by FLPMA. Due to limited BLM staff capacity and funding for plan revisions, it is unlikely that many of these RMPs will be revised to incorporate the old growth and mature forest inventory data in the foreseeable future.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: Here, many of the RMPs are old and do not have current inventories of water resources, species and habitats within the planning areas and BLM appears to have ignored inventory information it did have for some resources such as lands with wilderness characteristics (LWC) and cultural resources. By failing to utilize relevant inventory information, BLM is violating FLPMA’s inventory provision. See *Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006) (discussing need for BLM to take into account known resources in making management decisions); *ONDA v. Rasmussen*, 451 F.Supp. 2d 1202, 1212-13 (D. Or. 2006) (finding that BLM did not take a hard look under NEPA by relying on outdated inventories and such reliance was inconsistent with BLM’s statutory obligations to engage in a continuing inventory under FLPMA).

Friends of Nevada Wilderness***Shaaron Netherton***

Issue Excerpt Text: The proposed RMPAs detailed in the Final PEIS provide a number of exclusion zone criteria (FEIS at 6-7 to 6-14). The purpose of the RMPA is, “initial siting of utility-scale photovoltaic solar energy development proposals by identifying ‘solar application areas,’ which are areas of BLM-administered lands where proposals for solar energy development are anticipated to encounter fewer resource conflicts compared to areas identified as ‘exclusion areas’ where solar development is likely to encounter significant resource conflicts, making them unsuitable for solar development proposals,” (FEIS at 1-3). BLM’s process provides a pre-screening public lands for resource conflicts, presuming that siting projects in areas with lower resource conflicts will also reduce permitting times and make litigation less likely. For this process to be effective, it is essential that the exclusion zones accurately reflect areas with high resource conflicts - otherwise lands will be pre-screened for siting solar which will still contain large resource conflicts and will thus fail to meet the purpose and need of the RMPA. Unfortunately, the exclusion zone criteria laid out in the proposed RMPAs are not sufficiently protective of public land resources in order to accomplish the purpose of reducing conflict by siting projects in lower conflict areas. The exclusion criteria are primarily based on pre-existing RMP provisions although many of the RMPs at issue have not been updated in decades, and do not have current inventories of resources as required by FLPMA.

Friends of Nevada Wilderness***Shaaron Netherton***

Issue Excerpt Text: In order to actually meet the purpose and need of the RMPA, additional exclusion criteria need to be considered in Nevada. This request is based on both the lack of current planning and inventory required by FLPMA and the excessive amount of public land (nearly 12 million acres) being identified for a single extractive use. The lack of current planning in much of Nevada has, in part, forced Nevada’s Congressional delegation to take action with public lands legislation. Several public lands bill processes are underway in Nevada working to bring stakeholders together to resolve public lands issues within the state. While there is no legal requirement for these lands to be exempted from this effort, for the sake of the years of effort by a broad range of stakeholders, Tribes, local governments, and others along with land management technical review it is the appropriate management action to take.

Friends of the Inyo***Kayla Browne***

Issue Excerpt Text: The FEIS does not adequately take into consideration outdated RMPs that predate Land Use Plans protecting Lands with Wilderness Characteristics. PART OF THE PLAN BEING PROTESTED: Table 6-2, M.2.3.3, F.16 Due to the BLM’s ongoing and chronic failure to prepare and maintain an inventory of the affected public land resources, the BLM also failed to adequately address the resources of the area in reviewing the FEIS, finding that BLM did not take a hard look under NEPA by relying on outdated inventories and such reliance was inconsistent with BLM’s statutory obligations to engage in a continuing inventory under FLPMA. The FEIS states that Lands with Wilderness Characteristics (LWCs) are excluded under Exclusion #3, where land use plans establish protection for lands with wilderness character for future BLM planning decisions. Many Field Office RMPs are outdated and do not include LWC protections. The Bishop Field Office’s Land Use Plan was approved in 1993 (FEIS Table A-2), and the FEIS proposes to make 44,171 acres of land available for solar development. As provided in scoping comments and draft EIS comments supplied by Friends of the Inyo (FOI Scoping Comments 2023, FOI et al. 2024), the Bishop Field Office RMP was approved before the Los Angeles Department of Water and Power was required to rewater the Owens River, before utility-scale renewable energy development projects were contemplated, and before LWC protections were added to RMPs. The

landscape has dramatically changed, which is unaccounted for in the RMP. Many LWCs are outdated, and unchecked areas exist. Having the FEIS only exclude LWCs, where LUPs have been designated for protection, fails to accurately evaluate the affected environment and impacts in the alternatives. This also means that visual impacts are not properly accounted for in the Bishop RMP and, thus, the alternatives of the draft EIS. It is also inconsistent with the FLPMA provisions which contemplate that BLM will prepare and maintain adequate inventory data on the resources of an area and that information be used to inform the planning process. 43 U.S.C. § 1711(a); 43 U.S.C. § 1701(a)(2).

Oregon Natural Desert Association

Mark Salvo

Issue Excerpt Text: The Bureau’s declination to exclude community-inventoried wilderness from potential solar energy development, and in this case with a petition pending before the Secretary of the Interior and now the Burns District preparing to survey those lands, is violative of the agency’s planning criteria as delineated in the Federal Land Policy and Management Act. These include requirements that the Bureau “consider the present and potential uses of public lands” in planning, as well as the “relative scarcity of the values involved” and finally to “weigh the long- term benefits to the public against short-term benefits” (43 U.S.C. § 1712(c)(5)-(7)).

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: FLPMA mandates that BLM “shall prepare and maintain on a continuing basis an inventory must undergird the land use planning process, 43 U.S.C. § 1701(a)(2); see also *Ctr. for Biological Diversity v. BLM*, 422 F. Supp. 2d 1115, 1166-68 (N.D. Cal. 2006), and be kept current to account for resource changes. 43 U.S.C. § 1711(a). BLM must arrange for “resource, environmental, social, economic and institutional data and information to be collected.” 43 C.F.R. § 1610.4-3. BLM may not approve a management plan amendments based on outdated, inadequate, or inaccurate inventories. 43 U.S.C. § 1712(c)(4); *Or. Natural Desert Ass’n v. Rasmussen*, 451 F. Supp. 2d 1202, 1212-13 (D. Or. 2006). ... Here, many of the RMPs are old and do not have current inventories of water resources, information it did have for some resources such as lands with wilderness characteristics (LWC) and cultural resources. By failing to utilize relevant inventory information, BLM is violating FLPMA’s inventory provision. See *Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006) (discussing need for BLM to take into account known resources in making management decisions); *ONDA v. Rasmussen*, 451 F.Supp. 2d 1202, 1212-13 (D. Or. 2006) (finding that BLM did not take a hard look under by relying on outdated inventories and such reliance was inconsistent with BLM’s statutory obligations to engage in a continuing inventory under FLPMA).

Summary:

Protestors stated that the USS FPEIS/PRMPAs would violate FLPMA, Executive Order (EO) 14072, and BLM regulations by:

- Failing to maintain or update inventories of ACECs, LWC, old-growth/mature forests, cultural resources, water resources, species, and habitats within the planning area.
- Focusing only on areas designated through often outdated land use plans, and therefore failing to include exclusion criteria and management to protect recent agency and community-inventoried LWCs, ACEC nominations, old-growth areas, and areas protected through pending legislation.

Response:

The BLM relied on the most recent inventory of the resources on the public lands when preparing the USS FPEIS/PRMPAs. The BLM described the information it used for ACECs, LWC, old-growth/mature forests, cultural resources, water resources, species, and habitats within the planning area in Chapter 2 and Chapter 4 of the USS FPEIS/PRMPAs. As appropriate, the BLM has updated and refined analyses in Chapters 4 and Chapter 5 of the USS FPEIS/PRMPAs, based on information received during the public comment period for the USS DPEIS/RMPAs.

The resource-based exclusion criteria that define areas available for solar application—including those that reference resources identified in applicable land use plans—will update dynamically to include updated resource information as it becomes available (USS FPEIS/PRMPAs, p. 6-6). Although many land use plans linked to these resource-based exclusions have been in place for extended periods of time, they remain the approved management for the BLM Field and District Offices in the planning area. As these plans are updated and revised, and new information about resource conditions emerges, the extent of land areas excluded by application of this criteria will change. Furthermore, lands are excluded if they meet any exclusion criteria as written, regardless of their representation in Geographic Information System (GIS)-mapped exclusion areas.

The BLM developed a reasonable range of alternatives that meet the purpose and need of the USS FPEIS/PRMPAs and that address resource issues identified during the scoping period. The USS FPEIS/PRMPAs analyzed five action alternatives, which are described in Section 2.1 (USS FPEIS/PRMPAs, pp. 2-1–2-25), as well as a no-action alternative, which is described in Section 2.2 (USS FPEIS/PRMPAs, pp. 2-25–2-31). The alternatives analyzed in the USS FPEIS/PRMPAs cover the full spectrum by varying in the criteria used to identify lands available for application, including slope, resource-based exclusions, proximity to transmission, and prior disturbance. Additional discussion regarding the range of alternatives analyzed can be found below, in the *NEPA: Range of Alternatives* section.

Regarding ACECs and LWCs, all ACECs and LWCs identified in applicable land use plans are excluded under Exclusion #s 1 and 3 of the USS FPEIS/PRMPAs. In Section 2.1.1.6 of the USS FPEIS/PRMPAs, the BLM notes that some resource exclusions remain unmapped due to informational sensitivity or incomplete geospatial data for the 11-state planning area (USS FPEIS/PRMPAs, p. 2-20). As described in the *FLPMA – Areas of Critical Environmental Concern* section of this report, the evaluation and designation of ACECs is outside the scope of this planning process, but the BLM will evaluate any ACEC nomination that overlaps with a solar application, consistently with 43 CFR 1610.7-2(i) and the BLM’s ACEC Manual.

Managing wilderness resources is part of the BLM’s multiple-use mission. However, as noted in BLM Manual 6320, although LWC share the same criteria used to identify wilderness and wilderness study areas, they are not subject to any protective requirements prior to a planning or project-level management decision. In some circumstances, consideration of management alternatives for LWCs may be outside the scope of a particular planning process (as dictated by the purpose and need for the planning effort). Here, because the BLM’s purpose and need is to broadly identify areas available for solar application, as articulated in the Section 1.1.1 of the USS FPEIS/PRMPAs (p. 1-3), the BLM has determined that making decisions about whether to apply targeted protective requirements or manage specific inventoried LWCs to protect those characteristics is not consistent with that purpose and need. The BLM would make decisions about management of any LWCs in subsequent planning efforts. Should subsequent land use plans establish management direction for additional inventoried LWCs to protect their wilderness characteristics, then those lands would be excluded under Exclusion #3 in Table 6-2 of the USS FPEIS/PRMPAs. Furthermore, the BLM will evaluate potential impacts on resources and land uses and consider current resource data, including community-inventoried wilderness, as applicable, during project-specific review.

Mandatory programmatic design features in the USS FPEIS/PRMPAs require additional consideration of LWCs during project design and project-specific review (USS FPEIS/PRMPAs Appendix B, pp. B-27–B-28). Design Feature SDLW-2 requires project developers to

identify whether the lands within and immediately adjacent to the proposed solar energy project have been assessed for wilderness characteristics or have been included in a citizen’s wilderness inventory or proposal. If no current assessment exists and absent objectives to manage for wilderness character, the project developer shall conduct inventories and evaluations as per BLM Manual 6310 to determine the presence of wilderness characteristics. All relevant inventories and evaluations shall be included in the NEPA analysis and incorporated into the project decision (USS FPEIS/PRMPAs Appendix B, pp. B-27–B-28).

Regarding species and habitat within the planning area, Section 4.4 and Appendix F, Section 5.5.3, of the PEIS describes the varieties of habitat and wildlife species that may occur within BLM-administered lands where solar energy development may occur. Water resources are analyzed in Section 4.20, Section 5.20, and Appendix F, Section F.20, in the USS FPEIS/PRMPAs. Regarding old-growth forests, under Exclusion #18, old-growth forests identified in applicable land use plans will be excluded from solar energy development. As any additional old-growth forest areas are identified during subsequent land use plan revisions, those also would become excluded. Other old-growth resources, such as old-growth desert vegetation or resources identified in recent inventories, would also be considered in project-specific analysis, and impacts to sensitive resources would be avoided or minimized, as appropriate. Regarding cultural resources, the BLM reviewed data from thousands of cultural resource surveys conducted throughout the planning area. Table F.3.2-7 in Appendix F of the USS FPEIS/PRMPAs lists the number of acres surveyed on BLM-administered lands within the 11-state planning area by survey type and the number of cultural resources recorded since 1970. As required by FLPMA, the BLM relied on its current inventory of public lands, to the extent it was available, in developing the USS FPEIS/PRMPAs.

Regarding comments received on the DPEIS, the BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4).

In compliance with NEPA, the BLM considered all public comments submitted on the DPEIS. Additional information regarding responses to comments can be found below in the *NEPA: Response to Public Comments* portion of this report.

The BLM relied on best-available information when developing the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

ESA Violations

Nye County

Megan Labadie

Issue Excerpt Text: Failure to Protect Endangered Species under the Endangered Species Act (ESA) The EIS violates the ESA by inadequately addressing the impacts on threatened and endangered species, such as the desert tortoise, golden eagle, and other sensitive wildlife species and habitat. The document relies on ineffective mitigation measures and fails to enforce protections that the ESA mandates to prevent harm to these species and their critical habitats. The “adaptive management” strategy proposed is insufficient and does not meet the ESA’s requirement to avoid jeopardizing the continued existence of listed species. The EIS must enforce stringent protections for endangered species and their habitats in compliance with the ESA. This includes direction to adopt rigorous mitigation measures, monitoring, and enforcement to prevent harm to critical habitats.

Friends of the Inyo***Kayla Browne***

Issue Excerpt Text: The FEIS does not adequately protect wildlife listed under the Endangered Species Act (ESA) and state fully protected species in the Eastern Sierra. PART OF THE PLAN BEING PROTESTED: 6.2, Table 6.2, 4.4.4, 4.4.4.1, F.4.3 The FEIS includes exclusion criteria to protect the habitats of threatened, endangered, and special status species (exclusions #2, #5, #6, #8, #9). However, these exclusions are not correctly reflected in the mapping for the FEIS. This is the case with the Sierra Nevada bighorn sheep, Bi-State sage-grouse, and Nelson’s Desert bighorn sheep. The mapping shows overlap in these species’ critical habitat, herd units, and areas available for solar development under the FEIS. Failure to protect these areas will result in habitat disturbance that negatively impacts the species’ ability to survive and reproduce. FEIS Appendix F.4.3.3.1.1 discussed the negative impacts of the loss of critical winter range and migration corridors from improperly placed solar projects. That section also discusses the establishment of edge habitats with solar projects and the increase of predation and disruption to distribution and dispersal patterns. The FEIS must include all the critical habitat and herd areas, or solar development will adversely impact these species. Sierra Nevada Bighorn Sheep is listed as endangered under ESA with a limited range in the Sierra Nevada mountains in California. Part of their wintering range is being marked as available for development under the FEIS. Areas along the eastern slopes of the Sierra Nevada there is overlap with this species’ critical habitat and areas open for solar development. FEIS Appendix F.4.3.2.2.5 states that bighorn sheep ewes move to reliable watercourses or water sources during lambing season. In the Sierra Nevada, heavy snowpacks can mean that lambing happens closer to the bottom of their range at 4,000 feet in elevation in Owens Valley.

Western Watersheds Project et al.***Laura Cunningham et al.***

Issue Excerpt Text: We do not find a Biological Opinion attached to this Final PEIS. This is an important consultation with BLM and USFWS and this needs to be made public for review. When approving actions that “may affect” listed species or their critical habitats, such as this final PEIS, federal agencies must consult with the FWS to ensure the actions do not jeopardize the species’ continued existence or adversely modify their critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). To fulfill the substantive mandates of Section 7 of the ESA, federal agencies must consult with an expert agency before undertaking actions with potential to affect listed species or their habitat. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(a), (b). This Section 7(a)(2) consultation process has been described as the “heart of the ESA.” *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011). An agency has “an ongoing duty to avoid jeopardy that continues regardless of the status of consultation, so long as the agency retains discretionary control over the action.” *Ctr. for Biological Diversity v. United States EPA*, No. 22-486 (BAH), 2023 U.S. Dist. LEXIS 137361, at *17-18 (D.D.C. Aug. 8, 2023).

Center for Biological Diversity***Patrick Donnelly***

Issue Excerpt Text: A. Desert Tortoise In the Draft EIS, BLM proposed excluding, “Known occupied habitat for ESA-listed species, based on current available information or surveys of project areas,” (Draft PEIS at 2-21). In a footnote this was clarified to include the Mojave desert tortoise (Draft PEIS at 2-24). The definition of “occupied” was left unclear. Certain design features were applied to areas with, “a suitability index equal to or greater than 0.5 (Nussear et al. 2009 or most recent as approved by permitting agencies) or habitat supporting 5 or more tortoises per square mile,” (Draft PEIS at B-38). However, the Draft PEIS included design features in these areas implying that a proposed project could be permitted within tortoise habitat, just subject to various design features and mitigations. This contradicted other statements that these areas would qualify as

“occupied” and thus be excluded and not subject to design features. The Draft PEIS left the reader wondering - is occupied tortoise habitat excluded or not? The Center and other commenters on the Draft PEIS suggested excluding all occupied tortoise habitat from solar development, with emphasis on the importance of habitat linkages, connectivity habitat, and movement corridors (FWS 2024, p. 14, 17; CBD 2024, p. 20-21, 29-32; TNC 2024, p. 12; TWS et al. 2024, p. 38-39, 49-52; DTC 2024, p. 4-5; NWF 2024, p. 26-27). In the proposed RMPAs, BLM modified the endangered species exclusion criteria, but the language remains unclear and BLM did not fully disclose the extent of the exclusions or the basis for the changes. The proposed RMPAs would now exclude “Known occupied habitat for ESA-listed species,” (Final PEIS at 2-21). A footnote specifies “this exclusion applies to all occupied habitat for ESA-listed species, including... Mojave desert tortoise,” (Final PEIS at 2-23). But in examining the maps it is clear that all Mojave desert tortoise habitat is not excluded. There are various confounding statements in the Final PEIS. “BLM coordinated with the USFWS to identify important habitat areas for approximately 40 ESA-listed species to be excluded from solar energy development on BLM-administered lands,” (Final PEIS at 5-64, emphasis added). “The modified Exclusion #2 in the Proposed Plan amendments include specific mapped areas for 40 ESA-listed species identified in coordination with the USFWS,” (Final PEIS at M-14). “Exclusion #2 includes habitat areas for Mojave desert tortoise, including translocation and connectivity areas, rather than defining exclusion areas based on tortoise presence or tortoise density. In response to comments, the BLM decided not to incorporate the unmapped exclusion for known occupied habitat in the Proposed Plan,” (Final PEIS at M-40, emphasis added). The statements are contradictory because the actual exclusion criteria states that all occupied habitat for the Mojave desert tortoise should be excluded, but other statements imply that only selected habitat areas are excluded whether or not they are occupied.

Summary:

Protestors claim that the BLM’s approval of the USS FPEIS/PRMPAs would violate the Endangered Species Act (ESA) because they:

- Inadequately assess impacts on threatened and endangered species in the project area, rely on ineffective mitigation measures, and fail to enforce protections under the ESA.
- Fail to protect listed species and their habitat in the Eastern Sierras, incorrectly reflecting excluded habitats in mapping and identifying some of these areas as available for solar development.
- Are supported by inadequate consultation with the USFWS to ensure that the BLM’s actions do not jeopardize listed species or cause destruction or adverse modification to designated critical habitat and were not accompanied by a Biological Opinion.
- Include unclear language on exclusion criteria for ESA-listed species, such as the desert tortoise.

Response:

As indicated in USS FPEIS/PRMPAs Section 7.4, *Agency Cooperation, Consultation, and Coordination*, “the BLM has initiated consultation with the USFWS and National Marine Fisheries Service (NMFS) under Section 7(a)(2) of the ESA to ensure that the BLM’s Proposed Plan would not jeopardize the continued existence of any listed threatened or endangered species” (USS FPEIS/PRMPAs, p. 7-10). The BLM prepared a Biological Assessment analyzing potential impacts of the Proposed Plan on listed species, and the USFWS and NMFS are preparing Biological Opinions, which will be made available to the public. This programmatic consultation focuses on the land allocations and design features at a high level. In addition to programmatic consultation under Section 7(a)(2) for the Proposed Plan, the BLM will consult with the USFWS or the NMFS, as appropriate, during project-specific reviews to ensure that projects do not jeopardize listed species or

adversely modify designated critical habitat (USS FPEIS/PRMPAs, p. 1-10). Project-specific analysis and Section 7(a)(2) consultation would incorporate current, site-specific species habitat information. Important habitat areas that may not be reflected in the maps for this planning effort would be considered during project-specific review, as appropriate. Finally, the exclusion criteria and programmatic design features incorporated into the USS FPEIS/PRMPAs reflect proactive conservation measures under ESA Section 7(a)(1).

Under Exclusion #2, all designated and proposed critical habitat areas for listed species and specified habitat areas for 40 listed species are not available for solar projects (USS FPEIS/PRMPAs, p. 6-7). Section 2.1.1.6, *Exclusion Criteria under the Action Alternatives*, explains that the exclusion criteria are dynamic, so when new critical habitat is proposed or designated, that new critical habitat will become excluded. If species are listed or delisted in the future, then the BLM may consult with the USFWS or NMFS, as appropriate. In response to comments and in coordination with the USFWS and the NMFS, all designated and proposed critical habitat for species protected under the ESA remains excluded under the Proposed Plan. Table 6-2, *Resource-Based Exclusion Criteria in the Proposed Plan*, Exclusion #2 includes the updates from draft to final EIS and details regarding mapping (USS FPEIS/PRMPAs, p. 6-7). Footnote (b) includes the 40 ESA-listed species with excluded habitat areas (USS FPEIS/PRMPAs, p. 6-13). Other exclusion criteria may also protect important habitat areas as well, including ACECs.

Regarding Mojave desert tortoise habitat, the following areas would be excluded under Exclusion #2 of the Proposed Plan: (1) designated critical habitat; (2) existing and future translocation sites identified by USFWS in coordination with BLM; (3) crucial connectivity areas; and (4) additional habitat areas identified in coordination with the USFWS (USS FPEIS/PRMPAs, p. 6-8). These areas are mapped in the USS FPEIS/PRMPAs. The BLM did not change Exclusion #8 (relating to desert tortoise translocation sites), but added, in Exclusion #2, projected future translocation sites, crucial connectivity areas, and additional habitat areas. The BLM also obtained spatial data from the USFWS for these areas that are now mapped as excluded.

Regarding Sierra Nevada bighorn sheep, all designated critical habitat would be excluded under Exclusion #2. Furthermore, big-game migration corridors mapped as “high use” and “[m]igration pinch points/bottle necks, parturition areas, stopover areas, and crucial and severe winter range” are excluded under Exclusion #9 (USS FPEIS/PRMPAs, p. 6-9). Numerous programmatic design features require measures to mitigate impacts on listed species and big game (USS FPEIS/PRMPAs, Appendix B, Section B.2.4).

In addition to exclusion criteria, the USS FPEIS/PRMPAs include robust programmatic design features to mitigate potential impacts of solar projects on listed species (USS FPEIS/PRMPAs, Appendix B, Section B.3.4). For example, among the dozens of design features related to ecological resources, including BLM Special Status Species (SSS) and habitat, Design Feature ER-1sss requires project developers to

avoid direct and indirect impacts to ESA-listed and proposed species, their habitat, and the ecological functions upon which the species and habitat depend, including by implementing appropriate avoidance areas established in coordination with the BLM, USFWS, NMFS, and relevant state agencies. Avoidance areas shall account for pollinator habitat and habitat connectivity as part of the ecological function of maintaining habitat. Any impacts to ESA-listed and proposed species, their habitat and ecological function shall be minor, minimized, and residual impacts compensated for, as appropriate.

ER-2sss requires measures to mitigate impacts on BLM sensitive, big game, and other priority species. And, under ER-6sss,

[c]onsistent with ESA section 7(a)(1), project developers shall work with the BLM, USFWS, NMFS, and relevant state agencies to develop and implement proactive conservation efforts from recovery plans or conservation agreements/recovery efforts to assist with conservation and recovery of BLM Special Status Species beyond mitigation requirements if such efforts are compatible with the project.

The BLM coordinated with the USFWS, NMFS, and state agencies throughout the planning process. See Section 7.4, *Agency Cooperation, Consultation, and Coordination*, and Section 7.5, *Cooperating Agencies*, for details and lists of all 78 agencies the BLM coordinated with during the planning process (USS FPEIS/PRMPAs, p. 7-9–7-12). BLM utilized data from the USFWS’s Information for Planning and Consultation (IPaC) tool and from their Environmental Conservation Online System, as well as other sources to determine potentially affected ESA-listed species discussed in Section 4.4.4.1, *Species That Are Listed, Proposed for Listing, or Candidates for Listing under the ESA* (USS FPEIS/PRMPAs, p. 4-35–4-39). The BLM has prepared a Biological Assessment, in accordance with ESA Section 7(a)(2), programmatically evaluating impacts on ESA-listed species. The BLM analyzed impacts on BLM sensitive species and other wildlife species using the best-available data, including data from state wildlife agencies. Section 5.4.3, *Wildlife*, breaks down analyzed impacts by species groups (i.e., amphibians, birds, mammals) within all 11 states (USS FPEIS/PRMPAs, pp. 5-50–5-64). Section 5.4.4, *Special Status Species*, breaks down analyzed impacts for ESA listed species, ESA Candidate species, BLM sensitive species and BLM SSS; USS FPEIS/PRMPAs, pp. 5-64–5-72). As indicated in Section 5.4.4.3, *Comparison of Alternatives*, the USS FPEIS/PRMPAs does not provide a detailed impact analysis for individual species, but does indicate that SSS have the potential to be significantly affected during all project phases (USS FPEIS/PRMPAs, p. 5-69). Tables 6-4, 6-8, and 6-9 in the USS FPEIS/PRMPAs summarize potential impacts of the Proposed Plan on wildlife, including big game and sensitive species. The USS FPEIS/PRMPAs also states,

Avoiding, minimizing, and mitigating impacts on SSS will occur during the planning and permitting stages for individual projects and as such, species-specific analysis is beyond the scope of this PEIS. Consultation with Federal and state natural resource agencies on individual projects may result in modifications to those projects that would avoid, minimize, and mitigate many of the impacts” (USS FPEIS/PRMPAs, p. 5-69).

Appendix F, Sections F.4.3 and F.4.4 of the USS FPEIS/PRMPAs provide additional information about the BLM’s wildlife analysis.

The BLM developed the USS FPEIS/PRMPAs in full compliance with the ESA. Accordingly, this protest issue is denied.

FLPMA: Consistency with Federal, State, and Local Plans/Policies

Eureka County, NV

Jake Tibbits

Issue Excerpt Text: We expected BLM to fully comply with FLPMA and NEPA by properly coordinating with Eureka County in incorporating the land use plans, policies and controls of Eureka County into the EIS and resolving any inconsistencies that arise and/or documenting such in the EIS.1 BLM failed to meet these legal requirements which is especially egregious since we specifically commented on this as a cooperating agency repeatedly through the process. The cursory and cavalier language in Section 1.1.6 and Appendix M (M.2.7.3 on p. 70)) and Appendix L simply do not cut it. In Appendix L, BLM cherry-picked one, and only one, statement from the Eureka County Master Plan to make the case that the 2024 Solar Plan is consistent with Eureka County’s plans, policies, and controls. In Eureka County’s February 2023 scoping letter to BLM, we stated “we expect BLM to fully comply with the intent of FLPMA and NEPA by properly coordination

with Eureka County in incorporating the land use plans, policies, and controls of Eureka County in the EIS and resolving any inconsistencies that arise.” In this same letter, we referenced and enclosed a “resolution recently adopted by the Eureka County Board of Commissioners restating, reaffirming, and summarizing County policies and positions regarding siting, development, and operation of alternative energy projects in or affecting Eureka County and its citizens and resources.” Also, in Eureka County’s comments as a cooperating agency throughout the process, we consistently exhorted BLM to meet its obligations for coordination and consistency and provided specific examples of lack of principled coordination and inconsistencies with our local plans, policies, controls, and programs. This includes verbal comments at many cooperating agency meetings and the written comments (attached) provided to BLM: * In June 2023 on the draft Exclusion Criteria * In July 2023 on the Administrative Draft Chapters 4 and 5 * In December 2023 on the Administrative Draft EIS * In April 2024 on the public Draft EIS * In July 2024 on the Administrative Draft Final EIS However, BLM has consistently and cavalierly failed to engage in proper and principled coordination with Eureka County and both disregarded and did not reference whatsoever the specific comments Eureka County provided to BLM repeatedly through the process which highlighted how components of the 2024 Solar Plan are, in fact, directly inconsistent with our plans and policies.

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: Non-Conformance with Applicable Laws, Policies, and Plans. As far as Bahsahwahbee, the swamp cedar forests, and Spring Valley, the BLM failed to create their Western Solar Plan FPEIS to be in conformance with applicable laws, policies, and plans. For example, the FPEIS does not conform to White Pine County’s Land Use Plan policies on cultural resources. Also, the FPEIS ignores established state laws (e.g., AB171) and policies (e.g., AJR4) that conflict with developing industrial solar fields on any part of Bahsahwahbee area and the swamp cedars. The FPEIS also runs exactly opposite of our Tribes’ established policies to protect, preserve and commemorate Bahsahwahbee and protect our religious gathering area of Bahsahwahbee. BLM also ignored - at least for Bahsahwahbee and Spring Valley -- their own requirements under the Federal Land Management and Policy Act (FLPMA) Section 2, such that they did not coordinate with our Tribes, did not give priority to the designation and protection of ACECs, did not consider present and potential uses of the public lands, weigh long term benefits to the public against the short-term benefits, and did not consider Tribal policies for land management of the areas.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Humboldt County protests BLM’s PEIS/RMPA because it does not comply with FLPMA’s consistency mandate and NEPA’s consistency analysis requirement. Such omission precludes meaningful analysis of the PEIS/RMPA, and BLM’s failure to address inconsistencies and its selection of the novel alternative preferred in the PEIS/RMPA-which, as explained below, is largely inconsistent with Humboldt County’s land use plans-will significantly hamper provision of public health and safety, revenue collection, and environmental protection by Humboldt County, which consists largely of BLM land.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Third, BLM cannot defer consistency review to project-specific authorizations: as noted, FLPMA requires that BLM ensure maximal consistency between its land use plans and local land use plans. Fourth, as we explain below, the Proposed Plan is not substantially similar to Humboldt County’s Public Land Resource Management Policy Plan. Instead, it includes at least the following inconsistencies that CEQ’s NEPA regulations require BLM to analyze. BLM could, and should, address these through a modified land use plan-including,

for example, the Smart from the Start alternative proposed by Humboldt County and other Nevada counties.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: In a new Appendix L, BLM describes its consideration of Humboldt County’s Renewable Energy Development and Transmission Policy. According to Appendix L, this is the only County policy that BLM considered. BLM states that it “considered the [renewable energy] policies in the Humboldt County Plan and determined that it is substantially similar to the Proposed Plan (see Section 3.2.6 of the Final Programmatic EIS).” PEIS/RMPA at L-13. BLM further states that “[d]esign features in Appendix B of this Programmatic EIS further require measures to reduce impacts to sensitive resources including those noted in the Humboldt County Plan.” Id. And BLM notes that it will defer further consistency review to project-specific authorizations. See id. BLM’s statement does not address the County’s concerns. First, we provided reference to our Livestock Grazing Policy to BLM in our comments on the administrative final PEIS/RMPA and made clear that BLM must consider and ensure maximal consistency with all Humboldt County land use plans. See Humboldt County Administrative Final PEIS/RMPA Comments at Rows 4, 18. Additionally, our comments have repeatedly addressed our concerns regarding the impacts of the PEIS/RMPA on livestock grazing in the County. See, inter alia, id. at Rows 10, 18, 61-68, 79; Humboldt County Draft PEIS/RMPA Comments at *1, *26-28, *31-32. BLM does not address inconsistencies between the PEIS/RMPA and this policy.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS shows that BLM failed to adequately consider the impacts of the proposed plan amendments and reasonable alternatives in the context of FLPMA. The BLM is required to ensure that the proposed plan amendments will be consistent with objectives of each of the RMPs as a whole, not simply overlay a new decision onto existing management plans that are tied to the resources of each specific management area. For example, the Las Vegas RMP, which guides management of the Pahrump Field Office of BLM, contains numerous requirements which are inconsistent with the proposed RMPA.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: Unfortunately, the PEIS fails to show that BLM has considered such potential conflicts in its preparation of the proposed RMPAs as required by FLPMA. Because BLM managers must comply with management plans (ONRCF v. Brong, 492 F.3d 1120, 1025 (9th Cir. 2007)), this will create unanticipated conflicts and confusion - and also result in undermining the purpose of the Western Solar Plan to support good siting for solar projects.

Nye County

Megan Labadie

Issue Excerpt Text: Local BLM districts, especially the Southern Nevada District Office (SNDO), regularly fail to address local land use planning and additional land disposal requests even though Nye’s land designations were included in all alternatives of both administrative and public drafts of the Las Vegas RMP Update which was terminated in 2018. The County’s requests retain some parcels from the 1998 inventory, removes parcels that are not consistent with current County and Water District Planning documents, and designates new lands not identified in the 1998 RMP but considered in the 2014 Public Draft and the 2018 Administrative Draft RMP. Nye County and its southern communities of Pahrump, Amargosa Valley, Tonopah, and Beatty need the proposed designations to ensure adequate land is available to support infrastructure needs, community facilities, recreational opportunities, and open spaces necessary to support and enhance activities

consistent with projected growth and economic and industrial development described in Nye County’s approved Master Plan for the Pahrump Regional Planning District (2023), the Amargosa Valley Area Plan (2009), the Beatty Area Plan (2014), and the 2017 Nye County Water Resources Plan Update. The EIS purposefully does not fully advocate requirements to adhere to local plans. Nor does it provide direction for prior County efforts to administratively obtain public land. This oversight prohibits communities’ economic sustainability and reasonably foreseeable planning efforts by opening public lands available for solar siting in areas where BLM districts do not consider local needs and refuse to recognize long-standing requests for local development that predate solar applications carelessly streamlined through this flawed administrative process. The fact that County requests for public land designations under FLPMA and R&PP predate many solar applications is a critical issue that highlights the mismatch between local and national priorities. Prioritizing solar energy applications over these longstanding County designations undermines local planning efforts, threatens rural community development, and compromises the multiple-use mandate of public lands. To ensure that renewable energy development does not come at the cost of local autonomy and community well-being, federal agencies must recognize and respect county requests that predate solar applications and seek to integrate renewable energy projects in ways that align with local land-use goals and priorities.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: During the review of the Administrative DPEIS, the Counties strongly encouraged BLM to provide a consistency review matrix addressing county natural resource management plans. It was suggested that the matrix include: The BLM action item or mitigation measure, the corresponding county policy statement, whether the BLM action is consistent or not with the County Plan and if inconsistent provide an explanation as to why (rules, regulations or policies) the action is not consistent. BLMs response to this comment at the time was “No change made at this time. Handle at the project level analysis.” The Counties again asked BLM to provide a consistency review matrix in our Administrative FPEIS comments and saw BLMs attempt at including a very narrowly focused matrix that fails to address our concerns regarding the lack of internal consistency review for the entire local county plans. The BLM only included a small section of our plan specifically related to “renewable energy development” and did not give any consideration to the inconsistencies with other resource uses that might conflict with solar land allocations and provided no resolution to inconsistencies. There is no discussion within the FPEIS of any inconsistencies with local plans in their entirety and the BLM has failed to describe the extent which the agency would reconcile the RMPA with local plans. The BLM’s failure to provide meaningful analysis of these inconsistencies raises serious concerns about the adequacy of the RMPA’s review process. The Counties again request that the BLM complete this exercise and meaningfully address the extent to which RMPA’s inconsistencies can be reconciled with the entirety of local plans. This must be reflected in the Record of Decision.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: Furthermore, BLM does not consider, and there is no meaningful discussion presented anywhere in the document, as to how solar land allocations determined in a high-level planning document may conflict with other land allocation uses such as mineral leasing and development and how those conflicts will be reconciled. BLM only notes in their response that there were “No identified inconsistencies with applicable policies.” There is no way to know that based on the narrow “consistency review” that was given to the Counties plans and policies. BLM must take a more comprehensive “hard look” look at how their land allocation decisions cumulatively impact all uses in the Counties and the adjacent areas. Therefore, the BLM failed to

adequately consider the Counties local land use plans nor did they adequately respond to the Counties comments and concerns.

Primergy Solar

Emily Cohen

Issue Excerpt Text: Design Features Should be Revised to Ensure BLM Operates within its Jurisdiction Several design features establish requirements which are already regulated under existing agency codes, rendering BLM's requirements obsolete, duplicative, and inconsistent with well-established legal requirements, for example: * PW-22 Requires developers to integrate indigenous knowledge, in collaboration with/approval of Tribe(s) and, as appropriate and available, identify resource concerns, develop mitigation strategies, and inform decisions, while maintaining confidentiality of information. Tribal-related requirements will be established in the Memorandum of Agreement that is issued under the National Historic Preservation Act (NHPA) Section 106 consultation process, which will be binding on the project, obviating the need for additional, and potentially inconsistent, requirements. * N-1 Requires developers to evaluate, implement, and coordinate with the BLM to apply measures that avoid, minimize, or compensate for adverse noise impacts. Projects are already required to comply with municipal noise codes and regulations. * ER-7aq Requires developers to design transmission lines such that adequate height clearance is provided for riparian vegetation including riparian trees. Projects are already required to comply with the National Electric Code. * ER-6sss Requires development and implementation of conservation efforts beyond mitigation requirements if compatible with the project. * ER-9sss Requires a bat survey plan for potential impacts, including to proposed species, which can take approximately 12 years to become listed. * ER-1w, ER-2sss, ER-3sss, and ER-4sss Designate big game migration corridors as an Avoidance land allocation or compensatory mitigation areas * HS-1 Requires safety setbacks for solar facilities and associated transmission lines from residences and occupied buildings, roads, ROWs, and other public access areas. Projects are already required to meet manufacturer and local agency code setback requirements. * TI-2, TI-4, TI-5, TI-6, TI-7 Requires developers to provide access for Tribes to visit culturally important or sacred sites without any clear parameters, and in addition, such matters are more properly set forth in the terms of the Memorandum of Agreement that will be entered into under the Section 106 consultation process with the consulting parties. That consultation process will be vital to inform the various details and scope of any tribal access rights. * WR-9h Requires developers to monitor water quantity and quality in areas adjacent to or downstream from development areas throughout the life of the project to ensure that water flows and water quality are protected. Projects are already required to comply with NPDES and state- mandated water quality permit requirements. * WF-6 Requires developers to include BESS specifications and Fire Management Plan protocols. Projects are already required to comply with local fire authority code requirements. * AQC-PG-8 Requires use of real-time onsite dust monitors to document wind/emission events. Projects are already required to comply with local air district dust control permit requirements. * ER-PG-23sss Requires avoidance, minimization, or compensation for impacts to monarch butterflies, which is currently a candidate species. * ER-PG-26sss Requires developers to conduct post construction monitoring for BLM SSS and priority species for a minimum of five years post-construction. Species mitigation is already subject to the USFWS Biological Opinion.

Friends of Nevada Wilderness

Shaaron Netherton

Issue Excerpt Text: While we recognize this was a high level analysis, due to the extensive acreage affecting Nevada a finer screening of conflicts, including the expansion of the exclusion zones, needs to be completed before the ROD is issued. There are several categories of additional exclusion zones needed including the following:

- Areas proposed for solar that are in direct conflict with current public land legislation.

- Areas that have been formally proposed to the BLM for conservation and habitat protection in land use planning efforts that were abandoned. (Battle Mountain and Carson City Districts in particular). These would include LWCs, ACEC, BCAs, and other critical and high-value wildlife habitats as identified by the Nevada Department of Wildlife.

Areas proposed for solar that are in direct conflict with current public land legislation

Direct conflicts exist with the following introduced legislation:

- The Bahsahwahbee National Monument Act (S.4828) introduced by Senator Cortez Masto on July 29, 2024.
- “This legislation is a critical step in pushing for the creation of the Bahsahwahbee National Monument,” said Senator Cortez Masto. “We have a responsibility to protect this landscape and honor the memory of those killed in the massacres in Eastern Nevada, and I’ll continue working with all local Tribes and communities to ensure we can best support and preserve this sacred place.” Bahsahwahbee was the site of three 19th century massacres of the Newe people that had gathered in the area for religious ceremonies - including one of the largest recorded massacres of Native Americans in U.S. history, resulting in the death of approximately 525 to 700 men, women, and children.
- Of course the Biden Administration is also considering a Presidential National Monument proposal for this important area. Bahsahwahbee National Monument Proposal with Solar Conflicts
- The Truckee Meadows Public Lands Management Act (S. 3593) introduced on 1/16/24 by Senator Jacky Rosen and co-sponsored by Senator Catherine Cortez Masto. Conflicts include (total 22,150 acres):
 - 362 acres with the Burro Mountain Wilderness proposal
 - 487 acres with the Smoke Creek National Conservation Area (includes 3 acres overlap with Wrangler Canyon Wilderness)
 - 517 acres with Kiba Canyon NCA
 - 269 acres with Massacre Rim Dark Sky NCA ? 1,177 acres with Massacre Rim Withdrawal
 - 1,667 acres in Pah Rah NCA (proposed by Reno Sparks Indian Colony)
 - 1,004 acres in Tule Peak Withdrawal Area
 - 10,482 acres in Sand Hills/Petersen Mountain Withdrawal
 - 3,077 acres with the lands to be transferred to the Reno Sparks Indian Colony
 - 797 acres within lands to be transferred to the Pyramid Lake Tribe
 - 52 acres within lands to be transferred to the Washoe Tribe
 - 2,259 acres within Washoe County requested lands for disposal (includes land for Washoe County School District and affordable housing) Map of the Truckee Meadows Public Lands Management Act with Solar Conflicts
- Pershing County Economic Development and Conservation Act (S. 4848) introduced by Senator Rosen on 7/30/24 and the compassion bill HR 3173 introduced by Congressman Mark Amodei as part of his Northern Nevada Economic Development and Conservation Act on 5/10/23. Direct Conflicts Include:
 - 14.5 acres along the north end of the North Sahwave Proposed Wilderness. This is also identified as an LWC.
 - 383 acres in Bluewing Proposed Wilderness Map of the Blue Wing and North Sahwave Proposed Wilderness in the Pershing Bill with Solar Conflicts
- Southern Nevada Economic Development Act (S 4457) reintroduced by Senator Cortez Masto on 6/4/2024. Direct Conflicts Include:
 - 15,733 acres in the Red Rock National Conservation Area expansion
 - 6,097 acres in proposed Wilderness

- 14,408 acres in Clark County proposed Special Management Areas Map of the Southern Nevada Economic Development Bill and solar conflicts
- While still pending introduction this fall, the Nye County Conservation and Economic Development Act contents were approved by the Nye County Commission in Nye County Resolution No, 2022-06 on March 1, 2022. Direct Conflicts include:
 - 4,219 acres in the proposed Confusion Hills proposed Wilderness
 - 4,173 acres in the proposed Heart Hills proposed Wilderness ? 14,111 acres in the proposed Lunar Starlight National Conservation Area
 - 437 acres in Desert Tortoise Candidate Sites
 - 877 acres in Nye Country requested Recreation and Public Purposes conveyance
 - 72 acres of Nye County requested lands available for disposal
 - 1,837 acres of the Last Chance Range; an area Nye County requested be dropped from disposal consideration and returned to general multi-use BLM land as open space.

Requested Remedy: Remove all of the acres in conflict with public land legislation prior to issuing the Record of Decision. Shape files can be provided to assist the BLM with excluding these lands.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: While BLM did provide a very narrowly focused “consistency review” in Appendix L, we disagree with the declaration that BLM is consistent with the Counties plans in every aspect. Both Counties submitted their entire county natural resource plans with our comments on the DPEIS and we have included them again here for BLMs convenience. The purpose of providing BLM with our county natural resource plans is to encourage them to identify whether or not the federal agencies management actions are consistent with the county policy and if not consistent, they should provide a detailed explanation as to why based on federal laws, regulations, rules or policies. Unfortunately, BLMs response to comments was far from thoughtful nor did they demonstrate that any meaningful consideration to consistency review for the entire plan. BLMs “consistency review” was very narrowly focused on only those specific policy statements we brought forth in our DPEIS comments and there was no attempt at looking any further into our local plans as was requested by the Counties. Throughout the Final EIS, the BLM asserts that “in the development of the Programmatic EIS, the BLM established regular opportunities for interaction with state and local officials. State, local, and Tribal officials reviewed and provided input on the Programmatic EIS through multiple mechanisms, including as cooperating agencies, through scoping and Draft Programmatic EIS public comments...” While regular opportunities for interaction are appreciated, establishing opportunities for participation as a cooperating agency does not de facto achieve consistency with local plans. In other words, a federal agency cannot accomplish consistency simply because local governments formally participated as cooperating agencies. Furthermore, the BLM goes on to describe perceived inconsistencies “from these interactions (describing the regular interactions with cooperators),” but fails to reference all of the local county plans within the project area.

Utah Farm Bureau Federation

Terry Camp and ValJay Rigby

Issue Excerpt Text: BLM did not adequately coordinate with or consider state and local resource management plans, as required by FLPMA and the National Environmental Policy Act (NEPA). Utah’s Resource Management Plan encourages retention or mitigation of the loss of grazing AUMs and prime agricultural lands. Additionally, the Final Solar PEIS does not outline a specific process for working with local representatives to resolve conflicts between pre- existing land uses and solar development, as called for in Utah’s Resource Management Plan objectives.

Rose Strickland

Issue Excerpt Text: Consistency with Local, State and Federal Land Use Plans: Although not listed in the Exclusion Criteria, there are other federally managed areas in Nevada which will be adversely impacted by utility-scale solar developments. The Great Basin National Park, located in Snake Valley, NV is one of the premier International Dark Sky Parks within the United States, offering astronomy programs and dedicated to reducing its own light pollution. The Park will now be exposed to light pollution from utility-scale solar developments on public lands surrounding the park in Snake Valley in NV and Utah and Spring Valley in NV. Ash Meadows National Wildlife Refuge is a Ramsar designated wetland of international importance, a desert oasis in the Mojave Desert. As home to 25 endemic species with 12 species of plants and fish protected as threatened or endangered, its 30 perennial springs, seeps, and sloughs are dependent on the flow of ancient groundwater carried by the Amargosa River. Due to the Proposed Plan, the Refuge is now also surrounded by public lands available for utility-scale solar developments with unknown and undisclosed needs for sources of water. The final PEIS states (p. 1-11) that Section 202 of FLPMA requires the BLM to “...coordinate planning efforts with...other federal departments...”, but does not disclose whether this BLM decision on utility-scale developments on NV public lands was made in consultation with Park or Refuge management agencies or is in compliance with these Park and Refuge management plans. The final PEIS does not even consider the potential adverse impacts of the Proposed Plan on either the Park or the Refuge.

Citizens to Protect Smith Valley (NV)***Leslie Sonne***

Issue Excerpt Text: INCONSISTENCIES WITH 2020 LYON COUNTY MASTER PLAN. CHAPTER 5 NATURAL RESOURCES AND ENVIRONMENT CPSV protests the Final PEIS/Proposed RMPA because BLM did not consult with Lyon County regarding consistency with our Master Plan, as required by FLPMA, regardless of cooperating agency status. The Lyon County Board of County Commissioners provided BLM with a copy of the pertinent parts of the Lyon County Master Plan with its comment letter dated April 18, 2024, which is attached. BLM should have been aware of the 2020 Lyon County Master Plan through their public engagement and participation process. However, as pointed out in the CPSV comment letter (April 15, 2024), meaningful input from Nevada’s cooperating agencies in the Draft PEIS was ignored.

Citizens to Protect Smith Valley (NV)***Leslie Sonne***

Issue Excerpt Text: CPSV protests the Final PEIS/RMPA on the basis that our local citizens and government has been deprived of fulfilling Master Plan Goal NR 5 Policy NR 5.1. Lyon County Master Plan Goal NR5 addresses Renewable Energy. Policy NR 5.1 states: “Lyon County will encourage utilization of available renewable energy resources such as solar radiation, geothermal heat, and wind, with a stated strategies to “Identify sites in the county with significant solar, geothermal, or wind resources that may be suitable for future utility-scale development [and] Consider measures to encourage alternative energy development on these sites.” (emphasis added.)

State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development et al.***Sindy Smith et al.***

Issue Excerpt Text: The Federal Land Policy and Management Act (“FLPMA”) requires the BLM to assemble land use plans “consistent with State and local plans to the maximum extent [the Department of Interior] finds consistent with Federal law”. 43 U.S.C. §1711(c)(9). Despite the BLM’s claims to the contrary, the Proposed Plan, with the vast scale of lands “Available for Application,” is not consistent with either the State’s Resource Management Plan (“SRMP”) or some of the county resource management plans of affected counties. For example, it is the official

policy objective of the State that utility-scale solar be developed to “[e]ncourage the retention or mitigation of the loss of Animal Unit Months (AUMs) for livestock grazing on public lands when solar farms are constructed.” Yet the Proposed Plan designates over 5 million acres of BLM land, including millions of acres of land used for productive livestock grazing, as “Available for Application.” While the BLM could seek to retain or mitigate the loss of AUMs at the project-specific phase of a solar energy project, the vast expanse of productive grazing land now open to utility-scale solar development is inconsistent with the SRMP. Consistent planning would have used the PEIS as an opportunity to protect more grazing lands from future development while providing more nuanced guidance on where solar development is appropriate.

State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development et al.

Sindy Smith et al.

Issue Excerpt Text: In Utah’s Beaver County, the County Resource Management Plan contains a policy specifically opposing utility-scale solar energy development that could result in the loss of AUMs. The BLM acknowledges this inconsistency and cites design features in the Proposed Plan that could be used to mitigate impacts to livestock grazing. But true consistency with local land use plans, as intended under FLPMA, should have compelled the BLM to include county-specific exclusion areas based on a county’s formal policy opposing the loss of AUMs. Merely kicking the can down the road to the project-specific phase of solar development is not the purpose of the “consistent to the maximum extent” provision of FLPMA.

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: Exclusion No. 18, Old Growth Forests. The swamp cedar groves at Bahsahwahbee and elsewhere in Spring Valley are old growth forests that were not considered as such in the PFEIS. That’s surprising given that BLM representatives called our Tribes with questions about the swamp cedars forests in Spring Valley. The swamp cedars occur in areas of the valley bottom. These forests have trees that are centuries old (300+ years old), and BLM- USFS have defined similar woodlands as old growth forests at an age of 150-200 years old. Plus, these swamp cedar forests are relics of the Pleistocene-Holocene transition (c. 11,700 years ago). The swamp cedar forests are also subject to part of the BLM’s Ely District Resource Management Plan including at pages 27, 28, 40, 49, 50, 55. The swamp cedar forests are a cultural site and cultural resource - as they are the embodiment of our indigenous Newe ancestors massacred in Spring Valley - which is a further part of BLM’s Ely District RMP that was not properly considered in the Western Solar Plan. Also, swamp cedar forests were identified in the Nevada Forest, Range and Watershed Action Plan (page 386) as habitat for endangered species *Frasera gypsicola* - and here again, BLM failed to consider these plan components in the FPEIS and failed to follow its own exclusion criteria. Adding to this, the swamp cedar trees are a protected species under Nevada state law, put forth in Nevada Assembly Bill 171 and requiring such protected status to be included in future land use plans. More, the State of Nevada, BLM, USFS, and USFWS have an Agreement for Shared Stewardship (2019) where the first theme was for ecological restoration and expanding capacity in part by working with Tribal governments to improve ecosystem health - and that includes for Bahsahwahbee and the swamp cedar forests therein. But BLM again failed to consider those items, especially relating to Bahsahwahbee and Spring Valley, and failed to exclude those areas from the solar development zones in the FPEIS when they should have been by BLM’s own standards and criteria.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: For all public lands, Congress mandated that the BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43

U.S.C § 1732(b). The Final PEIS shows that BLM failed to adequately consider the impacts of the proposed plan amendments and reasonable alternatives in the context of FLPMA. The BLM is required to ensure that the proposed plan amendments will be consistent with objectives of each of the RMPs as a whole not simply overlay a new decision onto existing management plans that are tied to the resources of each specific management area. These plan amendments will cause conflicts and inconsistencies within individual RMPs.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: Other Inconsistencies with FLMPA: Ignoring Values of Adjacent National Park, National Wildlife Refuge, and Reservation Lands The Center also protests the proposed plan amendments because they are inconsistent with FLPMA, regulations and the RMPs in the following ways: The proposed plan amendments fail to address the need for compatibility with protection of National Park and National Wildlife Refuge (NWR) resources. FLPMA’s coordination and consistency provisions regarding public land planning and management extend to other federal departments and agencies. 43 U.S.C. § 1712(c)(9). The areas that would be available for solar development include areas adjacent to and lands designated as National Parks, NWR and Tribal lands including Indian Reservations. In its management of public lands BLM is charged with maintaining environmental quality as a whole, in a manner that contributes to the protection of those lands and resources for the enjoyment and benefit of current and future generations. Because the FLPMA requirement that BLM’s management of public lands be coordinated and ‘harmonious’ extends to those management obligations of other federal agencies, including national parks, national wildlife refuges, and tribal lands. 43 U.S.C. § 1712 (c)(9). BLM failed to fully consider impacts to National Park and NWR resources and Reservation lands. The proposed Plan Amendments would violate FLPMA for several reasons including because they will contribute to the degradation of resources and their values within the National Parks, NWR and on Tribal lands in terms of water resources, air quality, noise and other impacts.

Summary:

Protestors stated that the USS FPEIS/PRMPAs would violate FLPMA and NEPA by:

- Failing to be in conformance, or discuss the rationale for inconsistencies with, county plans and policies, including the Nye County’s approved *2023 Pahrump Regional Planning District Master Plan Update* (2023), the *Amargosa Valley Area Plan* (2009), the *Beatty Area Plan* (2014), Nye County’s *2017 Water Resources Plan Update*, Humboldt County’s *Land Use Plan* (2017), White Pine County’s *Land Use Plan* (2007), the *2020 Lyon County Master Plan*, Eureka County plans and policies, and Beaver County regulations.
- Failing to be in conformance with state laws and policies, including the State of Utah’s *Resource Management Plan* and Nevada Assembly Bill 171.
- Failing to be in conformance with Tribal laws and policies.
- Failing to be compatible with National Park and National Wildlife Refuge (NWR) plans and regulations.
- Failing to adequately consider effects on lands and resources under other agency and tribal jurisdiction.
- Failing to consider consistency with other BLM state and field office resource management plans including the BLM Ely District RMP and the Las Vegas RMP, which may result in future land use conflicts and inconsistencies.
- Failing to adequately protect the Bahsahwahbee area and the swamp cedars, which are protected under various state, local, and Tribal regulations, including Nevada Assembly Bill 171, an

Agreement for Shared Stewardship between Nevada, BLM, the U.S. Forest Service (USFS), and USFWS, and White Pine County's *Land Use Plan* policies regarding cultural resources.

- Proposing several design features that establish requirements that are regulated under existing agency codes, rendering the BLM's requirements obsolete, duplicative, and inconsistent with well-established legal requirements.

Response:

Section 202(c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." BLM land use plans may be inconsistent with officially approved or adopted state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

In accordance with this requirement, the BLM has considered officially approved or adopted resource-related state, local, and Tribal plans that are germane to the development of the USS FPEIS/PRMPAs. The BLM has worked closely with state, local, and Tribal governments during preparation of the USS FPEIS/PRMPAs. As described in Chapter 7 of the USS FPEIS/PRMPAs, the BLM has coordinated through government-to-government engagement with Tribes and with Federal, state, and local agencies through the cooperating agency process (USS FPEIS/PRMPAs, pp. 7-8–7-12). The BLM met with cooperating agencies regularly during preparation of the DPEIS and FPEIS. As cooperating agencies, state and local officials reviewed and provided input on the alternatives and administrative draft documents (USS FPEIS/PRMPAs, p. 1-12).

USS FPEIS/PRMPAs Appendix L describes the BLM's review of

officially approved or adopted state, local, and Tribal land use plans that may apply to utility-scale solar projects. The BLM considered plans approved and adopted by cooperating agencies, and from entities that are not cooperating agencies, but that submitted comments about plan consistency on the Draft Programmatic EIS (USS FPEIS/PRMPAs, p. 1-12).

The BLM's review of policy and plans in the 11-state planning area identified resource and land use policies and plans that relate to methods or locations of utility-scale solar energy development, broader renewable energy siting and regulation, and general land use. In most cases, the PRMPAs are consistent with state, local, and Tribal plans; however, there are a few cases where certain provisions in state, local, and Tribal plans may be inconsistent (USS FPEIS/PRMPAs, p. 1-12). The objective of the BLM's USS FPEIS/PRMPAs is consistent with the relevant provisions of many of these state, local, and Tribal plans: to facilitate renewable energy development while protecting important resources. For example, the Lyon County, Nevada's *2020 Master Plan* states that Lyon County "will encourage utilization of available renewable energy resources, such as solar," and will "[i]dentify sites in the county with significant solar. . . .resources that may be suitable for future utility-scale development" and "[c]onsider measures to encourage alternative energy development." (USS FPEIS/PRMPAs, p. L-15). The USS FPEIS/PRMPAs responds to Federal law and policy related to advancing renewable energy and aligns with the BLM's mandate for managing public lands consistently with FLPMA and other applicable laws. In particular, it responds to the Energy Act of 2020, EO 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), and EO 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (86 FR 70935), which directs the SOI to support national renewable energy goals on public lands. The BLM will discuss why any remaining inconsistencies between the USS FPEIS/PRMPAs and relevant local, state, and Tribal plans cannot be resolved in the ROD for the approved USS RMPAs and why the approved USS RMPAs are consistent with state, local, and Tribal plans to the maximum extent consistent with Federal law and the purposes of FLPMA. The BLM's ROD for the approved USS RMPAs will not

authorize any solar projects, and the BLM will consider comments related to specific resources and consistency with state, local, and Tribal plans during project-specific reviews, as appropriate.

Regarding state and local plans relating to grazing, such as the State of Utah's *Resource Management Plan* and *Beaver County, Utah, Resource Management Plan*, the BLM analyzed potential impacts on grazing in the planning area (USS FPEIS/PRMPAs, pp. 5-120–5-121). As stated in Table 6-4, although 90 percent of the lands available for solar development occur within grazing allotments, only 2 percent of those lands are expected to be developed over the planning period (USS FPEIS/PRMPAs pp. 6-23–6-24). The BLM notes that although grazing practices may evolve to be compatible with utility-scale solar, cattle grazing and utility-scale solar energy generation currently are largely incompatible (USS FPEIS/PRMPAs, p. 5-120). However, the USS FPEIS/PRMPAs include design features and project guidelines to minimize incompatibilities with grazing activities. Design Feature LG-1 requires project developers to coordinate with potentially affected grazing permittees/lessees during project-specific review, and project guidelines relate to designing and siting solar projects to allow grazing operations to continue to the maximum extent practicable (USS FPEIS/PRMPAs, pp. B-26, B-48). These design features promote compatibility between grazing and solar development consistently with the BLM's mandates under FLPMA to manage public lands for multiple use and sustained yield, while acknowledging that the BLM may elect to use "some land for less than all of the resources" (43 U.S.C. 1702). Impacts of individual projects on grazing, including in Utah, would be assessed during project-specific review.

USS FPEIS/PRMPAs Appendix M, Section M.2.7.3, *Plan Consistency with Local, State, and Tribal Plans*, provides a response to comments regarding the consistency with other plans, including impacts on grazing allotments (USS FPEIS/PRMPAs, pp. M-69, M-70). The BLM's meetings and coordination with Federal, state, local, and Tribal entities, as well as the BLM's fulfillment of FLPMA's Section 202 requirements, are outlined in Section 1.1.6, *Consistency with Local Plan* (USS FPEIS/PRMPAs, pp. 1-11, 1-12).

Regarding coordination with Eureka County, the BLM reviewed all potentially applicable state, local, and Tribal land use plans, including the *Eureka County Master Plan*, and considered comments provided by Eureka County. As described in USS FPEIS/PRMPAs Appendix L, the BLM considered plans approved and adopted by cooperating agencies and plans identified by entities that are not cooperating agencies. In most cases, as with the Eureka County local land use plans, the BLM concluded that the USS PEIS/RMPAs is consistent with the applicable state, local, and Tribal plan. Project-level decisions will undergo additional NEPA analysis.

Regarding potential conflicts between solar land allocations and other land uses, such as mineral resource development, Section 5.11 of the USS FPEIS/PRMPAs discusses the potential impacts of solar project authorizations on mineral resources and includes a discussion of various tools that the BLM can use to reduce or avoid such conflicts, including temporary segregation of lands under renewable energy applications from operation of the mining laws, offset drilling technologies, and underground mining methods compatible with solar development (USS FPEIS/PRMPAs, pp. 5-111–5-115). The designation of lands as available for solar projects in this planning process would not preclude other uses on such lands, including for potential mineral development. The BLM considers all applications for proposed uses of BLM-administered lands in accordance with applicable laws, regulations, and policies. Any new solar energy authorizations must be compatible with existing authorizations, including for mineral development, and therefore this planning action would not affect those existing authorized activities (USS FPEIS/PRMPAs, p. 5-111). The BLM's project-specific environmental reviews will include a detailed consistency review with the applicable land use plan and consideration of resource-related conflicts, public concerns, and proximity to important resources.

The BLM discusses compliance with other BLM plans, including resource management plans, in Section 1.3, *Relationship to Other Programs, Policies, and Plans*, of the USS FPEIS/PRMPAs. Additionally, Section 1.1.5, *BLM Requirements for Further Environmental Analysis*, notes that the BLM will perform “focused evaluation of the area proposed for application, including a detailed consistency review with the applicable land use plans” during project-specific reviews. Under the USS FPEIS/PRMPAs, areas designated as no-surface occupancy, right-of-way (ROW) exclusion, or ROW avoidance (to the extent the purpose of the ROW avoidance is incompatible with solar energy development) in applicable land use plans would not be available for solar application (Exclusion #7, USS FPEIS/PRMPAs, p. 6-8). The USS Approved RMPAs would amend land use plans within the 11-state planning area, as identified in Appendix A of the USS FPEIS/PRMPAs, only to identify land allocations and establish programmatic design features for utility-scale solar development. The approved USS RMPAs would not amend any other elements of those land use plans as they relate to other resources and land uses. In evaluating a solar application in an area allocated as available under the approved USS RMPAs, the BLM may nonetheless determine that the project is inconsistent with other elements of the applicable land use plan and may, at that point, modify the proposal to avoid the inconsistency, address the inconsistency through a project-specific plan amendment, or deny the application, as appropriate. The BLM would follow all applicable laws and policies in the course of completing any project-specific land use plan amendment.

The BLM acknowledges both the cultural and ecological importance of the Bahsahwahbee area, swamp cedars, and old-growth forests areas. The Bahsahwahbee area would be excluded from solar development under Exclusions #16 and #17 because it is a traditional cultural property (TCP) listed on the National Register of Historic Places (NRHP) and recognized by the BLM. Portions of the Bahsahwahbee area are also within the Swamp Cedar ACEC, which is excluded under Exclusion #1.

As described in USS FPEIS/PRMPAs Section 2.1.16, *Exclusion Criteria under the Action Alternatives*, certain resource exclusions remain unmapped, including TCPs and sacred sites, due to informational sensitivity. Lands would be excluded if they satisfy any one of the exclusion criteria as written, regardless of whether they are reflected on maps within the FPEIS (USS FPEIS/PRMPAs, pp. 2-20–2-21). The BLM would determine whether any unmapped exclusions apply during project-specific review in response to an application. Furthermore, if sensitive areas were identified or designated through other processes—for example, as an ACEC or National Monument—then those areas would become excluded because the exclusion criteria update dynamically to include current resource information. Specific resources would be considered during project-specific evaluation and NEPA review. Just because lands are available for solar application, it does not mean that the BLM has decided that these areas are suitable for solar energy development, and the BLM may deny a solar project application due to site-specific resource concerns (USS FPEIS/PRMPAs, p. 1-10).

In developing the USS FPEIS/PRMPAs, the BLM considered important resources, including National Parks and NWRs in the planning area. The USS FPEIS/PRMPAs identify *Areas of Special Coordination*, and Design Feature PW-29 states that the BLM will coordinate with the NPS when reviewing any solar project application within 25 miles of National Parks, National Monuments, and other NPS-managed lands (USS FPEIS/PRMPAs, p. H-8, B-8). Resources that will be considered through coordination include dark night skies, visitor access points, and other ecological and cultural features. Other designated areas are excluded under various criteria, such as ACECs, designated Critical Habitat for listed species, and National Conservation Lands. Under Design Feature PW-30, if a proposed project is within 10 miles of USFWS NWR lands, then project developers, in coordination with the BLM and USFWS, will consider the proposed project’s potential impacts on NWR resources and determine appropriate mitigation (USS FPEIS/PRMPAs, p. B-9). These design features and areas of special coordination ensure that the BLM considers these resources during project-specific review.

The BLM acknowledges that some of the design features in the USS FPEIS/PRMPAs (Appendix B) incorporate elements of other legal and regulatory requirements. This reflects the reality that utility-

scale solar projects are subject to a range of Federal, state, and local laws with overlapping objectives related to environmental protection. In making a decision regarding an individual solar development application, the BLM must comply with NEPA, ESA, NHPA, and any other applicable laws and regulations. Incorporating other legal requirements in the design features is designed to promote coordination between project developers, the BLM, and other Federal, state, and local regulatory agencies to ensure efficient reviews and project permitting. As the BLM notes,

Project developers and the BLM are required to comply with all applicable laws and regulations. While these design features identify some potentially applicable legal requirements where they may be relevant to mitigating impacts to resources, the design features are not intended to be a comprehensive catalog of all potentially applicable legal requirements. Project developers are responsible for identifying and complying with applicable requirements (USS FPEIS/PRMPAs Appendix B p. B-3).

The BLM would allow variations in design features in several instances, including where “an alternative design feature or a state-approved conservation measure is determined to provide equal or better protection for the resource(s) in question” (USS FPEIS/PRMPAs Appendix B, p. B-2). The BLM therefore could allow the inclusion of other appropriate design features, including those established through other regulatory authorities.

The BLM satisfied FLPMA’s consistency requirement in preparation of the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

FLPMA: General

Friends of the Inyo

Kayla Browne

Issue Excerpt Text: The FEIS does not adequately and accurately identify previously disturbed lands, particularly in arid, sparsely vegetated desert climates. The FEIS uses the US Geological Survey (USGS) Landscape Intactness model to identify substantial departures from baseline resource conditions to determine previously disturbed landscapes. Landscape intactness is defined as a quantifiable estimate of naturalness measured on a gradient of anthropogenic influence (FEIS K.1). The FEIS also uses the Terrestrial Development Index (TDI) to map and measure human disturbances. Therefore, the BLM uses human disturbances as a marker of previously disturbed lands. These datasets do not accurately and completely identify previously disturbed lands because they do not account for naturally occurring disturbances along the steep slopes of the Sierra Nevada Mountains, Inyo Mountains, White Mountains, and Adobe Valley in the form of alluvial fans. The FEIS is inconsistent with FLPMA, which requires BLM to prevent unnecessary or undue degradation of public lands. 43 U.S.C § 1732(b). Alluvial fans are being marked as disturbed lands inaccurately. Ground-truthing in these areas of the Eastern Sierra revealed no human-caused disturbance and the absence of invasive plant species or noxious weeds. The Eastern Sierra in California is a unique landscape comprising the Central Basin and Range and Mojave Basin and Range ecoregions. It is an arid ecoregion that also supports sagebrush growth. We believe that because it is a sparsely vegetated landscape, the USGS models identify these lands as previously disturbed when they do not meet the criteria. These alluvia occur on slopes greater than 5%, as stated by Friends of the Inyo et al. (FOI et al. 2024, p. 3). Because these alluvial fans are being flagged as previously disturbed lands, these rare, unique, and intact landscapes are at risk of solar development and are not being properly protected. Misidentifying these intact landscapes and making these areas available for solar development would cause potentially irreversible damage. Appendix F.4.1.3 discusses the difficulty and low success rate of vegetation restoration in arid climates, particularly in the Central Basin and Range and Mojave Basin and Range ecoregions. Saltbush-greasewood communities, Creosote communities, and unique habitat types, like microphyll woodlands and desert washes, are called out to be difficult to

rehabilitate and would likely sustain permanent damage from development even after decommissioning.

Friends of the Inyo

Kayla Browne

Issue Excerpt Text: The FEIS does not adequately protect cultural resources on the Volcanic Tablelands, Round Valley, Tungsten Hills, north and west of Bishop, CA. PART OF THE PLAN BEING PROTESTED: 6.2, Table 6-2, The FEIS excludes tribal interest areas (exclusion #17) from potential solar development. FEIS 5.3.1 states, “Cultural resources are nonrenewable and, once damaged or destroyed, are not recoverable. Therefore, if a cultural resource is damaged or destroyed during solar energy development, this particular cultural location, resource, or object would be irretrievable.” FLPMA SEC. 102. 43 U.S.C. 1701 directs that “(a) The Congress declares that it is the policy of the United States that- (8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” The inclusion of the areas discussed in this section as available for solar development under the FEIS violates FLPMA.

Summary:

Protestors stated the USS FPEIS/PRMPAs would violate sections of FLPMA, including the mandate in FLPMA to prevent unnecessary or undue degradation of public lands, in part by listing naturally occurring geological features, such as alluvial fans, as previously disturbed areas. The BLM violated FLPMA Section 102 (43 U.S.C. 1701) by allowing solar development, despite its mandate to manage to protect the quality of various resources and use of the public lands.

Response:

The proposed planning decision would not result in unnecessary or undue degradation to resources that may exist in lands the USS FPEIS/PRMPAs identifies as previously disturbed. As an initial matter, because this planning decision does not authorize any solar projects or other on-the-ground activity, the land allocation decisions itself cannot result in unnecessary or undue degradation. Moreover, the BLM is using appropriate criteria and data to identify previously disturbed lands within the planning area at a programmatic level. In response to public and cooperating agency feedback, the BLM adjusted those criteria and the data used to identify lands as previously disturbed from the DPEIS and draft plan for the USS FPEIS/PRMPAs to better reflect appropriate parameters for arid versus non-arid lands (USS FPEIS/PRMPAs Appendix K). At the same time, the BLM recognizes that a programmatic identification of lands as previously disturbed may be overinclusive. For that reason, and to ensure that lands are properly identified as previously disturbed and that restored lands are not used for solar development, the BLM added a design feature that requires project developers to verify that lands are, in fact, previously disturbed where projects are proposed on lands identified at the programmatic level as previously disturbed that are more than 15 miles from existing or planned transmission lines (i.e., lands that would not otherwise be available by virtue of the transmission proximity criterion). If the developer were not able to verify that the lands proposed for use in a solar project are in fact previously disturbed (and assuming the lands are more than 15 miles from an existing or planned transmission line), then the lands would not be considered available. In this way, the USS FPEIS/PRMPAs would protect resources, such as alluvial fans, that may be inadvertently identified as previously disturbed lands, thereby preventing unnecessary or undue degradation.

Many cultural resources would occur on lands subject to the exclusion criteria proposed in the USS FPEIS/PRMPAs, including some exclusion criteria based on the presence of cultural resources. But cultural resources may also occur on lands available for solar development under the USS FPEIS/PRMPAs. In those cases, impacts on cultural resources would be evaluated as the BLM considers project proposals, and the project proponent would be required to implement the programmatic design features related to cultural resources from Appendix B, Section B.2.3, of the USS FPEIS/PRMPAs. The BLM may also identify and require additional mitigation measures to avoid, minimize, or compensate for impacts on cultural resources, including any of the project guidelines identified in Appendix B, Section B.3.3, of the USS FPEIS/PRMPAs. This approach to project-level review is consistent with the policy statement in Section 102(a)(8) of FLPMA, 43 U.S.C. Section 1701(a)(8), that the BLM should manage the public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” Accordingly, this protest issue is denied.

FLPMA: Multiple Use

Utah Farm Bureau Federation

Terry Camp and ValJay Rigby

Issue Excerpt Text: UFBF strongly believes that the Final Solar PEIS fails to properly balance multiple uses of public lands as required by the Federal Land Policy and Management Act (FLPMA). By making nearly five million acres in Utah available for solar applications, the plan threatens to displace grazing and other existing uses rather than finding an appropriate balance. This vast acreage represents nearly 21% of BLM-administered lands in Utah, which is an excessive amount to dedicate to a single use. FLPMA mandates that public lands be managed ‘on the basis of multiple use and sustained yield,’ but this plan appears to prioritize solar energy development at the expense of other vital uses, such as livestock grazing. The potential loss or fragmentation of grazing allotments could have devastating ripple effects throughout our state’s agricultural sector and rural economies.

Utah Farm Bureau Federation

Terry Camp and ValJay Rigby

Issue Excerpt Text: Furthermore, many of these lands provide crucial wildlife habitat, recreational opportunities, and other resource values that could be compromised by industrial-scale solar development. UFBF contends that BLM has not adequately considered or weighted these existing uses and values in its decision-making process. We urge BLM to reconsider this approach and develop a truly balanced plan that preserves the multiple-use mandate of FLPMA. This should include significantly reducing the acreage available for solar applications, implementing stronger protections for existing grazing allotments, and establishing a more rigorous process for evaluating the impacts of proposed solar projects on other land uses and resources. The current plan, in our view, represents an overreach that threatens the sustainable, multiple-use management of Utah’s public lands.

State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development et al.

Sindy Smith et al.

Issue Excerpt Text: The BLM’s Proposed Plan strays from the BLM’s core function of promoting the “multiple use and sustained yield”¹⁶ of public lands by designating a huge swath of BLM lands as “Available for Application” greatly exceeding the BLM’s own RFDS. The BLM predicts that, under the Proposed Plan, Utah would see only 39,793 acres of solar development on BLM land by 2045, yet the Proposed Plan designates 5,010,256 acres as “Available for Application,” 126x Utah’s

RFDS acreage. While the State understands that the utility-scale solar energy industry needs flexibility for citing future developments, the vast size of lands degreed as “Available for Application” exceeds any reasonable industry need and fails the PEIS’s purpose and need statement. Utility-scale solar energy, though it will likely play an important role in Utah’s future energy mix, is a single-use of public lands. As the Proposed Plan acknowledges, locations where solar panels are installed are generally incompatible with mineral extraction, outdoor recreation, wildlife habitat, hunting, livestock grazing, and other common uses of BLM land. Natural vegetation conditions can also take many years to recover after solar panels are removed. This is precisely why the “Smart from the Start” Alternative proposed by Utah and other western states asked the BLM to adopt a more robust definition of “disturbed lands” and focus utility-scale solar development on low-conflict lands where these other uses don’t often occur. But the designation of a vast 5,010,256 acres fails in this regard.

The Wilderness Society et al.

Gregg DeBie et al.

Issue Excerpt Text: The Protesting Parties agree that BLM needs sufficient siting flexibility to avoid resource conflicts to the maximum extent possible, and we support opening more lands to solar application than needed to fulfill the RFDS, but ample room remains to carve out additional, discrete, low-conflict lands from the 31.7 million acres of proposed solar application areas without defeating BLM’s purpose and need for the proposed action. BLM, consistent with its multiple use and sustained yield mission imposed by the Federal Land Policy and Management Act (FLPMA), should begin by excluding all nominated areas of critical environmental concern (ACECs), inventoried lands with wilderness characteristics (LWC), and community-identified LWC until those lands are promptly evaluated. This exclusion should also be dynamic, so that depending on the results of the evaluations BLM would either continue to exclude the lands or open them to solar application. In this manner, BLM will comply with FLPMA by balancing multiple uses and preventing the first wave of development under the final solar plan from unnecessarily or unduly degrading public lands. This approach will further our shared goal of reducing environmental and social conflicts and lead to more efficient and responsible solar development in the end.

The Wilderness Society et al.

Gregg DeBie et al.

Issue Excerpt Text: In short, BLM’s multiple use and sustained yield mandate and duty to prevent unnecessary and undue degradation encompass the use of some public lands for conservation purposes, and protective land designations like ACECs and LWC, including the management prescriptions accompanying those designations, are key components of BLM’s mission. Indeed, FLPMA explicitly recognizes ACECs as “areas within the public lands where special management attention is required... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes.” Because the “[d]esignation and management of ACECs advance[s] the multiple use and sustained yield goals of FLPMA,” BLM must prioritize ACECs when preparing and maintaining its inventory of public lands resources and values and during land use planning. Federal courts also hold that LWC “retain vitality as a resource category covered by the BLM’s multiple-use land use planning mandate” under FLPMA, and that the resources and other values on the public lands that BLM must inventory include “wilderness characteristics.” These inventories elicit the information needed for BLM to make reasoned and informed decisions are the foundation on which all further management decisions are built-from land use allocations to site-specific project planning-so it is critical that BLM relies on current inventories when designating solar application areas and reviewing solar applications. While BLM may favor certain land uses over others in specific instances, the proposed management strategy in the Final Solar EIS for nominated ACECs and LWC does not meet the “delicate balancing” of land uses mandated by FLPMA. As discussed below, more should be done

to protect ACEC values and wilderness qualities on BLM-administered lands within the 11-requirements imposed by other federal laws”); *Utah Shared Access Alliance v. Carpenter*, 463 F.3d 1125, 1136 (10th Cir. 2006) (noting BLM has an independent duty to prevent unnecessary or undue degradation). state planning area. At a minimum, BLM must better explain its decisions not to exclude nominated ACECs or LWC left unprotected by existing RMPs.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: Federal Land Policy and Management Act (FLPMA) directs BLM to “manage the public lands under principles of multiple use and sustained yield” and declares it is the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” Multiple use as defined by FLPMA may include “the use of some land for less than all of the resources.” With the intention of reducing conflicts between utility-scale solar siting and other integral resources and uses of public lands, the proposed updated Western Solar Plan identifies 21 criteria for excluding some public lands from solar applications. The Western Solar Plan does not consider some resources for exclusion throughout the entire planning area at this time, due to the exclusion descriptions, even though BLM maintains data and inventories for those resources elsewhere in the planning area. This will likely result in increased conflicts in certain geographic areas, slowing renewable energy development. In contrast, excluding areas of high potential conflict at the outset would help ensure project applications are directed towards areas that are most suitable for utility-scale solar development and thus would likely result in a more rapid deployment of renewable energy. This issue was brought up in numerous public comments on the DEIS, with all commenters cited here suggesting modified exclusion criteria. BLM not only failed to update the exclusion criteria to address the issues raised by commenters in the DEIS comment period, BLM also failed to analyze their reasons for why it eliminated provisions within the draft plan’s exclusion criteria from consideration.

Nye County

Megan Labadie

Issue Excerpt Text: The Misguided Policy of Landscape-Level Planning The EIS adopts a landscape-level planning approach similar to the BLM’s Planning 2.0 initiative, which was rejected by Congress in 2017. Like Planning 2.0, this EIS consolidates decision-making at a broad landscape level, undermining local, site-specific considerations that are essential to informed land management. By treating vast regions as uniform blocks for development, the EIS disregards the specific ecological, cultural, and social characteristics of individual sites. This approach ignores the intent of Congress in rejecting Planning 2.0 and fails to adhere to the multiple-use mandate of the Federal Land Policy and Management Act (FLPMA), which requires the balanced use of public lands for a variety of purposes, including conservation.

Nye County

Megan Labadie

Issue Excerpt Text: The document lacks sufficient detail regarding the intersection of livestock grazing permits and solar siting on public lands, particularly in promoting the cohabitation of these two uses. Under FLPMA, 43 U.S.C. § 1701 et seq., the BLM is required to manage public lands for multiple uses, including both livestock grazing and renewable energy development. However, the document does not adequately address how these uses can coexist in areas designated for solar energy development, nor does it provide clear guidance or criteria for balancing the needs of grazing permit holders with the operational requirements and land alterations associated with solar facilities. Furthermore, the document fails to propose specific mitigation measures or management strategies that could support the co-location of these uses, which could result in conflicts over land access, fencing, water resources, and forage availability, contrary to FLPMA’s mandate to avoid

unnecessary or undue degradation of the land. The EIS should outline explicit guidelines for co-locating solar facilities with livestock grazing or exclude siting on grazing allocations altogether. Mitigation strategies may be developed to support the coexistence of these uses, ensuring access to fencing, water resources, and forage availability. Additional protection for ranchers should be developed to make them whole.

Nye County

Megan Labadie

Issue Excerpt Text: Disregard for Impacts on Rural Communities in Violation of FLPMA The EIS also fails to consider the adverse effects of large-scale renewable energy development on rural communities, contrary to the multiple-use mandate of FLPMA. These projects can lead to increased noise pollution, light pollution, dust, traffic, and other disruptions, significantly altering the rural character of these areas. FLPMA requires that public lands be managed in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. The EIS disregards these mandates by allowing development that threatens rural communities' quality of life and local economies.

EDF Renewables Development, Inc.

Devon Muto

Issue Excerpt Text: FLPMA's multiple use mandate requires BLM to manage the public lands and their resource values in a "combination that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c). EO 14008 makes clear that one such "combination" - the promotion of environmentally responsible renewable energy development on public lands - is of national importance. Congress expressed the same sentiment in the Energy Policy Act of 2020. At the Departmental level, Secretarial Order 3399 ("SO 3399") identifies a Department-wide objective to "prioritize[e] and accelerat[e] the appropriate environmental review of renewable energy projects ... on Department-managed lands " The Department's Strategic Plan similarly commits the Department to "increas[ing] renewable energy production on public lands ..." and "identif[y]ing ...additional areas with potential renewable energy resources." As stated on page 10 of its comment on the DPEIS, EDFR agrees blanket exclusions are appropriate under the multiple use mandate in those instances where utility-scale solar development clearly would be categorically incompatible with formally designated land use values, such as Wilderness Characteristics or National Conservation Lands. But blanket exclusions of solar development that lack a valid, resource-based demonstration of incompatibility should be removed from the Proposed Plan because they are arbitrary and capricious, essentially abdicate FLPMA's multiple use mandate, and (as explained further below) ignore the Department of the Interior's ("DOI") renewable energy directives laid down by the Energy Act of 2020, EO 14008, SO 3399, and the DOI Strategic Plan.

EDF Renewables Development, Inc

Devon Muto

Issue Excerpt Text: The Proposed Plan's inflexible approach to PDFs is also inconsistent with FLPMA's multiple use mandate. See 43 U.S.C. § 1732(a). As noted above, FLPMA directs BLM to manage the public lands and their resource values in a "combination that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c). By replacing the flexibility of the 2012 Solar Plan's approach with strict, uncompromising avoidance measures that significantly limit the amount of land available for renewable energy development, the Proposed Plan falls short of the multiple use mandate. Instead, it irresponsibly and unnecessarily undermines national policies for the development of renewable energy on public lands.

Summary:

Protestors claimed that the USS FPEIS/PRMPAs fail to comport with FLPMA’s direction that the BLM generally manage the public lands under principles of multiple use and sustainable yield by:

- Opening a disproportionate amount of land to solar development over other uses, such as livestock grazing, not adequately addressing how utility-scale solar and livestock grazing can coexist, and failing to address mitigation measures associated with solar development’s impact on livestock grazing.
- Placing blanket exclusions for solar development on areas that lack a valid, resource-based demonstration of incompatibility with the use of the land for solar energy generation, significantly limiting the amount of land available for renewable energy development.
- Taking a landscape-level approach to planning and ignoring local, site-specific considerations that are essential to informed land management, and failing to consider the adverse effects of large-scale energy development on rural communities, including increased pollution, dust, traffic, and other disruptions, which can significantly damage local resources and economies.
- Failing to mitigate conflicts with other integral resources and land uses, including by not adequately responding to public comments.
- Exceeding its own Reasonably Foreseeable Development Scenario (RFDS) in identifying BLM-managed lands as available for solar projects, and thereby allocating huge swaths of land as effectively “single-use,” only for utility-scale solar.
- Failing to protect ACECs, inventoried LWCs, and community-identified LWCs that were either nominated by the public or are currently being evaluated.

Response:

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 USC 1732(a)). Section 103(c) of FLPMA defines *multiple use*, in part, as management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

Multiple use does not mean that all uses must be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses and employ the mechanism of land use allocation to protect certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation. Through the land use planning process, the BLM evaluated and chose an appropriate balance of resource uses, which necessarily involves tradeoffs between competing uses. Such tradeoffs are consistent with, and indeed inherent to, managing the public lands under principles of multiple use and sustained yield.

Moreover, the planning decisions proposed in the USS FPEIS/PRMPAs will not themselves preclude any other use of the public lands, including in areas allocated as available for solar development. Section 1.1.5 of the USS FPEIS/PRMPAs states that the BLM will conduct project-specific environmental review in accordance with applicable laws and regulations in response to applications for solar projects. The project-specific process will include a comprehensive analysis to determine potential site-specific impacts on resources and other land uses to determine suitability of the proposed solar energy project and will identify appropriate mitigation measures to reduce impacts (USS FPEIS/PRMPAs Appendix B). The BLM considers other previously approved land use authorizations, such as existing authorizations for mineral development and ROWs, as part of the agency’s review of solar applications (USS FPEIS/PRMPAs, p. 5-104).

FLPMA grants the SOI the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, ACECs, present and potential uses of the land, relative scarcity of

values, and long-term and short-term benefits, among other resource values (43 U.S.C. 1711 § 201(a)). The BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). 43 CFR Section 4100.0-8, then, provides that the BLM will manage livestock grazing on public lands in accordance with applicable land use plans.

The BLM acknowledges that not all livestock grazing is compatible with utility-scale solar generation, as discussed in USS FPEIS/PRMPAs Section 5.13.1, and that the direct impact of solar development on grazing permit and lease holders may be significant because solar development would decrease lands available for livestock grazing (USS FPEIS/PRMPAs, p. 5-121). Impacts on livestock grazing are mitigated by the design features and project guidelines identified in USS FPEIS/PRMPAs Appendix B, Sections B.2.13 and B.3.13. Design Feature LG-1 requires project applicants to coordinate with potentially affected grazing permittees/lessees at the project-specific level (USS FPEIS/PRMPAs, p. B-26). Livestock grazing allotments are not, however, excluded from solar development, and the BLM grazing regulations (43 C.F.R. § 4110.4-2(b), 2005) provide that grazing permits or leases can be canceled or modified with a 2-year notification to the grazing permittee or lessee if some or all the lands within the grazing allotment are to be devoted to another use, consistently with the principles of multiple use and sustained yield. The USS FPEIS/PRMPAs would not authorize any solar projects, and compatibility of grazing operations concurrent with solar development would be evaluated at the project-specific NEPA review. For example, Section 4.13.1 describes recent research that suggests that sheep grazing and solar development can be compatible under certain circumstances (USS FPEIS/PRMPAs, p. 4-63).

As described in USS FPEIS/PRMPAs Section 2.1.1.6, lands are excluded if they satisfy any one of the exclusion criteria (see Table 2.1-3). The USS FPEIS/PRMPAs used the most current GIS data and best-available information to develop the exclusion criteria (USS FPEIS/PRMPAs, p. 2-20). Most of the exclusion criteria are dynamic, and areas identified as excluded in the USS FPEIS/PRMPAs will change as land use plans are revised, amended, or updated based on new information and data on resource conditions (USS FPEIS/PRMPAs, p. 2-20). Design Features PW-1 and PW-2 require further analysis at the project specific level (USS FPEIS/PRMPAs, p. B-4).

The BLM’s landscape-level approach is consistent with managing the public lands under principles of multiple use and sustained yield and aligns with direction in the Energy Act of 2020 and relevant EOs regarding environmental justice and clean energy. Section 1.1.1 of the USS FPEIS/PRMPAs states that the programmatic effort allows the BLM to respond to key changes made since publication of the 2012 Western Solar Plan, including an increase in solar development to support increased public interest in renewable energy (USS FPEIS/PRMPAs, p. 1-3). BLM’s land use planning regulations at 43 CFR 1610.1(b) and under the *BLM Land Use Planning Handbook* allow planning at any appropriate geographic scale. Programmatic environmental analysis is also informed by NEPA (42 USC §§ 4336b, 4336e(11)) and the Council for Environmental Quality’s (CEQ) NEPA regulations (40 CFR § 1502.4(b), 2022) for actions that have common impacts, subject matter, and technology.

Impacts of utility-scale solar development on local communities and their economies are discussed in Section 5.15 of the USS FPEIS/PRMPAs. Specific analysis of proposed projects would build on that programmatic assessment to determine the complete socioeconomic impacts on rural communities from a given project (USS FPEIS/PRMPAs, p. 5-133). Solar development may affect available housing, existing grazing allotments, cost of living, and traffic to small rural communities. Design Feature S-1 requires project applicants to work with state, local, and Tribal agencies and governments to develop community monitoring programs that evaluate negative socioeconomic impacts at the project level (USS FPEIS/PRMPAs Appendix B, p. B-27).

USS FPEIS/PRMPAs Section 5.2.1.1 discusses the impacts of fugitive dust from solar development. The BLM acknowledges an increase in fugitive dust from construction operations (USS FPEIS/PRMPAs, p. 5-11). Impacts on communities from fugitive dust would be mitigated by project guidelines AQC-PG-2, AQC-PG-4, and GS-PG-14, if applied at the project level. Additionally, USS FPEIS/PRMPAs Section 5.20.1.3 discusses the extent of water use, including for dust suppression, during construction activities.

The BLM considered all public comments submitted for the USS DPEIS/RMPAs, including those that identified or expressed concern about potential conflicts between solar development and other potential uses of the public lands, as required by the CEQ's NEPA regulations (40 CFR 1503.4, 2022). Appendix M of the USS FPEIS/PRMPAs presents the BLM's responses to all substantive comments, summarizing the issues raised, providing a meaningful response, identifying any modification in the USS FPEIS/PRMPAs, improvements to the impacts analysis, or factual corrections. The BLM's response also explains why certain public comments did not warrant further agency response. See the *NEPA – Response to Public Comments* section of this report for more information.

The RFDS presented in Section 2.2 of the USS FPEIS/PRMPAs was not used to set a target for how much land to make available for utility-scale solar development. The proposed allocations of land as available for solar were driven instead by considering where solar development would most likely avoid conflicts with other important resources and land uses. At the planning level, it is appropriate to allocate significantly more land for a use than the BLM believes prospective users may need or desire. In the present context, that approach allows solar developers to direct project proposals to where they determine those projects can be successfully constructed, while also leaving flexibility to adjust project siting in response to site-specific resource conflicts identified in project-level reviews.

The determination in the Proposed Plan not to exclude nominated ACECs, all inventoried LWCs, and community-identified LWCs is well within the BLM's discretion to make planning-level allocations as part of managing the public lands under principles of multiple use and sustained yield. Although those areas may warrant protection, the BLM has determined that a blanket exclusion in all cases is not warranted. For any proposed solar project on available lands that overlaps with a nominated ACEC or LWC, the BLM would evaluate the effects the project would have and use that evaluation to determine whether solar development is an appropriate use for those lands, consistently with the principles of multiple use, sustained yield, and any other applicable law.

The USS FPEIS/PRMPAs satisfies FLPMA's direction that the BLM manage the public lands under principles of multiple use and sustained yield (unless otherwise directed by law). Therefore, this protest issue is denied.

FLPMA: Unnecessary or Undue Degradation

Friends of Nevada Wilderness

Shaaron Netherton

Issue Excerpt Text: Overall, the NEPA review for the Proposed Plan Amendments is inadequate and, on this basis as well, BLM has failed to comply with FLPMA and other laws. BLM's failure to adequately comply with NEPA, as detailed herein and in earlier comments, also shows that adoption of the proposed Plan Amendments will violate FLPMA requirements. As the Interior Board of Land Appeals has stressed, “[t]o the extent BLM failed to meet its obligations under NEPA, it also failed to protect public lands from unnecessary or undue degradation.” *Island Mountain Protectors*, 144 IBLA 168, 202 (1998) (holding that to prevent unnecessary or undue degradation BLM must consider the nature and extent of surface disturbances resulting from a proposed decision as well as the environmental impacts on resources and lands outside the area of

operations); National Wildlife Federation, 140 IBLA 85, 101 (1997) (holding that BLM failed to properly balance competing resource values to ensure the future health of the public lands). On this basis as well as other bases detailed herein, BLM’s proposed Plan Amendment violates FLPMA and is unlawful. 43 U.S.C. §§ 1701(a)(8), 1732(b), 1732(d)(2)(a); 43 C.F.R. §8342.2.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: Exclusion criteria 1, 3, and 18 do not rely on the current inventory of public lands and will not prevent unnecessary or undue degradation of public lands as required by FLPMA. FLPMA requires BLM, “by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” This substantive duty lies at “the heart of FLPMA,” and extends to all actions undertaken on BLM-managed lands. Our comments advised BLM to look holistically at the resource-based exclusion criteria to ensure they satisfy FLPMA’s mandate to prevent unnecessary or undue degradation (UUD) of all the explicitly enumerated resources and values. FLPMA also directs BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values” which “shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” When developing and revising land use plans, FLPMA requires BLM to “rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” BLM guidance directs the agency to “maintain and update as necessary” its LWC inventories, including community-proposed LWCs. Western Solar Plan exclusions 1, 3, and 18 rely solely on applicable land use plans to determine whether Areas of Critical Environmental Concern (ACEC), Lands with Wilderness Characteristics (LWC), and old growth forests are excluded from solar application. In our comments, we explained that these exclusion descriptions do not “sufficiently prevent UUD and exclude important resources and values on BLM-administered lands,” and we urged a more holistic approach to ensure full compliance with FLPMA. In particular, groups emphasized in comments the need for BLM to update its inventories of areas with significant conservation value.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: FLPMA requires BLM, “by regulation or otherwise,” to “take any action necessary to prevent unnecessary or undue degradation” when “managing the public lands.” This substantive duty to prevent UUD lies at “the heart of FLPMA,” and extends to all actions undertaken on BLM- managed lands. However, the FEIS failed to undertake the relatively straightforward task of identifying truly disturbed lands and prioritizing these lands for solar development and transmission lines. Doing so would have avoided future resources conflicts, provided greater certainty to solar developers, and ultimately expedited BLM reviews and permitting decisions for proposal solar projects on public lands.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The proposed RMPA fails to comply with FLPMA’s mandates for preventing unnecessary and undue degradation of public lands. This failure permeates each of the issue areas discussed herein in this protest, and all of the below protested points are part of an overall protest based on this failure. “[T]he Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b) (“UUD”). This substantive duty to prevent unnecessary and undue (UUD) lies at “the heart of FLPMA,” *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 42 (D.D.C. 2003), and extends to all actions undertaken on BLM-managed public lands. In May of 2024 BLM issued a new definition of UUD as part of its Conservation and Landscape Health Final Rule, 89 Fed. Reg. 40308 (May 9, 2024)-the first time the agency expressly defined UUD outside of the mining context.

***Amargosa Conservancy
Mason Voehl***

Issue Excerpt Text: In order to properly comply with FLPMA and BLM’s duties to protect public lands and resources, the new definition of UUD at 43 C.F.R. § 6101.4 should apply to the Western Solar Plan. BLM must revise its review and potential approval of the proposed RMPAs accordingly. BLM’s Proposed Plan fails to prevent UUD because it authorizes harm to land and wildlife that is not necessary to meet BLM’s goals. BLM’s analysis in both the Draft and Final PEISs showed that it was possible to accommodate the Reasonably Foreseeable Development Scenario over 12 times over, while still excluding solar development from the occupied habitat of ESA listed species and other sensitive areas. See, e.g., Final PEIS at 2-27 to 2-28. Yet the Proposed RMPAs would leave much of this habitat available for development, excluding only certain areas based on undisclosed and arbitrary criteria. *Id.* at 6-13 (the Final PEIS does not describe how BLM and FWS delineated the “additional specific areas” or species protected under the Proposed Plan). The harm to ESA-listed species, for instance the desert tortoise or those at Ash Meadows National Wildlife Refuge, under the Proposed Plan would constitute UUD because it is not necessary to meet BLM’s solar development goals or the purpose and need for the action. Indeed, making the occupied habitat of ESA-listed species and other sensitive areas available for development is contrary to BLM’s stated purpose and need because it would increase resource conflicts and create uncertainty for developers.

***Center for Biological Diversity
Patrick Donnelly***

Issue Excerpt Text: The Final PEIS has failed to adequately address the unique issues related to development of solar adjacent to lakes and other open water features and to consider an exclusion for these areas to prevent unnecessary and undue degradation of public lands resources—the failure to consider exclusion of these sensitive areas on public lands shows that BLM has failed to comply with FLPMA’s planning and inventory requirements.

***Center for Biological Diversity
Patrick Donnelly***

Issue Excerpt Text: The Protested Proposed Plan Amendments fail to Comply with FLPMA Planning Requirements and Fail to Avoid Unnecessary and Undue Degradation of Public Lands. FLPMA requires that: [T]he public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use. 43 U.S.C. § 1701(a)(8). The requirement to prevent unnecessary and undue degradation (“UUD”) must be considered in all aspects of BLM decision-making including plan amendments. The Center protests the BLM’s failure to recognize the need for minimization, avoidance of unnecessary and undue degradation from the proposed plan amendments to public lands resources across the eleven western states including impacts to species and habitats due to habitat fragmentation, groundwater depletion, loss of habitat, edge effects of development, and loss of habitat connectivity.

***Center for Biological Diversity
Patrick Donnelly***

Issue Excerpt Text: In order to properly comply with FLPMA and BLM’s duties to protect public lands and resources, the new definition of UUD at 43 C.F.R. § 6101.4 should apply to the Western Solar Plan. BLM must revise its review and potential approval of the proposed RMPAs accordingly. BLM’s Proposed Plan amendments fail to prevent UUD because they would authorize harm to land and wildlife that is not necessary to meet BLM’s goals. BLM’s analysis in both the Draft and Final PEISs showed that it was possible to accommodate the Reasonably Foreseeable

Development Scenario over 12 times over, while still excluding solar development from the occupied habitat of ESA listed species and other sensitive areas. See, e.g., Final PEIS at 2-27 to 2-28. Yet the Proposed RMPAs would leave much of this habitat available for development, excluding only certain areas based on undisclosed and arbitrary criteria. Id. at 6-13 (the Final PEIS does not describe how BLM and FWS delineated the “additional specific areas” or species protected under the Proposed Plan). The harm to ESA-listed species under the Proposed Plan amendments would allow for UUD because they are not necessary to meet BLM’s solar development goals or the purpose and need for the action. Indeed, making the occupied habitat of ESA-listed species and other sensitive areas available for development is contrary to BLM’s stated purpose and need because it would increase resource conflicts and create uncertainty for developers.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: Slope Restrictions. ISSUE BEING PROTESTED: The Final PEIS failed to include an alternative which maintains the 5% slope restriction and failed to analyze the impacts of changing the slope restriction from 5% to 10%. PART OF THE Proposed Plan Amendments BEING PROTESTED: 2.1.1 In the 2012 Western Solar Plan, solar development was limited to areas with slope less than 5%. This helps minimize the impacts of erosion and large-scale land grading, and will promote quicker reclamation after decommissioning. Proposed Plan Amendments increase the maximum slope allowed to build solar projects on from 5% to 10%, a major shift from the 2012 WSP, which opens up a much larger area - millions of additional acres across the West - for development. However, the impacts of this change on public lands resources were not analyzed in the Final PEIS. The Center’s Draft EIS comment letter and others urged such an analysis (e.g. CBD 2024, pp. 3 & 14-15; CPSV 2024, p. 2; Taylor 2024, p. 1), but BLM failed to include it. The change is given a cursory mention with no analysis in several places in the Final PEIS (e.g. Final PEIS at 5-50, at 5-70, etc.). The only alternatives comparison is made between Alternative 1 (no slope requirement) and Alternatives 2-5 (10% slope requirement) and is presented in cursory fashion (Final PEIS at 2-41).

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The BLM failed to address the impacts of the proposed RMPAs on areas proposed for protection. In particular, the proposed RMPAs allocate lands as available for solar within or directly adjacent to areas currently proposed for various sorts of federal protection. These include proposals for: Bahsahwahbee National Monument (Nevada); Owyhee Canyonlands National Monument (Oregon); Great Bend of the Gila National Monument (Arizona); Cabeza Prieta National Wildlife Refuge expansion in Ajo Valley (Arizona); and the Ash Meadows Mineral Withdrawal (Nevada). In each case, the proposed RMPAs would allocate these lands as available for solar, which threatens to undermine the very features for which protections are being sought. Siting utility scale solar projects on these lands proposed for protection as national monuments and wildlife refuges would cause unnecessary and undue degradation of public lands resources because alternative, less sensitive sites, are available.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: BLM cannot rely on optional project guidelines to protect from UUD. A large number of mandatory design features in the Draft PEIS have become optional project guidelines in the Final PEIS. These optional guidelines, “provide additional methods and considerations that may support achievement of the required outcomes of the mandatory plan-wide and resource-specific design features. These guidelines may be applied in whole or in part at the discretion of the BLM authorized officer based on the project siting issues, local conditions, and advice from BLM resource staff,” (Final EIS, Appx. B at B-2). The criteria for when optional project guidelines would

apply is not specifically spelled out. It's unclear when and if any of these guidelines would apply. In short, the mandatory design features included in the Draft PEIS were significantly pared back and many were made optional in the proposed RMPAs without explanation. This serves to greatly limit the efficacy of design features in minimizing the harms of solar development, calling into question whether the RMPAs are effective in achieving their aims of low-conflict solar development or avoiding UUD of public lands as required under FLPMA. It also emphasizes the need for supplemental NEPA analysis, since the removal of these design features is a major change that the public never had the chance to comment on.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The Final PEIS fails to adequately provide for the protection of bird habitats, most importantly in and adjacent to open water or other aquatic features. As discussed above, the failure to address areas near open water and other aquatic areas is also a violation of FLPMA requirements to prevent UUD and look at the public lands resources as a whole in planning. The lack of analysis of impacts to birds was raised during the Draft PEIS comment phase by the Center and others (CBD 2024, p. 19-20; NCTWS 2024, p. 4; MTFWP 2024, p. 2; NMW 2024, p. 12; FWS 2024c, p. 19; BRW et al. 2024, p. 81-90). Each of these commenters urged BLM to adequately disclose and analyze the potential impacts of solar energy to birds, in particular regarding the “lake effect,” wherein birds can perceive a photovoltaic solar project as a lake and collision with the panels may result in direct mortality. The Final PEIS has only a cursory analysis of the potential for the lake effect (Final PEIS Appendix F at 5-116). The Final PEIS acknowledges that there may be fatality rates as high as 11.61 birds/MW/year, meaning California may be having annual mortality of 141,811 birds per year. If we assume the Final PEIS’s RFDS of 700,000 acres is accurate, and we use the ~7.5 acres/MW figure from the RFDS, we can expect roughly 93,000 MW of deployment. Using this crude analysis, we arrive at over 1,000,000 birds per year being killed by the lake effect across the planning area at full build out.

Summary:

Protestors stated that the USS FPEIS/PRMPAs would violate FLPMA and NEPA by failing to protect public lands from UUD through:

- Failing to properly balance competing resource values to ensure the future health of public lands.
- Using outdated inventories to determine whether ACECs, LWCs, and old-growth forests are excluded from solar application.
- Failing to identify previously disturbed lands and prioritizing them for solar development.
- Leaving substantial habitat for ESA-listed species available for development.
- Failing to protect all 11 western states from impacts from habitat fragmentation, groundwater depletion, loss of habitat, edge effects of development, and loss of habitat connectivity.
- Authorizing harm to land and wildlife that is not necessary to meet the BLM’s goals.
- Failing to include an alternative that maintains the 5-percent slope restriction.
- Authorizing solar development on lands adjacent to proposed federally protected lands, leaving these areas susceptible to UUD.
- Relying on optional project guidelines to prevent UUD of public land resources rather than requiring mandatory design features.
- Failing to address areas near open water or other aquatic areas.

Response:

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent UUD of the lands” (43 U.S.C. § 1732(b)).

The USS FPEIS/PRMPAs provide for the balanced management of the public lands in the planning area and identify appropriate allowable uses, management actions, and other mitigation measures that prevent the UUD of public lands. The BLM’s determination not to expand the scope of certain exclusion criteria, nor include additional exclusion criteria that the protests excerpted above recommend, does not result in UUD, nor does the disclosure of impacts to certain resources in the USS FPEIS/PRMPAs amount to UUD with respect to that resource because the Proposed Plan would not authorize any actual solar projects, much less any that would result in UUD. Authorization for the use of public lands would occur through a separate decision on a ROW application and would be subject to future, site-specific NEPA analysis.

Section 1.1.5 of the USS FPEIS/PRMPAs explains that programmatic NEPA analysis provides a high-level assessment of potential impacts across large geographic regions. The BLM will undertake a detailed, project-specific environmental review in accordance with applicable laws and regulations, including a comprehensive review and analysis to determine the potential site-specific impacts on resources and other land uses to determine the suitability of the proposed solar energy project. This site-specific analysis would address how a proposed solar project would affect resources other land uses and may identify alternatives and mitigation to reduce impacts. PW-1 requires project developments to assess the existing resource conditions for all resources discussed in USS FPEIS/PRMPAs Appendix B, Sections B.2.1 through B.2.21, as required under 43 CFR 2804.12(b). Through these site-specific reviews, the BLM will ensure that it is meeting its statutory obligation to prevent UUD of the public lands.

USS FPEIS/PRMPAs Table 2.1-3 provides an overview of the exclusion criteria, which include designated ACECs, LWCs for which the applicable RMP establishes protection, and old-growth forests identified in the applicable RMP (USS FPEIS/PRMPAs, p. 2-21). Although the land use plans and inventory data that these resource-based exclusions are tied to may be of varying ages, Section 6.1 of the USS FPEIS/PRMPAs notes that the exclusion criteria update dynamically as land use plans are revised, amended, or updated. For example, if a new ACEC were designated, then the newly designated ACEC would be excluded automatically.

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” Regarding LWCs, the BLM’s wilderness characteristics inventory process does not require that the BLM conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06B).

The BLM relied on a current inventory of the resources of the public lands when preparing the USS FPEIS/PRMPAs and described the information it used for ACECs, LWCs, and old-growth forests in USS FPEIS/PRMPAs Appendix G, Section G.3.3. Consistently with FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the USS FPEIS/PRMPAs. Relying on that data for the scope of exclusions for ACECs, certain LWCs, and certain old-growth forests does not result in UUD of the public lands.

The proposed planning decision would not cause UUD to public lands that the USS FPEIS/PRMPAs identifies as previously disturbed. The BLM is using appropriate criteria and data to identify previously disturbed lands in the planning area at a programmatic level. In response to public and cooperating agency feedback, the BLM adjusted those criteria and the data used to identify lands as previously disturbed between the DPEIS and USS FPEIS/PRMPAs to better reflect appropriate parameters for arid versus non-arid lands (USS FPEIS/PRMPAs Appendix K). At the same time, the BLM recognizes that a programmatic identification of lands as previously disturbed may be overinclusive. For that reason, and to ensure that lands are properly identified as previously disturbed and that restored lands are not used for solar development, the BLM added a design feature that requires project developers to verify that lands are, in fact, previously disturbed where projects are proposed on lands identified at the programmatic level as previously disturbed that are more than 15 miles from existing or planned transmission lines (i.e., lands that would not otherwise be available by virtue of the transmission proximity criterion). If the developer were not able to verify that the lands proposed for use in a solar project are in fact previously disturbed (and assuming the lands are more than 15 miles from an existing or planned transmission line), then the lands would not be considered available. As noted above, the decision to limit the scope of the proposed exclusion criterion that would apply to ESA-listed species habitat does not result in UUD. The USS FPEIS/PRMPAs would exclude all designated and proposed Critical Habitat for species protected under the ESA, as well as specific mapped areas for 40 ESA-listed species identified in coordination with the USFWS (see Footnote (b) of USS FPEIS/PRMPAs Table 6-2). To the extent that other areas that serve as habitat for ESA-listed species remain available, the BLM would undertake analysis at the project-specific level to further evaluate specific impacts on those and other SSS, including through ESA Section 7 consultation with USFWS or NMFS, as required. Mandatory Design Feature PW-2 requires project developers to analyze the potential impacts on potentially sensitive ecological resources, including habitat for ESA-listed and proposed species (USS FPEIS/PRMPAs Appendix B, p. B-4).

The Proposed Plan would not result in UUD to the public lands by virtue of habitat fragmentation, groundwater depletion, loss of habitat, edge effects of development, or loss of habitat connectivity because those impacts have been assessed at the programmatic level, will be assessed again at the project level, and are accounted for by the programmatic design features proposed in the USS FPEIS/PRMPAs. Cumulative impacts on wildlife from habitat fragmentation, changes in water availability, loss of habitat, and loss of habitat connectivity are discussed in USS FPEIS/PRMPAs Section 5.4.3.2 at the high level appropriate for this planning effort. Section 5.20.1.4 of the USS FPEIS/PRMPAs details impacts on groundwater withdrawal, estimating withdrawals necessary for utility-scale solar energy facilities of 5 to 750 megawatts (MW) to a maximum of 36.9 to 236 acre-feet per year, depending on site-specific factors (USS FPEIS/PRMPAs, p. 5-182). Project-specific NEPA reviews would further consider the potential for solar projects to contribute to cumulative impacts to particular wildlife species. Mandatory, resource-specific Design Feature ER-3g provides additional requirements that the BLM must satisfy regarding habitat connectivity at the project specific level (USS FPEIS/PRMPAs Appendix B, p. B-11). Design Feature ER-5g requires project developers to maximize the functionality of connectivity and migration corridors during project development. Certain big-game areas are allocated as avoidance areas for solar development, with development only allowed if the project applicant can demonstrate that the proposed project would not disrupt the important functions these areas serve (USS FPEIS/PRMPAs, pp. 6-3, 6-9). Project Guideline WR-PG-11 requires project applicants to monitor groundwater following project decommissioning (USS FPEIS/PRMPAs Appendix B, p. B-53).

Similarly, the Proposed Plan would not result in UUD on land and wildlife because impacts on land and wildlife have been assessed at the programmatic level, will be assessed again at the project level, and are accounted for by the programmatic design features proposed in the USS FPEIS/PRMPAs. The USS FPEIS/PRMPAs do not authorize or negate the need for additional analysis for any

individual solar development projects. USS FPEIS/PRMPAs Chapter 6 and Appendix F provide a detailed discussion of potential impacts on land and wildlife that could result from solar development. Additional analysis at the project-specific level would further evaluate specific impacts. The BLM proposed mandatory design features and discretionary project guidelines in Appendix B of the USS FPEIS/PRMPAs to better avoid impacts on land that is not excluded from solar development. USS FPEIS/PRMPAs Appendix B, Section B.2.4, provides design features intended to mitigate impacts on ecological resources, including vegetation communities, all terrestrial and aquatic species and habitats, and BLM SSS. USS FPEIS/PRMPAs Appendix B Section B.3.4 provides project guidelines that the BLM may require at the project-specific level, as appropriate.

It is not the case that the BLM declined to analyze the impacts from retaining an exclusion for lands with greater than 5-percent slope. Lands with slopes greater than 5 percent were excluded under the 2012 Western Solar Plan, which was analyzed as an aspect of the No-Action Alternative in the USS FPEIS/PRMPAs. The BLM acknowledges that development on slopes greater than 5 percent would increase the potential for soil erosion (USS FPEIS/PRMPAs Table 2.4-1, p. 2-41). As a result, the USS FPEIS/PRMPAs carried forward a 10-percent slope exclusion criterion to balance the fact that technological advances in utility-scale solar development since publication of the 2012 Western Solar Plan may enable development in steeper areas, but that potential resource-related issues associated with development on high slope lands remain.

The decision not to extend exclusion criteria for lands with certain designations to non-designated, adjacent lands does not result in UUD. Design features and project guidelines proposed in USS FPEIS/PRMPAs Appendix B are intended avoid and minimize impacts to specially designated lands that may be adjacent to solar development. For example, mandatory plan-wide Design Feature PW-29 requires consultation with NPS for projects within 25 miles of a National Park, a National Monument managed by NPS, or other NPS-managed lands. This consultation would facilitate the analysis of impacts on specific NPS-administered lands and surrounding resources during project-specific reviews. Potential impacts on specially designated lands and, where appropriate, areas proposed but not yet designated, would be assessed during project-specific analysis, and additional mitigation or setbacks could be incorporated, where appropriate. The BLM would comply with applicable BLM Manuals related to specially designated areas and LWCs when evaluating specific project applications.

The BLM is not relying on discretionary project guidelines to prevent UUD, and the decision to combine discretionary project guidelines with mandatory design features would not result in such degradation. The Proposed Plan, taken as a whole, sets out at a programmatic level an approach to utility-scale solar development on public lands that will meet goals and demand for renewable energy development while preventing UUD of the public lands. Specific project approvals will be subject to the same obligation to prevent UUD, which the BLM will meet, including through decisions to impose the discretionary project guidelines, where appropriate.

For the same reasons discussed above, the treatment of lands adjacent to open water or other aquatic features in the USS FPEIS/PRMPAs does not result in UUD, including with respect to impacts on bird species, because those impacts have been assessed at the programmatic level (as the protest discussion excerpted above indicates), will be assessed again at the project level, and are accounted for by the programmatic design features proposed in the USS FPEIS/PRMPAs. Designated and proposed Critical Habitat for Threatened and Endangered species, including aquatic species, is excluded from solar development (USS FPEIS/PRMPAs Table 2.1-3, p. 2-21). Where watercourses are or are proposed to be designated as Critical Habitat, a 0.25-mile buffer is also excluded from solar development. Potential impacts on these areas would be assessed during project-specific analysis, and additional mitigation or setbacks could be incorporated, where appropriate. Design Feature ER-2w requires developers to develop and implement measures to protect birds and bats in coordination with appropriate Federal and state agencies, such as the BLM, USFWS, and state agencies (USS FPEIS/

PRMPAs Appendix B, p. B-19). Under Design Feature ER-8w, developers are also required to monitor for and utilize adaptive-management practices to minimize or mitigate bird mortality associated with solar projects. Coordination with and reporting of mortalities to the BLM and USFWS is required (USS FPEIS/PRMPAs Appendix B, p. B-20). Additionally, project guidelines applied as appropriate regarding ecological resources are provided in Section B.3.4 (USS FPEIS/PRMPAs Appendix B, pp. B-38–B-44). Applicants will be required to coordinate with the BLM to identify applicable project guidelines at the project specific level.

The USS FPEIS/PRMPAs would not authorize any uses of the public lands, and future project proposals will be subject to further analysis at the project-specific level. Therefore, the USS FPEIS/PRMPAs will not result in UUD of the lands. Accordingly, this protest issue is denied.

National Trails System Act

Public Employees for Environmental Responsibility (PEER) et al.

Chandra Rosenthal et al.

Issue Excerpt Text: The NTSA mandates the Secretary of the Interior to fulfill certain obligations regarding the NTs and the NTSA. Advisory Council. The NTSA calls for the Secretary to establish an Advisory Council for each NT, stating: “The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the system...establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment.” 16 U.S.C. §1244(d). The Secretary of the Interior has failed to ever establish an Advisory Council for the OSNHT in accordance with the NTSA mandate detailed at 16 U.S.C. §1244(d).

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: Each such CMP is mandated to be completed “[w]ithin two complete fiscal years of the date of enactment of legislation designating a national historic trail...” and submitted “to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate...” Id. In accordance with these statutory provisions, the CMP for the OSNHT should have been completed and submitted to the noted congressional entities by October, 2005 - within two complete fiscal years of the Trail’s enactment in December, 2002. To date, no CMP has been prepared for the OSNHT, in accordance with legal mandates. Such CMP is presently 19 years overdue. The DOI and its OSNHT administrative delegates have failed to fulfill this statutory responsibility.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: NT Rights-of-Way. Also, of comparable administrative importance to CMPs, is the NTSA secretarial obligation to establish NT rights-of-way. The NTSA mandates that: “the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register.” Id. at §1246(a)(2). To date, no NTSA rights-of-way for the OSNHT have been prepared or issued in accordance with legal mandates. The DOI and its OSNHT administrative delegates have failed to fulfill this statutory responsibility. DOI’S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE NTSA IN REGARD TO THE OSNHT IS A VIOLATION OF FEDERAL STATUTORY LAW.

PEER et al.***Chandra Rosenthal et al.***

Issue Excerpt Text: Furthermore, BLM policy generally describes that: “National Trail administration includes leadership in the development of the statutorily required trailwide Comprehensive Plan, which provides strategic direction for National Trail administration and management, including identification of the nature and purposes of the National Trail and selection of the National Trail Right-of-Way.” *Id.* at § 1.6(D). To date, no CMP has been prepared for the OSNHT, in accordance with agency national trail policy requirements and guidance. The DOI’s delegated OSNHT Co-Administrators have failed to fulfill these agency policy requirements which are designed to effectuate the mandates of the NTSA.

PEER et al.***Chandra Rosenthal et al.***

Issue Excerpt Text: At least 24 BLM field units are crossed by the OSNHT in the FPEIS geographical area of coverage. These include: Arizona - Arizona Strip Field Office RMP; California - California Desert Conservation Area Plan as amended by DRECP LUP amendment, South Coast RMP; Colorado - Grand Junction RMP, Dominguez Escalante NCA RMP, Gunnison Resource Area RMP, McGinnis Canyons NCA RMP, San Luis RMP, Tres Rios RMP, Uncompahgre RMP; New Mexico - Rio Puerco RMP, Taos RMP, Farmington RMP; Nevada - Las Vegas RMP, Red Rock Canyon NCA RMP; Utah - Beaver Dam Wash NCA RMP, Cedar Beaver Garfield RMP, Grand Staircase-Escalante NM RMP, Kanab RMP, Kanab-Escalante RMP, Moab RMP, Monticello RMP, Price RMP, Richfield RMP, St. George RMP. With the possible exception of two of these RMPs, none of the noted BLM RMPs include OSNHT management or protection provisions.⁴ Notably absent from these RMPs are any NTSA rights-of-way, or BLM policy “Trail Management Corridors.” The absence of NTSA rights-of-way, BLM policy “Trail Management Corridors,” and NT management and protection provisions in these RMPs is even more egregious, and arbitrary and capricious, given further policy guidance issued by the BLM as early as 2012. BLM NT policy states: Chapter 4. Congressionally Designated National Trails - Land Use Planning 4.1 General Requirements A. Addressing Designated National Trails through Land Use Planning 1. As soon as practical after activation, the BLM must address designated National Trails through the land use planning process. 2. Designated National Trails may be addressed through a land use plan amendment, or a Statewide Trail Management Plan or a programmatic multi-state effort which amends applicable Resource Management Plans. 3. Regardless of the type of land use planning process undertaken, the BLM shall establish a National Trail Management Corridor(s) and identify management goals, objectives, and actions for each designated National Trail.

PEER et al.***Chandra Rosenthal et al.***

Issue Excerpt Text: To date, no NTSA rights-of-way for the OSNHT have been prepared or issued in accordance with agency national trail policy requirements and guidance. Furthermore, the DOI’s delegated OSNHT Co-Administrators have failed to establish NTSA rights-of-way, or trail management corridors. BLM Field Units crossed by the OSNHT have also failed to incorporate NTSA rights-of-way, or trail management corridors required by BLM policy into associated RMPs. Failure to perform these formally adopted policy directives in support of effectuation of the NTSA is arbitrary and capricious.

PEER et al.***Chandra Rosenthal et al.***

Issue Excerpt Text: BLM’S CONSISTENT AND PROLONGED FAILURE TO COMPLY WITH THE NTSA AND ITS AGENCY POLICIES REGARDING MANAGEMENT AND PROTECTION OF THE OSNHT IS ARBITRARY AND CAPRICIOUS, VIOLATES THE ADMINISTRATIVE PROCEDURE ACT, AND, HAS FURTHER PRECLUDED

EFFECTUATION OF THE NTSA, AND IS, THEREFORE, A VIOLATION OF THAT ACT, RESULTING IN DEMONSTRABLE DAMAGE TO OSNHT RESOURCES, VALUES, AND PUBLIC OPPORTUNITIES. THE ESTABLISHED AND CONTINUING FAILURE OF BLM TO EFFECTUATE NT POLICY AND THE NTSA, INCLUDING THE CURRENTLY PROPOSED FPEIS/RMPAs WITHOUT EXECUTION OF NT POLICY AND NTSA MANDATES WILL FURTHER DEGRADE THE NTS.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: Federal Case Law Requires the Completion of NT CMPs in Accordance with the Provisions of the NTSA, and Prohibits the Development/Amendment of Subsidiary Land Use Plans, such as the FPEIS/RMPAs Prior to the Completion and Adoption of Such NT CMPs, Including, Specifically the OSNHT CMP The federal courts have held that NT CMPs must be completed pursuant to the requirements of the NTSA - that is, within the prescribed time period - and each final CMP submitted to designated congressional committees. See Yaak Valley Forest Council v. Vilsack, 563 F. Supp. 3d (D. MT 2021). In the referenced case, the subject NT CMP, for the Pacific Northwest NST, was delinquent and the court, therefore, ordered the completion of a CMP within approximately one year from the ruling. Likewise, the CMP for the OSNHT must be completed prior to other discretionary federal plans, such as the FPEIS being formulated. Furthermore, the federal courts have held that failure to meet procedural planning requirements of federal land management law is actionable, and until such mandate land management plans are completed other agency plans and actions that may preclude statutory protection of lands, waters, or related resources are inappropriate and prohibited. (See Sierra Club v. Babbitt, 69 F. Supp. 2d 1202 (E.D. Cal. 1999), and, Friends of Yosemite Valley v. Kempthorne, 464 F. Supp. 2d 993 (E.D. Cal. 2006), and, Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024 (9th Cir. 2008)). Completion of the FPEIS, relevant RMPs and amendment of such RMPs prior to completion of the statutorily mandated CMP for the OSNHT makes the RMPs, the FPEIS, and proposed amendments of the RMPs invalid, at least in regard to the areas crossed by the OSNHT. Arguably, before any such action proceeds, the CMP must be completed subject to NEPA requirements. Following that, the inventory and corridor setting procedures of BLM Manual 6280 must be fulfilled and RMPs amended, subject to NEPA requirements, to properly address OSNHT management and protection including justifiable establishment of NT protective and management corridors. Without modification, the PEIS must be withdrawn. THE STATUTORILY MANDATED COMPREHENSIVE MANAGEMENT PLAN FOR THE OSNHT MUST BE COMPLETED PRIOR TO SECONDARY, DISCRETIONARY LAND MANAGEMENT PLANS, SUCH AS THE FPEIS/RMPAs, TO ASSURE THAT STATUTORY MANDATES ARE FULFILLED.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: A footnote to the Table on “Resource Based Exclusions” further defines NTs as follows: National Scenic Trails are extended pathways located for recreational opportunities and the conservation and enjoyment of the scenic, historic, natural, and cultural qualities of the areas through which they pass (NTSA 3(a)(2)). National Historic Trails (NHTs) are federal protection components and/or high-potential historic sites and high-potential route segments, including original trails or routes of travel, developed trail or access points, artifacts, remnants, traces, and the associated settings and primary uses identified and protected for public use and enjoyment (NTSA Sec. 3(a)(3)) and may include associated auto tour routes (NTSA 5(b)(A) and 7(c)). NHTs or other types of historic trails may also contain properties listed or eligible for listing on the NRHP including NHLs. NHTs are protected and identified as required by law (NTSA 3(a)(3)) through BLM inventory and planning processes. Id. BLM has misquoted NTSA definitions in this footnote. The relevant NTSA sections cited actually state the following: NTSA 3(a)(2) (16 U.S.C.

§1242(a)(2)) - “National scenic trails,... , which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.” NTSA 3(a)(3) 916 U.S.C. §1242(a)(3) - “National historic trails,... , which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historic significance National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water- based components of a historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail.” Consequentially, BLM has muddied the explanation of what the FPEIS “Resource Based Exclusions” actually exclude from potential solar development. The quoted statement regarding NHT protection and identification “through BLM inventory and planning processes” is meaningless as BLM has not conducted comprehensive NT resource, values, and opportunities inventories in accordance with its policy Manual 6280 on virtually any of its lands. And, the protection of trail corridors containing such NT resources, values, and opportunities that would be identified in such inventories has not occurred as neither NTSA rights-of-way or “Trail Management Corridors” have not been established in a CMP or land management unit RMPs.⁵ Again, the “Resource Based Exclusion” for “National Conservation Lands” and, specifically for NTs includes “[a]ll National Scenic and Historic Trails designated by Congress.” FPEIS, Table ES-2. Resource-Based Exclusion Criteria in the Proposed Plan, #14 - National Conservation Lands, p. 2-22. However, NTs are only “designated by Congress” as lines on a map, in a study normally prepared by the DOI and NPS. And, the width of any such NT line is not defined and infinitesimally narrow. Such a line, which has its origin in the Feasibility Study, study report, or study map for each NHT and NST, prepared for Congress and which serves as the basis for congressional establishment of each Trail, has no definable width.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: The width of NTs is to be determined through the congressionally required NTSA rights-of-way and BLM policy required “Trail Management Corridors.” If the responsible NT administering Secretary has not established a NTSA “right-of way” for a given NT, and the NT CMP contains no NTSA “right-of-way,” and the BLM, or other agency RMP or LUP, does not designate a “Trail Management Corridor,” the FPEIS exclusion provision only prevents solar development on an infinitesimally narrow line, and will not protect any resources, values, and public opportunities, or “settings” that are undoubtedly associated with each Trail although intended to be managed and protected by the NTSA. So, beyond the infinitesimally narrow line protected by the FPEIS exclusion, other excluded NST and NHT lands only includes “trail management corridors identified for protection through an applicable land use plan.” At least in regard to the OSNHT, as discussed above, none of the 24 BLM field units crossed by the Trail have RMPs that even recognize or discuss the Trail, much less have been amended to identify and designate “trail management corridors.” The land areas covered by five of the RMPs, crossed by the OSNHT, are excluded from solar development by the FPEIS exclusion for national conservation areas, and national monuments. Consequently, in lands covered by the other 19 RMPs, as the FPEIS exclusion areas currently seem to be defined, only the line of the OSNHT is excluded by the NT exclusion.⁶ In the case of the OSNHT, without a NTSA “right- of-way,” without a NTSA CMP, and with no BLM RMP “Trail Management Corridors” in RMPs, the resources, values, and public opportunities, and “settings” associated with the Trail are not protected from potential solar development by virtue of the NT exclusion. And, why are NT resources, values, “settings” and

opportunities on BLM lands not excluded from solar development, and protected? Because, the responsible Secretary, responsible administrative delegates, and Field unit land managers have not established statutorily required NTSA rights-of-way, or policy required “trail management corridors” geographically encompassing said resources, values, “settings” and opportunities. DOI’S AND BLM’S OWN INACTION ON A OSNHT CMP, ALL NT NTSA RIGHTS-OF- WAY, AND RMP AMENDMENTS ESTABLISHING “TRAIL MANAGEMENT CORRIDORS” HAS MADE THE FPEIS EXCLUSION CONFUSING AT BEST, AND MEANINGLESS AT WORST. THE NT SOLAR ENERGY “EXCLUSION” IS ARBITRARY AND CAPRICIOUS AND IN VIOLATION OF THE APA.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: It is Unclear How the FPEIS/RMPAs Will Programmatically Assess Solar Energy Applications Adjacent to NTs and Assure Protection and Management of NT Resources, Values, and Opportunities Pursuant to the NTSA and Agency Policies As discussed above, given the existing language of the NT exclusion in the FPEIS it seems that any NT lacking a NTSA right-of-way or policy based trail management corridor remains subject to solar energy development applications. Appendix H of the FPEIS seems to provide some additional information about processing of such applications, however, is significantly unclear. Appendix H is titled “Implementation Support Information and Maps for Design Features” and includes a section titled “H.4 National Scenic and Historic Trail - Draft Inventory Analysis Units.” FPEIS, pp. H-1, H-6. The text of section H.4 states: The map shown in Figure H.4-1 illustrates the locations of the National Scenic and Historic Trail -Draft Inventory Analysis Units (IAUs). A higher resolution and interactive map illustrating the National Scenic and Historic Trail Inventory Analysis Units is available using the following link:

<https://experience.arcgis.com/experience/51e1b71274f248aaa8f831b229dcfc38> Based on design feature SDLW-3, if a proposed solar project includes areas within these Draft IAUs, the project developer shall evaluate, in coordination with the BLM, whether the proposed development area has been adequately inventoried (per BLM Technical References 6280-1 Volumes 1 & 2) to inform about any adverse impacts on the resources, qualities, values, associated settings, and the nature and primary use or uses of the potentially affected trail. If adverse impacts are determined to be likely, avoidance or other mitigation measures must be identified in coordination with the BLM authorizing officer. Updates or refinements to the IAUs through the inventory process would supersede the Draft versions. (see Appendix B, Section B.2.16 for the entire design feature text). This section calls for a potential developer to ascertain whether there has been an adequate inventory of NT resources, values, and opportunities. It does not explain what happens if an adequate inventory has not been conducted. Clarification is needed. Furthermore, the section states that, regardless of the existence of an adequate inventory, “[i]f adverse impacts are determined to be likely” the development proponent and BLM will identify “avoidance or other mitigation measures.” The suggested process once again sidesteps BLM’s NT protection and management responsibilities detailed in its own policies and driven by NTSA mandates. This is unacceptable as contrary to fulfillment of the statutory intent and purposes of the NTSA. The process described also seemingly contradicts “purpose area” process described below calling for “additional inventory and analysis.” These inconsistencies must be addressed. Current language with lack of explanations will result in further degradation of the NTS.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: The web-based IAU map at the link provided states: Purpose Areas of special concern for National Scenic and Historic Trails are those areas beyond the congressionally designated route that would not be excluded from application by operation of the NLCS exclusions

that apply across all of the Solar Programmatic EIS Action Alternatives, but that require additional inventory and analysis at the local level at the time of a solar project application. See <https://experience.arcgis.com/experience/51e1b71274f248aaa8f831b229dcfc38>. It is implied that “Purpose Areas of special concern” are areas adjacent to NT lines that may contain NT resources, values, and opportunities that are subject to protection but have yet to have been inventoried or included in an RMP “Trail Management Corridor.” It also seems to be apparent that additional inventory and analysis in accordance with BLM policies would be initiated at the time of a solar energy application covering such areas. Clarification is needed. Why is a solar energy development application the triggering factor? BLM policy (Manual 6280) already requires such inventories of NT resources, values, and opportunities, and establishment of Trail Management Corridors as soon as possible after NT establishment by Congress. The suggested process once again sidesteps BLM’s NT protection and management responsibilities detailed in its own policies and driven by NTSA mandates. This is unacceptable as contrary to fulfillment of the statutory intent and purposes of the NTSA. Furthermore, there is no indication of what action will be taken following such inventory and analysis. If the inventory and analysis reveals the presence of relevant NT resources, values, and opportunities the lands examined should be protected by establishment of a Trail Management Corridor and development precluded if such would “substantially interfere” with the nature and purposes of the trail.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: ALL OF THE FOREGOING FPEIS DISCUSSION OF HOW SOLAR ENERGY APPLICATIONS WILL PROCEED FOR NTs WITHOUT DESIGNATED “TRAIL MANAGEMENT CORRIDORS” AND THEREFORE EXCLUDED FROM SUCH APPLICATIONS, CONSTITUTES DISREGARD OF EXISTING BLM TRAIL MANAGEMENT AND PROTECTION POLICY CONTAINED IN MANUAL 6280, INTENDED TO EFFECTUATE STATUTORY, NTSA RESPONSIBILITIES OF DOI AND BLM, THAT HAS BEEN IGNORED AND GONE UNFULFILLED FOR MORE THAN A DECADE. RATHER THAN ONCE AGAIN SIDESTEPPING ITS REPONSIBILITIES UNDER THE NTSA AND ITS OWN POLICIES, BLM MUST AGRESSIVELY PURSUE NT INVENTORIES AND ESTABLISHMENT OF LEGITIMATE TRAIL MANAGEMENT CORRIDORS WITH FULL PUBLIC KNOWLEDGE AND COMMENT OPPORTUNITIES PROVIDED VIA THE NEPA PROCESS. FURTHERMORE, INDICATIONS OF ASSIGNING NT INVENTORIES AND EVALUATION OF ADVERSE IMPACTS ON NTs TO NON-GOVERNMENTAL SOLAR ENERGY DEVELOPMENT APPLICANTS IS AN IMPROPER ASSIGNMENT OF INHERENT FEDERAL GOVERNMENT FUNCTIONS AND RESPONSIBILITIES.

PEER et al.

Chandra Rosenthal et al.

Issue Excerpt Text: Furthermore, Congress directed that: “The Secretary shall manage the system- (1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and (2) in a manner that protects the values for which the components of the system were designated.” Id. at 16 U.S.C. 7202(c). This congressional mandate clearly strengthens the exception to general multiple use management cited in FLPMA in regard to all NLCS lands, including NHTs and NSTs. The congressionally authorized routes of the OSNHT pass through and are proximate to federal public land areas of the FPEIS/RMPAs. Therefore, in accordance with FLPMA (43 U.S.C. §1732) said lands must be managed in accordance with the mandates of the NTSA and the NLCS as such precedential laws dedicate said lands with limitations and allowances of greater specificity than the broad multiple use purposes of FLPMA. Under FLPMA the Secretary’s authority to allow solar development on federal public lands is discretionary, not mandated, and limited and dependent upon a broad array of factors. The

Secretary's authority to allow any activities on federal public lands crossed by NTs, including the OSNHT is specifically prescribed, and limited by the language of the NTSA. Activities, uses, and development along NTs, and specifically, NHTs such as the OSNHT are limited to Secretarial allowances for the following uses and subject to certain findings: * purposes for which such NTs were established such as public recreational enjoyment, and public education and learning; * "[w]ithin the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes" (16 U.S.C. §1246(d)); * developments and uses along NTs for "campsites, shelters, and related-public-use-facilities" and "[o]ther uses along the trail, which will not substantially interfere with the nature and purposes of the trail..." (16 U.S.C. §1246(c)); and, * "the use of motorized vehicles" "which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation [i.e. - the designation or establishment date of a given NT], are allowed by administrative regulations" "shall be permitted by the Secretary charged with administration of the trail." *Id.* Taking these limitations on the Secretary's authority to allow activities and uses along NTs into account, any authorization of solar energy development is subject to a finding that such use "will not substantially interfere with the nature and purposes of the trail..." *Id.*

Old Spanish Trail Association

William Helmer

Issue Excerpt Text: There is absolutely no reference to an Old Spanish National Historic Trail Corridor which should be the ten mile wide corridor referenced in the Comprehensive Administrative Strategy (CAS, p. 5); Old Spanish National Historic Trail: Comprehensive Administrative Strategy, Bureau of Land Management National Park Service, Department of the Interior, Denver, CO and Salt Lake City, UT, December 2017). OSTA's specific comments were completely ignored, as was the National Trail Exclusion Category #14. The Old Spanish National Historic Trail Corridor is not depicted on the Utility-Scale Solar Energy Development Map for the FPEIS/RMPAs, at the website:

<https://experience.arcgis.com/experience/269187273bc743c5a4d21c75b44d0f2f/page/Page/?views=Ad-d-Data>. Because the Old Spanish National Historic Trail Corridor is not excluded, numerous areas within the Trail Corridor are categorized as "Lands Available for Application" in the PEIS/RMPAs Proposed Plan. Although there are many more examples between California and New Mexico, attached are maps of the Stump Spring, NV, and Wells Gulch, CO areas which clearly show how the historic integrity of the Trail is compromised by the potential development of industrial solar projects (see Attachments 2 and 3). Exclusion means exclusion, not further project level NEPA analysis. Since there is no Comprehensive Management Plan as required by the National Trails System Act, Section 5(e), the Comprehensive Administrative Strategy (CAS) becomes the default guidance for management of the Old Spanish National Historic Trail. On p. 5 of the CAS it is stated: "The trail corridor is informally considered by the NPS to lie five miles on either side of the centerline of the trail alignment to include the nearest elements of the view shed, parts of the cultural landscapes, landmarks, and traditional cultural properties near the trail. The BLM follows direction from their trail administration manual to establish a trail corridor." The Old Spanish National Historic Trail Corridor, as referenced in the CAS, should be considered the baseline for the management of the Old Spanish Trail, upon which Inventory Analysis Units can refine at a later time. The FPEIS/RMPAs completely ignores OSTA's comments, and completely ignores the only current guidance for the Old Spanish National Historic Trail Corridor, the Comprehensive Administrative Strategy. It is extremely important to have the ten mile wide Old Spanish National Historic Trail Corridor in the map so that Exclusion #14 is unambiguous, and can be referenced verbally and spatially in the FPEIS/RMPAs.

Summary:

Protestors claimed that the USS FPEIS/PRMPAs would violate the National Trails System Act (NTSA) by:

- Failing to establish an Advisory Council for the Old Spanish National Historic Trail (OSNHT).
- Failing to include a comprehensive management plan (CMP) for the OSNHT, which was required within 2 fiscal years of the OSNHT’s enactment in 2002.
- Failing to establish an ROW or a trail management corridor for the OSNHT and not referencing the Comprehensive Administrative Strategy’s 10-mile wide corridor for the OSNHT.
- Failing to complete an updated inventory of National Trail System (NTS) resources and failing to explain how the BLM will ensure the protection and management of National Scenic and Historic Trail (NSHT) resources, values, and opportunities while assessing solar energy applications if an adequate inventory is not completed.
- Failing to manage lands on the OSNHT in accordance with NTSA and National Lands Conservation System (NLCS).

Response:

The NTSA (16 U.S.C. 1241–1251, as amended): (1) promotes the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas, and historic resources of the United States; (2) provides the means for attaining these objectives by instituting an NTS; (3) prescribes the methods and standards for adding NTS components; and (4) encourages partner involvement in the planning, development, operation, maintenance, and, where appropriate, operation and maintenance of NTS components.

Three BLM Manuals address the NTS: BLM Manuals 8353, 6250, and 6280. BLM Manual 8353 provides guidance on the management of secretarially designated National Recreation Trails, including National Water Trails and Connecting and Side Trails. BLM Manual 6250 outlines the policies and procedures for administering congressionally designated NSHTs. BLM Manual 6280 focuses on the management of NSHTs and trails under study or recommended for congressional designation. Per BLM Manual 6280, allocation of a National Trail Management Corridor must be “of sufficient width to encompass NTS resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.”

The overall administration of NSHTs, including designation of an Advisory Council, CMP, and ROWs for each designated trail, is beyond the scope of this planning effort. However, the BLM has considered NSHTs in detail in developing the USS FPEIS/PRMPAs. Potential impacts on NSHTs are analyzed in Section 5.16 and Appendix F, Section F.16, of the USS FPEIS/PRMPAs.

Under Exclusion #14, all National Conservation Lands, including congressionally designated NSHTs, and any trail management corridors identified for protections through an applicable land use plan would be excluded from solar development (USS FPEIS/PRMPAs, p. 6-10). This exclusion is mapped in the USS FPEIS/PRMPAs and will update dynamically to include new information about trail resources, including information about trail management corridors that may be developed through subsequent NSHT inventory and planning actions.

The BLM will consider Exclusion #14 in conjunction with mandatory resource-specific Design Feature SDLW-3 when reviewing solar project applications. Design Feature SDLW-3 requires project developers to

coordinate with the BLM field office, NSHT administrators, Tribes, and partner organizations to review the adequacy of information in available RMPs and NSHT inventory reports for any proposed solar project that may impact NSHT management corridors. They must ensure that the

project design avoids substantial interference and adverse impacts on NSHT management corridors and determine any areas unsuitable for development, following the BLM national trail inventory process as outlined in the NSHT manuals (6250/6280) and Inventory, Assessment, and Monitoring (IAM) technical references. Developers should avoid, minimize, or compensate for impacts on NSHTs to the maximum extent practicable (see glossary) according to program policy standards. If NSHT management corridors are not adequately inventoried in an RMP, developers shall refer to the DRAFT Inventory Analysis Units (IAU) established for NSHTs in the 11-state planning area. These areas, though not excluded from lands available for application under the [National Conservation Land] exclusion criterion, will require further consideration, inventory, and analysis by the BLM or project developer, including the refinement of IAUs at the local level during the solar project application process. This inventory may reveal unanticipated or undocumented remnants, artifacts, trail tread or trace, high potential historic sites and route segments, trail features, and associated settings for NSHTs adjacent to or within the proposed project site” (USS FPEIS/PRMPAs Appendix B, p. B-28).

USS FPEIS/PRMPAs Appendix H, Section H.4, *National Scenic and Historic Trail – Draft Inventory Analysis Units*, describes the analysis units that project developers must consider in implementing Design Feature SDLW-3. Figure H.4-1 depicts the NSHT units, including the OSNHT, and Draft IAUs based on the viewshed within 30 miles of NSHTs.

[I]f a proposed solar project includes areas within these Draft [Inventory Analysis Units], the project developer shall evaluate, in coordination with the BLM, whether the proposed development area has been adequately inventoried (per BLM Technical References 6280-1 Volumes 1 & 2) to inform about any adverse impacts on the resources, qualities, values, associated settings, and the nature and primary use or uses of the potentially affected trail. If adverse impacts are determined to be likely, avoidance or other mitigation measures must be identified in coordination with the BLM authorizing officer. Updates or refinements to the IAUs through the inventory process would supersede the Draft versions” (USS FPEIS/PRMPAs Appendix H, p. H-6).

In short, additional site-specific analysis would be required prior to authorizing any solar project that may affect the OSNHT or other NSHTs in the 11-state planning area. When the BLM receives an application for a utility-scale solar energy project, the BLM will review whether the application includes areas within a trail management corridor identified for protection through an applicable land use plan, in which case those areas would be excluded under exclusion number 14. Additionally, consistent with SDLW-3, the BLM will also review whether the application includes areas within a Draft IAU for a NSHT (USS FPEIS/PRMPAs Appendix H, Figure H.4-1). If it does, then the BLM will review the applicable RMP and any NSHT inventory reports to determine whether the existing inventories comply with BLM policy. If the existing inventories are not adequate (e.g., where a management corridor inventory has not been conducted consistently with BLM policy), the project developer will, in coordination with the BLM and other partner organizations, conduct additional inventory of trail resources, consistently with BLM policy, using the Draft IAU as a starting point. This inventory will inform potential changes to project design necessary to avoid substantial interference and adverse impacts on NSHTs. Furthermore, once the inventory is completed and refined at the local level, the BLM may update the relevant RMP to incorporate the inventory as part of the NSHT Management Corridor in accordance with BLM policy. The BLM has clarified SDLW-3 in the Approved Plan.

Regarding the OSNHT in particular, the BLM and NPS cooperatively administer this resource. When evaluating proposed solar project applications within the Draft IAU for the OSNHT, the BLM will coordinate with NPS and other partner organizations to ensure that any additional inventory activities are appropriately scoped and contribute, where possible, to other inventory and planning efforts.

In addition to Exclusion #14 and Design Feature SDLW-3, other mandatory resource-specific design features would mitigate potential impacts on NSHTs. Mandatory resource-specific Design Feature CR-1 would require project developers to

work with the BLM and stakeholders to avoid or minimize surface, auditory, and atmospheric disturbance near or on historic properties when their eligibility is based on their visual and/or auditory setting or on an aspect of integrity related to feeling and association. This measure shall be implemented to protect NRHP-eligible TCPs, sacred sites, cultural landscapes, and historic trails, among other historic properties, present in the Area of Potential Effects from visual or auditory intrusion and to maintain the integrity of their historic setting unless a different acceptable resolution of adverse effects is proposed.

Visual quality Design Feature VR-4vq also requires project developers to

consult on viewshed protection objectives and practices with the respective land management agencies for landscapes having special designations, including but not limited to Wilderness Areas, NSHT, Wild and Scenic Rivers, National Parks, National Monuments, other NLCS units, and NWRs located within the project's viewshed. Developers will demonstrate how they chose the site for the development and how they resolved concerns involving landscapes having special designations while recognizing that the BLM retains authority for final decisions determining project approval and conditions.

The USS FPEIS/PRMPAs complied with the NTSA, FLPMA, and policies related to management of the NSHTs in the planning area. Accordingly, this protest issue is denied.

NEPA: Best Available Information

Southern Utah Wilderness Alliance

Stephen Bloch and Hanna Larsen

Issue Excerpt Text: BLM has violated NEPA by failing to consider, analyze and disclose the impacts of leasing and development on BLM-identified lands with wilderness characteristics in Utah. As SUWA explained in its Solar DEIS comments, BLM is proceeding to identify public lands available for future solar leasing and development in Utah without using the agency's own most current information regarding agency-identified lands with wilderness characteristics and without assessing the impacts of leasing and development to this critical resource. See S. Utah Wilderness All. and Ctr. for Biological Diversity, Comments on the Utility-Scale Solar Energy Development PEIS/RMPA (DOI- BLM-HQ-3000-2023-0001-RMP-EIS), 2-5 (Apr. 18, 2024) ("DEIS Comments"). This approach violates the National Environment Policy Act ("NEPA") and its implementing regulations. BLM has steadfastly refused to use the agency's own, most current LWC inventories in Utah as a part of its work on the Solar PEIS, in violation of NEPA. According to BLM's Geospatial Business Platform Hub,¹ there are 3,619,843 acres of agency-identified LWC in Utah.² Of that, 2,726,618 acres are outside of the Grand Staircase-Escalante and Bears Ears National Monuments (areas identified in Table 6-2 as exclusion areas). Rather than consider the impacts of solar leasing and development on 2,726,618 acres, BLM simply excluded the 455,255 acres that the agency is actively managing to protect wilderness characteristics but at no time identified and disclosed the acreage of agency-identified LWC that would be available to solar leasing and development on the remaining 2,726,618 acres. See Solar PEIS at 4-72 to -73; tbl. F.16.2-8. BLM's explanation in the Solar PEIS for this approach is that agency has "full discretion in how to manage an area that possesses wilderness characteristics and may decide whether or not to protect such characteristics and by what specific management prescriptions through a subsequent land use planning decision. Solar PEIS at 4-73 (citation omitted). This response, however, misses the point: NEPA requires BLM to consider, analyze and disclose the impacts of leasing and development on LWC areas irrespective of

whether BLM is managing to protect those values. See DEIS Comments at 2-5 (discussing BLM’s NEPA obligations); see also *S. Utah Wilderness All. v. Norton*, 457 F. Supp. 2d 1253, 1264-69 (D. Utah 2006) (holding BLM violated NEPA by failing to consider information about wilderness characteristics before leasing).

***Southern Utah Wilderness Alliance
Stephen Bloch and Hanna Larsen***

Issue Excerpt Text: Likewise, the Solar PEIS’s response to comments asks and answers the wrong question regarding LWC areas. BLM asserts that “[c]ompleting an inventory of all lands with wilderness characteristics in the 11-state planning area is beyond the scope of this planning effort, the purpose of which is to broadly identify lands available for solar application using currently available information and data.” Solar PEIS at M-14. But SUWA is not asking that BLM conduct new LWC inventories as part of the Solar PEIS.³ Rather, our point is that NEPA requires BLM to use the information it already has at hand and consider, analyze and disclose the impacts of solar leasing and development on those 2,726,038 acres of agency-identified LWC in Utah now, and before it decides which of those lands to make available for that use. In the Solar PEIS, BLM only discusses impacts to the 455,255 acres that the agency is actively managing to protect wilderness characteristics. See Solar PEIS at 5-141 to -143. As we explained in our comments, many of BLM-Utah’s West Desert RMPs and management framework plans⁴ are decades-old and neither reflect BLM’s current LWC inventories nor (of course) identify which of those areas BLM intends to manage to protect wilderness characteristics. SUWA DEIS Comments at 3. In addition, BLM has identified many LWC areas in the rest of the state after the completion of the six 2008 RMPs for the Vernal, Price, Moab, Monticello, Richfield and Kanab field offices. BLM has yet to consider whether all or specific agency-identified LWC areas within those field offices should be managed to protect wilderness characteristics.

***Eureka County, NV
Jake Tibbitts***

Issue Excerpt Text: Ecological function (while maybe not in a desired ecological state) still exists even in ecologically degraded sites (e.g., ecological state 2 and many community phases of even state 3). But by a strict definition, any ecological site not in reference state (which is almost every ESD in the Great Basin) cannot be “intact” by pure definition. They may be at risk of crossing an ecological threshold, but that does not mean function is not “intact.” As an example, research has shown high usage by sage grouse of sagebrush “islands” with cheatgrass-dominated understories. Using the Landscape Intactness index and RCMAP results in many high value ecosystems being improperly categorized as almost “sacrifice” areas. We have identified some areas categorized with these tools to be open for solar application because of being disturbed or low intactness which are actually seedings or habitat projects where tens of thousands of public dollars have been invested in these projects. This is an obvious shortcoming that BLM has failed to address even though we have identified these specific areas during the process. BLM’s response has been to “address at the project scale” which undermines the entire point of this 2024 Solar Plan. Why move forward high-conflict and high-value lands when we know they truly are not based on on-the-ground conditions?

A supplemental EIS is necessary to properly analyze lands through the best available science being Ecological Site Descriptions with their associated State and Transition Models/Disturbance Response Groups. Including the SFTS alternative would address this issue.

This has been one of the primary issues Eureka County has consistently commented through the entire process through verbal comments in cooperating agency meetings as well as in written comment in July 2023 on the Administrative Draft Chapters 4 and 5, in December 2023 on the Administrative Draft EIS, in April 2024 on the public Draft EIS, and in July 2024 on the Administrative Draft Final EIS.

Summary:

Protestors claimed that the BLM's approval of the USS FPEIS/PRMPAs would violate NEPA by failing to consider the most current information regarding LWCs in the identification of lands available for future solar leasing, sometimes relying on data that is decades old. In addition, protestors stated that the BLM has failed to consider, analyze, and disclose the impacts of leasing and development on BLM-identified lands with wilderness characteristics. Protestors note that a supplemental EIS is necessary to properly analyze impacts on lands using the best-available science, including Ecological Site Descriptions and associate State and Transition Models/Disturbance Response Groups.

Response:

NEPA requires the BLM to "ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document" (42 U.S.C 4332(d)). The CEQ regulations implementing NEPA further require that agencies use information that is reliable and accurate (40 CFR 1502.23, 2022).

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The resource-based exclusion criteria that define areas available for solar application—including Exclusion #3 for LWCs identified in applicable land use plans—will update dynamically to include updated resource information as it becomes available. Although many land use plans linked to these resource-based exclusions have been in place for extended periods of time, they remain the approved management for the BLM Field and District Offices in the planning area. As these plans are updated and revised, and new information about resource conditions emerges, the extent of land areas excluded by application of this criteria will change. Furthermore, lands are excluded if they meet any exclusion criteria, regardless of their representation in GIS-mapped exclusion areas. Completing an inventory of all LWCs in the 11-state planning area is beyond the scope of this planning effort, the purpose of which is to broadly identify lands available for utility-scale solar projects using currently available information and data. The BLM acknowledges that, in lands designated available in the USS FPEIS/PRMPAs, there are likely numerous cultural, environmental, and wilderness characteristics/resources that may not be accounted for in the data and inventories used for the programmatic impact analysis. These characteristics/resources would be identified and assessed at the project-specific level in compliance with NEPA and Section 106 of the NHPA. Design Feature SDLW-2 requires project developers to

identify whether the lands within and immediately adjacent to the proposed solar energy project have been assessed for wilderness characteristics or have been included in a citizen's wilderness inventory or proposal. If no current assessment exists and absent objectives to manage for wilderness character, the project developer shall conduct inventories and evaluations as per BLM Manual 6310 to determine the presence of wilderness characteristics. All relevant inventories and evaluations shall be included in the NEPA analysis and incorporated into the project decision" (USS FPEIS/PRMPAs Appendix B, p. B-27).

The BLM would comply with applicable current BLM Manuals related to specially designated areas and LWCs when evaluating specific project applications. Areas that may qualify as ACECs or LWCs would also be analyzed in site-specific solar energy project assessments, as would transportation concerns (e.g., solar projects located near roads that lead to LWCs).

Managing wilderness resources is part of the BLM's multiple-use mission. However, as noted in BLM Manual 6320, although LWCs share the same criteria used to identify wilderness and wilderness study areas, they are not subject to any protective requirements prior to a planning or project-level management decision. In some circumstances, consideration of management alternatives for LWCs may be outside the scope of a particular planning process (as dictated by the purpose and need for the planning effort). For example, a targeted amendment to address a specific project or proposal may not in all circumstances require consideration of an alternative that would protect wilderness characteristics (BLM Manual 6320). The BLM has determined that decisions about whether to apply targeted protective requirements or manage specific inventoried LWCs to protect those characteristics is not consistent with the purpose and need as articulated in the Section 1.1.1 of the USS FPEIS/PRMPAs (p. 1-3). The USS FPEIS/PRMPAs does analyze potential indirect impacts on LWCs that are not managed for wilderness characteristics in Section 5.16 and Section 6.4, which states

utility-scale solar energy development activities adjacent to or near LWCs and citizen's proposed wilderness areas could adversely affect or eliminate the wilderness characteristics in portions of these areas by affecting their naturalness (i.e., visual impacts) or opportunities for solitude or primitive and unconfined recreation" (USS FPEIS/PRMPAs, p. 5-142).

The magnitude of impacts on specially designated areas and LWCs would depend on the location and characteristics of the solar energy facility and the proximity to these areas. However, decisions on management of these areas would be completed in subsequent land use planning processes. Should future land use plans decide to manage additional inventoried LWCs to protect their wilderness characteristics, then Exclusion #3 in Table 6-2 of the USS FPEIS/PRMPAs would apply.

Potential impacts from utility-scale solar projects on geological, hydrological, paleontological, soundscape, and cultural resources are discussed throughout Chapter 5 and Chapter 6 of the USS FPEIS/PRMPAs. Section 5.16.1 and Section 5.16.2 specifically describe direct, indirect, and cumulative impacts on BLM-identified LWCs. Where land use plans establish protection for wilderness characteristics, this exclusion preserves these characteristics for future BLM planning decisions.

The BLM's methods to identify previously disturbed lands in the USS FPEIS/PRMPAs are described in Appendix K of the USS FPEIS/PRMPAs. As explained in Appendix K, the BLM's methodology incorporates ecological datasets derived from the Rangeland Condition Monitoring Assessment and Projection, along with USGS landscape intactness data. Mandatory plan-wide Design Feature PW-4 provides that

For projects proposed in areas identified as 'previously disturbed' as described under this Plan (see Section 6.1 and Appendix K), applicants shall verify that the area meets the criteria described and coordinate with the BLM. If the proposed project site is included in the BLM's Restoration Landscapes (see Appendix H, Section H.1), the project developer shall confirm that restoration activities have not been initiated, completed, or are not imminent" (USS FPEIS/PRMPAs Appendix B. p. B-4).

The BLM relied on high quality information in preparing the USS FPEIS/PRMPAs. Accordingly, a Supplemental EIS is not necessary, and this protest issue is denied.

NEPA: Cumulative Impacts

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: The RFDS underpins BLM’s entire analysis of cumulative impacts in the PEIS/RMPA. See PEIS/RMPA at 2-31 (“The RFDS land use and power values presented in this section and Appendix C were used to evaluate the cumulative impacts of solar energy development on resources in the 11-state planning area.”); *id.* at 5-1 (describing resource-specific evaluations of “[c]umulative impacts, including from all solar energy development expected over approximately the next 20 years across the 11-state planning area (the RFDS)”); see also 40 C.F.R. § 1508.1(g) (NEPA requirement that BLM to assess the “reasonably foreseeable” effects, including direct, indirect, and cumulative effects, of the proposed action). Courts have repeatedly held that an agency must “consider the cumulative effects of projects that [it] is already proposing.” *Jones v. Nat’l Marine Fisheries Serv.*, 741 F.3d 989, 1000 (9th Cir. 2013) (original brackets and internal quotation marks omitted). BLM’s analysis of cumulative effects is fatally flawed because the RFDS does not consider existing information regarding the acreage of proposed solar projects and the wattage of those projects even though that information is readily available to BLM through its MLRS Reports, through preexisting BLM analyses, and even through the PEIS/RMPA itself.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: BLM’s MLRS Reports reveal that more than 500,000 acres of federal land in Nevada are presently under application for solar development while more than 66,000 acres of solar development has already been permitted. BLM’s RFDS ignores these applications, forecasting that over the next 20 years just 48,000 acres of solar development will occur in Nevada. See PEIS/RMPA at 2-32. This is inaccurate and implausible given the numbers cited above, the fact the PEIS/RMPA makes more than 11.8 million acres available for solar development in Nevada, and given BLM’s recent subsidies on renewable energy acreage rents and capacity fees, including an 80% reduction in capacity fees. See 89 Fed. Reg. 35,634 (May 1, 2024).¹¹ Indeed, though BLM’s analysis in the RFDS disregards this prediction, the PEIS/RMPA admits that “[o]ver the 20-year planning period, it is estimated that significant growth in utility- scale solar energy development will occur, including solar energy facilities with battery storage.” *Id.* at J-4. Further, BLM’s own recent FEIS/RMPA for the Greenlink West Transmission Project predicts “36 solar RFFAs [reasonably foreseeable future actions] estimated at 205,288 acres” in the project area for that transmission line between north Las Vegas and Reno, Nevada. Greenlink West FEIS/RMPA at 3-321.¹² These sources present data easily accessible to BLM that shows the RFDS to be wildly inaccurate. Moreover, BLM’s RFDS assumptions only consider projects between 5-750 MW, see PEIS/RMPA at 3-3, disregarding the fact that there are currently multiple projects comprising more than 1,200 MW under consideration in Nevada.¹³

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Thus, the problem persists in the final PEIS/RMPA, and means that BLM has not analyzed cumulative impacts of the Proposed Plan, or any of the alternatives, on any resource. Again, the PEIS/RMPA treats the RFDS as a target, stating that the PEIS/RMPA “presents an estimate of the amount of land required for solar energy development (the RFDS).” PEIS/RMPA at 2-31. In other words, BLM uses the RFDS not to assess impacts but rather to project whether BLM can meet its target of opening 700,000 acres of public land to solar development. It is no surprise, then, that “the approximately 700,000 acres estimated to be needed to meet the demand for solar energy development on public lands through 2045,” *id.* at 5-3, is precisely the same as the 700,000 acres of solar development that the RFDS predicts will occur during the next 20 years, *id.* at 2-32.

As we have previously stated, BLM fundamentally misunderstands the nature of an RFDS. No matter the nation’s renewable energy goals, the RFDS (that is, here, the cumulative impacts analysis) should not state BLM’s hopes or goals. Instead, it should state-as accurately as possible, and including pending or proposed projects-the impacts that BLM understands to be reasonably foreseeable. The County emphasizes that the RFDS is a global and fatal NEPA flaw. Because the cumulative impact analysis for every alternative across every resource relies on the RFDS, the deep inaccuracy of the RFDS infects the cumulative impact analysis of every alternative across every resource.

Eureka County, NV

Jake Tibbitts

Issue Excerpt Text: Both Washington and Oregon, states with much less public land and fewer solar irradiance resources, have more RFDS acres than Nevada. According to the BLM’s current Active Renewable Projects data and other sources⁵ there are currently solar projects built or in the permitting queue in Nevada far exceeding this RFDS. This does not include many other proposed projects that have yet to enter a formal NEPA process with BLM. We highlight BLM’s statement that “Over the 20-year planning period, it is estimated that significant growth in utility-scale solar energy development will occur, including solar energy facilities with battery storage (EIA 2022e).” (pp. J-4 & J-5). Presumably, the BLM’s RFDS for Nevada (48,119 acres developed over 20 years) incorporates this statement, otherwise it is not “reasonably foreseeable” considering known industry trends. On the other hand, significant future growth implies that actual solar applications and approvals on BLM land in Nevada will increase above the existing current high levels. Interestingly, BLM represents the west-wide 700,000-acre RFDS as “a conservative assumption that will likely overestimate solar energy development on BLM-administered lands in certain areas...” (p. C-3.). The BLM’s implication is that the 700,000 acre RFDS (of which the Nevada RFDS is only 48,119 acres) is likely even lower, implying that impacts from solar development over the next 20 years will likewise be lower than expected, and lower than accounted for in the EIS and Proposed Plan. This suggestion is indefensible considering actual, current solar development in Nevada and current industry trends. BLM’s RFDS for Nevada (extrapolated from the BLM’s 700,000-acre RFDS for the 11-state planning area, based on the DOE’s Solar Futures study (2021) and its companion report on environmental implications (NREL 2022)) clearly underestimates future solar development in Nevada and consequently, the associated environmental impacts. By favoring a national-level study that focuses on solar needs, not solar development growth as driven by markets, the BLM has ignored actual (recent and current) BLM solar development in Nevada as a basis for establishing a future development forecast. The RFDS and all of Chapter 5 Environmental Impacts must be entirely rewritten and analyzed in a supplemental EIS to reflect a defensible RFDS in Nevada based on, and consistent with, actual solar development and industry growth trends.

Nye County

Megan Labadie

Issue Excerpt Text: Violations of the National Environmental Policy Act (NEPA) The EIS fails to comply with NEPA, which mandates a thorough analysis of all significant environmental impacts and the consideration of reasonable alternatives. The document does not provide a comprehensive assessment of cumulative impacts from multiple projects, nor does it adequately analyze less destructive alternatives, such as prioritizing the use of degraded lands for development. Furthermore, the EIS does not meet NEPA’s requirements for meaningful public participation, having relied on limited virtual meetings and insufficient public comment periods that exclude many affected communities from the decision-making process. The EIS must conduct a full cumulative impact assessment of the availability of lands for proposed solar projects, considering alternatives that prioritize the use of degraded lands. Additionally, the public participation process

must be expanded to ensure that affected communities, particularly those in Nye County, have a central role in decision-making.

Friends of Nevada Wilderness

Shaaron Netherton

Issue Excerpt Text: The Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development fails to adequately address the cumulative impacts that opening 49% of Esmeralda County to industrial Solar development would have on the intact landscapes, cultural and biological resources or the people of Esmeralda County. The Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development identified 49% of Esmeralda. This has a disproportionately significant impact on a sparsely populated county with remarkably intact landscapes.

Summary:

Protestors claimed that the BLM's approval of the USS FPEIS/PRMPAs would violate NEPA by:

- Using the RFDS to evaluate the cumulative impacts of the USS FPEIS/PRMPAs, which does not consider existing information regarding proposed solar projects presently under application and underestimates future solar development, making it impossible to adequately analyze the cumulative impacts that future solar development projects will have on the western landscape.
- Failing to analyze an alternative that prioritizes the use of degraded lands and failing to take a hard look at the cumulative effects of solar development on remote areas.
- Failing to address the cumulative impacts that opening 49 percent of Esmeralda County to industrial solar development would have on the intact landscapes, cultural and biological resources, or communities of the area.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). *Cumulative effects* are

effects on the environment that result from the incremental effects of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.1(g)(3) (2022)).

The BLM has prepared a cumulative impact analysis that is consistent with the broad nature and scope of the proposed alternatives under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Cumulative impacts were disclosed in detail in Chapter 5 of the USS FPEIS/PRMPAs for each resource or resource use. USS FPEIS/PRMPAs Appendix J, *Overview of Activities in the 11-State Planning Area*, identifies activities in the 11-state planning area that were considered in the cumulative impact analysis, including projects, actions, and trends that could affect human and environmental receptors in the defined regions of influence and the defined 20-year time frame. This analysis evaluates the potential cumulative effects of the action alternatives and Proposed Plan compared to the No-Action Alternative, under which certain BLM-administered lands are already available for solar development. As described in Chapter 2 of the USS FPEIS/PRMPAs, approximately 60 million acres are currently available for solar development under the No-Action Alternative, including approximately 8 million acres in Nevada (USS FPEIS/PRMPAs, p. 2-6). Under the Proposed Plan

approximately 32 million acres would be available for solar development in the planning area, including 12 million acres in Nevada (USS FPEIS/PRMPAs, p. 6-4).

To inform the cumulative impacts analysis and further evaluate the planning alternatives, the BLM developed an RFDS that projected the amount of land area and electricity-generating capacity (i.e., power) needed to support potential utility-scale solar energy development in the 11-state planning area through the year 2045. As described in Appendix C of the USS FPEIS/PRMPAs, the basis for the RFDS is the U.S. Department of Energy’s (DOE) *Solar Futures Study* and its companion report on environmental implications, *Environmental and Circular Economy Implications of Solar Energy in a Decarbonized U.S. Grid* (National Renewable Energy Laboratory (NREL) 2022). As outlined in USS FPEIS/PRMPAs Appendix M, the RFDS does not set a limit on development or establish a solar development target for BLM-managed public lands. Instead, it provides a comparison between the acreage in the RFDS and the acreage available for solar applications under the alternatives. This comparison shows that, under all alternatives, including the Proposed Plan, there is enough land to accommodate the estimated development levels outlined in the RFDS, taking into account potential siting adjustments that would be better assessed during the proposal stage (USS FPEIS/PRMPAs Appendix M, p. M-10). As described in Chapter 2 of the USS FPEIS/PRMPAs, the assumptions in the RFDS “will likely overestimate the amount of utility-scale solar energy development on BLM-administered lands for some states and underestimate development for other states, but overall is likely an overestimate of lands needed” (USS FPEIS/PRMPAs, p. 2-31). The RFDS represents a “top down” estimate of potential future utility-scale solar project demand based on upper-end estimates of potential future power needs, rather than a “bottom up” estimate based on project applications that the BLM has received. The RFDS estimates outlined in USS FPEIS/PRMPAs Section 2.2 do not include existing solar projects as explained in Appendix C, *Reasonably Foreseeable Development Scenario*. The “top down” RFDS estimate, based on high-quality information about estimated future market demand for power prepared by the DOE and NREL, presents relevant context to inform this broad, holistic programmatic NEPA analysis. In the BLM’s experience, many proposed utility-scale solar project applications are withdrawn or not implemented. The cumulative effects of individual utility-scale solar projects would be evaluated in detail during project-specific reviews.

In accordance with NEPA, the BLM relied on the best-available data and applied a suitable scope of analysis to assess cumulative effects, including quantitative comparisons between the RFDS estimates for solar development and the land available for application. The cumulative effects analysis in the USS FPEIS/PRMPAs is informed by current data on foreseeable solar projects and effectively guides this planning process.

Regarding the protestor’s statements regarding degraded lands, the BLM did analyze two alternatives in detail that would prioritize utility-scale solar projects on previously disturbed lands: Alternatives 4 and 5. Furthermore, as described in USS FPEIS/PRMPAs Section 6.1, *Description of the Proposed Plan*, under the Proposed Plan previously disturbed lands (regardless of transmission proximity) not otherwise excluded would be available for utility-scale solar. In response to public and cooperating agency feedback, the BLM modified the methods and data used to identify lands as previously disturbed lands in USS FPEIS/PRMPAs, as described in Appendix K (USS FPEIS/PRMPAs Appendix M, p. M-27).

The BLM adequately analyzed cumulative impacts in the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

NEPA: Impacts Analysis – Other

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The RMPA increases the maximum slope allowable for solar energy siting from 5% to 10%, a major shift from the 2012 WSP, which opens up a much larger area - millions of additional acres across the West - for development. However, the impacts of this change were not analyzed in the FEIS. During scoping, numerous commenting parties including the Amargosa Conservancy urged BLM to include an alternative that would maintain the 5% slope requirement (Amargosa Conservancy, et al. 2023, p. 8). Not only did BLM fail to include an alternative maintaining the 5% slope requirement in the FEIS, BLM also failed to even analyze the impacts of changing this slope requirement. Some Draft EIS comment letters urged such an analysis (e.g. CBD 2024, pp. 3 & 14-15), but BLM failed to include it. The change is given a cursory mention with no analysis in several places in the FEIS (e.g. FEIS at 5-50, at 5-70, etc.). The only alternatives comparison is made between Alternative 1 (no slope requirement) and Alternatives 2-5 (10% slope requirement) and is presented in cursory fashion (FEIS at 2-41). Thus the FEIS failed to respond to scoping and DEIS comments by failing to include an alternative which maintains the 5% slope restriction and failing to analyze the impacts of changing the slope restriction from 5% to 10%. This issue has a tangible effect on the Amargosa River watershed. In particular, portions of the alluvial fans coming off of Mount Charleston into Pahrump Valley in Wheeler Wash and Carpenter Canyon have been allocated as Available for solar in the FEIS which have a slope of greater than 5% but less than 10%. As described in CBD 2024, pp. 14-15, there can be considerable environmental impacts from developing on steeper slopes, including increased erosion, increased area being graded within project sites, and could cause changes to hydrology and groundwater infiltration. These steeper areas also tend to be areas where big game and other organisms come up or down off the mountains during seasonal movements.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: Analysis of Impacts of Increased Slope Available for Development is Inadequate The proposed RMPAs increases the maximum slope allowed to build solar projects on from 5% to 10%, a major shift from the 2012 WSP, which opens up a much larger area - millions of additional acres across the West - for development. However, the impacts of this change were not analyzed in the Final PEIS. During scoping, numerous commenting parties urged BLM to include an alternative that would maintain the 5% slope requirement (Amargosa Conservancy, et al. 2023, p. 8). Not only did BLM fail to include an alternative maintaining the 5% slope requirement in the Final PEIS, BLM also failed to even analyze the impacts of changing this slope requirement. The Center's Draft EIS comment letter and others urged such an analysis (e.g. CBD 2024, pp. 3 & 14-15), but BLM failed to include it. The change is given a cursory mention with no analysis in several places in the Final PEIS (e.g. Final PEIS at 5-50, at 5-70, etc.). The only alternatives comparison is made between Alternative 1 (no slope requirement) and Alternatives 2-5 (10% slope requirement) and is presented in cursory fashion (Final PEIS at 2-41). Thus the Final PEIS failed to respond to scoping and Draft PEIS comments by failing to include an alternative which maintains the 5% slope restriction and failing to analyze the impacts of changing the slope restriction from 5% to 10%. On this basis and others, the PEIS is inadequate.

Western Watersheds Project et al.

Laura Cunningham et al.

Issue Excerpt Text: We Protest that BLM has not taken a hard look under NEPA and assessed direct, indirect and cumulative impacts to designated Wild Horse Herd Management Areas (HMAs). the proposed action appears to violate the Wild Horse and Burro Act. BLM Land Use

Plans specifically allocate lands for Wild Horse HMAs, and AMLs are established based, at least in part, on land area available. We raised these issues in scoping comments: B&RW and WLD (2023) Wild Horse and Burro conflicts at 113-114. Many Nevada Wild Horse HMAs established under the Wild Horse and Burro Act and designated under FLPMA through Land Use Plans would be drastically impacted by the PEIS proposed action. The PEIS enables proposal large-scale industrialization of the HMAs (with bulldozed or otherwise significantly altered vegetation, fences that prevent free roaming and may block access to critical resources of forage/water/space, new and expanded roading and human disturbance and harassment, and horse potentially squeezed into small areas resulting in increased and intensified competition with wildlife and livestock. The PEIS certainly appears to represent undue degradation of ecological conditions in the HMAs. It also fails to provide evidence of assessing and a Thriving Natural Ecological Balance is maintained. It may also violate existing Herd Management Area Plans (in the areas that have them).

Citizens to Protect Smith Valley (NV)

Leslie Sonne

Issue Excerpt Text: NEPA ANALYSES AND TIERED ANALYSIS CPSV protests the FINAL PEIS/RMPA because there is no enforceable commitment to conduct complete NEPA analysis for every public land application. Full NEPA analysis is a required condition that must be integrated with the Record of Decision to assure disclosure of site- specific impacts and mitigation required to make an informed decision. Concerns were raised by CPSV and other commenters to the Draft PEIS regarding BLM’s intent for tiering site-specific NEPA analysis to the Final PEIS. A tiered analyses would rely on the current analyses of direct, indirect, and cumulative impacts, and mitigation in the Final PEIS/RMPA, which are too general for tiering, but were necessary to accommodate the 11-state plan area. Thus, the general impact analysis in the Final PEIS is insufficient for the intended use of tiering site-specific NEPA analysis. BLM makes this commitment under all Action Alternatives: “... a solar development ROW would only be approved following an appropriate project- specific review, and a decision to issue a project ROW would need to comply with NEPA. (see Section 1.1.5).”

Eureka County, NV

Jake Tibbits

Issue Excerpt Text: BLM must complete a supplemental EIS to: * Complete adequate and defensible livestock grazing impacts analysis to include many of the same impacts to wildlife and wild horses. * Analyze omitted impacts to range improvements that are imperative to livestock grazing management. BLM has the geospatial data at hand, especially at the local field office level, to include all known range improvements (including fencing) and stockwatering features on all lands open for solar development application, which was not done for the 2024 Solar Plan. This minimal level of analysis must be completed to show the full potential of impacts and to disclose to potential lessees the extent of grazing infrastructure that may need to be mitigated. Further, the design features and project guidelines in Appendix B, Section B.13 fall far short in addressing impacts to grazing because all the impacts to grazing were not included in the analysis. Further, BLM failed to outline any and all reasonable mitigation to offset grazing impacts, including AUM loss compensation, even though such mitigation was specifically requested and is required by BLM to include.6

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: The County protests BLM’s failure to rely on best available science in the PEIS/RMPA and, thus, its failure to adequately assess impacts. For example, BLM fails to consider the environmental impact of solar development-caused “heat islands” on humans, wildfire, vegetation, wildlife, special status species, and water. In so doing it disregards best available science demonstrating that temperatures over a PV plant were regularly 3-4°C warmer than wildlands at night.19 Nor does it analyze how solar development might increase risks from wildfire,

a driver of ecological degradation and public safety risk in the County. The County has repeatedly raised these issues, including suggesting (as we do again here) that BLM prepare an SEIS to address them. See Humboldt County Administrative Final PEIS/RMPA Comments at Row 15; Humboldt County Draft PEIS/RMPA Comments at *29-30 (wildfire), *22-24 (air quality), *24 (vegetation), *24 (special status species), *25 (hazardous waste), *25 (health and safety), *27 (livestock grazing), *29 (water resources).

Summary:

Protestors stated that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA because the BLM has:

- Failed to analyze the impacts of increasing the maximum slope allowable for solar development from 5 percent to 10 percent and failed to respond to public comments from both scoping and the DEIS.
- Failed to take a hard look and assess the direct, indirect, and cumulative impacts to the designated Wild Horse Herd Management Areas (HMAs).
- Failed to conduct sufficient impact analyses to support the intention to tier site-specific NEPA analysis from the FPEIS/PRMPA, failing to include an enforceable commitment to conduct NEPA analysis for future tiered public land use applications.
- Failed to include a livestock grazing impact analysis, analyze impacts to range improvements, and address any mitigation necessary to offset grazing impacts.
- Failed to analyze impacts of “heat islands” caused by utility-scale solar projects.

Response:

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The environmental information made available to public officials and citizens before decisions are made must be reliable and accurate (40 CFR 1502.23, 2022). A *hard look* is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable effects of the proposed action. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The BLM’s proposed planning decisions described in the USS FPEIS/PRMPAs would not authorize any solar projects, and all projects are subject to further review (USS FPEIS/PRMPAs Section 1.1.5). The analysis in this programmatic planning effort provides the basis to make informed decisions regarding individual project applications.

Because the land use planning decisions under consideration by the BLM are programmatic in nature, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from planning-level changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

As described in USS FPEIS/PRMPAs Chapter 2, *Description of Alternatives and Reasonably Foreseeable Development Scenario (RDFS)*, the BLM considered a range of alternatives which included a 5-percent maximum allowable slope criterion (i.e., the No-Action Alternative), no slope-

based exclusion (i.e., Alternative 1), and a 10-percent slope exclusion for Alternatives 2 through 5. The USS FPEIS/PRMPAs further discusses the rationale regarding the retention of the slope criterion and the adjustment made since the 2012 Western Solar Plan (USS FPEIS/PRMPAs, p. 2-3). The 10-percent slope criterion acknowledges that technical advances in utility-scale solar since the 2012 Western Solar Plan may enable development in steeper areas, but potential resource-related issues associated with development on high-slope lands remain (USS FPEIS/PRMPAs Appendix M, p. M-27). Multiple design features require solar project developers to implement measures to reduce impacts of solar projects on water resources. Across the alternatives, the BLM evaluated the potential impacts associated with the maximum slope exclusion, including the No-Action Alternative (i.e., 5-percent slope exclusion), Alternative 1 (no slope-based exclusion), and inclusion of the 10-percent slope exclusion for Alternatives 2 through 5. The impacts associated with the slope exclusions across alternatives are outlined throughout USS FPEIS/PRMPAs Chapter 5 across resources and resource uses, as well as in Appendix F, *Methodologies and Supplemental Materials for Analysis of Affected Environment and Environmental Effects of Solar Energy Development on Resources*. By including a range of slope-exclusion criteria across the alternatives analyzed in detail, the BLM did analyze potential effects of solar development across areas with slopes up to 10 percent.

The Wild Free-Roaming Horses and Burros Act of 1971, as amended, gave the BLM the responsibility to protect, manage, and control wild horses and burros (WH&B). BLM Handbook H-4700-1 and Manual 4700 describe the authorities, objectives, policies, and procedures that guide the management of WH&B on BLM-administered lands. The general management objectives for WH&B are to: (1) protect, maintain, and control healthy herds with diverse age structures, while retaining their free-roaming nature; (2) provide adequate habitat for WH&B through the principles of multiple use on BLM-administered lands; (3) achieve and maintain a thriving natural ecological balance with other resources; (4) provide opportunities for the public to view WH&B; and (5) protect WH&B from unauthorized capture, branding, harassment, or death. To achieve these goals, the BLM designated HMAs) for the long-term maintenance of WH&B herds and collects data about the animals and their habitat. As outlined in USS FPEIS/PRMPAs Section 14.3.2, on BLM-administered lands across 10 of the 11 western states (excluding Washington, which has no wild horse and burro Herd Areas [HAs] or HMAs), HAs cover a total of 42,440,065 acres, and HMAs span 26,917,766 acres (USS FPEIS/PRMPAs, p. 4-64). The USS FPEIS/PRMPAs includes statistics for WH&B and displays the HAs and HMAs within the western states in USS FPEIS/PRMPAs Appendix F (see Table F.13.2.2-1, p. F-179, and Figure F.13.2.2-1, p. F-180). Potential impacts of utility-scale solar development on wild horses were evaluated and described in Section 5.13.2 (USS FPEIS/PRMPAs, pp. 5-125–5-130). As stated in USS FPEIS/PRMPAs Chapter 5, the BLM does not anticipate that solar energy facilities would be sited within HMAs. Impacts on HMAs would depend on the size and location of the solar energy facility and its proximity to an HMA, as well as the size of any affected wild horse and burro populations. Any future reduction of the appropriate management levels (AMLs) would be subject to the requirements of the Wild Free-Roaming Horses and Burros Act of 1971, as amended. Design features in Appendix B of the USS FPEIS/PRMPAs would mitigate impacts to WH&B, including requiring solar project developers to “identify WH&Bs and their Herd Management Areas in proximity to the proposed project. In coordination with the BLM, developers shall consult existing land use plans and updated inventories” (WHB-1), and “[w]here applicable, . . . ensure access to or replacement of water sources for WH&B” (WHB-2). The BLM would consider potential impacts on HAs and HMAs during project-specific reviews.

As discussed in Section 1.1.5 of the USS FPEIS/PRMPAs, the

Programmatic EIS will not alleviate the need for project-specific analyses for solar energy development at the local level. Rather, the broad identification and allocation of lands as open,

avoidance, or exclusion areas for solar energy development under this Programmatic EIS is an important step to guide solar developers to locations where the BLM anticipates fewer issues with critical resources or other critical uses.

Designating lands as available does not mean that the BLM has determined that the lands are be suitable for solar energy development. Any solar energy project application that is received by the BLM will require project-specific environmental review, consistent with applicable laws, including NEPA, ESA, and NHPA. Although the BLM may tier to relevant analysis in this programmatic document, the BLM will comply with the CEQ's NEPA regulations at 40 CFR 1501.11 (2024) that require agencies to reevaluate programmatic environmental documents in certain circumstances to ensure reliance is appropriate. Additionally, all solar energy project applications on BLM-administered lands must adhere to the BLM's ROW regulations at 43 CFR Part 2800. Under these regulations, the BLM may require applicants to submit a project plan of development, addressing any known or potential conflicts with sensitive resources and values, along with proposed measures to avoid, minimize, or mitigate those conflicts. Further explanation regarding tiering is outlined in Section 1.5, *BLM Requirements for Further Environmental Analysis* (USS FPEIS/PRMPAs, pp. 1-10, 1-11).

Potential impacts on livestock grazing are outlined in USS FPEIS/PRMPAs Section 5.13.1, *Livestock Grazing*. The analysis includes direct and indirect impacts related to construction and operations, as well as transmission lines and roads (USS FPEIS/PRMPAs, pp. 5-120, 5-121). The section also evaluates cumulative impacts and compares potential impacts across alternatives. The analysis recognizes the potential for unavoidable negative economic impacts and outlines both the opportunities and limitations for mitigating those financial effects. This programmatic analysis supports the BLM's broad planning decision. USS FPEIS/PRMPAs Appendix F Section F.13 provides additional information about the affected environment, including the grazing permits and leases in force as of January 2022 (p. F-176). The BLM would consider any site-specific grazing impacts in subsequent project-specific analysis. Furthermore, design features and project guidelines outlined in Appendix B of the USS FPEIS/PRMPAs would mitigate impacts of solar projects on grazing and WH&Bs.

Regarding the potential for utility-scale solar projects to create "heat islands" that could affect wildland fire, wildlife, vegetation, and water resources, the USS FPEIS/PRMPAs does disclose that utility-scale solar projects could result in changes to ground or water temperatures, thus affecting local vegetation communities, wildlife, SSS, and other resources (USS FPEIS/PRMPAs pp. 5-33, 5-38, 5-43, 5-53, 5-56, and 5-67). Section F.2.3.5 addresses albedo effects (i.e., reduction of the fraction of solar radiation reflected back into space by an area of the Earth's surface due to large areas darkened by solar panels). This section cites research that indicates "benefits resulting from widespread deployment of photovoltaics (PVs) for fossil fuels far outweigh (that is, are more than 30 times larger than) the unfavorable effects due to the small change in the Earth's albedo." Programmatic design features and project guidelines include measures to "reduc[e] environmental conditions (for example, temperature and humidity) emanating from the facility," (ER-11g) and monitor "the regional climate, including season and long-term information on temperatures precipitation, evaporation, evapotranspiration, and drought severity" (WR-7h) and "cumulative temperature changes to plant communities and wildlife habitat, both in and outside of solar facilities, based on current research" (ER-PG-8). Resource-specific design features for wildland fire (WF-1 through WF-6) require project-specific assessment and minimization of wildfire risk in coordination with the BLM, local governments, and other appropriate fire- and emergency-management organizations.

The USS FPEIS/PRMPAs complied with NEPA's requirement to analyze the environmental consequences/impacts associated with proposed action. Accordingly, no Supplemental EIS (SEIS) is needed, and this protest issue is denied.

NEPA: Impacts Analysis – Socioeconomics and Environmental Justice

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS fails to follow BLM’s established guidelines on analyzing and mitigating environmental justice impacts during the NEPA process. The 2022 BLM document titled “Addressing Environmental Justice in NEPA Documents” presents the obligations BLM must follow when addressing equity issues for energy development. Environmental justice is defined in this document as follows: “Environmental justice (EJ) is the fair treatment and meaningful involvement of all potentially affected people—regardless of race, color, national origin, or income—when we in the federal government develop, implement, and enforce environmental laws, regulations, and policies[...] Fair treatment means that no group should bear a disproportionate share of the adverse consequences that could result from federal environmental programs or policies. Populations of particular concern are minority, low-income, and tribal communities.” (Bureau of Land Management, 2022 p. 3-4) (Catlin, 2024 p. 13-14). The FEIS fails to adequately define and identify impacted environmental justice communities. In particular, while it makes generalized statements about the racial, demographic, and socioeconomic makeup of the 11 Western states, the impacts of the RMPA will be felt differently across those states, and across communities within those states. Rural counties in particular will bear much of the burden of the development enabled by the RMPA, and the socioeconomic situation for these communities is different than in urban parts of the West. The FEIS’ provided methodologies used for evaluation of Environmental Justice in section F.5 appear arbitrary and data coarse. The FEIS describes application of the 50% Threshold Analysis, meaning that if the percentage of block group population (whose income is equal to or below 200% of the federal poverty level) is equal to or more than 50% of the total block group population, it qualifies as a potential low-income population of concern. The FEIS does not provide sufficient justification of the adoption of the 50% Threshold Analysis as an appropriate methodology to adequately address, mitigate, or avoid impacts to low-income populations affected by this planning process. Many rural communities within the planning area such as Amargosa Valley, NV have statistically significant low-income populations consisting of over 30% of total population, according to census data.¹ Through arbitrary adoption of the 50% Threshold Analysis methodology, the FEIS fails to clarify why low income communities wherein nearly 1 in 3 residents are considered to be in a poverty state do not rise to the level of significant concern in siting renewable energy projects in the West.

Nye County

Megan Labadie

Issue Excerpt Text: Inadequate Consideration of Environmental Justice under Executive Order 12898 The EIS does not adequately address environmental justice concerns, as mandated by Executive Order 12898, which requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations. The document fails to consider the cumulative and disparate impacts on rural and Indigenous communities that would bear the brunt of environmental degradation, reduced access to natural resources, and increased health risks due to pollution from construction and operation of these projects. Communities in Nye County, Nevada, should qualify as environmental justice communities based on their average household incomes and other socioeconomic factors. Environmental justice communities are typically defined by a combination of factors, including low income, minority status, and increased vulnerability to environmental burdens, all of which apply to Nye’s communities. According to the U.S. Department of Housing and Urban Development (HUD), a common threshold for low-income status is 80% of the area median income (AMI). For Nevada, the state median household income is around \$65,000. The average household incomes in Beatty (\$39,000) and Amargosa Valley (\$43,000) fall well below this threshold. Pahrump (\$51,000)

and Tonopah (\$50,000) also have incomes significantly lower than the state median. These figures indicate that these communities are economically disadvantaged, meeting a key criterion for environmental justice status. Environmental justice concerns are not limited to income alone. Rural communities like those in Nye County often face additional challenges, such as limited access to healthcare, fewer economic opportunities, and lower capacity to respond to environmental changes. This isolation increases their vulnerability to the negative impacts of large-scale developments like those proposed in the Utility Scale Programmatic EIS. The EIS proposes large-scale solar developments near these communities, which could result in water scarcity, loss of recreational land, and other environmental impacts. These communities, with their lower average incomes, may lack the resources and political power to effectively oppose or adapt to these changes. This potential for disproportionate adverse impacts is a hallmark of environmental justice issues. Given these factors, the communities of Beatty, Amargosa Valley, Pahrump, and Tonopah can be considered environmental justice communities due to their lower income levels, rural status, and increased vulnerability to the cumulative environmental impacts proposed by the EIS. This designation underscores the importance of more inclusive, community-centered land-use planning and the need for federal agencies to consider the unique challenges faced by these populations when making decisions that affect their environment and quality of life. The EIS should include a dedicated environmental justice analysis focusing on the specific conditions for rural areas like Pahrump, Beatty, Tonopah, and Amargosa Valley. This analysis would evaluate how the proposed solar developments could disproportionately affect these communities in terms of economic, social, and health impacts. It should consider the lower average household incomes, the reliance on limited water resources, and the potential loss of land for recreation, tourism, and local economic activities. The EIS must use this analysis to identify vulnerable populations and assess potential cumulative impacts, ensuring compliance with Executive Order 12898 on environmental justice.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS fails to sufficiently analyze cumulative impacts to environmental justice communities and socioeconomics. PART OF THE PLAN BEING PROTESTED: 5.5.2, 5.15.2 There is the distinct possibility of severe cumulative impacts from the RMPA in the Amargosa River watershed. There are over 25 solar applications currently in Basin 230 and Basin 162, and several more north of Beatty. The RMPA designates 220,000 acres for solar development in the Amargosa River watershed, which would represent a fundamental transformation of the landscape: cumulative water withdrawals for this sort of development could be tens of thousands of acre-feet (tens of billions of gallons); private property and communities surrounded by industrial development; severe dust problems with so much destabilizing soils. It paints a very bleak picture of the future in this community. Unfortunately the FEIS does not adequately examine this issue. Under the cumulative impacts analysis for environmental justice and socioeconomics, the FEIS touts the benefits of clean air and jobs, saying that the cumulative impacts of the RMPA would be beneficial for environmental justice and rural communities. The FEIS lacks analysis of how the above factors such as water, dust, and land disturbance, may fundamentally transform communities and ruin them for residents and the environment. The scale of transformation envisioned by the RMPA would cause significant cumulative impacts to the communities of the Amargosa River watershed, and these are not analyzed in the FEIS.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS fails to adequately consider or mitigate the impacts of large-scale solar development on rural communities located near lands opened to solar development. Rural communities often face unique challenges, including limited access to services and infrastructure, and the development of industrial-scale solar projects can exacerbate these challenges. Issues like

increased traffic, noise, heat island effect, and the visual impacts of large solar installations were not adequately addressed in the plan.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The BLM’s failure to consider these socio-economic impacts in the FEIS constitutes a major gap in the analysis and threatens the well-being of these communities. These impacts are made more acute when solar development occurs directly on the fenceline of property owners in environmental justice and rural communities. Across the Amargosa River watershed, property owners are facing the prospect of BLM-managed public lands directly on their property lines being allocated for solar development. This includes the entirety of the private property comprising the town of Amargosa Valley, smaller parcels in and around private property in the town of Beatty, and all of the landowners along the south border of the town of Pahrump. Likely thousands of property owners are directly affected by this, and thousands more whose properties are not directly abutting lands made available for solar but who will nonetheless be impacted due to proximity. Numerous organizations, municipalities, and agencies expressed the need for BLM to analyze and provide alternatives that could have mitigated or eliminated potential impacts to rural communities through instituting exclusionary buffer zones or setback distances. Commenters proposed setback radii surrounding rural communities ranging from 1 to 30 miles to prevent the potential for these communities to bear a disproportionate burden of impacts from this programmatic process (Humboldt County, 2024; Citizens to Protect Smith Valley, 2024 p. 4; Labadie, 2024 p. 2; Basin & Range Watch, 2024, p. 13). The FEIS failed to address these concerns and provide acceptable alternatives for public review. While the FEIS discloses that there will be significant impacts on environmental justice and rural communities, it fails to adequately mitigate those impacts, or to address what impacts may be impossible to mitigate.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: Campbell and Converse Counties submitted comments to BLM on the PDEIS asking the agency to consider the impacts their decision would have on the socioeconomics of the region and state and encouraged the agency to better align with local county natural resource management plans. As described above in section B (BLM Fails to Adequately Consider Consistency with Approved Local Government Plans) and section C (BLM Failed to Adequately Respond to Counties Comments). BLM fell short in adequately analyzing for impacts to our Counties based on solar allocation decisions. To be clear, Wyoming embraces an all-of-the-above energy strategy, and we are an energy state that exports over ninety-percent (90%) of the energy we produce. We recognize the need and value in having a diverse energy production portfolio and our Counties contribute significantly to our State and nation in meeting these increased energy and supply chain demands. Further, most renewable energy projects in our Counties occur on private surface where landowners negotiate surface use agreements, lease terms and /or Right-of-Way easements directly with the private sector. The County reiterates that should solar occur on either private or federal surface, BLM must allow subsurface mineral leasing and development to occur. Any curtailment of mineral leasing and development activity significantly impacts the socio- economics of the communities and eliminates a critical funding stream for not just for the Counties, but all counties, the State of Wyoming and its residents. Without that tax revenue derived from the mineral leasing and development, there would be insufficient funds to provide basic services at a level needed for the protection of county residents. There is currently no county or state tax structure in place associated with solar energy development nor is there a federal revenue stream that is generated from that type of development that would directly benefit the Counties. While we recognize that the sale of goods and services, along with benefits to local businesses during construction and long-term production,

does boost the local economy, renewable energy development falls short in meeting the revenue stream supported by the extractive minerals industries. For these reasons, BLM must include and expand its socioeconomic analysis related to the effects funding and revenue decreases would have on local services and programs should solar land allocations conflict and thereby restrict or replace other multiple use resources such as mineral leasing and development, grazing, recreation, etc. It is critical that the BLM include an in-depth analysis on where those funding streams will be recovered if mineral leasing and development is significantly reduced or eliminated long-term. While an important part of the energy mix, renewables simply fall short of providing that type of financial support to state and local communities where the energy source is derived and the impacts must be adequately considered in the analysis.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: BLM failed to adequately consider impacts to adjacent private landowners and private mineral owners BLM failed to consider the impacts that solar allocations would have on adjacent private or state lands not only for surface impacts or access but also access for adjacent private or state minerals. To reiterate, the Counties have a substantial amount of split estate (mostly private surface/federal mineral) but there may be instances of federal surface/private minerals. Campbell County is unique as our lands are comprised of approximately 83% private surface and an estimated 87% federal minerals. We are also an energy rich area with an estimated forty percent (40%) of the nation’s BTU’s, which is critical in meeting the nation’s increased energy demands. Converse County is rich in federal resources as our lands are comprised of approximately 76% private surface and an estimated 60% federal minerals. Mineral production from oil and gas is not only critical to our county, state and school systems but also for the meeting energy demands nationally. BLM must honor valid existing rights and permits that currently exist for other uses on lands being considered for solar allocation. The ability to access federal and private minerals that are currently under lease if solar allocations occupy the surface is a concern for the Counties and the private mineral owners and must be honored. Furthermore, if BLM surface is adjacent to private landowners who have access to the BLM parcel for grazing allotments where solar allocation occurs, that permit and access must be honored. BLM does not fully address these situations in the FPEIS. The Counties assert that a Supplemental Environmental Impact Statement (SEIS) is necessary to provide a more comprehensive analysis of the socioeconomic impacts of the proposed RMPA or allow Wyoming to be removed from the planning amendment and address these issues at the appropriate state or resource management planning level. Without a thorough assessment of the long-term consequences of these restrictions, including the loss of revenue, employment, and public services, the BLM risks implementing a plan that will harm Wyoming’s communities and the people who rely on the responsible development of public lands. It is incumbent on BLM to address these issues in detail in Record of Decision.

EDF Renewables Development, Inc

Devon Muto

Issue Excerpt Text: The Proposed Plan fails to examine the adverse economic impacts it would impose upon the solar energy industry and therefore does not comply with the Federal Land Policy and Management Act (“FLPMA”)J. FLPMA requires that in developing and revising land use plans, the Secretary shall “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.” 43 U.S.C. § 1712(c)(2). BLM regulations require the agency staff to “estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing the National Environmental Policy Act.” 43 C.F.R. § 1610.4-6. The FPEIS falls short of these requirements by failing to undertake a detailed assessment of

the economic impacts of the Proposed Plan and each alternative. Instead, the FPEIS’s comparison of the socioeconomic impacts of the action alternatives is confined to two, two sentence paragraphs in section 5.15.3.2. This “analysis” does not mention, let alone thoroughly assess, the negative economic impact on the solar industry that will result from the BLM’s decision to significantly reduce the amount of available land for solar energy generation and implement impractical PDFs.

Friends of Nevada Wilderness

Shaaron Netherton

Issue Excerpt Text: Social Impact of the Solar PEIS on Nevada’s Rural Counties especially Esmeralda and Nye County The solar PEIS failed to address the catastrophic socio-economic impact of temporary workers on the healthcare, communities, safety, stability of Central Nevada communities and residents. Esmeralda County is one of the most rural and least densely populated counties in America, outside of Alaska.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: The County protests BLM’s inadequate analysis of impacts of the Proposed Plan on social and economic values. As we have repeatedly noted, BLM’s socioeconomic analysis in this 11-state RMPA is unspecific and local impacts are minimized or undocumented. See Humboldt County Administrative Final PEIS/RMPA Comments at Row 14; Humboldt County Draft PEIS/RMPA Comments at *27-28; Humboldt County Administrative Draft PEIS/RMPA Comments at *23 (noting excessive impacts of the PEIS/RMPA on “socioeconomics”). We suggested in our comments on the administrative final PEIS/RMPA, and again state, that BLM must prepare a SEIS to remedy its deficient analysis.¹⁸ In brief, relevant local impacts not discussed in the PEIS/RMPA-particularly, in Section 5.15.1-include those to grazing (existing permits and leases will be incompatible with solar application); mining (excluded from areas developed for solar); recreation (impossible on areas developed for solar); agriculture (severely impacted by heat zones created by solar panels that are adjacent to fields-which mapping that identifies agricultural areas as “disturbance” zones in the Proposed Plan makes inevitable); community development and safety (hampered by solar application on, for example, lands slated for disposal and affected by increased threat of wildfire on lands developed for solar); public services (such as law enforcement, fire control, and road maintenance required to service solar sites); environmental justice considerations; habitat conservation and open space (for example, greater sage-grouse habitat conservation efforts that are part of the County’s land use plans and, indeed, part of BLM’s land use planning, and with which the Proposed Plan is at cross-purposes); transportation infrastructure; property values; tourism; and quality of life (including reliance on grazing permits and leases and use and enjoyment of undeveloped public land).

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: The BLM failed to respond to concerns we raised regarding persons with disabilities. The BLM did not respond to the Equity Action Plan. In April 2022 the Department of Interior released its Equity Action Plan which states, “Public land visitation data collected from the Department’s bureaus suggests that certain underserved communities are underrepresented as public land visitors, relative to their presence in the U.S. population at large.” This includes persons with disabilities and limited physical access. This project proposal will help decrease access within this area for underserved communities.

BlueRibbon Coalition***Simone Griffin***

Issue Excerpt Text: Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the BLM consider the access needs of disabled users, and it has failed to address them in the alternatives for this PEIS. This PEIS fails to comply with the Department of Interior Equity Action Plan.

Summary:

Protestors stated that the USS FPEIS/PRMPAs would violate FLPMA, NEPA, the DOI’s Equity Action Plan and other Federal guidance because they:

- Fail to follow established guidelines on analyzing and mitigating environmental justice impacts, propose large-scale closures of existing routes that will decrease access within the area for people with disabilities and other underserved communities, inadequately define and identify cumulative, socioeconomic, or health impacts on communities with environmental justice concerns, use evaluation methodologies that exclude communities arbitrarily and without justification, and refuse to respond to previously raised concerns regarding persons with disabilities.
- Fail to consider the cumulative impacts on indigenous communities that would bear the brunt of environmental degradation, reduced access to natural resources, and increased health risks due to pollution from construction and operation of these projects.
- Fail to adequately analyze the impacts of large-scale solar development on rural communities, including impacts from increased traffic, noise, the heat-island effect and visual impacts, and fail to provide mitigation strategies for rural communities.
- Fail to include an in-depth socioeconomic analysis on the negative impacts on the solar industry of significantly reducing the amount of available land for solar energy generation and implementation of PDFs.
- Fail to analyze impacts on local funding sources, including information about where funding streams will be recovered if mineral leasing and development were significantly reduced/eliminated long-term.
- Fail to analyze the socioeconomic impacts of temporary workers for solar development on the healthcare, communities, safety, and stability of Central Nevada communities/residents, and other consequences.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15, 2022), and that NEPA documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, and 1502.15, 2022). The BLM is required to take a “hard look” at potential environmental impacts of adopting the USS FPEIS/PRMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The analysis provides the necessary basis to make informed land use plan-level decisions. Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decision or actions (i.e., the BLM would not authorize any solar projects through this planning effort), the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM analyzed potential impacts on communities with environmental justice concerns in the USS FPEIS/PRMPAs, as described in Section 4.5, 5.5 and Section 6.4, consistently with EO 14096 and BLM policy. NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through EO 14096, agencies are encouraged to include effects that relate to environmental justice. The BLM’s methods for identifying communities with environmental justice concerns are further described in USS FPEIS/PRMPAs Appendix F, Section F.5. These methods, including the 50-percent Threshold Analysis for identifying low-income communities, is consistent with Federal policy, including CEQ) and BLM guidance.

USS FPEIS/PRMPAs Section 5.5 and Section 6.4 identify environmental justice effects, such as economic burdens, health impacts and healthcare access, cumulative burdens, recreational accessibility, and outreach needs, and also analyzes those concerns in the context of cumulative impacts. The impact analysis in the USS FPEIS/PRMPAs addresses a wide range of potential impacts on rural communities, such as air quality and dust, acoustic environment, water resources, exposure to mining and soil contaminants, visual impacts, impacts to traditional rural community structures, health services, housing, transportation, employment inequity, and land use changes (USS FPEIS/PRMPAs, pp. 5-72–5-81). As described in Appendix B of the USS FPEIS/PRMPAs, project developers would be required to implement design features to address potential effects on communities with environmental justice concerns (USS FPEIS/PRMPAs Appendix B, B-21). Many of the environmental justice design features (both mandatory requirements and project guidelines) emphasize general strategies to address environmental justice concerns, including those intended to support equitable economic development and that prioritize equitable employment opportunities for potentially affected populations with environmental justice concerns. For example, Design Feature EJ-5 requires the BLM and project developers to

use all available resources and strategies to minimize disproportionate and adverse impacts on communities with environmental justice concerns or impacts on human health and welfare generally. Such impacts include but are not limited to air quality, drinking water supplies, water supplies for agricultural and livestock use, local use of subsistence resources, and public services.

A more focused and locally contextual analysis will be conducted as part of project-level NEPA analyses, including an evaluation to determine whether there are populations with environmental justice concerns proximate to the proposed project and whether the proposed project may have disproportionate and adverse effects. The environmental justice impacts and environmental justice-related design features were analyzed as part of a programmatic assessment of utility-scale solar development in the 11-state planning region.

The Proposed Plan would not decrease access to public lands for persons with disabilities or underserved communities. The Proposed Plan would not close any routes to motorized travel. As described in USS FPEIS/PRMPAs Section 4.14 and Section 5.14, individual solar project areas could include areas containing designated open routes for off-road vehicles, thereby eliminating public access along those routes. Design features included in USS FPEIS/PRMPAs Appendix B, Section B.2.14, require project developers to assess and mitigate impacts on recreational resources, as appropriate. Impacts on any individual routes—and related impacts on access for persons with

disabilities or communities with environmental justice concerns—would be examined and mitigated, as appropriate, through project-specific analysis.

As described in USS FPEIS/PRMPAs Chapter 7 and Appendix D, the BLM has engaged with Tribes through government-to-government and Section 106 consultation throughout this planning effort. The BLM contacted nearly 250 Tribes and has held numerous meetings with Tribes to ensure that Tribal viewpoints concerns are fully considered. Tribal outreach and consultation will continue as solar applications are received. Design Features PW-5, PW-21, TI-4, TI-5, and TI-6 address continued Tribal consultation in the USS FPEIS/PRMPAs. Specific resources and areas of Tribal interest will be considered in project-specific reviews, including analysis of both potential adverse and beneficial impacts. The cumulative impact analysis in USS FPEIS/PRMPAs Section 5.18.3 and the design features described in Appendix B, Section B.18, include measures to avoid and minimize impacts on Tribal interest resources.

The BLM analyzed potential impacts of utility-scale solar development on rural communities, including related visual effects, noise, traffic, socioeconomic effects, adequacy of services and infrastructure, housing, and other resources. The analysis acknowledges that solar energy projects could adversely affect cattle grazing, recreation, and mining activity and consequently affect local employment and income in the industries affected, in addition to employment, income, housing availability and affordability, tax revenues, and public services in communities in the vicinity of solar projects. The BLM took a “hard look” at these resources, and potential impacts are described in USS FPEIS/PRMPAs Section 5.1 (Noise), Section 5.2 (Air Quality and Climate), Section 5.8 (Health and Safety), Section 5.11 (Mineral Resources), Section 5.13 (Rangeland Resources), Section 5.14 (Recreation), and Section 5.15 (Socioeconomics). The analysis describes how solar energy development would create employment and tax benefits, but could adversely affect socioeconomic resources, including recreation, property values, quality of life, and social services, in the planning area. Most solar facilities permitted on BLM-administered lands to date have been sited in remote locations. Nonetheless, the BLM agrees that in the future some solar facilities may be permitted in areas closer to residences and towns. The impacts of those facilities on any residences or rural communities would be evaluated at the project-specific level. Regarding noise impacts, in response to comments on the USS Draft PEIS/RMPAs, the BLM noted that estimating the time above 35 decibels (dB) during construction and operations may be appropriate in project-specific review. Additionally, erosion of soils, biological soil crusts, and desert pavement are discussed in USS FPEIS/PRMPAs Section 4.6.2.2, Section 4.6.2.3, and Section 4.6.2.4, respectively, and the impacts from fugitive dust, including Valley Fever, and fugitive dust emissions from solar facilities are discussed in Section 5.5.1.1. The BLM acknowledges that unmitigated emissions of fugitive dust could cause significant impacts, specifically on rural communities, and therefore includes mandatory plan-wide and resource-specific design features and project guidelines to address and mitigate these impacts in the USS FPEIS/PRMPAs. The design features to address air quality and fugitive dust concerns can be found in USS FPEIS/PRMPAs Appendix B, Section B.2. USS FPEIS/PRMPAs Section 5.8 includes a discussion of potential adverse health and safety effects. Potential adverse health and safety impacts will be thoroughly assessed for local communities as part of project-specific NEPA analyses. If a proposed project site has been previously used for heavy industrial development, then the risks associated with residual contamination will be assessed in the project-specific NEPA analyses. Regarding potential impacts on mineral development and related economic impacts, new solar authorizations must be compatible with existing authorizations, including for mineral development; therefore, this planning action would not affect existing authorized activities (USS FPEIS/PRMPAs, p. 5-111). The magnitude of impacts on mineral development would depend on the location of solar energy projects in proximity to mineral resources and potential future mineral operations (USS FPEIS/PRMPAs, p. 5-115). Under Design Feature M-1, “project developers shall, to the maximum extent practicable (see glossary), ensure that the solar energy project avoids areas of known high

mineral potential or ongoing mineral development.” Potential impacts would be further examined in project-specific NEPA analysis.

The analysis in the USS FPEIS/PRMPAs evaluates potential impacts from solar facilities of different sizes and generating capacities. The BLM will perform additional analysis in project-specific reviews, including examining the nature and magnitude of potential impacts of individual solar projects on socioeconomic conditions (i.e., property values, cattle grazing, recreation and mining activity, local public finances and services, housing availability and affordability, and social disruption and social change).

Regarding the potential adverse impacts on the solar industry, the BLM acknowledges that the Proposed Plan would reduce the amount of land available for solar projects, compared to the No-Action Alternative. However, approximately 32 million acres of BLM-administered land would be available for solar projects under the Proposed Plan. Furthermore, all solar projects on BLM-administered land are subject to the BLM’s review and authorization, even under the No-Action Alternative. The analysis indicates that all alternatives would provide adequate lands to support the anticipated demand for solar under the RFDS’ therefore, there is no indication that the Proposed Plan would result in adverse economic impacts on the solar industry.

Chapters 5 and 6 of the USS FPEIS/PRMPAs appropriately evaluate the potential direct, indirect, and cumulative environmental, social, and economic effects of the Action Alternatives and the Proposed Plan, respectively. Because this planning effort has broad geographic and temporal scopes and does not authorize any solar projects, the depth and detail of the impact analysis are general, focusing on important issues and impacts in a qualitative manner. The USS FPEIS/PRMPAs analyze a reasonable range of alternatives to inform the BLM’s planning decision and approach to processing solar project applications. The BLM developed this range of alternatives in response to the purpose and need of this planning effort, that is, to identify which areas of BLM-administered lands should be available for solar energy projects. Because the exact locations of proposed solar projects are not known at this time, the alternatives analysis in the EIS describes impacts of typical project elements. The analysis also incorporates required design features.

The BLM complied with NEPA and FLPMA’s requirements to analyze the socioeconomic and other cumulative, direct, and indirect impacts in the USS FPEIS/PRMPAs, and its environmental justice analysis complies with relevant guidance. Accordingly, this protest issue is denied.

NEPA: Impacts Analysis – Design Features

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: The County protests the design features set forth in PEIS/RMPA Appendix B, Programmatic Design Features and Project Guidelines, and BLM’s reliance on those design features to analyze impacts. As we stated in our comments on the administrative final PEIS/RMPA, despite the County’s work with BLM and other cooperating agencies on design features, Appendix B fails to meet basic standards of NEPA adequacy and consequently would harm Humboldt County and subject its residents to increased environmental risks due to unanalyzed and undisclosed effects of solar development and BLM’s uninformed decision making. See Humboldt County Administrative Final PEIS/RMPA Comments at Rows 104-15; see also Humboldt County Draft PEIS/RMPA Comments at *11, *16, *30; Humboldt County Administrative Draft PEIS/RMPA Comments at *4-5, *9. BLM issued reasonably plausible design features in the public DEIS/RMPA; in the final PEIS/RMPA BLM has backtracked, weakening the design features in multiple ways that undercut the purpose of NEPA and make mandatory NEPA analysis of the Proposed Plan impossible.

Sierra Club***Jackie Feinberg***

Issue Excerpt Text: The DEIS proposed an entire suite of fully mandatory Design Features intended to avoid, minimize, and/or compensate for adverse impacts from solar energy development. The FEIS downgrades many of the formerly mandatory Design Features to non-mandatory guidelines which “may be applied in whole or in part at the discretion of the BLM authorized officer based on the project siting issues, local conditions, and advice from BLM resource staff.” This change clearly weakens a set of formerly obligatory resource protection measures, yet the FEIS claims that the BLM simply “further refined and organized the design features to make them clearer and easier to use,” understating the environmental impact of the change in policy. Additionally, as with other departures from protections that were proposed in the DEIS, BLM states that the only rationale for the change is to afford “better flexibility.” In violation of NEPA and FLPMA, BLM provides no substantive analysis of the potential impact of this change to dilute protections for sensitive resources and expose them greater harms, particularly considering other policy changes embodied in BLM’s new Preferred Alternative.

Peter Sonne

Issue Excerpt Text: The FEIS failed to disclose or analyze why the mandatory design features in the DEIS were significantly pared back and many were made optional. PART OF THE PLAN BEING PROTESTED: 6.3, Appendix B Massive changes were made to Appendix B: Proposed Programmatic Design Features Under the BLM Action Alternatives. The FEIS included significant changes to the design features of the RMPA from the DEIS which the public was unable to provide comment on. The design features are the basic rules with which project developers must comply to build solar projects on public lands and it seems you are giving great weight to many issues noted by commenters that will be “solved” with the design features. They are the primary tools for mitigating the impacts of large-scale solar development on public land, and their application is essential to ensuring projects do not cause undue and unnecessary harm to public lands resources.

Summary:

Protestors claimed that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA by:

- Changing the implementation of certain design features from mandatory in the Draft PEIS to guidelines or best management practices that the BLM would consider, but not necessarily require, when evaluating proposed solar projects in the future.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15, 2022) and that NEPA documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, and 1502.15, 2022)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the USS FPEIS/PRMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The analysis provides the necessary basis to make informed land use plan-level decisions. Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decision or actions (e.g., the BLM is not approving any solar projects), the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The planning decisions in the USS FPEIS/PRMPAs include programmatic design features and project guidelines for future solar projects within the planning area (USS FPEIS/PRMPAs Appendix B). The programmatic design features and project guidelines are updated from those established in the 2012 Western Solar Plan. During the public comment period for the DPEIS, the BLM received input on both the structure of the design features and the specifics of individual design features identified in Appendix B. Accordingly, the BLM revised the structure and extent of Appendix B and the design features in the USS FPEIS/PRMPAs. As a result, some mandatory design features were restyled as discretionary “project guidelines.” Project guidelines provide additional methods and considerations for how to achieve the required outcomes of the mandatory plan-wide and resource-specific design features (USS FPEIS/PRMPAs Appendix B, p. B-2). Although the guidelines may be applied in whole or in part at the discretion of the BLM authorized officer to mitigate impacts based on the project siting issues, local conditions, and advice from BLM resource staff, the outcome specified in the design features remains mandatory. The BLM will identify applicable project guidelines (i.e., which methods will be used to meet the outcome required by mandatory design features) during project-specific reviews based on existing land use plans, information gathered during project-specific condition assessments, and NEPA analyses (USS FPEIS/PRMPAs Appendix B, p. B-2). The mandatory outcomes required by the design features remain unchanged between the DPEIS and FPEIS. The programmatic design features and project guidelines reflect the BLM’s experience reviewing utility-scale solar projects since publication of the 2012 Western Solar Plan and would reduce potential resource impacts compared to the No-Action Alternative. The BLM identified as project guidelines those measures that may not be applicable or required for every proposed solar project to achieve the outcomes required by the design features. The design features and project guidelines in the USS FPEIS/PRMPAs provide clearer direction for project developers, reflect technical feasibility constraints, and provide more robust resource protection when compared to the No-Action Alternative.

The program elements adopted via planning-level decisions will provide the basis for future project-specific utility-scale solar energy project decisions. USS FPEIS/PRMPAs Chapters 5 and 6 include resource-specific evaluations of the effects on 21 different resources, including a programmatic evaluation of how application of design features to solar projects is anticipated to reduce potential impacts.

Because the USS FPEIS/PRMPAs are land use planning-level decisions it is appropriate to defer resource-specific analyses and requirements to the project-specific level, which will undergo a thorough a NEPA analysis to determine which resource-specific design features and project guidelines are applicable to the project, and would therefore be incorporated as conditions of any authorization. Project-level reviews will include

a comprehensive review and analysis to determine the potential site-specific impacts on resources and other uses to determine the suitability for the proposed solar energy development. The BLM may tier to relevant analysis in this Programmatic EIS but will consider site-specific impacts of individual project applications prior to any agency decision” (USS FPEIS/PRMPAs, p. 1-10).

The BLM complied with NEPA’s requirement to analyze the environmental consequences of the proposed planning decisions, including programmatic design features and project guidelines. Accordingly, this protest issue is denied.

NEPA: Impacts Analysis – Pending Applications

Clearway Energy Group LLC

Dan Hendrick

Issue Excerpt Text: In our comments on the Draft PEIS, we explained that many of our projects proposed on BLM land would be eliminated by the resource-based exclusions or rendered infeasible for development by certain project design features. We therefore requested that BLM allow these projects to be processed under the 2012 Western Solar Plan, the permitting framework in effect when the application was filed and when Clearway originally sited and designed its projects. Specifically, we requested that BLM establish legacy markers based on milestones achieved by the Applicant, rather than by BLM, given the routine delays associated with local BLM offices, including significant delays associated with Cost Recovery Agreements (“CRA”) or the filing a Notice of Intent (“NOI”) under NEPA. Unfortunately, it appears that BLM disregarded our comments. As described in Section 6.5 of the Final PEIS, each full and partial exemption (“legacy”) marker identified by the BLM relies on action that must be taken by BLM, penalizing companies (like Clearway) who have followed the rules and diligently processed their applications. Particularly relevant here, the Final PEIS provides “Partially Exempt” legacy status (exempt from land use exclusions only) to projects which have a fully executed Cost Recovery Agreement by April 18, 2024. Under this definition, however, our Amber Project receives no legacy protections under the Final PEIS, despite that fact that it has been pending since 2021 and we have spent over \$1 million processing the application with BLM. BLM attempts to justify its chosen legacy markers by stating they are needed to “maintain the orderly administration and management of the public lands.” However, this explanation is inadequate, and BLM provides no support for the process it has proposed. Indeed, while some of Clearway’s projects proposed on BLM land qualify for partially exempt legacy status, it appears that legacy status for those projects was more a product of luck than BLM intention. This hit-and-miss treatment of Clearway’s projects underscores the unreasoned approach to BLM’s legacy markers and demonstrates that the markers do not actually result in the orderly management of BLM lands.

Primergy Solar

Emily Cohen

Issue Excerpt Text: Likewise, under Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the President ordered the Secretary of the Interior to “review siting and permitting processes on public lands” with a goal of increasing “renewable energy production on those lands... while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs.” The BLM has expressly stated in the record that it is preparing the Final PEIS in response to Executive Order 14008, the Energy Act of 2020, and because its initial solar energy planning was conducted more than 10 years ago. Imposing new rules after a project has undergone extensive and costly site assessments and BLM has formulated mitigation plans, introduces significant uncertainty and additional risks for developers. Utility-scale solar projects require substantial capital investment to begin development, and preventing legacy projects from receiving Full Exemption status will result in undue delays, which could jeopardize the economic viability of pending projects. Projects of this scale in the final stages of permitting typically have an identified offtake customer, established project timelines, and executed contractual agreements for procurement. Imposing these new standards on existing projects requires developers to make changes that could have significant financial implications for the developers, energy buyers, and other project partners, while also risking the

timeline for the project’s commissioning. Imposing new requirements at this late stage on the Purple Sage project also will pose the risk of a legal violation under NEPA, as it is highly likely that the EIS process will extend beyond the 2-year deadline for EISs recently enacted into law under the Fiscal Responsibility Act. 42 U.S.C. 4336a(g).

Large-Scale Solar Association

Shannon Eddy

Issue Excerpt Text: BLM Can Maintain the Orderly Administration and Management of Public Lands without Punishing Developers Who Have Invested Significantly in Existing Project Applications. Agency action under the Administrative Procedure Act (“APA”) may be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” A decision is arbitrary and capricious if an agency fails to consider important aspects of the issue before it, if it supports its decisions with explanations contrary to the evidence, or if its decision is either inherently implausible or contrary to governing law. Failure to articulate a rational connection between the facts and the decision, based on substantial evidence in the administrative record, also renders a decision arbitrary and capricious. Additionally, when an agency changes course, it must “be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” Failure to consider reliance interests renders an agency’s action arbitrary and capricious. Finally, BLM’s determination regarding legacy status is not entitled to any deference, but rather is subject to independent review. BLM’s legacy status definitions, which would eliminate or render infeasible projects that have already made significant investments in project development and ROW processing in reliance on the 2012 Western Solar Plan permitting standards, ignore developers’ significant reliance interests and should be reconfigured to better protect the expectations of applicants who, through no fault of their own, do not qualify for fully or partially exempt status. The Final PEIS fails to adequately explain or justify BLM’s legacy status determinations, providing no support for the process it has proposed. BLM’s explanation for its chosen legacy markers is limited to two sentences: “The BLM has numerous solar energy development applications at various stages in the review process, ranging from just received to near a decision. ... To maintain the orderly administration and management of the public lands, the following criteria would be applied to each project application.” This explanation and the proposal itself fails to consider important aspects applicable to legacy status and substantial evidence supporting a more reasonable, and fairer, approach. Developers routinely spend hundreds of thousands of dollars to reach the point of application submittal and payment of application fees and several million dollars by the time BLM initiates the NEPA process. This is particularly true under competitive bidding scenarios-the process for obtaining “preferred applicant” status is extremely onerous and costly. Some developers must spend millions of dollars to win a competitive bid and, once they have, must deposit that money with BLM. Importantly, these bids were based on the rules applicable at the time they were made, and BLM granted “preferred applicant” status and accepted the bid money based on those rules.

EDF Renewables Development, Inc

Devon Muto

Issue Excerpt Text: If BLM applied the pending application policy of the 2012 Western Solar Plan to the Proposed Plan, solar applications pending before publication of the DPEIS on January 19, 2024, would be exempt and remain subject to the 2012 Western Solar Plan. Instead, under the FPEIS, even applicants that have already filed applications, submitted a Plan of Development (“POD”), paid the \$15 per acre application fee, performed resource studies, and held meetings with BLM, may still find their applications unexpectedly altered or rendered infeasible by the Proposed Plan, with no warning before publication of the FPEIS on August 30, 2024. The U.S. Supreme Court has held that when an agency changes existing policies without “a reasoned analysis for the change,” it will be struck down as arbitrary and capricious because “[a]n agency may not ... depart

from a prior policy sub silentio” without “show[ing] that there are good reasons for the new policy.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-15 (2009) (Fox Television); see also *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (State Farm). This burden is heightened further when the agency’s “prior policy has engendered serious reliance interests that must be taken into account.” *Fox Television*, 556 U.S. at 515; see also *Simley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996). Here, BLM does not provide a reasoned analysis or explanation for its policy shift. BLM states, but does not explain how or why, the new pending application policy would “maintain the orderly administration of public lands.” FPEIS, p. 6-40. Nor does the agency explain why the new policy is superior to the old one. BLM’s about-face is precisely the sort of “depart[ure] from a prior policy sub silentio” that the U.S. Supreme Court has rejected as arbitrary and capricious under the Administrative Procedure Act (“APA”).

Sierra Club

Jackie Feinberg

Issue Excerpt Text: There are at least 25 pending solar applications within the watershed, in particular in the Amargosa Desert (hydrographic basin 230) and in Pahrump Valley (hydrographic basin 162). A great number of these projects have initiated permitting with BLM. BLM did not provide the public with a list of exempt or partially exempt projects so we do not know whether or how many of these projects lie within the watershed. But, in some cases these projects are sited in areas excluded from development in the proposed final Western Solar Plan, in particular north of Ash Meadows and some areas near Pahrump. Since we are unable to determine which projects are exempt or partially exempt, we’re unable to evaluate the environmental impacts. BLM has denied the public sufficient information to understand the implications of the FEIS and Final Plan and has failed to adequately disclose and analyze the impacts of the exemption practice proposed.

Summary:

Protestors claimed that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA because the BLM has:

- Failed to disclose projects that are already undergoing permitting in the Pahrump Valley and therefore did not provide the public with the opportunity to evaluate the environmental impacts of those projects.
- Failed to respond to comments requesting that the BLM exempt pending applications from the Proposed Plan.

Protesters also claimed that the BLM violated the Administrative Procedure Act by failing to provide adequate rationale for the legacy status determinations in the USS FPEIS/PRMPAs, essentially rendering projects in development under the 2012 Western Solar Plan infeasible and reducing the amount of Federal land available to solar development.

Response:

This planning effort would not authorize any solar projects; all projects are subject to project-specific NEPA review.

In the DPEIS, the BLM explained that it might exempt some projects from elements of this Plan (USS DPEIS, pp. 2-1, 2-2). The BLM has discretion to determine how to apply amended plans to actions currently under review because the existing land use plan decisions remain in effect until an amendment or revision is completed and approved (BLM Land Use Planning Handbook H-1601-1, p. 47). Section 6.5, *Applicability to Projects Under Review*, of the USS FPEIS/PRMPAs describes the

extent to which the elements of the Proposed Plan would apply to project applications that are currently under review. The BLM considered public comments in developing this process. Project applications would be fully exempt, partially exempt, or not exempt from the Proposed Plan depending on the degree to which the BLM has progressed its review of the application. Fully exempt applications would not be subject to any provisions of the Proposed Plan and would continue to be processed in accordance with existing applicable land use plans (e.g., the 2012 Western Solar Plan or other existing plan). Partially exempt applications would not be subject to the land allocations in the Proposed Plan (and would, instead, be subject to the allocations in the existing applicable land use plan), but would be required to comply with the updated programmatic design features.

This approach for handling applications during the period of transition between plans balances the need to ensure orderly administration of the public lands, respect the work that BLM and applicants have put into reviewing certain applications, and ensure that resource protections are appropriately integrated into project-specific design and analysis. The criteria for *fully exempt* and *partially exempt* applications are designed to identify applications for which the BLM's review has reached key milestones, such that requiring conformance with elements of the Proposed Plan would unnecessarily disrupt the review. The criteria for determining exemption status provide objective indicators of progress that can be applied consistently across the planning area to facilitate the transition between plans.

The analysis in the USS FPEIS/PRMPAs captures all potential impacts because exempting certain projects is equivalent to selecting the No-Action Alternative in those areas. Exempt projects are required to comply with the existing land use plans.

The USS FPEIS/PRMPAs appropriately analyzes potential environmental impacts of the proposed land use allocations and design features at a programmatic level—it does not analyze impacts of particular projects. Project-specific impacts are and will continue to be analyzed in detail at the implementation stage. Specific projects, whether exempt from or subject to the Proposed Plan, are not analyzed in this planning process.

The BLM complied with NEPA's requirement to analyze the environmental consequences of the proposed planning decisions, including decisions to exempt some implementation actions from elements of the Proposed Plan. The BLM's criteria for identifying fully and partially exempt applications reasonably support the BLM's mission and do not violate the Administrative Procedure Act. Accordingly, this protest issue is denied.

Impacts Analysis: Visual Resources

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: In acknowledging that SVRAs could be subject to visual impacts, the BLM acknowledges that the FEIS opens the potential for violation of management mandates and undermining of resource preservation or conservation objectives and goals of other managing agencies, including the U.S. Fish & Wildlife Service, National Park Service, and others. The FEIS fails to adequately analyze potential impacts to SVRAs and define negligible vs. non-negligible impacts to lands whose visual values are under protective status.

Town of Beatty, Nye County, Nevada

Carrie Radomski

Issue Excerpt Text: The valley directly across from the Historic Ghost Town of Rhyolite located off of State Route 374 the road leading to Death Valley National Park from Beatty. is a Sensitive Visual Resource for the town, its residents. visitors. and businesses. This valley is a Visual Resource that

directly relates to the stability and health of our economy as stated above. Three utility-scale solar projects applications have been submitted and accepted on land in this valley: one active project in the “available” area, the Rigel Solar Project, one active project in the ‘excluded.. area, the SB Solar Project, and one dormant project in the “excluded.. area, the Beatty Energy Center project. These projects are adjacent to Death Valley National Park and directly adjacent to State Route 374. These are lands we have requested a modification to exclusion. they are a Sensitive Visual Resource and should be classified and considered as such (see included map). CFR 2804.35(c)18 specifies the criteria that BLM uses to determine whether land may be placed in a low priority status. CFR 2804.35(c)(1) specifies that “Lands near or adjacent to lands designated by Congress, the President, or the Secretary for the protection of sensitive viewsheds, resources, and values (e.g., units of the National Park System, Fish and Wildlife Service Refuge System, some National Forest System units, and the BLM National Landscape Conservation System), which may be adversely affected by development” may be considered for low priority status.

Summary:

Protestors stated that the BLM did not comply with Federal regulations by failing to adequately analyze impacts to or protect sensitive visual resource areas (SVRAs) and define impacts to lands with visual value protective status, specifically in the valley leading to Death Valley National Park.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15, 2022) and that NEPA documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, and 1502.15, 2022). The BLM is required to take a “hard look” at potential environmental impacts of adopting the USS FPEIS/PRMPAs.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The analysis provides the necessary basis to make informed land use plan-level decisions.

Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decisions or actions (i.e., the BLM would not authorize any solar projects through this planning effort), the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Proposed Plan includes several exclusion criteria (e.g., Exclusions #11, #12, #14, #17) and design features to reduce impacts of utility-scale solar projects on sensitive visual resources. For example, Design Feature PW-29 establishes “areas of special coordination” with the NPS:

If a proposed project is within 25 miles (40 kilometers) of a National Park, or other NPS-managed lands, project developers, in coordination with the BLM and NPS, shall consider the proposed project’s potential impacts to eight identified resource elements (Dark Night, Points of Entry, Upstream Watersheds, Wind Erodibility, Water Erodibility, Landscape Intactness, Viewshed Key Observation Points, and NRHP Key Observation Points) and determine appropriate mitigation. Refer to Appendix H for maps and more information.”

The BLM analyzed potential visual resource impacts of solar energy development on BLM-administered lands in the USS FPEIS/PRMPAs. BLM Manual 8400 describes the overall policy direction for Visual Resource Management (VRM) with the objective of managing public lands in a manner that will protect the quality of the scenic (i.e., visual) values of these lands. The BLM’s VRM system is described in USS FPEIS/PRMPAs Appendix F, Section F.19.3.1. As the BLM states in

Section 5.19 of the USS FPEIS/PRMPAs, visual impacts from solar energy development may include changes to visual values and the existing landscape character, both from visual contrasts created by facilities and aesthetic degradation of natural spaces. Additionally, although the BLM indicates that solar energy development generally would exclude SVRAs on BLM-administered land, impacts could occur from nearby lands available for development. As such, site- and project-specific analysis is needed to thoroughly assess the potential impacts from a particular project or activity on visual resources (FPEIS/PRMPAs, pp. 5-143–5-145, Appendix F, pp. F-201–F-225). See USS FPEIS/PRMPAs Appendix F, Section F.19.3 for the visual resource impact analysis and individual state maps of scenic quality ratings and SVRAs (FPEIS/PRMPAs Appendix F, pp. F-226–F-244).

The BLM complied with BLM regulations and NEPA’s requirement to analyze the environmental effects on visual resources in the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

NEPA: Impacts Analysis – Water Resources

Western Watersheds Project et al.

Laura Cunningham et al.

Issue Excerpt Text: We Protest that BLM has failed to conduct a hard look NEPA analysis at potential water availability, water use and terrestrial and aquatic species habitat and population losses from impacts of the massive solar build out under the PEIS. BLM mapped areas without consideration of a lack of available ground and surface water for industrial solar at the scale contemplated in the PEIS in the local or regional areas. There has also been no hard look at the toll that extensive past, ongoing and foreseeable hard rock mining and mineral processing, continued intensive irrigation pumping from valleys with dwindling aquifers, and other water depleting activities will take on aquifers over the life of a solar project. Basically – there’s no consideration of where the water will come from for all phases of solar projects competing for uses of water.

Peter Sonne

Issue Excerpt Text: While the FEIS provides some broad-scale analysis of groundwater demand and withdrawals across the American West, it fails to examine basins that are critically overdrawn and how further groundwater withdrawals may exacerbate such impacts. If the FEIS and RMPA will be the final word on siting, then there must be analysis of a variety of groundwater basin scenarios, including those that are overdrawn. The FEIS lacks any meaningful mitigation strategies to address these impacts. Public comments repeatedly urged the BLM to consider water-supply-based exclusions, especially in areas where water tables are already in significant decline, yet the BLM has failed to adequately respond. Instead, BLM primarily relies on inadequate mitigation measures which will not address the root causes of groundwater overdraft. For instance, the FEIS says that impacts to groundwater “can be avoided by using alternate water sources (e.g., trucking in water) and reducing water consumption requirements” (FEIS at 5-38). But this ignores the obvious question - where is the water being trucked in from? In the desert, functionally all available water resources are groundwater - that water will be withdrawn from somewhere. Since a typical utility-scale solar facility will consume about 1,000 acre-feet of water during construction, the fossil fuel implications of trucking in such a vast amount of water are substantial. BLM failed to identify how such issues would be mitigated, instead punting to state water regulation as sufficiently protective of groundwater resources (FEIS at 5-181). BLM also says that design features from Appendix B will be sufficiently protective of groundwater resources (FEIS Appendix B at B-32-35). However, these design features are mostly just further studies. Those design features that purport to be protective of groundwater resources are vague and unenforceable (for instance, feature WR-3w: “Project developers shall utilize appropriate water sources with respect to management practices for maintaining aquatic, riparian, and other water-dependent resources.”). The design features for Legal Availability of Water contain no

mandates at all for how a project will be permitted - they just require further studies. Studies do not protect groundwater resources. The FEIS does not contain sufficient analysis of the impacts of the RMPA on groundwater resources; does not offer an alternative which would restrict development within over drafted and overallocated groundwater basins; and does not offer sufficiently protective design features. Without robust protections for these vulnerable water resources, the plan risks causing long-term, irreversible damage to groundwater systems and associated dependent ecosystems.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS lacks any meaningful mitigation strategies to address these impacts. Public comments repeatedly urged the BLM to consider water-supply-based exclusions, especially in areas where water tables are already in significant decline, yet the BLM has failed to adequately respond. Instead, BLM primarily relies on inadequate mitigation measures which will not address the root causes of groundwater overdraft. For instance, the FEIS says that impacts to groundwater “can be avoided by using alternate water sources (e.g., trucking in water) and reducing water consumption requirements” (FEIS at 5-38). But this ignores the obvious question - where is the water being trucked in from? In the desert, functionally all available water resources are groundwater - that water will be withdrawn from somewhere. Since a typical utility-scale solar facility will consume, as an average, 1,000 acre-feet of water during construction, the fossil fuel implications of trucking in such a vast amount of water are substantial. In addition, the source basin may also be overdrafted. BLM failed to identify how such issues would be mitigated, instead relegating responsibility to address this issue to state water regulation as sufficiently protective of groundwater resources (FEIS at 5-181). BLM also says that design features from Appendix B will be sufficiently protective of groundwater resources (FEIS Appendix B at B-32-35). However, these design features are mostly just further studies. Those design features that purport to be protective of groundwater resources are vague and unenforceable (for instance, feature WR-3w: “Project developers shall utilize appropriate water sources with respect to management practices for maintaining aquatic, riparian, and other water-dependent resources.”). The design features for Legal Availability of Water contain no mandates at all for how a project will be permitted - they just require further studies. Studies do not protect groundwater resources.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS does not contain sufficient analysis of the impacts of the RMPA on groundwater resources; does not offer an alternative which would restrict development within overdrafted groundwater basins; and does not offer sufficiently protective design features. Without robust protections for these vulnerable water resources, the plan risks causing long-term, irreversible damage to groundwater systems and associated dependent ecosystems such as Ash Meadows NWR, Death Valley National Park, the Amargosa WSR, numerous designated Wilderness Areas, National Conservation Lands, Areas of Critical Environmental Concern, and other biological and cultural resources.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS failed to adequately assess the impacts of solar development on groundwater resources, particularly in hydrographic basins that are already over-pumped or over-appropriated. Many of the regions open to solar development are in arid environments where groundwater resources are critically stressed, such as within the Amargosa River watershed. The additional water demands for solar projects-whether for construction, dust suppression, or operational cooling-will exacerbate existing groundwater depletion. The Amargosa Conservancy commented during the scoping phase that BLM should exclude projects in overdrafted groundwater basins unless

the extraction is offset by an equal or greater reduction in groundwater pumping elsewhere in the basin (Amargosa Conservancy et al. 2023, p. 10). The Amargosa Conservancy and others also commented during the Draft EIS phase that BLM has failed to properly analyze impacts to overdrafted groundwater basins from solar development (Amargosa Conservancy 2024, pp. 4-5; Center for Biological Diversity 2024, pp. 23 & 44; Basin and Range Watch, et al., pp. 28-30 & 54). While the FEIS provides some broad-scale analysis of groundwater demand and withdrawals across the American West, it fails to examine basins that are critically overdrawn and how further groundwater withdrawals may exacerbate such impacts. If the FEIS and RMPA will be the final word on siting, then there must be analysis of a variety of groundwater basin scenarios, including those that are overdraw.

Summary:

Protestors claimed that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA because the BLM has:

- Failed to take a hard look at impacts on potential water availability, water use, and terrestrial/aquatic species’ habitat/population losses, including potential cumulative impacts to water availability in light of agricultural activities and mineral processing.
- Failed to provide sufficient analysis of impacts on groundwater resources or adequate groundwater mitigation strategies, failing to offer an alternative that would restrict development within already over-drafted groundwater basins, relying instead on vague and unenforceable design features to mitigate impacts, and failing to adequately respond to comments regarding water-supply-based exclusions during the scoping and DPEIS phases.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15, 2022) and that NEPA documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, and 1502.15, 2022). The BLM is required to take a “hard look” at potential environmental impacts of adopting the USS FPEIS/PRMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The analysis provides the necessary basis to make informed land use plan-level decisions.

Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decisions or actions (i.e., the BLM would not authorize any solar projects through this planning effort), the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM took a “hard look” at potential impacts on water resources, including water availability, water use, and impacts on terrestrial and aquatic species USS FPEIS/PRMPAs Section 5.4.2, Section 5.4.3, and Section 6.4 describe impacts on aquatic biota, including potential impacts from groundwater withdrawal (USS FPEIS/PRMPAs, p. 5-38). Furthermore, exclusion criteria and

design features are designed to reduce impacts to wildlife and plant species—including aquatic species. Under Exclusion #2, Threatened and Endangered species’ designated and proposed Critical Habitat and other specified habitat areas that provide protection of aquatic biota would not be available for solar projects. Exclusion #2 covers watercourses that provide designated and proposed Critical Habitat, plus a 0.25-mile buffer for listed aquatic species, including anadromous salmonids under NMFS jurisdiction (USS FPEIS/PRMPAs, Table 6-2). USS FPEIS/PRMPAs Appendix B includes design features, project guidelines and other further measures to reduce impacts to SSS during project-specific review.

The BLM took a “hard look” at impacts on water resources in USS FPEIS/PRMPAs Section 5.20 and Section 6.4. USS FPEIS/PRMPAs Section 5.20.4 evaluates the water-related impacts under all alternatives, and potential impacts under the Proposed Plan are disclosed in Section 6.4. As explained in USS FPEIS/PRMPAs Section 5.20.1.2 through Section 5.20.1.4, water use would be managed under applicable Federal, state, and local permits and their requirements. This analysis notes that most utility-scale solar projects do not require large quantities of water, except during construction of larger facilities and during operations at sites where dust control is needed (USS FPEIS/PRMPAs, p. 5-180). Nevertheless, impacts from water use during construction, operations, maintenance, and decommissioning were analyzed. Design features and project guidelines would minimize impacts on surface waters and groundwater (USS FPEIS/PRMPAs Appendix B, Section B.2.20.3). Impacts on water resources after decommissioning would be insignificant because water use would cease, the site would be remediated of all contaminants and returned to pre-development native states to the greatest extent possible in accordance with applicable regulations. Cumulative impacts on water supply are analyzed in Chapter 5, Section 5.20.2 of the USS FPEIS/PRMPAs. While the analysis acknowledges that cumulative impacts on water supplies could range from small to moderately high, they would be constrained by the limited availability of water rights and via oversight by state and local water authorities (USS FPEIS/PRMPAs, p. 5-184). The nature and magnitude of impacts on water resources and aquatic habitat that could occur would depend on the locations and design of specific projects, as well as the mitigation measures implemented to address impacts. Impacts on water resources and aquatic habitat would be further analyzed in project-specific NEPA analyses.

While certain comments on the Draft PEIS requested new exclusion criteria for groundwater and surface water withdrawals, the BLM took a “hard look” and determined that no new exclusion criteria are necessary. The BLM did not incorporate an exclusion criterion related to groundwater supply because these resources are appropriately managed in accordance with applicable Federal, Tribal, state and local laws, policies, designations, or declarations, as detailed in resource-specific Design Feature WR-11, which requires project developers to “perform a water availability assessment to demonstrate that water is physically and legally available to meet the project’s needs” (USS FPEIS/PRMPAs Appendix B p. B-35). The range of alternatives analyzed in the USS FPEIS/PRMPAs was appropriate as the alternatives would make various amounts of land available for solar projects and balance solar development with other uses on lands administered by the BLM.

The BLM complied with NEPA’s requirement to analyze the environmental consequences of the Proposed Plan on water resources and terrestrial/aquatic species in the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

NEPA: Impacts Analysis – Wildlife

Sierra Club

Jackie Feinberg

Issue Excerpt Text: Federal guidance directs the BLM to “avoid[] or minimiz[e] adverse impacts that would fragment habitat identified as a priority for connectivity or corridors, and where not possible, offsetting or compensating for these impacts.” BLM’s own guidance instructs that the agency will “assess public lands for habitat connectivity and identify areas of habitat connectivity.” The FEIS failed to disclose the rationale for how desert tortoise “habitat areas” for exclusion were chosen. Furthermore, there are nearly 200,000 acres of overlapping area between Priority 1 and 2 desert tortoise habitat connectivity lands and areas displayed as open to solar application on BLM’s proposed Western Solar Plan map, primarily in the Beatty, Pahrump Valley, and Valley of Fire areas.

Defenders of Wildlife

Vera Smith

Issue Excerpt Text: BLM failed to adequately disclose and evaluate the impacts to listed species and fails to provide key information necessary for decision-making. BLM has an obligation under the National Environmental Policy Act to rigorously explore and objectively evaluate all reasonable alternatives in sufficient detail so that a reader can compare and contrast the environmental effects of the various alternatives. As stated above, BLM changed exclusion criteria 2 between the draft and final PEIS so that in the proposed alternative in the final PEIS occupied habitat for ESA-listed species is not excluded. BLM does exclude habitat for 40 species but, beyond stating that the US Fish and Wildlife Service (FWS) identified the habitat exclusions, does not provide information on how the excluded habitats were identified or where they are located. Further, BLM does not explain why it chose to exclude habitat for these 40 species and not the other hundreds of listed species that occur within the planning area. Finally, BLM does not disclose in any meaningful way (that is, beyond explaining how many listed species are affected by each alternative) the direct, indirect, or cumulative impacts to the listed species and their occupied and suitable habitats. This dearth of information precludes informed decision-making. We raised this issue on pages 4-5 and 17 of our comments on the draft PEIS.

Western Watersheds Project et al.

Laura Cunningham et al.

Issue Excerpt Text: We Protest that BLM has failed to take a hard look at significant FEIS conflicts contained in its existing Land Use Plans. There is no hard look under NEPA at the direct, indirect and cumulative impacts of the PEIS’s major conflicts with sustaining habitats and viable populations of important and sensitive species. The Idaho Bruneau MFP (map 3-5) is an example of BLM allocating lands for big game habitat – see map allocating Antelope winter habitat. The Solar PEIS appears to map away this habitat, as well as habitat for many rare plant species and potentially the Mud Flat oolite ACEC. The PEIS solar area mapped is also identified as Kit Fox habitat in the MFP. We Protest that BLM ignores a hard look NEPA assessment myriad conflicts of the solar PEIS with wildlife and sensitive species management requirements in scores of Land Use Plans. What land use plan elements would the 32 million acres conflict with? In failing to carefully identify such conflicts, BLM cannot ensure that its actions won’t cause serious conflicts and imbalances between existing allocations. This failure is likely to result in irreversible habitat damage - undue degradation of habitats and species population losses and extirpations on public lands.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The Final PEIS has failed to adequately disclose and analyze the potential for impacts from solar development on avian species; failed to adequately mitigate for these impacts through design features and project guidelines; and failed to exclude sensitive areas where these impacts would be most acute.

Western Watersheds Project et al.

Laura Cunningham et al.

Issue Excerpt Text: We Protest the lack of a hard look NEPA analysis at the BLM’s solar FEIS sprawl and proposed large-scale solar intrusion into remote wild land areas amid surrounding designated Sage-grouse habitats. We Protest the failure of the FEIS to address and effectively balance conflicts with habitats and populations identified in the Sage-grouse ARMPAs and BLM Land Use Plans for Sage-grouse and other sensitive sagebrush species habitat protection and/or conservation.

Summary:

Protestors stated that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA by:

- Failing to provide a rationale supporting the decision to designate Priority 1 and 2 desert tortoise habitat and areas as open to solar applications.
- Failing to take a hard look at or identify the direct, indirect, and cumulative impacts of conflicting land use plan elements on sustaining habitats and viable populations of important and sensitive species.
- Failing to disclose how excluded habitat areas were identified or located, and failing to provide meaningful information about the direct, indirect, or cumulative impacts on the listed species and their occupied/suitable habitats.
- Failing to be consistent with findings from USFWS for greater sage-grouse, making the management actions under the PEIS insufficient to curb the decline of the species.
- Failing to adequately disclose and analyze the potential impacts from solar development on avian species, failing to mitigate those impacts, and failing to exclude sensitive areas.

Response:

Regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15, 2022) and that NEPA documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail (40 CFR 1500.4, 1502.1, and 1502.15, 2022). The BLM is required to take a “hard look” at potential environmental impacts of adopting the USS FPEIS/PRMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The analysis provides the necessary basis to make informed land use plan-level decisions.

Because the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decisions or actions (i.e., the BLM would not authorize any

solar projects through this planning effort), the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Regarding potential impacts to Mojave desert tortoise, the following areas would be excluded under Exclusion #2 of the Proposed Plan: (1) designated Critical Habitat; (2) existing and future translocation sites identified by USFWS in coordination with BLM; (3) crucial connectivity areas; and (4) additional habitat areas identified in coordination with USFWS. These areas are mapped in the USS FPEIS/PRMPAs. To clarify the extent of Exclusion #2, the BLM mapped this exclusion in the Proposed Plan; whereas in the DPEIS/DRMPAs, this exclusion was only described in text as “known occupied habitat.” The BLM did not change Exclusion #8 (relating to desert tortoise translocation sites), but, in Exclusion #2, added projected future translocation sites, crucial connectivity areas, and additional habitat areas. The BLM also obtained spatial data from USFWS for these areas that are now mapped as excluded. Design features are included in USS FPEIS/PRMPAs, Appendix B, Section B.2.4.4, to mitigate impacts of solar projects on Mojave desert tortoise and habitat.

The BLM agrees that other existing BLM land use plans include important management direction for wildlife habitat, among numerous other resources and uses. The approved USS RMPAs would amend land use plans within the 11-state planning area, as identified in Appendix A of the USS FPEIS/PRMPAs, only to make land allocations and establish programmatic design features for utility-scale solar development. The approved USS RMPAs would not amend any other elements of those land use plans as they relate to other resources and land uses. In evaluating a solar application in an area allocated as available under the approved USS RMPAs, the BLM may nonetheless determine that the project is inconsistent with other elements of the applicable land use plan and may, at that point, modify the proposal to avoid the inconsistency, address the inconsistency through a project-specific plan amendment, or deny the application, as appropriate. The BLM would follow all applicable laws and policies in the course of completing any project-specific land use plan amendment.

In response to comments on the DPEIS/DRMPAs, and in coordination with USFWS and NMFS, the BLM modified Exclusion #2, related to Threatened and Endangered species for the Proposed Plan. All designated and proposed Critical Habitat for species listed under the ESA remains excluded. The BLM decided not to incorporate the unmapped exclusion for known occupied habitat (part of Exclusion #2 in the DPEIS) in the Proposed Plan. Instead, the modified Exclusion #2 in the Proposed Plan includes specific mapped areas for 40 ESA-listed species identified in coordination with USFWS. USS FPEIS/PRMPAs Table 6-2, *Resource-Based Exclusion Criteria in the Proposed Plan*, Exclusion #2 includes the updates from draft to final EIS and details regarding mapping (USS FPEIS/PRMPAs, p. 6-7). Listed under Footnote (b) are the 40 ESA-listed species (USS FPEIS/PRMPAs, p. 6-13). The BLM made this change because the extent of known occupied habitat was not clearly defined and would have led to inconsistent interpretations. Because part of the BLM’s objective is to improve siting of utility-scale solar projects, while protecting important resources, the BLM determined that mapping this exclusion would provide valuable clarity. The habitat areas for 40 listed species identified in coordination with USFWS represent a subset of species of concern in the planning area. Throughout the planning process, all maps are representative of the latest GIS data available, but some resource exclusions will continue to be unmapped due to lack of complete GIS data available and/or the sensitive nature of the resource (USS FPEIS/PRMPAs, p. 2-20). In addition to the species habitat excluded under Exclusion #2, design features require project developers to consider and mitigate impacts on all ESA-listed and proposed species, along with other sensitive species (USS FPEIS/PRMPAs Appendix B). For example, under Design Feature ER-1sss

[p]roject developers shall avoid direct and indirect impacts to ESA-listed and proposed species, their habitat, and the ecological functions upon which the species and habitat depend, including

by implementing appropriate avoidance areas established in coordination with the BLM, USFWS, NMFS, and relevant state agencies. Avoidance areas shall account for pollinator habitat and habitat connectivity as part of the ecological function of maintaining habitat. Any impacts to ESA-listed and proposed species, their habitat and ecological function shall be minor, minimized and residual impacts compensated for, as appropriate.”

In addition to programmatic consultation under Section 7(a)(2) for the Proposed Plan, the BLM will consult with the USFWS or the NMFS, as appropriate, during project-specific reviews to ensure that projects do not jeopardize listed species or adversely modify designated Critical Habitat (USS FPEIS/PRMPAs, p. 1-10). Project-specific analysis and Section 7(a)(2) consultation would incorporate current, site-specific species habitat information. Important habitat areas that may not be reflected in the maps for this planning effort would be considered during project-specific review, as appropriate. Finally, the exclusion criteria and programmatic design features incorporated into the USS FPEIS/PRMPAs reflect proactive conservation measures under ESA Section 7(a)(1).

The BLM utilized data from the USFWS’ IPaC tool and from their Environmental Conservation Online System, as well as other sources to determine potentially affected ESA-listed species discussed in Section 4.4.4.1, *Species That Are Listed, Proposed for Listing, or Candidates for Listing under the ESA* (USS FPEIS/PRMPAs, pp. 4-35–4-39). The BLM has prepared a Biological Assessment, in accordance with ESA Section 7(a)(2), programmatically evaluating impacts on ESA-listed species. The BLM analyzed impacts to BLM sensitive species and other wildlife species using the best available data, including data from state wildlife agencies. USS FPEIS/PRMPAs Section 5.4.3, *Wildlife*, breaks down analyzed impacts by species groups (e.g., amphibians, birds, mammals) within all 11 states (USS FPEIS/PRMPAs, pp. 5-50–5-64). USS FPEIS/PRMPAs Appendix F contains detailed supplemental materials for analysis. USS FPEIS/PRMPAs Appendix F, Section F.4.3, *Wildlife*, includes the assessments for the detailed analysis for amphibian, reptile, bird, insect, and mammal species (pp. F-98–F-122). USS FPEIS/PRMPAs Section 5.4.4 and Section 6.4.4, *Special Status Species*, breaks down analyzed impacts for ESA-listed species, ESA Candidate species, BLM sensitive species and BLM SSS (USS FPEIS/PRMPAs, pp. 5-64–5-72). USS FPEIS/PRMPAs Appendix F, Section F.4.4, *Special Status Species*, describes the methodologies the BLM implemented for evaluation. A GIS-based analysis was used to compare potential impacts on SSS by alternative, and species found in counties that overlap with boundaries under each alternative were considered to be potentially affected by solar energy development. This GIS-based approach provides a general assessment of species potentially affected by solar energy development. Project-specific species assessments will be required for future solar energy development projects (USS FPEIS/PRMPAs Appendix F, pp. F-123–F-124).

As discussed in USS FPEIS/PRMPAs Section 1.3.4, *Sage-Grouse Planning*, the BLM is engaged in a separate planning process, in coordination with USFWS, regarding management of greater sage-grouse. The *Draft RMP/EIS for Greater Sage-Grouse Range-wide Planning* was published in the FR on March 15, 2024 (89 FR 18963), and the public comment period closed on June 13, 2024 (USS FPEIS/PRMPAs, p. 1-14). As described in response to comments received on the USS DPEIS/DRMPAs, the BLM will continue to rely on applicable BLM sage-grouse plans to identify mapped habitat areas subject to Exclusion #6 (for sage-grouse habitat) because these data are the best available and most accurate representation of sage-grouse habitat and planning designations on BLM-administered lands (USS FPEIS/PRMPAs Appendix M, p. M-16). This exclusion will update dynamically: as new plans are completed and updated designations are put in place, any areas designated in sage-grouse plans as unavailable for solar projects will be excluded under this plan, as well. In other words, if a sage-grouse plan prohibits solar projects in certain habitat areas, then those areas will automatically become exclusion areas under the approved USS RMPAs.

USS FPEIS/PRMPAs Section 1.1.5, *BLM Requirements for Further Environmental Analysis*, explains that when the BLM receives an application for a solar project, a project-specific evaluation

will be required, consistently with NEPA, ESA, NHPA, and other applicable laws, to analyze the impacts on resources and other uses and determine the suitability of the proposed project (USS FPEIS/PRMPAs, p. 1-10). The BLM will evaluate whether any exclusions are present—including mapped and unmapped—and which resource-specific design features apply, among other factors.

The BLM complied with NEPA's requirement to analyze the environmental consequences and impacts on wildlife in the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

NEPA: Public Participation

Citizens to Protect Smith Valley (NV)

Leslie Sonne

Issue Excerpt Text: CPSV protests the Final PEIS/ Proposed RMPA Resource Exclusion Criteria for transmission proximity due to BLM's failure to include an analysis of the impacts to natural resources and socioeconomics of changing the transmission proximity from 10 miles with 100 kV capacity in the Draft PEIS to 15 miles with 69 kV in the Final PEIS. The Draft PEIS provided two alternatives (Alts. 3 & 5) which limited solar development to areas within 10 miles of existing or planned transmission lines, applicable to transmission lines with 100 kV capacity or higher (Draft PEIS at 2-5). The Final RMPA, by contrast, allows solar development within 15 miles of existing or planned transmission lines, applicable to transmission lines with 69kV capacity or higher (Final PEIS at 6-2). The expansion of the proximity buffer from 10 miles to 15 miles results in significantly more acreage being made available for solar in the RMPA than was evaluated in the Draft PEIS such as along the Greenlink North and Greenlink West alignments in Nevada. The effects of expanding the proximity buffer are far-reaching and affect functionally every area in all states in which the 10-mile buffer was applied in the Draft PEIS. The net result of these two expansions in the transmission proximity exclusion criteria means that the public is denied the opportunity to evaluate and comment on this critical change in the RMPA land allocations so the public is unable to understand the ramifications of the changes in the scale of land that is made available for solar in the RMPA.

Peter Sonne

Issue Excerpt Text: The Final Solar PEIS changed key factors that defined potential inclusion areas: increasing the distance from 10 to 15 miles from transmission lines and changing the definition of high voltage transmission lines from 100 to 69kV. Thousands of acres have now been moved into 'included' areas which were previously excluded. In the case of our valley, only the very northernmost part of Smith Valley was included in the BLM favored plan (Alternative 3); the areas adjacent to my home were not. I object that people and communities in previously 'excluded' areas who may have decided not to comment on the plan in April 2024, are now prevented from protesting. This is unjust and I wonder about the legality of prohibiting protests under these circumstances. The DEIS provided two alternatives (Alts. 3 & 5) which limited solar development to areas within 10 miles of existing or planned transmission lines, applicable to transmission lines with 100 kV capacity or higher (DEIS at 2-5). The final RMPA, by contrast, allows solar development within 15 miles of existing or planned transmission lines, applicable to transmission lines with 69kV capacity or higher (FEIS at 6-2). These two changes open vast amounts of new acreage for solar development in the RMPA than was evaluated in the DEIS. The effects of expanding the proximity buffer are far-reaching and affect functionally every area in all states in which the 10-mile buffer was applied in the DEIS. The net result of these two expansions in the transmission proximity facet of the RMPA means that the public is denied the opportunity to evaluate and comment on this critical factor in the RMPA land allocations. The FEIS did not even provide any analysis of the difference between the 10- and

15-mile proximity buffer, so the public is unable to ascertain the changes in the scale of land that is made available for solar in the RMPA.

Peter Sonne

Issue Excerpt Text: Many mandatory design features in the DEIS have become optional project guidelines in the FEIS. These optional guidelines, “provide additional methods and considerations that may support achievement of the required outcomes of the mandatory plan-wide and resource-specific design features. These guidelines may be applied in whole or in part at the discretion of the BLM authorized officer based on the project siting issues, local conditions, and advice from BLM resource staff.” The criteria for when optional project guidelines would apply is not specifically spelled out. It’s unclear when and if any of these guidelines would apply. Design features are the main tool BLM has to mitigate the environmental impacts of solar development. “Design features and project guidelines are measures or procedures incorporated into the proposed plan or alternatives that could avoid, minimize, and/or compensate for adverse impacts from solar energy development,” (FEIS at ES-14). While the siting of projects, and avoiding sensitive areas, is the main tool to mitigate impacts, there is an operating assumption in the RMPA that most impacts can be avoided and mitigated using design features. “The BLM’s use of exclusion criteria to prohibit solar energy development in sensitive areas would mitigate potential environmental impacts from solar energy development by precluding impacts on those sensitive areas altogether. Programmatic design features required under all Action Alternatives would further mitigate impacts from proposed solar development,” (FEIS at 2-2). The dramatic change in number and applicability of design features from the DEIS to the FEIS constitutes a significant shift in the approach of the RMPA to mitigating impacts from solar development. The public should have had a chance to review these proposed changes and provide comment on them, bringing into question the adherence of this RMPA process to NEPA.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: The FEIS introduces a vastly changed Proposed Alternative which undermines the stated purpose of the action “to improve initial siting of utility-scale photovoltaic solar energy development proposals by identifying ‘solar application areas,’ which are areas of BLM-administered lands where proposals for solar energy development are anticipated to encounter fewer resource conflicts.” It also violates the requirement that environmental review under NEPA “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” In developing the new, highly modified Proposed Alternative internally, after the ordinary opportunity for the public to consider and comment on the agency’s proposal, BLM unlawfully subverts this process. There is a stark difference between what was presented to the public in the draft EIS as BLM’s Preferred Alternative and what the FEIS now presents as its Proposed Alternative. The DEIS Preferred Alternative would have made 22 million acres open for solar application, conditioned on being sited within 10 miles of existing or planned large transmission and on meeting BLM’s definition of disturbance. What BLM now presents as its Preferred Alternative designates 50% more land, nearly 32 million acres, open to solar development and transmission applications. The maximum allowable distance from transmission is increased by 50% to 15 miles; however, even that distance may be an understatement. Distance from transmission is not binding if the BLM “disturbance” criteria are met, and vice versa -- the disturbance requirement is no longer binding if the project is within 15 miles of transmission. The universe of transmission was also expanded by lowering the eligibility of electrical capacity to

include minor 69 kV lines, which the FEIS acknowledges will need upgrading for utility scale projects.

Sierra Club

Jackie Feinberg

Issue Excerpt Text: The FEIS fails to address the increased exposure of BLM lands to irreparable resource impacts from the Proposed Alternative. NEPA requires BLM to provide the public with a meaningful opportunity to engage in the public comment process to inform the final agency action. Here, the change from a Preferred Alternative in the DEIS that provided far more protection for habitat and species than that selected in the FEIS deprives the public of a fair opportunity to meaningfully participate in the NEPA process. The FEIS introduces this new, more permissive and less resource-based alternative after the opportunity for public participation has ended, with the sole rationale of “flexibility” and without further substantive analysis.⁹⁶ Moreover, the FEIS analysis of potential impacts resulting from this greatly expanded universe of application areas is deficient; BLM provides no substantive quantification of likely increased resource conflicts and impacts. Nor does it address the added delay caused by applications sprawling over an area 45 times the estimated acreage need, which will defeat the goal to efficiently process projects in order to advance administration decarbonization goals.

Eureka County, NV

Jake Tibbits

Issue Excerpt Text: Introducing this new alternative as the Preferred Alternative only in the FEIS undermines NEPA’s purpose. Primarily, the enlargement of the transmission proximity criteria from 10 miles to 15 miles and the decrease in transmission line capacity from >100kV to >69kv resulted in substantial changes and impacts not adequately disclosed to the public nor specifically offered for public review and comment. NEPA has an “‘action-forcing’ purpose in two important respects. It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S.332, 349, 109 S. Ct. 1835, 1845 (1989) (internal citations omitted). In developing the new Preferred Alternative internally, after the ordinary opportunity for the public to consider and comment on the agency’s proposal, BLM unlawfully subverted this process. There are dramatic differences between what BLM presented to the public in the draft EIS as its preferred alternative, Alternative 3, and after the opportunity for public participation has ended.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: A large number of mandatory design features in the DEIS have become optional project guidelines in the FEIS. These optional guidelines, “provide additional methods and considerations that may support achievement of the required outcomes of the mandatory plan-wide and resource-specific design features. These guidelines may be applied in whole or in part at the discretion of the BLM authorized officer based on the project siting issues, local conditions, and advice from BLM resource staff.” The criteria for when optional project guidelines would apply is not specifically spelled out. It’s unclear when and if any of these guidelines would apply. Design features are the main tool BLM has to mitigate the environmental impacts of solar development. “Design features and project guidelines are measures or procedures incorporated into the proposed plan or alternatives that could avoid, minimize, and/or compensate for adverse impacts from solar energy development,” (FEIS at ES-14). While the siting of projects, and avoiding sensitive areas, is the main tool to mitigate impacts, there is an operating assumption in the RMPA that most impacts

can be avoided and mitigated using design features. “The BLM’s use of exclusion criteria to prohibit solar energy development in sensitive areas would mitigate potential environmental impacts from solar energy development by precluding impacts on those sensitive areas altogether. Programmatic design features required under all Action Alternatives would further mitigate impacts from proposed solar development,” (FEIS at 2-2). The dramatic change in number and applicability of design features from the DEIS to the FEIS constitutes a significant shift in the approach of the RMPA to mitigating impacts from solar development. The public should have had a chance to review these proposed changes and provide comment on them, bringing into question the adherence of this RMPA process to NEPA.

Nye County

Megan Labadie

Issue Excerpt Text: Weak Public Participation and Community Engagement under NEPA The EIS violates NEPA’s requirement for public participation by limiting opportunities for meaningful input from local communities, especially those most impacted by the proposed projects. The reliance on virtual meetings, inadequate public comment periods, and lack of transparency in decision-making processes disenfranchise rural, low-income, and Indigenous communities whose voices must be central in decisions affecting their lands and livelihoods.

Arizona Game and Fish Department

Cheri Boucher and Clayton Crowder

Issue Excerpt Text: The CFR requires meaningful public involvement. (43 C.F.R. § 1610.3-1). Providing the exact same response to ninety-six comments demonstrates no such opportunity was provided to the Department as does the BLM’s unwillingness to expand the effects analysis to incorporate very basic landscape-level resource analyses. Limited Administrative review of the Final EIS- the BLM created a new preferred alternative (Proposed Plan) for Final EIS that combined previous alternatives. The Administrative FEIS review included only the Proposed Plan and design features rather than a revised version of the full Final EIS. Aspects of the Administrative FEIS review that were not shared include the effects analysis specific to the Proposed Plan. The Proposed Plan allows solar energy development within 15 miles of existing or planned transmission lines, as well as previously disturbed lands outside of the 15 mile transmission buffer. While Alternative 3 analyzed the effects to resources for energy development within 10-miles of existing or planned transmission line, and Alternative 4 allowed for solar development within previously disturbed areas, the combined effects to resources were not disclosed until the Final EIS was published. Additionally, timelines for Administrative review of the Proposed Plan and Design Features were substantially truncated, with 18-days for review of the Proposed Plan, and 11 days for review of the Design Features; these review periods included weekends and the federal July 4th holiday. “State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals.” 43 C.F.R. § 1610.3-1. “Any notice requesting written comments shall provide for at least 30 calendar days for response.” 43 C.F.R. § 1610.2.

Citizens to Protect Smith Valley (NV)

Leslie Sonne

Issue Excerpt Text: CPSV protests the Final PEIS/ Proposed RMPA because decision-making for an 11-state plan area deprived stakeholders who will be most affected by the plan with opportunities for a meaningful role in the land use planning process. According local communities a meaningful role in decision making on public lands has long been an emphasis for public land management, the importance of which has been reiterated through many laws, regulations, and policies. The unequivocal importance for required local input is reinforced by the Council on Environmental Quality (CEQ). “CEQ works to ensure that environmental reviews for infrastructure projects and federal actions are thorough, efficient, and reflect the input of the public and local communities.”

(Emphasis added.) Current national policy also specifically requires the necessity for public engagement and participation in decisions regarding infrastructure projects. As part of a robust engagement strategy, which will help inform agencies' decision-making, agencies will: Review and update policies, procedures, and stating to ensure that the public, including disadvantaged communities, has a meaningful opportunity to participate in decision-making.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: Design features are the main tool BLM has identified to mitigate the environmental impacts of solar development. "Design features and project guidelines are measures or procedures incorporated into the proposed plan or alternatives that could avoid, minimize, and/or compensate for adverse impacts from solar energy development," (Final PEIS at ES-14). While the siting of projects, and avoiding sensitive areas, is the main tool to mitigate impacts, there is an operating assumption in the PEIS for the proposed RMPAs that most impacts can be avoided and mitigated using design features. "The BLM's use of exclusion criteria to prohibit solar energy development in sensitive areas would mitigate potential environmental impacts from solar energy development by precluding impacts on those sensitive areas altogether. Programmatic design features required under all Action Alternatives would further mitigate impacts from proposed solar development," (Final PEIS at 2-2). The dramatic change in number and applicability of design features from the Draft PEIS to the Final PEIS constitutes a significant shift in BLM's approach in the proposed RMPAs to mitigating impacts from solar development. The public should have had a chance to review these proposed changes and provide comment on them, bringing into question the adherence of this RMPA process to NEPA.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The Draft PEIS provided two alternatives (Alts. 3 & 5) which limited solar development to areas within 10 miles of existing or planned transmission lines, applicable to transmission lines with 100 kV capacity or higher (Draft PEIS at 2-5). The final proposed RMPAs, by contrast, allow solar development within 15 miles of existing or planned transmission lines, applicable to transmission lines with 69kV capacity or higher (Final PEIS at 6-2). These two changes open up vast amounts of new acreage for solar development which the public was unable to review because of the changes from the Draft PEIS. For instance, a 69kV line near Paisley, Oregon adds tens of thousands of acres for solar development under the proposed RMPAs which would not have been available under Alternatives 3 or 5 in the Draft PEIS (Figure 20). The environmental impacts of these changes area not addressed in any meaningful way in the Final PEIS.

Summary:

Protestors claimed that the BLM's approval of the USS FPEIS/PRMPAs would violate NEPA's public participation requirement by:

- Failing to provide affected interested parties in the 11-state plan area with meaningful participation opportunities in the land use planning process, relying on virtual meetings, inadequate public comment periods, and lack of transparency, which disenfranchises rural, low-income, and indigenous communities and limits their opportunity for meaningful input.
- Failing to allow the public sufficient opportunity to review substantial changes to the Preferred Alternative (including changes to the transmission proximity criterion) and programmatic design features between the DPEIS to the FPEIS.
- Failing to provide cooperating agencies at least 30 calendar days for the administrative review of the Proposed Plan and design features.

Response:

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making. CEQ regulations require that agencies seek and consider public comments in the NEPA process (e.g., 40 CFR 1501.9, 1503.1, 2022), but there is a wide variety of ways to engage the public in the NEPA process (BLM NEPA Handbook, H-1790-1, pp. 62–63). The BLM’s planning regulations require a minimum 90-day public review period (43 CFR 1610.2(e)) for Draft RMPAs supported by an EIS. Pursuant to NEPA, the BLM must assess, consider, and respond to all substantive comments received (40 CFR 1503.4, 2022). *Substantive comments* are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pp. 23–24).

The BLM summarizes and responds to comments related to the public participation process in Appendix M, Section M.2.8.1, *Public Outreach* (USS FPEIS/PRMPAs, pp. M70, M-71). The BLM provided robust public participation opportunities, in compliance with NEPA. The BLM solicited written comments during the scoping period in response to the Notice of Intent (issued in December 2022) and held 15 public scoping meetings in 2023 (USS FPEIS/PRMPAs, pp. 7-1, 7-2). The BLM also held eight public meetings after publication of the DPEIS in multiple locations throughout the planning area and virtual meetings to allow the various opportunities and mechanisms for engagement with this planning effort. The specific opportunities for public involvement are described in the USS FPEIS/PRMPAs, Chapter 7, *Consultation, Coordination, and Public Engagement* (USS FPEIS/PRMPAs, pp. 7-1–7-8). Additionally, the BLM published the USS DPEIS/DRMPAs for a 90-day public comment period on January 19, 2024, and notified and involved the public and other agencies via FR notices, public and informal meetings, individual contacts, media releases, and the effort’s ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2022371/510> (USS FPEIS/PRMPAs, p. 7-3).

The BLM also engaged with local Tribal governments and their members through the government-to-government consultation process, as outlined in USS FPEIS/PRMPAs Section 7.2, *Government-to-Government Consultation*, and ensured opportunities for engagement with low-income and minority populations that may have environmental justice concerns, as described in Section 7.1.2, *Equitable and Meaningful Engagement Opportunities* (USS FPEIS/PRMPAs, p. 7-8, 7-6, respectively).

NEPA requires that the BLM assess, consider, and respond to all substantive comments received on a DEIS. Accordingly, it is common for changes to occur between a DEIS and a FEIS, based on public comment. In response to comments received on the USS DPEIS/DRMPAs, the BLM developed the Proposed Plan as a blend of elements from the range of alternatives analyzed in the USS DPEIS/DRMPAs. Regarding the transmission proximity criterion, Section 6.1 of the USS FPEIS/PRMPAs explains that

[L]ands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. This is a change from Alternatives 3 and 5 in the Draft Programmatic EIS, under which lands within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater are available, unless otherwise excluded by resource-based criteria. The changes to the distance and voltage thresholds were made in response to public comments indicating that the thresholds used in the Draft Programmatic EIS were too restrictive, resulting in the exclusion of lands that may potentially be appropriate for development. The voltage threshold is reduced from 100kV to 69 kV because 69 kV lines may be upgraded to make them suitable for carrying the power loads from solar energy facilities” (USS FPEIS/PRMPAs, p. 6-2).

The Proposed Plan is within the range of alternatives analyzed in the DPEIS because Alternatives 1 and 2 did not include any transmission proximity criterion. Therefore, impacts of potential utility-

scale solar development in areas between 10 and 15 miles from transmission (at any voltage level) were disclosed and analyzed in the DPEIS through the discussion of those alternatives across all 21 resources analyzed in detail in Chapters 4 and 5 of the USS DPEIS/DRMPAs. Furthermore, the BLM received comments on the DPEIS requesting that the BLM reduce or expand the transmission proximity distance, illustrating that the public did have an opportunity to comment on this criterion (see USS FPEIS/PRMPAs, Appendix M, Section M.2.4.1).

As described in the *NEPA – Impacts Analysis – Design Features* section of this report, during the public comment period for the DPEIS, the BLM received input on both the structure of the design features and on the specifics of individual design features identified in Appendix B. Accordingly, the BLM revised the structure and extent of Appendix B and the design features in the USS FPEIS/PRMPAs. As a result, some mandatory design features were restyled as discretionary “project guidelines.” Project guidelines provide additional methods and considerations for how to achieve the required outcomes of the mandatory plan-wide and resource-specific design features. These guidelines may be applied in whole or in part at the discretion of the BLM authorized officer based on the project siting issues, local conditions, and advice from BLM resource staff. Although the guidelines may be applied in whole or in part at the discretion of the BLM authorized officer to mitigate impacts based on the project siting issues, local conditions, and advice from BLM resource staff, the outcome specified in the design features remains mandatory. The BLM will identify applicable project guidelines (i.e., which methods will be used to meet the outcome required by mandatory design features) during project-specific reviews based on existing land use plans, information gathered during project-specific condition assessments, and NEPA analyses (USS FPEIS/PRMPAs Appendix B, p. B-2). The programmatic design features and project guidelines reflect the BLM’s experience reviewing utility-scale solar projects since publication of the 2012 Western Solar Plan and would reduce potential resource impacts compared to the No-Action Alternative. The BLM identified as project guidelines those measures that may not be applicable or feasible for every proposed solar project. The design features and project guidelines in the USS FPEIS/PRMPAs provide clearer direction for project developers, reflect technical feasibility constraints, and provide more robust resource protection, as compared to the No-Action Alternative. The BLM considered the programmatic effects of the modified design features and project guidelines in evaluating the Proposed Plan in the FPEIS, including the capacity of the design features and project guidelines to mitigate the effect of utility-scale solar development on various resources (USS FPEIS/PRMPAs Section 6.4).

In developing the Proposed Plan in the USS FPEIS/PRMPAs, the BLM appropriately selected from the spectrum of alternatives already analyzed or a variation of an alternative, or a combination of alternatives already analyzed in the DRMP/DEIS, consistently with NEPA (BLM Handbook H-1790-1, p. 29). In addition, per BLM NEPA Handbook (H-1790-1), substantive comments, among other things, can present reasonable alternatives outside of those analyzed in the EIS. The CEQ NEPA regulations recognize that, in response to substantive comments, the BLM may develop and evaluate suggested alternatives not previously given serious consideration by the agency (40 CFR 1503.4(a)(2), 2022). The BLM drew from components considered, analyzed, and presented to the public and cooperating agencies in the USS DPEIS/DRMPAs when developing the Proposed Plan in the USS FPEIS/PRMPAs. None of these changes between the USS DPEIS/DRMPAs and USS FPEIS/PRMPAs constitute significant new circumstances or information relevant to environmental concerns or result in significant effects outside the range of effects analyzed in the USS DPEIS/DRMPAs. The public had extensive opportunities to comment on all elements of the Proposed Plan described in the USS FPEIS/PRMPAs, in compliance with NEPA. Accordingly, the BLM is not required to offer an additional public comment period or draft an SEIS.

As described in Chapter 7 of the USS FPEIS/PRMPAs, the BLM engaged in robust consultation with cooperating agencies throughout development of the plan. The BLM coordinated with the 78

cooperating agencies listed in Section 7.5, *Cooperating Agencies*, to solicit their review and comments on key portions of the DPEIS and FPEIS. The BLM provided all cooperating agencies with opportunities to participate during various steps of the planning process, including regular briefings, requests for input on draft alternatives and the administrative draft of the USS PEIS/RMPAs, and identification of issues and data during scoping and during the public comment period. Neither NEPA nor the BLM's planning regulations dictate specific requirements or timelines for cooperating agency reviews. The BLM's planning regulations at 43 C.F.R. Section 1610.2(e) require that "any notice requesting written comments shall provide for at least 30-calendar days for response," but those requirements are for "public participation activities." Public participation activities are further defined in 43 C.F.R. Section 1610.2(f) and include general notice at the outset of the process, inviting participation in the identification of issues, review of the proposed planning criteria, publication of the DEIS/DRMP, publication of the FPEIS/PRMPAs, and public notice and comment on any significant change made to the plan as a result of action on a protest. Administrative reviews by cooperating agencies are not subject to these public participation noticing requirements. Accordingly, the BLM is not required to provide a 30-calendar day review for cooperating agencies on administrative draft documents.

The BLM complied with NEPA's public participation process requirements. Accordingly, this protest issue is denied.

NEPA: Range of Alternatives

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: In any case, and assuming that BLM must meet the 700,00-acre solar development goal that it sets forth in the PEIS/RMPA, flexibility as a planning goal is the sole justification for BLM's Proposed Plan to open more than 31 million acres for solar development when only 700,000 acres are necessary to meet the goal. Though BLM has discretion to shape the purpose and need statement, it may not "frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish those goals and the project would collapse under the weight of the possibilities." *Citizens against Burlington, Inc. v. Busey*, 371, 938 F.2d 190, 196 (D.C. Cir. 1991). Instead, BLM "must define goals for its action that fall somewhere within the range of reasonable choices." *Id.* Here, because of BLM's flexibility goal, the Proposed Plan opens for solar application an area at least 44 times greater than the area necessary to accomplish its own solar development goal. This is impermissible under NEPA: the ill-defined planning goal of flexibility, which creates a 31.7 million-acre area available for solar development, is not within the range of reasonable choices.

Utah Farm Bureau Federation

Terry Camp and ValJay Rigby

Issue Excerpt Text: BLM failed to adequately consider reasonable alternatives that would better protect existing uses like grazing. Specifically, BLM improperly dismissed the "Smart from the Start" alternative proposed by the Western Alliance, which would have focused solar development on disturbed lands near existing transmission while avoiding conflicts with grazing and other uses. This alternative was erroneously deemed "substantially similar" to analyzed alternatives when in fact it represents a distinct and reasonable approach.

Citizens to Protect Smith Valley (NV)***Leslie Sonne***

Issue Excerpt Text: CPSV protests the Final PEIS/ Proposed RMPA Reasonable Range of Alternatives due to BLM’s failure to include an alternative which maintains the 5% slope from the 2012 Western Solar Plan (WSP) and failed to analyze the impacts of changing the slope restriction from 5% to 10%. There could be considerable environmental impacts from developing on steeper slopes including increased erosion, increased grading, and could cause changes to hydrology and groundwater infiltration. The RMPA increases the maximum slope allowed to build solar projects from 5% to 10%, a significant shift from the Western Solar Plan (WSP), which opens up a much larger area - millions of additional acres for development across the West, including Smith Valley where the area boundary for “Available for Application” directly abuts private property with residences and agricultural operations. BLM was requested by many commenters to include an alternative that maintains the 5% slope requirement. Not only did BLM fail to include an alternative maintaining the 5% slope requirement but BLM failed analyze the impacts of the change in the Final PEIS. Slope limitations and transmission proximity are intuitively known limitations to solar developers. They result in no additional value as siting criteria. Solar developers do not want the added maintenance and construction costs associated with slopes or construction of more roads and transmission lines to bring their projects online. These parameters used in the geospatial analysis to identify public land open for industrial-scale solar development application are not useful to differentiate areas that minimize conflicts for permitting. These parameters are self-limiting. Slope, in particular does not distinguish between Alternatives 2-5 when the 10% slope requirement is the same for each alternative.

State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development et al.

Sindy Smith et al.

Issue Excerpt Text: The BLM failed to fully analyze the “Smart from the Start” Alternative jointly submitted by several cooperating agencies, including the State of Utah. The “Smart from the Start” Alternative (discussed in Proposed Plan Section 2.3.6, p. 2-37) was a reasonable alternative that went beyond Alternatives 1 through 5 to further refine where utility-scale solar development could be located while better protecting BLM grazing allotments, agricultural uses, homes, source water protection areas, important wildlife habitat, and cultural or historical resources. The BLM’s decision to not carry forward the “Smart from the Start” Alternative for more detailed analysis was a missed opportunity that deprived BLM decision makers of considering a full range of alternatives as required under NEPA. The “Smart from the Start” Alternative would have required (in addition to programmatic resource-based exclusions) that utility-scale solar development only occur on public lands within 10 miles of existing or authorized utility transmission lines that are both “disturbed” and “low conflict.” The “low conflict” criteria and a more comprehensive definition of what constitutes “disturbed lands” make the “Smart from the Start” Alternative substantially different from Alternative 5 or the Proposed Plan.

State of Utah, Public Lands Policy Coordinating Office and Office of Energy Development et al.

Sindy Smith et al.

Issue Excerpt Text: The Proposed Plan states that the BLM declined to fully analyze the “Smart from the Start” Alternative because “[m]any elements of the “Smart from the Start” alternative exist within the BLM’s regulation, policy, and procedures or are substantially similar to those already included in Alternatives 4 and 5 and the Proposed Plan. The low-conflict lands criteria are either already part of the exclusion criteria described in Section 2.1.1.6 for the Action Alternatives and Table 6-2 for the Proposed Plan or would more appropriately be addressed during project-specific reviews.”¹³ This is faulty reasoning. Alternative 5, which was fully analyzed, is “substantially

similar” to Alternatives 3 and 4, with Alternative 5 being a combination of Alternatives 3 and 4 (see Table ES-1, Page ES-6 of the DPEIS). The “Smart from the Start” Alternative is substantially different from Alternative 5 in that it applies a mile-wide buffer zone from agricultural uses, homes, source water protection areas, important wildlife habitat, and cultural or historical resources. Even with this buffering, the “Smart from the Start” Alternative would have provided ample lands and flexibility for potential utility-scale solar energy development, based on the Utah Reasonably Foreseeable Development Scenario (“RFDS”) of 39,793 acres. It appears that the BLM refused to analyze the “Smart from the Start” Alternative in greater detail because it would be inconvenient to do so and would infringe upon a self-imposed timeline. Council on Environmental Quality (“CEQ”) guidance specifically states that programmatic environmental impact statements should have a purpose and need statement that allow for a broad range of reasonable alternatives, allowing for the public to provide meaningful input. Specifically, “The purpose and need for a programmatic review will differ from the purpose and need for a project- or site-specific EA or EIS. The purpose and need for a PEA or a PEIS should be written to avoid eliminating reasonable alternatives and focused enough for the agency to conduct a rational analysis of the impacts and allow for the public to provide meaningful comment on the programmatic proposal.”¹⁴ Here, the BLM eliminated a reasonable, practical alternative from detailed analysis, despite clear differences between it and the action alternatives under consideration by the agency. By eliminating the alternative, BLM failed to consider the broader issues brought to light by cooperating agencies and the public. BLM instead focused on action alternatives that were, in essence, different varieties of the same general idea, with similar maps. By failing to consider the “Smart from the Start” Alternative, BLM missed the very purpose behind doing a programmatic NEPA analysis and barred the effort by cooperating agencies to meaningfully impact the process. In light of CEQ’s guidance, BLM should have analyzed the “Smart from the Start” Alternative. Failure to fully analyze the “Smart from the Start” Alternative runs counter to the stated purpose of the FPEIS, in Section 1.1.1: “The purpose of the proposed action is to facilitate improved siting of utility-scale solar energy development by identifying areas of BLM- administered lands where solar energy development proposals may encounter fewer resource conflicts...”.

Peter Sonne

Issue Excerpt Text: An obvious omission from the range of alternatives is that of slope requirements. In the 2012 Western Solar Plan (WSP), solar development was limited to areas with slope less than 5%. This helps minimize the impacts of erosion and large-scale land grading and will promote quicker reclamation after decommissioning. In the FEIS, one alternative does away with any slope requirement altogether, while the other four alternatives have a 10% slope requirement. The FEIS failed to include an alternative which maintains the 5% slope restriction. The RMPA increases the maximum slope allowed to build solar projects on from 5% to 10%, a major shift from the 2012 WSP, which opens a much larger area - millions of additional acres across the West - for development. However, the impacts of this change were not analyzed in the FEIS. During scoping, numerous commenting parties urged BLM to include an alternative that would maintain the 5% slope requirement. Not only did BLM fail to include an alternative maintaining the 5% slope requirement in the FEIS, but BLM also failed to even analyze the impacts of changing this slope requirement. Some Draft EIS comment letters urged such an analysis, but BLM failed to include it. The change is given a cursory mention with no analysis in several places in the FEIS (e.g. FEIS at 5-50, at 5-70, etc.). The only alternatives comparison is made between Alternative 1 (no slope requirement) and Alternatives 2-5 (10% slope requirement) and is presented in cursory fashion (FEIS at 2-41). Thus, the FEIS failed to respond to scoping and DEIS comments by failing to include an alternative which maintains the 5% slope restriction and failing to analyze the impacts of changing the slope restriction from 5% to 10%. There can be considerable environmental impacts from developing on steeper slopes, including

increased erosion, increased area being graded within project sites, and could cause changes to hydrology and groundwater infiltration.

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Humboldt County protests BLM’s failure to analyze-in the final PEIS/RMPA or, as the County suggested, in a SEIS-the Smart from the Start alternative advanced by governments in Nevada and Utah. See 40 C.F.R. § 1502.9 (“If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion.”). The County has repeatedly explained that the Smart from the Start alternative is- contrary to BLM’s assertion-substantially different from the five alternatives that BLM analyzed in drafts of the PEIS/RMPA. See Humboldt County Administrative Final PEIS/RMPA Comments at Row 9; Humboldt County Draft PEIS/RMPA Comments at *12-16, *22, *25, *29 (discussing Smart from the Start alternative), *17-21 (explaining that Smart from the Start is not substantially similar to alternatives BLM considered in the draft PEIS/RMPA and that it should be considered in the PEIS/RMPA); Humboldt County Administrative Draft PEIS/RMPA Comments at *22-25 (describing and advocating analysis of the Smart from the Start alternative in the programmatic NEPA document). The analysis in the PEIS/RMPA is inadequate without analysis of Smart from the Start: without it, BLM has not considered a reasonable range of alternatives. See 40 C.F.R. § 1502.14 (BLM must consider “reasonable alternatives” to the proposed action); id. § 1508.1(z) (“Reasonable alternatives means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.”).

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: These arguments for excluding Smart from the Start from analysis fail. First, as we explained in our comments on the draft PEIS/RMPA and administrative final PEIS/RMPA, Smart from the Start differs from BLM’s selected and considered alternatives in at least eight ways, ranging from the definition of disturbed land to special buffers around cultural and historic resources as well as communities and greater sage-grouse habitat. The PEIS/RMPA does not address these differences, and we incorporate the detailed analysis in our comments on the draft PEIS/RMPA and administrative final PEIS/RMPA here. Second, contrary to the assertion quoted above, BLM appears to acknowledge in the PEIS/RMPA that determining the “suitability in fact” of land available for application under the PEIS/RMPA is appropriate, and indeed important, in a programmatic document. The PEIS/RMPA states that BLM has “updated the parameters used to identify lands as previously disturbed to better reflect appropriate parameters for arid versus non-arid lands.” Id. at ES-9, 6-2. That is, BLM has attempted to improve its mapping of disturbed land. This is entirely appropriate in a programmatic document and land use plan that is meant to determine whether an area is “generally unsuitable” for solar development and, generally, to open all areas that are not unsuitable to such development. Id. at 1-10 (defining exclusion areas as “BLM-administered lands that are believed to be generally unsuitable for solar energy development”). BLM’s refusal to address, at a programmatic level, conflicts with habitat, cultural and historic areas, and agricultural, residential, and source water buffers-among other issues addressed in the Smart for the Start alternative-runs contrary to its own statements in the final PEIS/RMPA and portends unfeasible, high-conflict projects that will overburden local government permitting authorities and BLM and lead to project-level decisions with a strong likelihood of local conflict.

Humboldt County Board of Commissioners***Michelle Cook***

Issue Excerpt Text: As we have previously explained, BLM’s 44.5-million-acre figure lumps together (1) solar energy zones (SEZs) under the 2012 Western Solar Plan; (2) solar variance lands under the 2012 Plan; and (3) all lands in the five states not covered by the 2012 Plan which are not explicitly closed to solar. The PEIS/RMPA categorizes all of these as “available.” However, most states not covered by the 2012 Plan do not have any lands allocated as “available” for solar under their current land use plans, have not undertaken a planning analysis for solar development, and have not made a planning decision informed by public comment. BLM cannot categorize lands as being “available” for solar development under the No Action Alternative unless a land use planning decision has been made to that effect. NEPA requires that BLM “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” and “make use of reliable existing data and resources.” 40 C.F.R. § 1502.23. Absent this reliable information, the PEIS/RMPA precludes meaningful analysis of the differences between the No Action Alternative and the Proposed Plan. BLM must produce a SEIS that conforms to NEPA’s requirement by accurately assessing the land “available” for solar development in the No Action Alternative.

Eureka County, NV***Jake Tibbits***

Issue Excerpt Text: Failure to Incorporate the Reasonable Alternative of Western Alliance “Smart from The Start” Eureka County believes solar energy production can have a place on BLM administered land under BLM’s multiple use and sustained yield mission. As such, we strongly assert the scale, disturbance, and impacts required for solar development calls for a more measured and risk averse approach than currently outlined Proposed Plan and analyzed in the PEIS Alternatives. It is unfounded and arbitrary for BLM to conclude throughout the EIS that all of the alternatives analyzed including the now Preferred Alternative under the Proposed Plan have less effects and impacts than the No Action Alternative, especially when all of the alternatives pre-screen lands open for application and actually direct and incentivize applications to certain areas. We adopted and joined in the effort to promote and request the inclusion of the Western Alliance Smart from the Start Alternative (SFTS) as cooperating agencies during the PEIS development process. We strongly disagree with the BLM’s failure to not consider the SFTS alternative in the Draft PEIS / RMPA especially given BLM’s requirement to “use the environmental analysis and proposals of cooperating agencies to the maximum extent practicable” (40 CFR § 1501.7(h)(2)). BLM’s explanation in Section 2.3.6 of why the alternative was not carried forward is simply disingenuous and egregiously faulty. The SFTS alternative provides a viable and important approach with concepts to reduce resource and people-based conflicts completely absent in any of the alternatives analyzed in the EIS. This shortcoming undermines NEPA’s requirement of reasonable alternatives to be considered. We extensively commented on this issue during the process including verbal comments and cooperating agency meetings and our written comments in December 2023 on the Administrative Draft EIS, in April 2024 on the public Draft EIS, and in July 2024 on the Administrative Draft Final EIS. Irrespective of what BLM says in Section 2.3.6 of the EIS, the SFTS Alternative is not “substantially similar in design” nor is it “substantially similar in effects” (BLM NEPA Handbook, p. 52) to any of the existing alternatives and BLM’s assertion that it is misapprehends crucial differences that would translate to substantial changes on the ground if implemented.

Amargosa Conservancy***Mason Voehl***

Issue Excerpt Text: The Final Environmental Impact Statement (FEIS) fails to provide a reasonable range of alternatives for analysis (FEIS Section 2.1), and improperly excludes reasonable alternatives from detailed consideration (FEIS Section 2.3). The problems with the range

of alternatives were highlighted in numerous parties' comment letters (i.e. CBD 2024, p. 12-36; TNC 2024, p. 4-15; Humboldt County 2024, p. 2, 11, 12; NAS 2024, p. 26-27). The range of alternatives presented is insufficient and does not meet the requirements of the National Environmental Policy Act (NEPA). Notably, the RMPA adopted numerous decisions that were not sufficiently analyzed in the FEIS, including new programmatic features that should have been analyzed. These include the slope requirement, exclusion criteria, grandfathering projects, design features, and the addition of the avoidance category. In all cases, BLM has violated NEPA by failing to analyze a range of alternatives pertaining to these critical issue areas.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS did not evaluate the Western Alliance Smart from the Start Alternative, nor did it incorporate substantially similar principles to the Western Alliance Smart from the Start Alternative into the proposed RMPA. The FEIS states that “many elements” from this alternative exist within BLM’s current policy and procedures, and that other elements are included in Alternatives 4 and 5 (FEIS at 2-37). While this may be partially true, not all elements of the Western Alliance Smart from the Start Alternative were evaluated in the FEIS, and not all elements were addressed in Section 2.3.6 of the FEIS, where BLM describes its rationale for rejecting the alternative from consideration. In particular, BLM failed to examine an alternative in the FEIS that would include a buffer around communities, despite being requested by 53 commenters during scoping (FEIS at 7-2) and numerous commenters on the DEIS (Humboldt County, 2024; Citizens to Protect Smith Valley, 2024 p. 4; Labadie, 2024 p. 2; Basin & Range Watch, 2024, p. 13). BLM also failed to explain why it was eliminating such an alternative from consideration. As described below, the RMPA will entail significant and unmitigable impacts to communities and property owners. BLM’s failure to examine an alternative which would provide true mitigation for these issues is a major failure of the FEIS to adhere to FLPMA and NEPA.

Nye County

Megan Labadie

Issue Excerpt Text: Overlooking Sustainable Renewable Energy Alternatives in Violation of NEPA NEPA mandates that federal agencies explore all reasonable alternatives to proposed actions. However, the EIS fails to acknowledge there are more sustainable and less impactful alternatives, such as distributed and decentralized renewable energy sources like rooftop solar and community-owned energy projects. These options would minimize environmental degradation and support local economies. By default, the EIS focuses exclusively on large-scale utility projects that perpetuate centralized control and environmental harm in favor of large-scale industrial financial savings.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS fails to analyze a range of alternatives pertaining to critical issue areas, and fails to adequately describe why it rejected the Western Alliance Smart from the Start Alternative from further consideration.

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: The importance of recreational opportunity in the planning area warrants the formation of a range of alternatives. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to Preliminary Proposals or preferred alternatives analyzed during a NEPA process. 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9. “[A]gencies shall rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. The alternatives section is considered the “heart” of the NEPA document. 40 C.F.R. § 1502-14 (discussing requirement in EIS context). There was no alternative given that excluded recreation areas from being

considered. The legal duty to consider a reasonable range of alternatives applies to both EIS and EA processes. *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998) (citing *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) (“Alternatives analysis is both independent of, and broader than, the EIS requirement.”). A NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14 (EIS); *Id.* at § 1508.9 (EA); *Bob Marshall Alliance*, 852 F.2d at 1225 (applying reasonable range of alternatives requirement to EA). A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993). We often see a “conservation alternative” there should also be a “recreation alternative” that expounds upon the current recreational opportunities.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: Range of Alternatives is Inadequate The Final PEIS fails to provide a reasonable range of alternatives for analysis (Final PEIS Section 2.1), and improperly excludes reasonable alternatives from detailed consideration (Final PEIS Section 2.3). The problems with the range of alternatives were highlighted in numerous parties’ comment letters (i.e. CBD 2024, p. 12-36; TNC 2024, p. 4-15; Humboldt County 2024, p. 2, 11, 12; NAS 2024, p. 26-27). The Final PEIS fails to analyze a reasonable range of alternatives because all “action” alternatives include the same exclusion criteria, the same design features, the same “distance to transmission” exclusions, the same slope exclusions, and the same monitoring and adaptive management. See Final PEIS at 2-2 to 2-25 (description of action alternatives). The Final PEIS fails to consider a reasonable range of alternatives including alternatives that the Center and other commenters previously suggested during the scoping phase. The range of alternatives presented is insufficient and does not meet the requirements of NEPA. Notably, the proposed RMPAs would adopt numerous decisions that were not sufficiently analyzed in the Draft or Final Programmatic Environmental Impact Statement (Final PEIS), including new programmatic features that should have been analyzed.

Summary:

Protestors stated the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA by:

- Failing to adequately assess a reasonable range of alternatives, noting that the BLM improperly dismissed the “Smart from the Start” alternative without providing an adequate explanation for why the alternative was not carried forward.
- Failing to adequately explain decisions adopted in the USS FPEIS/PRMPAs (e.g., slope restrictions), and failed to consider alternatives that were less impactful, an alternative that excluded recreation areas, an alternative that protected grazing uses, and only focused on large-scale utility solar projects.

Finally, protestors stated the proposed alternative is not a reasonable alternative because it would make significantly more land available for solar than is necessary.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate a reasonable range of alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for elimination (40 CFR 1502.14(a), 2022). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1, quoting Question 1b, *CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, March 23, 1981).

Similarly, agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14(a), 2022). An alternative may be eliminated from detailed study if it is determined not to meet the proposed action's purpose and need, determined to be unreasonable given the BLM mandates, policies, and programs, is substantially similar in design to an alternative that is analyzed, or the implementation of which is speculative, remote or technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the USS FPEIS/PRMPAs and that address resource issues identified during the scoping period. The USS FPEIS/PRMPAs analyzed the No-Action Alternative, five action alternatives, and the Proposed Plan, which are described in Section 2.1.1, Section 2.1.2, and Section 6.1 (USS FPEIS/PRMPAs, pp. 2-1–2-31, pp. 6-1–6-16). These alternatives were developed in response to the purpose and need of this planning effort to identify which areas of BLM-administered lands should be available for solar energy application. Additionally, the alternatives analyzed in the USS FPEIS/PRMPAs cover the full spectrum by varying in the criteria for excluding lands due to slope, transmission proximity, and land-disturbance status. The BLM considered comments received on the range of alternatives in the USS DPEIS/DRMPAs and developed the Proposed Plan as a blend of elements from the range of alternatives, including resource-based exclusion criteria, transmission proximity, previously disturbed lands, and design features as described in Section 6.1 and Section 6.2 (USS FPEIS/PRMPAs, pp. 6-6–6-16). The avoidance areas for big-game migratory corridors are a modification of Exclusion #9 in response to comments received on the USS DPEIS/DRMPAs, and as described in Section 6.4, would reduce impacts when compared to the action alternatives. The resource-based exclusions are incorporated into all action alternatives because the BLM believes that they are important criteria for promoting improved siting that reduces resource conflicts. The alternatives include exclusions for a range of resources, including recreation (Exclusion #4). Under the Proposed Plan, Exclusion #4, developed recreational facilities and some Special Recreation Management Areas (SRMAs) would be excluded.

Regarding slope, the alternatives include a range of slope exclusions. The No-Action Alternative includes a 5-percent slope exclusion for the six states subject to the 2012 Western Solar Plan. Alternative 1 has no slope exclusion, and the action alternatives and Proposed Plan include a 10-percent slope exclusion. Therefore, potential impacts of solar projects on all slopes are analyzed in the USS FPEIS/PRMPAs.

The BLM analyzed the No-Action Alternative, described in Section 2.1.1 (USS FPEIS/PRMPAs, pp. 2-25–2-31). The No-Action Alternative represents continued management under existing land use plans, including the 2012 Western Solar Plan, in the six southwestern states, and existing land use plans in the other five states. Currently, when the BLM receives an application for a solar project in one of the five states not subject to the 2012 Western Solar Plan, the BLM evaluates whether the project would conform to the management direction relating to ROWs, generally. Where land use plans lack solar-specific allocations, the BLM considers those areas available, and the BLM will review individual projects for conformance with the land use plan. If a proposed project includes lands designated as an ROW-exclusion area, for example, then the BLM would require that the project application be modified to avoid those lands, consider a project-specific land use plan amendment to address the inconsistency, or deny the application.

Solar development applications will all be evaluated through site-specific NEPA reviews, as described in Section 1.1.5 (USS FPEIS/PRMPAs, pp. 1-10–1-11). Because the exact locations of future proposed projects are not known, the alternatives analysis in this document describes impacts of typical project elements. However, it should be noted that all the alternatives analysis the protestors note as inadequate are covered within the analysis in the USS FPEIS/PRMPAs. For example, for the action alternatives analyzed in the DPEIS, all SRMAs in all 11 states were excluded from application. Under the No-Action Alternative (i.e., the current status quo), SRMAs in the five states not subject to

the 2012 Western Solar Plan, Nevada, and parts of Utah are not excluded. With further consideration and through discussions with BLM staff and other interested parties, the BLM agrees that not all SRMAs should be excluded. In response to comments, the BLM has adjusted Exclusion #4 (USS FPEIS/PRMPAs, p. 6-7).

As described in Section 2.3.5 and Section 2.3.6 (USS FPEIS/PRMPAs, pp. 2-36–2-38) the BLM considered, but eliminated from detailed analysis, a distributed generation alternative and the “Smart from the Start” alternative. Distributed generation does not meet the BLM’s purpose and need for action, and the “Smart from the Start” alternative is substantially similar to other alternatives analyzed in detail in the EIS. Many elements of the “Smart from the Start” alternative exist within the BLM’s regulations, policies, and procedures and are substantially similar to those already included in Alternatives 4 and 5 and the Proposed Plan. The exclusion criteria in the proposed updated Western Solar Plan are consistent with the definition of *low-conflict lands* in the “Smart from the Start” approach in many ways: both account for sage-grouse habitat, important wildlife habitat (including big game), and cultural and historic resources. The BLM agrees that these are important considerations in identifying areas where solar projects would likely encounter fewer resource conflicts. The BLM may consider other site-specific conditions, such as proximity to agricultural uses or lands identified for disposal, in project-specific reviews, as appropriate. The range of alternatives analyzed in the USS FPEIS/PRMPAs meet the purpose and need and address resource issues identified during scoping. The range of alternatives analyzed in the USS FPEIS/PRMPAs would make various amounts of land available for solar application and appropriately balances solar development with other uses of lands administered by the BLM. Other suggested alternatives by the public already fall within the range of alternatives being considered in the USS FPEIS/PRMPAs and do not require separate analysis.

In response to the protestor’s statement that the size of the planning area does not meet the purpose and need of the planning effort, and therefore the proposed action is not a suitable alternative, this planning effort supports the BLM’s administration and management of public lands under the principles of multiple use and sustained yield and responds to direction in the Energy Act of 2020 and relevant EOS on clean energy. The purpose and need statement described in Section 1.1.1 (USS FPEIS/PRMPAs, p. 1-3) was developed consistently with the BLM’s responsibilities under FLPMA and NEPA. The BLM’s land use planning regulations allow planning at any appropriate geographic scale. See 43 CFR 1610.1(b), “A resource management plan shall be prepared and maintained on a resource or field office area basis, *unless the State Director authorizes a more appropriate area*” (emphasis added). See also BLM Land Use Planning Handbook H-1601-1, “State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.” The planning area here, defined in coordination with relevant BLM state directors, includes 11 western states experiencing increasing interest in solar energy development. This planning area facilitates consistency across states in the west and updates the approach taken in the BLM’s 2012 Western Solar Plan.

In addition, as described in Section 2.2 (USS FPEIS/PRMPAs, p. 2-31–2-32) and USS FPEIS/PRMPAs Appendix C, the RFDS estimates the amount of land area and electricity-generating capacity (i.e., power) that may be needed to support anticipated utility-scale solar energy development in the 11-state planning area through the year 2045. The estimate of approximately 700,000 acres of solar energy development on public lands by 2045 is based on the DOE’s *Solar Futures Study* and its companion report on environmental implications. In response to comments on the DPEIS/DRMPAs, the BLM updated USS FPEIS/PRMPAs Section 2.2 to clarify that the acreage reflects the estimated amount of land needed to support future projected new solar development and does not include existing solar projects. The RFDS encompasses future solar development through 2045 (i.e., projects to be proposed and/or permitted). Additionally, the RFDS is not a limit on development, nor is it an expression of a target the BLM has set for solar development on public

lands. The relationship of the acres associated with the RFDS compared to the acres available for application under the alternatives illustrates that under each of the alternatives, including the USS FPEIS/PRMPAs, sufficient land is available to meet the estimated level of development described under the RFDS, considering the need for potential siting adjustments for solar development that are more effectively evaluated at the time of a proposal.

The BLM considered a reasonable range of alternatives in the USS FPEIS/PRMPAs in full compliance with NEPA, including properly considering all alternatives submitted by the public.

Consistent with CEQ's NEPA implementing regulations (40 CFR 1502.14, 2022), the BLM properly dismissed alternatives that did not meet the purpose and need of the USS FPEIS/PRMPAs or were substantially similar to alternatives carried forward for detailed analysis. Accordingly, this protest issue is denied.

NEPA: Response to Public Comments

Arizona Game and Fish Department

Cheri Boucher and Clayton Crowder

Issue Excerpt Text: The BLM is required to “provide for meaningful public involvement of ... State and local government officials” in developing the Final PEIS. 43 C.F.R. § 1610.3-1 (emphasis added). Overall, the cooperating agency process for the Final PEIS did not provide for meaningful involvement for the Department as follows: 1) the lack of meaningful response to the majority of the Department’s comments; 2) the limited nature of the Administrative review of the Final EIS; and 3) the lack of geospatial data provided to cooperating agencies. Lack of meaningful responses to Department comments- The Department provided BLM with 114 comments during the administrative review of the Draft PEIS, many of which provided details requesting very fundamental landscape-level analysis for wildlife and wildlife resources. The BLM responded to all but 18 comments with “No change made at this time. Handle at project-level analysis”, including comments where project level analysis of the issue raised would not be appropriate to address the concern. * For example, the Final PEIS does not reference the updated AZGFD data. The Final PEIS identifies the Department’s 2012 State Wildlife Action Plan (Table 4.4-2 and Appendix F-F.4.3.1.2) as the key data source from Arizona, despite multiple comments that this data (and citation) should be updated with the 2022 Arizona Wildlife Conservation Strategy.

Rose Strickland

Issue Excerpt Text: Missing/Outdated Resource Data: The reference in the draft PEIS on BLM sensitive species, BLM2017f Sensitive and Status Species List, (BLM, 2017f, “BLM Nevada Sensitive and Status Species List.”

<https://www.blm.gov/sites/default/files/policies/2017%20Final%20BLM%20NV%20Sensitive%20and%20Special%20Species%20Status%20List%20.pdf>), does not appear changed in the final PEIS. However, there is a reference to an updated list as of November 8, 2023 on the BLM website. This has raised additional questions of which list was used by BLM in the final PEIS. Do either of these lists incorporate current State data on threatened, endangered, and sensitive species from either the Nevada Department of Wildlife species of conservation concern in the Nevada State Wildlife Action Plan (See: <https://www.ndow.org/wp-content/uploads/2023/11/2022-SWAP-Full-Doc-FINAL-print.pdf>) or the Nevada Division of Natural Heritage’s At-Risk Plant and Animal Tracking List and Plant and Animal Watch List (See: <https://heritage.nv.gov/documents/ndnh-current-tracking-list>). Protest: BLM did not respond in the final PEIS to the concern about whether current or outdated information was used in the PEIS and whether State data, provided in the April 27, 2024 comments, was being used at all for the PEIS.

Rose Strickland

Issue Excerpt Text: Substantive issues were raised about BLM’s draft PEIS in the April 17, 2024 comments including questions about the accuracy of the information, impacts analysis, and its planning process. I understand that the National Environmental Policy Act (NEPA) requires that all substantive comments received before a decision is reached must be considered to the extent feasible and that agencies must respond to all substantive written comments during the public comment period for an EIS. Protest Issues: 1. Purpose and Need: There is no reasonable rationale presented in the final PEIS for BLM making 11,840,100 acres of Nevada public lands available for application for solar developments (Table ES-1 and Table 6-1) when the BLM estimated need for such lands totals only 700,000 acres west-wide and 48,119 acres of “estimated Area Developed by 2045 for Nevada under RFDS (Table 2.2-2), nor was this concern addressed in the final PEIS. Ignoring its recognition of the vast changes in solar technologies since 2012 (and one of the reasons for developing this Proposed Plan), BLM has not addressed in the final PEIS the concern that efficiency of solar development technology is changing so quickly that the estimated need for these huge land use allocations is grossly overestimated. In addition, not disclosed in the final PEIS is how the Proposed Plan is putting a cloud of “possible future” solar development on 12 million acres of NV public lands and nearly all other future development proposals on these lands, as well as existing and future uses and resource management activities, including fire rehabilitation and restoration, wildlife management, weed control, etc. Why spend limited BLM budget funds for resource management when specific solar developments would eliminate most multiple uses of public lands? BLM did not respond to these comments in the final PEIS. Protest: BLM erred in its decision on the amount of available NV public lands and did not respond to these comments in the final PEIS by greatly reducing the amount of public lands in Nevada available for solar development to reflect the actual “need” for Nevada public lands for utility-scale solar developments.

Rose Strickland

Issue Excerpt Text: Exclusion Criteria: While BLM has attempted to exclude public lands with fewer resource conflicts from being designated as available for solar development, the final PEIS still includes public lands, both administered by the BLM and also by other federal agencies, with significant resources and values and unrecognized conflicts. Breeding Bird Survey Routes (BBS) and Important Bird Areas (IBA) in Nevada: The BLM final PEIS did not respond to comments and questions on protecting BBS routes or IBAs on Nevada public lands. While IBAs are listed in the Glossary and in References, the only substantive information I could find in the final PEIS is that BLM is not responsible for management of IBAs (p.4-28). Considerable information was provided in the April 27, 2024 comments to BLM about Nevada’s exceptional biodiversity, since little or no information on Nevada’s biodiversity was disclosed in the draft PEIS, except for discussions of possible adverse impacts of utility-scale solar development on regional biodiversity. BLM did not respond to these comments in the final PEIS about why protection for these important resources in Nevada was not provided by including them in exclusion areas or avoidance areas in the Proposed Plan.

Clearway Energy Group LLC***Dan Hendrick***

Issue Excerpt Text: Clearway’s comments on the Draft PEIS explained that the unmapped and vague Exclusion No. 5 creates significant uncertainty for solar developers, causing commercial risk that will significantly chill investment in development. We further explained that the “partner agency/other entity” agreements described in the exclusion are vaguely defined and could be interpreted to apply to even to handshake deals between local BLM field office staff and

community groups opposed to solar development. We therefore requested that the exclusion be mapped and better defined to limit its negative impact on solar development. Unfortunately, Exclusion No. 5 in the Final PEIS remains unmapped and the language is largely unchanged. Our previous concerns therefore continue to apply and have not been adequately addressed by BLM in the Final PEIS. However, we understand that the intent of Exclusion No. 5 is to apply only to formal agreements between BLM and federal and state wildlife agencies, and is not intended to capture informal management requests or handshake deals. We therefore request that BLM clarify the language of Exclusion No. 5 to ensure that its underlying intent is properly documented in the ROD. Thus, the exclusion should be clarified to explain that areas subject to the exclusion based on agreements between BLM and other entities are limited to agreements that meet all the following criteria: 1) A formal written agreement has been entered into between the relevant BLM State Director and USFWS or a state fish and wildlife agency; 2) The agreement concerns management of sensitive species habitat; and 3) The agreement identifies precisely mapped areas where solar development is prohibited in order to protect sensitive species habitat.

Eureka County, NV

Jake Tibbitts

Issue Excerpt Text: We note that the coordination and consistency obligations above are required to be met by BLM regardless of Eureka County’s participation as a cooperating agency. The failures of BLM noted above are further evidenced by BLM not incorporating changes to address Eureka County’s comments in contravention of the NEPA regulatory requirement to “use the environmental analysis and proposals of cooperating agencies to the maximum extent practicable” (40 CFR § 1501.7(h)(2)). We acknowledge that BLM did provide a comment response table in January 2024 (attached) to all cooperating agency comments on the administrative draft chapters 4 and 5. However, the responses are extremely cavalier and, in some cases, laughable. It is obvious that BLM was simply “checking the box” in these responses. Especially since the large bulk of the responses have the repeated “No change made at this time. Handle at project-level analysis” which is ludicrous given the changes and additions we requested were directly applicable at the programmatic level and were directly related to identifying lands for resource-based and conflict reducing exclusions. Another standard response BLM provided to our previous comments was “No change at this time. BLM will review need to update this text for the Final PEIS.” Yet, we could not find a single change that was made by BLM in the final EIS based on this BLM response. This documentation makes clear that BLM did not value the cooperating agency relationship in this process nor have any real desire to adequately coordinate with us to incorporate our input under the NEPA requirements as well as the intent of cooperating agency and coordinated relationships.

Eureka County, NV

Jake Tibbitts

Issue Excerpt Text: Even after our repeated comments trying to address this issue, the analyses the Proposed Plan is based on only includes effects to BLM issued rights of way (ROW) and authorizations. It was a major omission to not better outline non-BLM issued ROWs in the recreation and transportation sections. Many if not most of the existing roads on BLM managed lands in areas open for solar application are not BLM roads but instead county roads and public roads - all pre-FLPMA valid existing rights of way (i.e., RS 2477). All known roads and access must be included in the analysis, through a supplemental EIS, regardless of having a BLM authorization or right of way. We previously provided, multiple times in the process, data sources to easily complete this analysis that are readily available. This would include county road maps and TIGER/Line GIS data (readily available through the US Dept. of Commerce at <https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html>). Many of the areas available for application in the alternatives have these roads there. Solar projects cannot be sited in these areas without authorization from states and counties. Without including these roads and potential conflicts, there is no disclosure

in the 2024 Solar Plan to proponents nor states and counties about the breadth or extent of effects on travel and access. This creates a huge point of conflict that the Proposed Plan was supposedly meant to reduce. This will also create a “case or controversy” to force title disputes in court with BLM and solar developers which should and can be avoided. To emphasize this issue, Appendix B: Programmatic Design Features and Project Guidelines, has multiple locations referencing access roads, road improvement measures, use of existing roads, etc. Nowhere in Programmatic Design Features and Project Guidelines is there even a single mention of the need to coordinate with counties to get authorizations for work on either county roads or public roads held in trust by counties. This was not flagged for inclusion in the process because BLM failed to include analysis regarding these roads in the EIS.

Converse County, Wyoming

Karen Rimmer

Issue Excerpt Text: Further to this point, the Counties argued in our PDEIS comments specific to the “Reasonably Foreseeable Development Scenario” that Wyoming has a very small stake in this document with approximately 30,000 acres statewide. To further support the reasons why Wyoming should be removed from the decision document, on numerous occasions BLMs response to cooperating agency comments in the Administrative PDEIS was “No change made at this time. Handle at the project level analysis.” To put it into perspective, the BLM received 1263 comments from cooperators on the Administrative PDEIS. Of those 1263, BLM responded by saying “no change” to 928, which was 73% of comments received. Of the 928 comments that were “no change” decisions, 884 had “project level” or “project specific” analysis as the reason for the “no change” decision. Looking at it a different way, 95% of the “no change” responses by BLM were noted as being appropriately handled at the local level with 70% of the overall comments indicating that the issues would be analyzed at the “project level.” The response to comments by BLM in the Administrative PDEIS at the broader landscape level only reinforces the fact that solar land allocations are more appropriately handled at the state, local or project level. Furthermore, BLM doesn’t respond directly to the request for Wyoming to be removed from the planning effort and does not offer any detailed reasons why the request was dismissed. Therefore, the BLM failed to adequately consider the Counties request for Wyoming to be withdrawn from this RMPA process nor did they adequately respond to the Counties comments and concerns.

Old Spanish Trail Association

William Helmer

Issue Excerpt Text: OSTA’s letter of 4-18-24 states (p. 2): “Public involvement for the BLM draft Solar (PEIS) has been extremely inadequate relevant to the huge scope of an updated Western Solar Plan which includes all eleven western states. Many members of the public, including members of the Old Spanish Trail Association (OSTA), requested expanded hearings, hybrid/in-person hearings, public meetings in coordination with local BLM offices, and notices in local newspapers. All these reasonable requests for public involvement were ignored. Five states in the revised Western Solar Plan had no public meetings at all-California, Oregon, Washington, Montana and Wyoming. BLM Department Manual 516DM11-12/10/2020 states: “(1) The type and level of public involvement shall be commensurate with the NEPA analysis needed to make the decision.” This was not done, and it is probable that the majority of the people of the West have no idea that this huge planning decision, which will affect the lives of millions of people who use public lands, is even taking place. More hybrid/public hearings which provide details of the proposed RMPs should be scheduled.” Instead of addressing the important public involvement issues cited in OSTA’s letter, the response from BLM was “the BLM’s comment period on the Draft Programmatic EIS was conducted in accordance with BLM policy and regulations and was not extended” FPEIS, Volume II, Appendix M, p. M-71.” Obviously, the BLM did not respond to any of the issues raised by OSTA, and responses to substantive comments are required under NEPA

regulations: “An agency preparing a final environmental impact statement shall consider substantive comments timely submitted during the public comment period. The agency shall respond to individual comments or groups of comments” (40 CFR 1503.4(a)).

***Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe
Amos Murphy and Alvin Marques***

Issue Excerpt Text: Other Exclusion Criteria Failures. BLM identified 21 “Exclusion Criteria” (PFEIS at ES-12 - ES-14; Section 2.1.1.6 at 2-20 - 2-24). These exclusion criteria pose a number of serious problems and failures for the following reasons: (a) BLM failed to seek input from or consult with our Tribes on the criteria; (b) BLM created arbitrary and capricious qualifiers within certain criteria such as “recognized by the BLM”; (c) BLM arbitrarily stated that the old growth forests only qualified as such if “identified in applicable land use plans” and then do not state what they deem as applicable; (d) BLM arbitrarily and capriciously created exclusion criteria #16 for NRHP sites by qualifying such sites “and any additional lands outside the designated boundaries identified for protection”, where they had to go through an undefined, unknown, and arbitrary filter of “through an applicable land use plan”; (e) BLM failed to exclude sites that would be easily identified to be in nonconformance or violation of federal, state and local laws and policies and land use plans; and (f) BLM failed to establish exclusion criteria that are currently the subject of various conservation, preservation, and commemoration actions and campaigns.

***Amargosa Conservancy
Mason Voehl***

Issue Excerpt Text: Many DEIS commenters suggested buffers around protected areas (Bowers 2024, p. 3; CPANP 2024, p. 4-6; Taylor 2024, p. 1; Basin and Range Watch 2024, p. 140; DTC 2024, p. 29; MBCA 2024, p. 3; NPCA 2024, p. 6). The FEIS fails to respond to these comments in Appendix M.2.5.21, “Specially Designated Areas and Lands with Wilderness Characteristics.” This violates 43 U.S.C. § 1712(c)(9), the requirement for BLM to ensure coordination with the land use management activities of other agencies.

Summary:

Protestors claimed that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA by:

- Failing to provide meaningful public involvement with cooperating agencies, including a limited nature of the administrative review, failure to discuss the advancement of technologies, and lack of geospatial data provided to cooperating agencies.
- Failing to respond to comments regarding exclusion criteria.
- Failing to consider all substantive comments on the DPEIS to the extent feasible.
- Failing to adequately consider the counties’ requests for Wyoming to be withdrawn from the RMPA process, along with failing to meet other requests for additional or altered public involvement/coordination.
- Failing to respond to comments requesting that the BLM analyze all known roads and access, including non-BLM-issued ROWs in the recreational and transportation sections, and failing to coordinate with counties to receive authorizations for work on county/public roads to reduce conflict for the Proposed Plan.
- Failing to respond to comments and requests for additional public involvement.
- Failing to consider and respond to comments regarding buffers around protected areas.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received during the public comment periods under NEPA (40 CFR 1503.4, 2022). *Substantive comments* are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM NEPA Handbook H-1790-1, pp. 65–66).

In compliance with NEPA, the BLM considered all public comments submitted on the USS DPEIS/DRMPAs. The BLM complied with CEQ’s NEPA implementing regulations (40 CFR 1503.4, 2022) by performing a detailed comment analysis that assessed and considered all substantive comments received. USS FPEIS/PRMPAs Appendix M, *Comments and Responses for the Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development*, presents the BLM’s responses to all substantive comments. In USS FPEIS/PRMPAs Section M.2, the BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impact analysis, or factual corrections made in the USS FPEIS/PRMPAs as a result of public comments. The BLM’s responses also explain why certain public comments did not warrant further agency response. BLM’s comment response process does not treat public comments as if they are a vote for a particular action, but does ensure that every comment is considered at some point when preparing the USS FPEIS/PRMPAs.

Several protestors stated that the BLM failed to respond to comments, requesting that the BLM utilize updated wildlife data. The USS FPEIS/PRMPAs provides responses to comments regarding wildlife and data used in the analysis within Appendix M. USS FPEIS/PRMPAs Section M.2.5.7, *Wildlife*, provides information specific to data sets used (USS FPEIS/PRMPAs, pp. M-36, M-37). As discussed above under the *NEPA: Impacts Analysis – Wildlife* section of this report, the BLM utilized data from USFWS’s IPaC tool and from their Environmental Conservation Online System to determine potentially affected ESA-listed species discussed in Section 5.4.3.2, *Cumulative Impacts* (USS FPEIS/PRMPAs, p. 5-59). The BLM assessed impacts on sensitive species and other wildlife using the best-available data, including information from state wildlife agencies. USS FPEIS/PRMPAs Appendix G outlines all GIS data sets used in the USS FPEIS/PRMPAs analysis (see section G.2.3, *State-Level Fish, Park, and Wildlife Department GIS Data*). The USS FPEIS/PRMPAs also utilized the latest available BLM SSS lists at the time of the analysis, which include state protected and sensitive species. The BLM also utilized additional data that were provided by state agencies (USS FPEIS/PRMPAs Appendix F, p. F-98). Many of the exclusions and avoidance areas related to wildlife habitat are also *dynamic*, meaning that they will update as new resource information is available: “For example, under Criterion 2, which excludes designated and proposed critical habitat for species protected under the ESA, if new critical habitat is proposed then designated in the future, that critical habitat would be excluded upon its proposal and updated with its designation” (USS FPEIS/PRMPAs, p. 2-20). The BLM will regularly update big-game avoidance areas based on the latest data (USS FPEIS/PRMPAs, p. 6-16). The avoidance areas are dynamic and will incorporate updated Federal, state, and Tribal datasets for big game over time. The BLM will evaluate updated datasets periodically and incorporate new data, as appropriate. Lands would be excluded if they were to satisfy any one of the exclusion criteria as written, regardless of whether they were reflected on maps prepared as part of the USS FPEIS/PRMPAs. The BLM would evaluate updated resource data, including wildlife, during project-specific review in response to an application. Programmatic design features and project guidelines, such as ER-1sss and ER-2sss, also require project developers to mitigate impacts to sensitive species.

One protester stated that the BLM failed to respond to comments regarding the changes in solar technologies since publication of the 2012 Western Solar Plan and future changes in technology. The BLM provided responses to comments on this topic in USS FPEIS/PRMPAs Appendix M, under Section M.2.9.1, *Solar Technologies* (USS FPEIS/PRMPAs, Appendix M, pp. M-72, M-73). As

discussed in USS FPEIS/PRMPAs Section 1.1.1, *Purpose and Need*, the proposed action is to improve the initial siting of utility-scale photovoltaic (PV) solar energy development. The PV solar energy facilities are the focus of this planning effort because a majority solar energy applications submitted to the BLM involve PV technologies. Any future projects that involve different solar technologies or supporting infrastructure than PV solar technologies will be guided by existing land use plan requirements, relevant policies, and site-specific NEPA analyses.

Another protestor discusses BLM's failure to respond to comments regarding the management of Breeding Bird Survey (BBS) Routes and Important Bird Areas (IBAs). Appendix M of the USS FPEIS/PRMPAs provides responses to comments related to this topic. USS FPEIS/PRMPAs Section M.2.3.21, *New Proposed Exclusions*, responds to comments and requests for additional exclusion areas including wildlife corridors, crossings, and management area (USS FPEIS/PRMPAs Appendix M, pp. M-24, M-25). Programmatic design features and project guidelines in the USS FPEIS/PRMPAs include measures to mitigate potential impacts of solar projects on migratory birds (USS FPEIS PRMPAs Appendix B, pp. B-19, B-20, and B-43). For example, under Design Feature ER-5w,

[p]roject developers shall avoid siting projects in or near key migratory flyways, pathways for water-associated birds, and near open water or other areas that are known to attract large numbers of birds, where practicable. If impacts to migrating birds that pass through the project sites are anticipated minimization and mitigation actions shall be determined in coordination with the BLM, USFWS, and state wildlife agencies" (USS FPEIS/PRMPAs Appendix B, p. B-20).

The USS FPEIS/PRMPAs addresses IBAs in Section 4.4.3.2, *Birds*, outlining that the BLM has no requirement to manage IBAs. The BLM utilized Audubon IBA data in the development of the USS FPEIS/PRMPAs (Appendix G, p. G-7). Additional discussion regarding migratory routes and flyways are also discussed in Section 4.4.3.2 (USS FPEIS/PRMPAs, p. 4-29). The USS FPEIS/PRMPAs provide analysis of potential impacts to wildlife, including migratory bird species and SSS in Section 5.4.3, *Wildlife*, and Section 5.4.4, *Special Status Species*. Supplementary information about the affected environment and environmental impacts are included in USS FPEIS/PRMPAs Appendix F, Sections F.4.3 and F.4.4. Solar project applications will all be evaluated through site-specific NEPA reviews, as described in Section 1.1.5 (USS FPEIS/PRMPAs, pp. 1-10–1-11). Because exact locations of future proposed projects are not known, the alternatives analysis in this document describes impacts of typical project elements. Future site-specific NEPA will utilize the best-available information to evaluate potential impacts of solar development projects.

A protestor stated the BLM failed to reply to their comments regarding Exclusion #5. As outlined in USS FPEIS/PRMPAs Appendix M, Exclusion #5 applies to areas where the BLM, USFWS, and/or state agency partners have established conservation agreements or strategies for specific species, outlining conservation actions on BLM-managed public lands that prevent large-scale impacts or disturbances, such as utility-scale solar development (USS FPEIS/PRMPAs Appendix M, pp. M-15, M-16). The conservation agreements and strategies referenced in Exclusion #5 are formal written agreements between the BLM and relevant agencies, including USFWS, NMFS, and/or state agency partners. As described in Exclusion #5, any agreements relating to sensitive species habitat conservation or ecosystem protection that "would preclude large-scale impacts/disturbance, such as solar energy development" would be excluded, and the exclusion would apply to the geographic scope established in the agreement. The areas excluded under this exclusion criteria and the others will vary over time as the BLM enters new conservation agreements or amends existing agreements.

The BLM considered and responded to input received, including from Tribes, relating to the proposed exclusion criteria. Comments regarding impacts and exclusions associated with old-growth forests are outlined in USS FPEIS/PRMPAs Appendix M, Section M.2.3.18 (pp. M-22, M-23), and responses to comments related to the exclusion for NRHP-listed historic properties are outlined in USS FPEIS/PRMPAs Appendix M, Section M.2.3.16 (pp. M-21, M-22).

USS FPEIS/PRMPAs Appendix M, Section M.2.5.19, provides a summary and response to comments regarding recreation and access to public lands for recreation (p. M-51). This response directs readers to review the potential impacts associated with this plan related to recreation in Section 5.14, *Recreation* (USS FPEIS/PRMPAs pp. 5-131, 5-132). The USS FPEIS/PRMPAs also provides analysis of potential impacts on non-recreational transportation routes that would be used for transporting materials and equipment and function as commuter routes during the construction, operations, and decommissioning of a solar energy facility (see USS FPEIS/PRMPAs Section 5.17, *Transportation*, pp. 5-145–5-150). The USS FPEIS/PRMPAs appropriately analyzes potential impacts to recreation and transportation resources at a programmatic level. During project-specific NEPA analysis, the BLM would evaluate specific impacts from a proposed solar project on roads, ROWs, and access.

USS FPEIS/PRMPAs Appendix M, Section M.2.1.6, *Expanded Planning/Decision Area*, summarizes and responds to comments regarding proposed expansions and exclusions of geographic areas from consideration and analysis (USS FPEIS/PRMPAs, Appendix M, p. M-6). Additionally, Section M.2.1.1, *Purpose and Need*, summarizes comments and provides a response regarding the purpose and need of the proposed action, including the scope of the proposed action (USS FPEIS/PRMPAs, pp. M-2, M-3). The BLM expanded the planning area, compared to the 2012 Western Solar Plan, because the BLM is seeing increased interest in solar energy on BLM-administered lands outside of the six southwestern states covered by the 2012 Western Solar Plan and to improve the BLM’s management consistency across the western states (USS FPEIS/PRMPAs, p. 1-7). The BLM’s intention in this planning process is to identify lands where development is most feasible, not to determine that all such lands are suitable for development in fact. Section 6.1 of the USS FPEIS/PRMPAs provides

Based on the BLM’s mission, experience, and expertise, it is appropriate for broad-scale planning efforts to make orders-of-magnitude more lands available for a given use than the RFDS estimates would be put to that use. Complexity and controversy involved in navigating technical challenges, environmental concerns, community interests, and other potential uncertainties involved in the deliberative permitting process make that approach prudent. Making significantly more acres available than the BLM estimates will be developed will help to ensure solar projects are not only sited for feasibility and legal compliance but also in a way that is environmentally responsible and works for local communities” (USS FPEIS/PRMPAs, p. 6-3).

The project-specific review required for any particular application will include focused evaluation of the proposed project area, including a detailed consistency review with the applicable land use plan and consideration of resource-related conflicts, public concerns, and proximity to important resources. The project review process may result in the modification or denial of the application, as determined appropriate by the BLM.

The BLM summarizes and responds to comments related to the public participation process in Appendix M, Section M.2.8.1, *Public Outreach* (USS FPEIS/PRMPAs, pp. M-70, M-71). The BLM solicited written comments during the scoping period and held 15 public scoping meetings (USS FPEIS/PRMPAs, pp. 7-1, 7-2). The Notice of Availability for the DPEIS/DRMPAs was published in the FR on January 19, 2024 (89 FR 3687), initiating a 90-day public comment period, which concluded on April 18, 2024. During this time, the BLM hosted eight public informational meetings—two virtual and six in person—to engage the public and gather feedback on the DPEIS/DRMPAs. As further outlined in Section 7 of the USS FPEIS/PRMPAs, the BLM collected, reviewed, organized, and responded to comments submitted. USS FPEIS/PRMPAs Section 7.2, *Government-to-Government Consultation*, also outlines the BLM’s government-to-government consultation with federally recognized Tribes, as consistent with EO 13175. Appendix D of the USS FPEIS/PRMPAs also outlines the government-to-government consultation that occurred during the planning process. In December 2022, the BLM sent letters to 241 Tribes, chapters, and bands,

providing information about the initiation of this planning process. The correspondence invited these Tribes to participate as cooperating agencies under NEPA and as consulting parties under Section 106 of the NHPA, while also offering opportunities for government-to-government consultation. To further engage interested Tribes, the BLM conducted two Tribal informational webinars on May 10 and June 14, 2023, explaining the PEIS and outlining ways to participate. Additionally, on January 22, 2024, the BLM sent a follow-up letter to 248 Tribes, inviting them to a webinar held on February 20, 2024, to share details, gather feedback, and address questions related to the DPEIS. The BLM continues government-to-government consultation and will consult with Tribes that may be potentially affected by individual proposed solar energy development projects on BLM-administered lands. Tribal interests would be reviewed and evaluated collectively and concurrently with Tribes. This information is further outlined in Section 4.18 and Section 5.18 of the USS FPEIS/PRMPAs.

The *NEPA – Public Participation* section of this report describes the BLM’s engagement with cooperating agencies in developing the USS FPEIS/PRMPAs. Neither NEPA nor BLM planning regulations include specific requirements for responses or review periods for cooperating agencies. The BLM is not required to provide cooperating agencies access to geospatial data prior to the public review, but did so as a courtesy to facilitate the review of the administrative draft USS FPEIS/PRMPAs. The BLM further provided a public geospatial interface in conjunction with publication of the USS FPEIS/PRMPAs and is committed to providing tools, data, and assistance to help the public implement the plan. The BLM also notes that, as described in Section 2.1.16, *Exclusion Criteria under the Action Alternatives*, certain resource exclusions remain unmapped. Lands would be excluded if they were to satisfy any one of the exclusion criteria as written, regardless of whether they are reflected on maps within the FPEIS (USS FPEIS/PRMPAs, pp. 2-20–2-21). The BLM appreciates the input from cooperating agencies and considered it to the extent feasible, in compliance with applicable regulations and policy.

USS FPEIS/PRMPAs Appendix M, Section M.2.3.14, *National Conservation Lands*, provides a summary and response to comments received on National Conservation Lands and Resource-Based Exclusion #14, including comments requesting buffers around these lands (USS FPEIS/PRMPAs Appendix M, Section M.2.3.14, pp. M-20, M-21). As discussed in that section, the BLM concluded that additional setbacks from these lands were unnecessary because design features and project guidelines already incorporated measures to avoid and minimize impacts to specially designated areas (see USS FPEIS/PRMPAs, Appendix B, Section B.16). Under Design Feature PW-29, if a proposed project is within 25 miles of a National Park, a National Monument managed by NPS, or other NPS-managed lands, then project developers must, in coordination with the BLM and NPS, consider potential impacts on eight identified resource elements (i.e., Dark Night, Points of Entry, Upstream Watersheds, Wind Erodibility, Water Erodibility, Landscape Intactness, Viewshed Key Observation Points, and NRHP Key Observation Points) and determine appropriate mitigation (USS FPEIS/PRMPAs Appendix B p. B-8). This consultation would facilitate the analysis of impacts to specific NPS-administered lands and surrounding resources during project-specific reviews. USS FPEIS/PRMPAs Appendix H, Section H.4, includes the maps of resource areas of concern that the BLM developed in coordination with NPS. Cultural landscapes, such as those surrounding the National Historic Sites, proposed ACECs, and habitat for state species of concern would be analyzed for project-specific applications. Additionally, potential impacts to these areas will be evaluated during project-specific analysis, allowing for the implementation of further mitigation or setbacks as deemed appropriate.

The BLM adequately responded to public comments on the USS DPEIS/DRMPAs in the USS FPEIS/PRMPAs. Accordingly, this protest issue is denied.

NEPA: Supplemental EIS

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: Humboldt County protests BLM’s decision to open for solar application land “within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria” without properly analyzing the effects of this decision through a SEIS subject to public comment. The decision is contrary to NEPA’s command that an agency analyze the effects of a proposed action on the environment and that it prepare a supplemental NEPA document where substantial changes to a proposed action are relevant to environmental concerns. See 40 C.F.R. § 1502.1; id. § 1502.9(d)(1)(i) (BLM must prepare a SEIS where a major federal action, such as a RMPA, remains to occur and where BLM “makes substantial changes to the proposed action that are relevant to environmental concerns”); see also id. § 1502.9 (“If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion.”).

Humboldt County Board of Commissioners

Michelle Cook

Issue Excerpt Text: The County protests BLM’s mapping of exclusion areas in the PEIS/RMPA and its exclusion criterion for greater sage-grouse. As we stated in our comments on the administrative final PEIS/RMPA, BLM must prepare a SEIS to accurately represent exclusion areas in the Proposed Plan. See Humboldt County Administrative Final PEIS/RMPA Comments at Row 12. We have also previously argued that BLM’s exclusion criterion for greater sage-grouse is insufficient because it defers to other land use plans rather than using the Utility-Scale Solar Energy PEIS/RMPA to specifically exclude solar development from greater sage-grouse habitat. See Humboldt County Draft PEIS/RMPA Comments at *14-15. The final PEIS/RMPA does not address these concerns. BLM continues to defer exclusion of solar development from greater sage-grouse habitat to other land use planning efforts.¹⁴ Further, BLM’s mapping and calculation of the acreage of exclusion areas in the administrative final PEIS/RMPA is inaccurate and misleading because it shows extensive exclusion areas imposed under the 2015 greater sage-grouse LUPAs which excluded solar development in Nevada both on priority habitat management areas (PHMA) and general habitat management areas (GHMA). Many of these exclusions-according to BLM’s analysis, amounting to more than 300,000 acres-will shortly disappear as BLM finalizes its greater sage-grouse EIS/RMPA. See PEIS/RMPA at M-16. These errors mean that BLM does not sufficiently disclose the environmental impacts of the PEIS/RMPA. BLM offers only the following: it notes that the draft EIS for the greater sage-grouse RMPA has been published, and states that the exclusion criteria for greater sage-grouse “is coextensive with the treatment of utility-scale solar energy development under applicable land use plans and so currently prohibits such development as provided in the 2015 Sage-Grouse Plan Amendments.” PEIS/RMPA at 2-24. The PEIS/RMPA notes, however that “[t]he exclusion is also dynamic and subject to potential future changes to those plans. Therefore, because the BLM is reevaluating the extent to which solar development should be excluded in sage-grouse habitat as part of its latest sage-grouse planning efforts, the scope of this exclusion may change.” Id.

Eureka County, NV

Jake Tibbits

Issue Excerpt Text: A. The FEIS Violated NEPA in Adopting an Alternative Not Presented to the Public In the FEIS, BLM includes for the first time a new alternative under the Proposed Plan which “replaces Alternative 3 as the Preferred Alternative for this Final Solar Programmatic EIS” (FEIS p. 2-46). While BLM can modify a proposed action based on public comments (40 C.F.R. § 1503.4(a)),

a supplemental EIS is required if BLM makes substantial changes that are relevant to environmental concerns, as it has in adopting the new alternative (40 C.F.R. § 1502.9(c)). Also, NEPA’s intent, in both letter and spirit, is for BLM to prepare a supplemental EIS when “purposes of the Act will be furthered by doing so” (40 C.F.R. § 1502.9(d)). Both circumstances apply here and, therefore, BLM must prepare a supplemental EIS.

Friends of Nevada Wilderness

Shaaron Netherton

Issue Excerpt Text: Supplemental NEPA is required because elements of Proposed RMPAs were not analyzed in the DPEIS: Changes to transmission proximity from 10-mile to 15-mile Draft PEIS: “Solar application areas would be identified as remaining areas within 10 miles on both sides of existing and planned transmission lines with capacities of 100 kV or greater.” DPEIS at 2-12 (Alt 3). “Solar application areas would be areas that are within (1) 10 miles of existing and planned transmission lines with capacities of 100 kV or greater (as described above for Alternative 3) and (2) previously disturbed (as described above for Alternative 4).” DPEIS at 2-18 Final PEIS: “Lands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. This is a change from Alternatives 3 and 5 in the Draft Programmatic EIS, under which lands within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater are available, unless otherwise excluded by resource-based criteria.” Final PEIS at 6-2. Changes to Include Areas Proximate to 69kv transmission lines Draft PEIS: “Solar application areas would be areas that are within (1) 10 miles of existing and planned transmission lines with capacities of 100 kV or greater (as described above for Alternative 3) and (2) previously disturbed (as described above for Alternative 4).” DPEIS at 2-18 (Alt. 5) “Solar application areas would be identified as remaining areas within 10 miles on both sides of existing and planned transmission lines with capacities of 100 kV or greater.” DPEIS at 2-12 (Alt 3) Final PEIS: “Lands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. This is a change from Alternatives 3 and 5 in the Draft Programmatic EIS, under which lands within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater are available, unless otherwise excluded by resource-based criteria.” Final PEIS at 6-2. The BLM has failed to properly indicate the location of transmission lines used to delineate the 15 mile buffer zone around 69KV lines. This information has not been made available to the public and does not appear on any of the maps in the Solar PEIS. Without proper disclosure of this information the public cannot make fully educated comments.

Amargosa Conservancy

Mason Voehl

Issue Excerpt Text: The FEIS and proposed RMPA introduce a new land allocation which did not appear in the DEIS. The purpose of the “avoidance” allocation is described as designating “...certain areas that are available for solar applications, but which have sensitive environmental resources that are particularly vulnerable to disturbance,” (FEIS at 6-16). The FEIS gives two criteria for lands which qualify for avoidance designation: “All portions of big game migratory corridors that are not identified as “high-use” in state or federal wildlife agencies’ migration corridor databases;” and “areas designated as avoidance for solar development in existing BLM land use plans,” (FEIS at Table 6-3). The avoidance designation does not eliminate lands from consideration for solar; rather it imposes some modest conditions on development on solar in these areas. These modest conditions are: 1.) conformance with existing RMP; 2.) stipulations to address local conditions; and 3.) consider feedback from local communities and project modifications to address those concerns (FEIS at 6-16). These measures are essentially the same measures required for every project under NEPA and do not provide any substantive protection or benefit for lands designated avoidance. It is

not a meaningful designation. This has effects in the Amargosa River watershed. Areas up Wheeler Wash east of Pahrump; on the west side of Pahrump in the Last Chance Range; and east of Beatty in the Bare Mountains are all designated as avoidance lands in the RMPA. The avoidance designation is not meaningful and provides no protection to these areas. The introduction of the avoidance land allocation in the FEIS was never analyzed in the DEIS. There is no transparency about how and why BLM decided to introduce this new concept, how BLM decided which lands would qualify as avoidance. The public needs to be able to weigh in on this land allocation concept. The presence of this allocation strongly suggests that a Supplemental EIS may be necessary.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: A supplemental environmental impact statement should be prepared where the decision has not yet been made and “[t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns” 40 C.F.R. § 1502.9(d)(1)(i). In addition to changes discussed in detail elsewhere in this protest, below are listed some of the significant changes which are relevant to environmental concerns and require additional NEPA analysis before a decision can be made by BLM regarding the proposed RMPAs.

- Changes to criteria for ESA-listed species. From Draft PEIS, “Known occupied habitat for ESA-listed species, based on current available information or surveys of project areas.” (Draft PEIS at 2-21). Final PEIS: “[S]pecified areas for 40 specific ESA-listed species.” (Final PEIS at 6-7). “Additional specific areas for the following 40 ESA-listed or proposed listed species created in coordination with USFWS are also mapped and excluded: autumn buttercup, bi-state sage grouse, blowout penstemon, bonytail, Carsons wandering skipper, clay reed-mustard, clay-loving wild buckwheat, Colorado hookless cactus, Colorado pikeminnow, Debeque phacelia, Dixie valley toad, Dudley bluffs bladderpod, Dudley bluffs twinpod, dwarf bear poppy, gypsum wild buckwheat, grizzly bear, Holmgren milkvetch, humpback chub, Jones cycladenia, Kendall’s warm spring dace, Knowlton’s cactus, last chance townsendia, Lee pincushion cactus, Mojave desert tortoise, northern aplomado falcon, north park phacelia, pariette cactus, Pecos sunflower, razorback sucker, San Rafael cactus, Shivwits milkvetch, shrubby reed-mustard, Siler pincushion cactus, Sneed pincushion, Sonoran pronghorn, Uinta basin hookless cactus, Ute ladies-tresses, Winkler cactus, Wright fishhook cactus, Wyoming toad.” (Final PEIS at 6-13, note b).
- Changes to Exclusion criteria for big game From Draft PEIS Exclusion for: “All big game migratory corridors identified in applicable land use plans to the extent the land use plan decision prohibits utility-scale solar energy development. All big game winter ranges identified in applicable land use plans to the extent the land use plan decision prohibits utility-scale solar energy development.” (Draft PEIS at 2-22). From Final PEIS Exclusion for: “All big game areas identified in applicable land use plans to the extent the land use plan decision prohibits large-scale impacts/disturbance, such as utility-scale solar energy development.” (Final PEIS at 6-9). “The portions of big game migratory corridors mapped as ‘high use’ in Figure 6-3 (CDFW 2023b; IDFG 2023b; Kauffman et al. 2024; MFWP 2024; UDWR 2023c; and WGFD 2023b).” Id. “Migration pinch points/bottle necks, parturition areas, stopover areas, and crucial and severe winter range.” Id.
- Changes to transmission proximity from 10-mile to 15-mile Draft PEIS: “Solar application areas would be identified as remaining areas within 10 miles on both sides of existing and planned transmission lines with capacities of 100 kV or greater.” (Draft PEIS at 2-12 (Alt 3)). “Solar application areas would be areas that are within (1) 10 miles of existing and planned transmission lines with capacities of 100 kV or greater (as described above for Alternative 3) and (2) previously disturbed (as described above for Alternative 4).” (Draft PEIS at 2-18). Final PEIS: “Lands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. This is a change from Alternatives 3 and 5 in the Draft Programmatic EIS, under which lands within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater are available, unless otherwise excluded by resource-based

criteria.” (Final PEIS at 6-2). • Changes to Include Areas Proximate to 69kv transmission lines
 Draft PEIS: “Solar application areas would be areas that are within (1) 10 miles of existing and planned transmission lines with capacities of 100 kV or greater (as described above for Alternative 3) and (2) previously disturbed (as described above for Alternative 4).” (Draft PEIS at 2-18 (Alt. 5)). “Solar application areas would be identified as remaining areas within 10 miles on both sides of existing and planned transmission lines with capacities of 100 kV or greater.” (Draft PEIS at 2-12 (Alt 3)). Final PEIS: “Lands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. This is a change from Alternatives 3 and 5 in the Draft Programmatic EIS, under which lands within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater are available, unless otherwise excluded by resource-based criteria.” (Final PEIS at 6-2). New Addition of “Areas of Special Coordination” To Justify Lack on Analysis This term does not appear in Draft PEIS. From Final PEIS: “Implementation support information is provided in this appendix for areas that would not be excluded from application through resource-based exclusions that are applicable across the Action Alternatives and Proposed Plan, but that warrant additional review at the time of a solar project application. The areas were identified during preparation of this Programmatic EIS based on input from the National Park Service (NPS), U.S. Fish and Wildlife Service, cooperating agencies, and Bureau of Land Management (BLM) subject matter experts. In cases where screening identifies an intersection between a proposed project and areas addressed in Sections H.1 through H.5, project developers could propose avoidance and/or other mitigation measures to address resource concerns.” (Final PEIS at Appx. H, p. H-1). Areas include: BLM Restoration Landscapes; Oil and Gas Lease Areas; Big Game Exclusions and Avoidance Land Allocations; National Scenic and Historic Trails; National Park Service Areas of Special Consideration. Id. • Downgrading Design Features to Project Guidelines As discussed above, many mandatory design features discussed in the Draft and relied on to minimize impacts were downgraded to guidelines in Final PEIS, Appendix B.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The introduction of the avoidance land allocation in the Final PEIS was never analyzed in the Draft PEIS. There is no transparency about how and why BLM decided to introduce this new concept, how BLM decided which lands would qualify as avoidance. Analysis during the Draft PEIS and the acceptance of public comment would have better informed the avoidance allocation. If the intent is to protect big-game migration corridors, it’s likely that it would have been more protective to simply add this as an exclusion criteria. The public needs to be able to weigh in on this land allocation concept. The presence of this allocation strongly suggests that a Supplemental PEIS may be necessary.

Summary:

Protestors claimed that the BLM’s approval of the USS FPEIS/PRMPAs would violate NEPA because the BLM has failed to prepare a supplemental EIS for the following reasons:

- The BLM altered the area open for solar application to areas within 15 miles of existing transmission lines and did not sufficiently analyze the environmental consequences or offer the opportunity for public comment.
- The BLM introduced *avoidance* as a new land allocation, which did not appear in the DPEIS/DRMPAs and, as such, has not been adequately vetted.
- The USS FPEIS/PRMPAs introduced items that did not appear in the DPEIS, such as changes to criteria for ESA-listed species, exclusion criteria for big game, a new addition of “Areas of

Special Coordination” to justify lack of analysis, and downgrading of design features to project guidelines.

- The BLM proposed a substantial change in the FPEIS by replacing Alternative 3 as the Preferred Alternative for the Proposed Plan.
- There is inadequate analysis on exclusion criteria for greater sage-grouse as the BLM defers to other land use plans rather than using the USS FPEIS/PRMPAs.

Response:

NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)(i)-(ii), 2022). *Substantial changes* to the proposed action relevant to environmental concerns are defined as changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). An SEIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed in the EIS (BLM Handbook H-1790-1, p. 29). In addition, the BLM NEPA Handbook (H-1790-1) indicates that substantive comments, among other things, can present reasonable alternatives outside of those analyzed in the EIS. The CEQ NEPA regulations recognize that, in response to substantive comments, the BLM may develop and evaluate suggested alternatives not previously given serious consideration by the agency (40 CFR 1503.4(a)(2), 2022).

As described in USS FPEIS/PRMPAs Section 6.1, the Proposed Plan blends elements of the alternatives analyzed in the DPEIS (USS FPEIS/PRMPAs, p. 6-1). The potential impacts of all alternatives and the Proposed Plan are analyzed in the USS FPEIS/PRMPAs. The BLM has made no substantial changes to the proposed plan that are relevant to environmental concerns in the USS FPEIS/PRMPAs, and the BLM has determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts. Although the BLM did change the criteria for available lands from those within 10 miles of existing and planned transmission lines with capacities of 100 kV or greater to areas within 15 miles of existing and planned transmission lines with a capacity of 69 kV, this change does not constitute a significant new circumstance or information relevant to environmental concerns because this change would not result in significant effects outside the range of effects analyzed in the DPEIS. The Proposed Plan is within the range of alternatives analyzed in the DPEIS because Alternatives 1 and 2 did not include any transmission proximity criterion. Therefore, impacts of potential utility-scale solar development in areas between 10 and 15 miles from transmission of any voltage were disclosed and analyzed in the DPEIS through the discussion of those alternatives across all 21 resources analyzed in detail in Chapters 4 and 5. The BLM also documented the potential impacts of the Proposed Plan in Section 6.4 of the USS FPEIS/PRMPAs, and Figure 6-2, depicting the Proposed Plan, reflects the transmission criterion (USS FPEIS/PRMPAs, pp. 6-17–6-18, Table 6-4). Furthermore, the BLM received comments on the DPEIS requesting that the BLM reduce or expand the transmission proximity distance, illustrating that the public did have an opportunity to comment on this criterion, and the Proposed Plan incorporates that feedback (USS FPEIS/PRMPAs Appendix M, Section M.2.4.1). Thus, this change does not require preparation of an SEIS (USS FPEIS/PRMPAs, p. 6-2).

The “avoidance” land classification also does not constitute a significant new circumstance or information relevant to environmental concerns because this change would not result in significant effects outside the range of effects analyzed in the DPEIS. This allocation category was included in the USS FPEIS/PRMPAs in response to public comment on the DPEIS and expands protection for big-game migration corridors and areas designated as avoidance for solar development in existing

BLM land use plans (USS FPEIS/PRMPAs, p. 6-3, Figure 6-3, p. 6-15; Appendix M, pp. M-18, M-19; Appendix H, p. H-5). The avoidance areas would reduce impacts compared to those analyzed and disclosed under the action alternatives in the DPEIS. Furthermore, the USS FPEIS/PRMPAs includes a discussion on the impacts of the avoidance land allocation in Section 6.2 and Section 6.4, and applications for solar energy projects in avoidance areas would require site-specific evaluations during project-specific review (USS FPEIS/PRMPAs, p. 6-16).

The exclusion criteria related to ESA-listed species, big-game habitat, and “Areas of Special Coordination” in the Proposed Plan are also within the range of alternatives analyzed in the DPEIS. Exclusion #2 for ESA-listed species’ habitat in the Proposed Plan falls within the range of alternatives because it incorporates elements of the No-Action Alternative, which did not exclude “known occupied habitat,” and instead excludes specific habitat areas for 40 listed species, as well as designated and proposed Critical Habitat (USS FPEIS/PRMPAs, p. 6-1). The modifications to Exclusion #9 for big-game habitat would exclude more lands and would not make any previously excluded lands available, thereby reducing potential resource impacts compared to those analyzed in the DPEIS under the No-Action Alternative and action alternatives (USS FPEIS/PRMPAs, p. 6-1). The “Areas of Special Coordination” in the USS FPEIS/PRMPAs were referred to as “Areas of Special Concern” in the Draft PEIS. In the USS FPEIS/PRMPAs, the BLM clarified how the BLM and project developers will consider “Areas of Special Coordination” by incorporating them into mandatory plan-wide design features. These changes were included based on response to public comment on the DPEIS and are consistent with Federal laws and policies.

Regarding greater sage-grouse, Exclusion #6 incorporates “greater sage-grouse and Gunnison sage-grouse habitat as identified for exclusion in applicable land use plans” (USS FPEIS/PRMPAs, p. 6-8). As Footnote (e) in Table 6-2 of the USS FPEIS/PRMPAs indicates, the BLM is in the process of developing an updated plan or plans managing activities in sage-brush habitat (USS FPEIS/PRMPAs, pp. 1-14, 6-13). Although the mapped lands available for application under USS FPEIS/PRMPAs reflect the sage-brush habitat-exclusion area based on the currently applicable *2015 Sage-Grouse Plan Amendments*, this exclusion area will be updated to reflect the decisions of the BLM’s ongoing greater sage-grouse planning effort when that is completed.

As explained in the *NEPA – Public Participation* section of this report, during the public comment period for the DPEIS, the BLM received substantial input on both the structure of the design features and on the specifics of individual design features identified in USS FPEIS/PRMPAs Appendix B. Accordingly, the BLM revised the structure and extent of Appendix B and the associated design features and project guidelines in the USS FPEIS/PRMPAs. The analysis of the Proposed Plan in Table 6-4 of the USS FPEIS/PRMPAs explains that, for many resources, updated design features are expected to reduce impacts as compared to the No-Action Alternative (USS FPEIS/PRMPAs, pp. 6-19–6-28). The programmatic design features and project guidelines provide clearer direction for project developers, reflect technical feasibility constraints, and provide more-robust resource protection, when compared to the No-Action Alternative. Because the design features and project guidelines in the Proposed Plan would reduce impacts compared to the No-Action Alternative, the reorganization and reclassification does not constitute a substantial change that would result in significant effects outside the range of effects analyzed in the DPEIS or FPEIS.

The BLM is not required to prepare an SEIS because the Proposed Plan is different from the preferred alternative in the DPEIS. As explained in the BLM’s NEPA Handbook, “[t]he identification of a preferred alternative does not constitute a commitment or decision in principle, and there is no requirement to select the preferred alternative in the ROD. The identification of the preferred alternative may change between a draft EIS and final EIS” (BLM NEPA Handbook, H-1790-1, p. 95). The Proposed Plan is within the range of alternatives previously discussed and analyzed in the DPEIS; thus, no substantial changes, nor substantial new circumstances or information about the significance of adverse effects are present.

Based on the discussion above, the BLM is not required to prepare an SEIS. Accordingly, this protest issue is denied.

Historic and Cultural Resources and Religious Practice

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: Consultation Violations. BLM failed to state that it was going to include Bahsahwahbee as available for solar development. Not once during any consultations, meetings, or correspondence to our Tribes did the BLM ever state that this would be done. This violates the Biden Administration’s own policies on tribal consultation.^{1 2} It also violates the required consultation under Section 106 and Section 110 of the National Historic Preservation Act. This failure underscores that BLM has neither consulted with Tribes in good faith nor taken the required “hard look” at potential impacts.^{3 4} There are 54 pages in the FPEIS that reference consultation, starting at ES-13 and ES.3.2 at ES-42, where the BLM gives the public the false impression that they actually consulted in good faith and with appropriate entities like CTGR.

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: Exclusions Violations. BLM failed to exclude specific areas from solar development zoning even when their stated exclusion criteria required them to do so. That the BLM’s Western Solar Plan endangers historic and cultural resources has been expressed by many.⁵ But even where BLM is fully aware of areas that were required to be excluded per their criteria, BLM did not even follow their own criteria. * Exclusion No. 16, National Register of Historic Places (NRHP). In the FPEIS at ES-13, 2-23, 2-29, 4-13 - 4-15, BLM identified that lands within the boundaries of properties listed in the NRHP and any additional lands outside the designated boundaries identified for protection through an applicable land use plan were to be excluded from solar development zoning. But they did not do so. Bahsahwahbee was listed in the National Register of Historic Places in 2017, but BLM failed to exclude it. Also, there is an applicable pending agreement between BLM and the Tribes should be considered as an “applicable land use plan” where areas beyond the boundaries of the Bahsahwahbee NRHP site should be excluded.

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: Exclusion No. 17, Tribal Interest Areas. In the FPEIS at ES-13, ES-36, 2-23, 2-29, 2-44, 4-13 - 4-15, BLM identified “Tribal Interest Areas” as lands to be excluded from the solar development. Furthermore, this exclusion criteria states that the following were excluded from solar development: “Traditional cultural properties (TCPs) and Native American sacred sites that are identified through consultation with Tribes and recognized by the BLM or that are the subject a Memorandum of Understanding between the BLM and a Tribe or Tribes.” And yet, BLM included for solar development exactly those kinds of areas. For example, Bahsahwahbee NRHP site or TCP was not excluded. The Bahsahwahbee National Monument area, which is a Native American sacred site and religious gathering area, was not excluded. And an area defined in a pending MOU was not excluded, which is another Native American sacred site that was identified in meetings, correspondence and other consultation between Tribes and BLM. None of those areas were excluded. We are requesting BLM exclude all of these areas from solar development zoning.

***Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe
Amos Murphy and Alvin Marques***

The FPEIS Appendix shows multiple entities demanding that BLM give due consideration to our heritage beyond the exclusion of Traditional Cultural Properties (TCPs) and sacred sites such that those areas are excluded from and made not available for development. According to the FPEIS, the many TCPs, sacred sites, and other cultural sites can be excluded from the purview of the permitting pursuant to the review in Section 4.3. While the National Park Service listed Bahsahwahbee as a TCP in the NRHP in 2017, the FPEIS failed to exclude the Bahsahwahbee TCP. The BLM knows that our Tribal Nations have worked recently to amend the Bahsahwahbee TCP and to have the President establish the Bahsahwahbee National Monument within the National Park System due to its exceptional cultural and historical significance and singular place in American history. Our Tribes are working to share the terrible and tragic history at the site with the Nation, through interpretation and commemoration and education which necessarily requires the site to be preserved and not developed. Furthermore, during multiple environmental reviews in the past three decades, we have repeatedly expressed to BLM we do not want Bahsahwahbee to be developed. While BLM has pushed development proposals forward (like this Western Solar Plan) that would destroy Bahsahwahbee, the swamp cedar forests, and other Tribal cultural and religious sites in the valley, our Tribes are working to preserve and commemorate the site in perpetuity as the Bahsahwahbee National Monument.

***Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe
Amos Murphy and Alvin Marques***

Issue Excerpt Text: BLM targeted Bahsahwahbee and swamp cedars with development in a discriminatory way. BLM has excluded other religious/sacred sites, TCPs, or other places of Tribal religious and historical significances from the Western Solar Plan but then somehow failed to exclude Bahsahwahbee. This happened even when Bahsahwahbee is arguably today's most recognized example - known nationally and throughout Interior and the White House - of Tribes seeking to preserve and commemorate their religious gathering area and a place of paramount significance to our religious practices and observances.

***Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe
Amos Murphy and Alvin Marques***

Issue Excerpt Text: RLUIPA Violations. Department of Justice released a statement on the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and BLM would violate those provisions by approving its preferred alternative in the Western Solar Plan PFEIS since the RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, and other religious assemblies and institutions... The BLM's zoning of Bahsahwahbee and swamp cedars for industrial solar development violates RLUIPA, and therefore Bahsahwahbee and swamp cedar forests must be excluded on this ground as well as other detailed grounds.

***Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe
Amos Murphy and Alvin Marques***

Issue Excerpt Text: Executive Order 13798 and DOJ October 6, 2017 Memorandum Violations. BLM's Western Solar Plan and FPEIS violates EO 13798 and the associated DOJ Memorandum. To that point, we provide the following critical grounds for protest:

- Free exercise of religion at Bahsahwahbee and the swamp cedar forests is a fundamental right afforded to our Tribe through the US Constitution, federal laws, executive orders, and policies. It is also our inherent right that we've practiced for thousands of years, and a right that was never extinguished by treaty or other agreement. BLM's proposal to develop Bahsahwahbee and the

swamp cedars into an industrial solar zone strips us of our free exercise right to practice/perform our religion in accordance with our religious beliefs.

- BLM is disallowed from targeting our religious practices, which BLM did by marking Bahsahwahbee and swamp cedars as solar development zones. If approved, this would indirectly cut off our ability to practice our religion tied specifically to those places.
- BLM targeted Bahsahwahbee and swamp cedars with development in a discriminatory way. BLM has excluded other religious/sacred sites, TCPs, or other places of Tribal religious and historical significances from the Western Solar Plan but then somehow failed to exclude Bahsahwahbee. This happened even when Bahsahwahbee is arguably today's most recognized example – known nationally and throughout Interior and the White House – of Tribes seeking to preserve and commemorate their religious gathering area and a place of paramount significance to our religious practices and observances.
- BLM would substantially burden our Tribe and fails a least restrictive means of its compelling governmental interest – if one even exists. Even if the BLM's solar development at Bahsahwahbee and swamp cedars could satisfy a compelling government interest, the BLM would have to demonstrate that the substantial burden placed on our Tribe was the “least restrictive means of achieving a compelling government interest”. This cannot be satisfied when BLM has identified 31 million acres of federal land as available for solar development. It also cannot be satisfied because BLM conducted no required analysis of a viable alternative that could satisfy BLM's interest for the chosen restriction on free exercise at Bahsahwahbee and swamp cedars.
- BLM is prohibited from second-guessing reasonableness of our Tribe's religious belief or practice. Even if BLM considered that roughly 7,000 acres of Bahsahwahbee could be sacrificed and still allow for our Tribe to continue our religious practices unburdened, that too would be a violation because the government may not, under RFRA, second-guess the reasonableness of a religious belief or practice.
- BLM is prohibited from banning an aspect of our Tribe's religious observances and practices. The BLM's Western Solar Plan in effect would serve as a ban on an aspect of our Tribe's religious observances and practices by making Bahsahwahbee and swamp cedars available for development. Further, BLM's Solar Plan and FPEIS also compels our Tribe to act inconsistent with our religious observances or practices and substantially pressures our Tribe from modifying our observances and practices through BLM's discriminatory solar zoning and intended destruction of Bahsahwahbee. And yet, BLM's Western Solar Plan memorializes this.

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: BLM's Western Solar Plan and FPEIS violates EO 13798 and the associated DOJ Memorandum.¹¹ To that point, we provide the following critical grounds for protest: * Free exercise of religion at Bahsahwahbee and the swamp cedar forests is a fundamental right afforded to our Tribes through the US Constitution, federal laws, executive orders, and policies. It is also our inherent right that we've practiced for thousands of years, and a right that was never extinguished by treaty or other agreement. BLM's proposal to develop Bahsahwahbee and the swamp cedars into an industrial solar zone strips us of our free exercise right to practice/perform our religion in accordance with our religious beliefs.

Nye County

Megan Labadie

Issue Excerpt Text: Disregard for Cultural and Archaeological Resources under the National Historic Preservation Act (NHPA) The EIS does not comply with NHPA, which mandates federal agencies to take into account the effects of their undertakings on historic properties. The EIS

permits development in areas of profound cultural and archaeological significance to both the County's communities and Indigenous communities without adequate consultation or consideration of alternatives to avoid, minimize, or mitigate harm. It fails to adhere to Section 106 of the NHPA, which requires meaningful engagement with Indigenous tribes and other stakeholders to protect cultural and historic resources.

Friends of the Inyo

Kayla Browne

Issue Excerpt Text: Another area that is in available for development in Alternative 3, and in all of the Alternatives to some degree, lies west of the Volcanic Tablelands ACEC in Mono and Inyo Counties and in patches throughout Round Valley in Inyo County, north of Bishop. It would be an affront to the Tribes if these areas were to be available for solar development. The Volcanic Tablelands are sacred and contain prehistoric petroglyphs, and Round Valley still has evidence of prehistoric irrigation ditches that prove the Paiutes cultivated crops. The Tribes commented in the 2012 WSP NEPA process and again in this round of the BLM Solar EIS and stated that they opposed any solar development in the Owens Valley. The concerns raised by the Indigenous Community seem to have been ignored in all alternatives. Ignoring the comments provided by the Big Pine Paiute Tribe violates the National Historic Preservation Act (NHPA) Section 106, 54 U.S.C. 306108 and its implementing regulations at 36 CFR part 800. Failure to address concerns raised by the Indigenous Community contradicts FEIS 5.3.2, which discusses reducing cumulative impacts on cultural resources. This section states that "consultation with affected Indian Tribes regarding their knowledge of and/or concerns for cultural resources in a given project area must be conducted early and often throughout the project development process." Tribes were not consulted in the FEIS process early enough to provide adequate consultation on the Proposed Plan. If proper consultation had been given, the Owens Valley tribes could have identified important cultural areas in the Volcanic Tablelands, Round Valley, Tungsten Hills, north and west of Bishop, CA.

Center for Biological Diversity

Patrick Donnelly

Issue Excerpt Text: The Final PEIS makes no effort to address cultural resources on the public lands included in the proposed RMPAs in any meaningful way providing only numbers of sites likely to be impacted by each alternative and assuming they will be addressed in later analysis. See Final PEIS at 5-22 to 5-27. In sum, for cultural resources the Final PEIS provides: NRHP-listed sites are excluded from solar energy development under each action alternative, which provides an important initial mitigation of potential impacts on these cultural resources. However, there are many NRHP-eligible and unknown eligibility sites that are not excluded. Potential impacts on such sites and methods to mitigate such impacts would be evaluated on a project specific basis. Final PEIS at 5-26. Exclusion 16 covers listed historic properties and landmarks but is only partially mapped and the Final PEIS makes no effort to address how NRHP-listed sites could be impacted by development, even if the footprint of those sites is excluded. Final PEIS at 2-23. Exclusion 17 is overly narrow and unclear: "Tribal Interest Areas" are described as "Traditional cultural properties (TCPs) and Native American sacred sites that are identified through consultation with Tribes and recognized by the BLM or that are the subject of a Memorandum of Understanding between the BLM and a Tribe or Tribes." This appears to only apply to TCPs and sacred sites that have already been "identified through consultation" and it is unclear if or when Tribes would have an opportunity to engage in meaningful consultation about TCP and sacred sites in areas where no project had previously been proposed and subject to consultation. As a result the PEIS fails to show that it would protect all relevant cultural resources including TCPs, cultural landscapes, sacred sites, and ancient trail systems.

Summary:

Protestors stated that the BLM’s approval of the USS FPEIS/PRMPAs would violate the NHPA, the Religious Land Use and Institutionalized Persons Act, the Religious Freedom Restoration Act, EO 13798, and Federal regulations regarding Tribal consultation and protection of Native American cultural and religious sites by:

- Failing to exclude the Bahsahwahbee National Monument Area and other Native American cultural and religious sites from solar development, contrary to the BLM’s exclusion area criteria, and failing to inform Tribes that the BLM was going to include Bahsahwahbee as available for solar development. Protestors claim that allowing solar development in these areas would inhibit free exercise of religion in these places and would fail to demonstrate the least-restrictive means of achieving a compelling government interest.
- Failing to analyze potential effects of the undertaking on historic properties, TCPs, cultural landscapes, sacred sites, and ancient trail systems.
- Failing to adequately consult with tribes early enough in the planning process, particularly in Owens Valley.
- Failing to exclude many NRHP-eligible sites and sites where eligibility is unknown, and failing to evaluate the potential impacts on cultural resources in any meaningful way.

Response:

Section 106 of the NHPA requires Federal agencies to assess and resolve the effects of projects they carry out on historic properties. The regulations implementing NHPA Section 106 require Federal agencies to make a “reasonable and good faith effort” to identify historic properties within the area of potential effect in part through consultation with Native American Tribes (36 CFR 800.4(b)). Per 36 CFR 800.3(c)(3), the BLM should consult with the State Historic Preservation Office (SHPO) and appropriate Tribal Historical Preservation Officers (THPOs) in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties. Consultation with the SHPO and THPOs involves identifying historic properties (36 CFR 800.4), assessing adverse effects (36 CFR 800.5), and resolving adverse effects (36 CFR 800.6). Although the BLM must give Tribal concerns and preferences due consideration and make a good faith effort to address them as an integral part of the decision-making process in land use planning, decisions may not always conform to the preferences and suggestions of the Tribes. In these cases, BLM must notify the Tribe of final plan decisions, including an explanation for why the plan was or was not able to accommodate particular Tribal concerns (BLM Handbook H-1780-1, p. IV-7).

In addition to consultation under NHPA Section 106, the BLM has broader Tribal consultation responsibilities:

The NHPA Section 106 standard only applies to the agency’s effort to consult with Indian tribes regarding historic properties of religious and cultural significance in the context of NHPA Section 106 *and not the other specific and general authorities that require tribal consultation on a government-to-government basis*” (emphasis added; BLM Manual 1780, *Tribal Relations*, H-1780-1, A2-1). It is BLM’s policy to provide “an early opportunity for tribes to help inform BLM decisions with the potential to affect their interests through both formal consultation and serving as cooperating agencies (BLM Handbook H-1780-1, p. IV-2).

The Religious Land Use and Institutionalized Persons Act (42 U.S.C. §§ 2000cc, et seq.) prevents governments from regulating land use in a manner that imposes a substantial burden on religious institutions. The Religious Freedom Restoration Act (42 U.S.C. Chapter 21B § 2000bb, et seq.)

protects free exercise of religion. EO 13798 emphasizes the protection of religious freedom and free speech in Federal agency activities.

The USS FPEIS/PRMPAs describes how the BLM consulted with SHPOs and Native American Tribes in Section 7.2, *Government-to-Government Consultation* (USS FPEIS/PRMPAs, pp. 7-8–7-9), Section 7.4, *Agency Cooperation, Consultation, and Coordination* (USS FPEIS/PRMPAs, pp. 7-9–7-10), and Appendix D, *Government-to-Government Resource Consultations* (USS FPEIS/PRMPAs Appendix D, pp. D-1–D-7). In these sections, the BLM notes that it initiated consultation with 241 Tribes, chapters, and bands—including the Ely Shoshone Tribe of Nevada and the Confederated Tribes of the Goshute Reservation—all of which are listed in USS FPEIS/PRMPAs Appendix D in Table D-1 (pp. D-1–D-6). Informational webinars were held on May 10 and June 14, 2023, and February 20, 2024, to inform interested Tribes about the planning effort, share information, gather feedback, and answer questions (USS FPEIS/PRMPAs p. 7-8). Thirteen Federally Recognized Tribes and one non-Federally Recognized Tribe engaged in consultation with the BLM. Government-to-government consultation for the USS FPEIS/PRMPAs is ongoing (USS FPEIS/PRMPAs, p. 7-8). In addition, the BLM will continue to consult on a government-to-government basis with any Tribes that are interested in or potentially affected by individual proposed solar projects on BLM-administered lands during project-specific reviews (USS FPEIS/PRMPAs, pp. 7-8–7-9).

The BLM, in consultation with the SHPOs of the 11 states within the planning area and the Advisory Council on Historic Preservation, has proposed a finding of “no historic properties affected,” consistently with 36 CFR 800.4(d)(1)(ii), because the proposed planning decision would not authorize any solar project and would not itself result in any ground disturbance. On November 8, 2024, the Advisory Council on Historic Preservation notified the BLM that the Council did not object to this finding. Future project proponents would need to apply for a ROW, identifying a proposed site from among the lands available for solar development, and the BLM would need to make a further implementation-level decision to approve, approve with modification, or deny the proposed ROW. That implementation-level decision would be subject to Section 106 of the NHPA, and the BLM would consult with the relevant SHPO and other parties at that time to identify and resolve any potential impacts to historic properties.

The USS FPEIS/PRMPAs include a number of exclusion criteria and programmatic design features intended to avoid and mitigate impacts on cultural resources, including historic properties and areas of importance to Tribes. USS FPEIS /PRMPAs Table 2.1-3 provides exclusion criteria for lands that would be excluded from solar development under all action alternatives (USS FPEIS/PRMPAs, p. 2-22–2-23). Exclusion #16 applies to lands within the boundaries of NRHP-listed properties and any lands outside the boundaries of these properties that are identified for protection in the applicable land use plan (USS FPEIS/PRMPAs, p. 2-23). Exclusion #17 applies to all TCPs “and Native American sacred sites that are identified through consultation with Tribes and recognized by the BLM or that are the subject of a Memorandum of Understanding between the BLM and a Tribe or Tribes” (USS FPEIS/PRMPAs, p. 2-23). As described in Section 2.1.1.6 of the PEIS, certain resource exclusions—including Tribal Interest Areas—remain unmapped due to informational sensitivity or lack of complete geospatial data. However, lands are excluded if they satisfy any one of the exclusion criteria, as written, regardless of whether they are shown to be part of exclusion areas mapped based on GIS data. These exclusions are also *dynamic*, meaning that a historic property newly listed on the NRHP becomes automatically excluded from solar development.

As described in USS FPEIS/PRMPAs Appendix F, Section F.3 (pp. F-26–F-63), the BLM used a number of data sources to identify cultural resources within the 11-state planning area. The USS FPEIS/PRMPAs describe known cultural resources by state and their NRHP eligibility (see USS FPEIS/PRMPAs Table F.3.2-6, p. F-44) and summarizes known cultural resources on available lands in each of the 11 states in the planning area for all of the alternatives (see USS

FPEIS/PRMPAs Tables F.3.3-1–F.3.3-11, pp. F-58–F-63). Additionally, Figure F.3.2-1 (USS FPEIS/PRMPAs Appendix F, p. F-40) illustrates potential Tribal cultural areas of significance and affiliation. BLM notes, however, that “Tribally affiliated territories are only properly defined by Tribes and any figures in this document depicting traditional Tribal territories are subject to review by Tribes through formal consultation” (USS FPEIS/PRMPAs, p. 4-76). The analysis describes how the types of activities commonly associated with solar projects could affect cultural resources and historic properties (including properties listed or eligible for listing on the NRHP) at a general level. The analysis of potential impacts on cultural resources informs this programmatic planning effort, while appropriately requiring additional analysis of resources, including cultural resources, during subsequent project-specific review.

The BLM will conduct additional site-specific NEPA analysis, Section 106 consultation, and government-to-government consultation, as appropriate, prior to authorizing any future implementation actions. During project-specific review, the BLM would determine whether any of the unmapped exclusions may apply—this would involve coordinating with potentially affected Tribes to determine whether any NRHP-listed properties (Exclusion #16) or TCPs or sacred sites (Exclusion #17) are present, or whether there are other important resources (including cultural resources or properties that are eligible for listing on the NRHP) that should otherwise be considered in the BLM’s review. Through project-specific NEPA review, Section 106 consultation, and additional government-to-government consultation, the BLM would further identify and analyze impacts on cultural, historic, and resources of Tribal interest, including TCPs, swamp cedar forests, or any other areas that the tribes bring forward during these site-specific consultations. The BLM specifically states

In the course of project-level decision making and implementation, cultural resource surveys, evaluations, and any resolution of adverse impacts from a project on properties that have been listed or are eligible for listing on the NRHP must be conducted prior to construction of that project. Consultation with affected Indian Tribes regarding their knowledge of and/or concerns for cultural resources in a given project area must be conducted early and often throughout the project development process. In the event that cultural resources are unexpectedly encountered during construction activities, provisions should be in place to address the appropriate evaluation and treatment of such discoveries” (USS FPEIS/PRMPAs p. 5-25).

Design Features PW-5, PW-21, TI-4, TI-5, and TI-6 address continued consultation with Tribes. As noted in Section 4.18 (USS FPEIS/PRMPAs, pp. 4-75–4-79) and Section 5.18 (USS FPEIS/PRMPAs, pp. 5-150–5-153), Tribes must be consulted early and often so as to identify Tribal-specific resources, impacts, and mitigation strategies. The BLM will continue to work with Tribes who request consultation in finalizing and implementing this planning effort, including during project-specific NEPA reviews for utility-scale solar projects.

Regarding the Bahsahwahbee area in particular, this area would be excluded from solar development under Exclusions #16 and #17 because it is a TCP listed on the NRHP and recognized by the BLM. Portions of the Bahsahwahbee area are also within the Swamp Cedar ACEC, which is excluded under Exclusion #1.

The USS FPEIS/PRMPAs does not make any decisions that limit religious practices or freedoms. The USS FPEIS/PRMPAs would not authorize any solar projects, and the BLM’s intention in this planning process is to identify lands where development is most feasible, not to determine that all such lands are suitable for development. The BLM would evaluate potential impacts on access for religious purposes during project-specific reviews.

The BLM complied with all consultation requirements in preparation of the USS FPEIS/PRMPAs, adequately inventoried the area of potential effects for cultural resources, and has complied with

Section 106 of the NHPA. The USS FPEIS/PRMPAs do not affect any religious freedoms or practices. Accordingly, this protest issue is denied.

Violations of Other Federal Laws and Policies

Confederated Tribes of the Goshute Reservation and Ely Shoshone Tribe

Amos Murphy and Alvin Marques

Issue Excerpt Text: On April 27, 2022, President Biden signed EO 14072, creating a national policy for “Strengthening the Nation’s Forests, Communities, and Local Economies”. But BLM’s Western Solar Plan, particularly regarding Bahsahwahbee and the swamp cedar forests in Spring Valley, violates that federal policy in the following ways: * BLM’s FPEIS works against the stated Section 1 policy of EO 14072, as it seeks to destroy and not strengthen the swamp cedar forests, running counter to the policy’s stated benefits of clean air and water, sustaining plants and animals fundamental to combating global climate and biodiversity crises, and that hold special importance to Tribal Nations. The BLM also strips away the policy’s stated intention for people to “engage in recreation that revitalizes our souls and connects us to history and nature.” Moreover, the BLM FPEIS by destroying Bahsahwahbee and the swamp cedar forests would strip away the benefit they provide now and will provide in the future for the local economy, specifically tourism and recreation sectors of the economy. * BLM’s FPEIS does not comply with the EO 14072 policy to consult with tribal governments to conserve the swamp cedar forests, to support indigenous traditional ecological knowledge and cultural and subsistence practices, to honor Tribal treaty rights, and deploy practices that improve the resilience of such lands, waters, and communities. * BLM’s FPEIS does not comply with EO 14072 stated policy to support collaborative, locally led conservation solutions. That BLM made Bahsahwahbee and its swamp cedar forests available for industrial solar development runs exactly opposite our Tribal Nations’ locally led and long-running efforts to protect the swamp cedar forest and our active locally/Tribally led Bahsahwahbee National Monument campaign to preserve and commemorate this historically, culturally, religiously, and naturally unique and iconic part of America. * BLM’s Western Solar Plan and associated FPEIS would violate and run counter to required actions, provisions, and policies in Section 2, 3, and 4 of EO 14072.

Nye County

Megan Labadie

Issue Excerpt Text: Neglect of Water Resource Protection under the Clean Water Act (CWA) and Nevada Revised Statute (NRS) 278.020 The EIS does not fully comply with the CWA, which aims to restore and maintain the integrity of the nation’s waters. By allowing water-intensive solar thermal projects in arid regions, the EIS disregards the potential for significant impacts on surface and groundwater resources. The vague “best management practices” for water use outlined in the document lack enforceable standards and do not meet the CWA’s requirement to prevent degradation of water quality or protect aquatic ecosystems. The EIS’s approach to water resource analysis is severely lacking, as it limits the scope of review to site-specific impacts without addressing the broader, cumulative effects of large-scale solar development in a region like Nye County, where water is already scarce. Cumulative impacts resulting from large-scale siting availability will significantly deplete local groundwater supplies. Focusing solely on individual project sites fails to consider the compounded strain that multiple projects across the County will place on regional water resources. This piecemeal analysis neglects the interconnectedness of groundwater systems and the potential for long-term depletion that could jeopardize agriculture, local communities, and wildlife that depend on these water sources. The CWA requires a more comprehensive evaluation of how these projects might collectively affect water quality and availability, yet the EIS sidesteps these broader obligations. A holistic, regional water analysis is

essential to avoid over-extraction and ensure the long-term sustainability of water resources in this arid region.

Nye County

Megan Labadie

Issue Excerpt Text: Failure to Address Waste Management in Accordance with the Resource Conservation and Recovery Act (RCRA) The EIS fails to adequately address waste management challenges associated with large- scale renewable energy development, contrary to the Resource Conservation and Recovery Act (RCRA), which governs the disposal of solid and hazardous waste. The construction, maintenance, and eventual decommissioning of these projects will generate significant waste, including hazardous materials like heavy metals, rare earth elements, and polymers. The EIS does not provide enforceable guidelines or long-term strategies for recycling or safely disposing of these materials, risking pollution and health hazards.

EDF Renewables Development, Inc

Devon Muto

Issue Excerpt Text: Among other things, the GIS layer appears to indicate that the Proposed Plan would exclude from development all priority desert tortoise connectivity habitat identified by USFWS and BLM in the 2012 PEIS. This presents yet another unsubstantiated departure from prior policies that have engendered serious reliance interests. Under the current Western Solar Plan, a significant amount of utility-scale solar development is allowed - and currently proposed - in priority desert tortoise connectivity habitat where the land is overlapped with a variance designation, provided special stipulations and considerations for desert tortoise impacts are followed. By excluding a large amount of public lands presently available to utility-scale solar development without explanation or assessment of its impact on the solar industry, the changes to Exclusion 2 under the Proposed Plan would once again violate national renewable energy policy and the APA.

EDF Renewables Development, Inc

Devon Muto

Issue Excerpt Text: In other words, the Proposed Plan imposes a ten percent slope exclusion as a proxy for resource-specific exclusions and protections. The obvious flaw in this logic is that the Proposed Plan already includes 21 exclusion criteria and over 200 PDFs to protect these resources with far more specificity. The FPEIS makes no case that the slope exclusion would do a better job at protecting these resources than the resource-specific protections elsewhere in the Proposed Plan. The lack of clear reason or justification for the slope exclusion alone makes it arbitrary and capricious. Furthermore, as stated in EDFR's comment letter on the DPEIS, "slope mapping is done on a coarse basis when looking at statewide information and does not always accurately reflect the conditions on the ground for a site that might fit a project but have some higher slopes." EDFR Comment Letter, p. 3. In other words, BLM does not have data precise enough to implement the Proposed Plan's 10 percent slope exclusion with any degree of accuracy. The slope of a given parcel of land also depends on the method of measurement; for example, where overall an area may have a less-than-10-percent slope, there may be small topographical features with greater than 10 percent slope, which would create a patchwork exclusion over ridges and hills even within overall flat areas. See EDFR Comment Letter p. 17 ("Slope is ... a highly variable measurement, depending on what topographic resolution you are using."). These imprecisions in the definition of the slope exclusion will inevitably lead to disorderly administration of public lands by causing the exclusion to be mapped in conflict with conditions on the ground. An exclusion based on unclear, incomplete, and/or conflicting data is arbitrary and capricious under the APA.

EDF Renewables Development, Inc
Devon Muto

Issue Excerpt Text: But a review of the rest of the FPEIS quickly reveals that the Proposed Plan would actually reduce the amount of federal land available to solar development compared to current conditions, directly contrary to the national renewable energy development policies and goals of the Energy Act of 2020, EO 14008, SO 3399, and the DOI Strategic Plan. Rather than “increase renewable energy production,” the Proposed Plan reduces presently available lands within the FPEIS 11-state planning area by 33 percent, from 47.6 million acres to 31.7 million acres, excluding almost 16 million acres from development. As separately explained above, the remaining available lands are further reduced by 206 mandatory PDFs, some of which alone would render most projects infeasible. Furthermore, the FPEIS’s unjustified departure from reasonable existing policies for pending projects would contravene SO 3399 by imposing new, burdensome requirements that will reduce in size and/or decelerate environmental review of many projects under application well before publication of the FPEIS.

Friends of Nevada Wilderness
Shaaron Netherton

Issue Excerpt Text: Lands are included for solar development that have been withdrawn by law. The National Defense Authorization Act passed and signed into law on December 23, 2022 (Public Law 117-263) expanded the Fallon Naval Air Station bombing ranges and designated Wilderness, national conservation areas and special management areas for the Fallon Paiute Shoshone Tribe. The PEIS violates this law by including the following:

- 19,700 acres of solar in the B-20 Bombing Area
- 71,283 acres of solar in the B-17 Bombing Area
- 33,136 acres of solar in the Dixie Valley Training Area (while not specifically withdrawn from solar this is an active military area and large scale solar developments are not appropriate).
- 4,366 acres of solar in the Numu Newe Special Management Area (Cultural) has previously been withdrawn.

“SEC. 2981. WITHDRAWAL AND RESERVATION OF PUBLIC LAND. “(a) WITHDRAWAL.- “(1) BOMBING RANGES.-Subject to valid rights in existence on the date of enactment of this subtitle, and except as otherwise provided in this subtitle, the land established as the B-16, B-17, B-19, and B-20 Ranges, as referred to in subsection (b), and all other areas within the boundary of such land as depicted on the map entitled ‘Churchill County Proposed Fallon Range Training Complex Modernization and Lands Bill’ and dated November 30, 2022, which may become subject to the operation of the public land laws, are withdrawn from all forms of- “(A) entry, appropriation, or disposal under the public land laws; “(B) location, entry, and patent under the mining laws; and “(C) disposition under all laws relating to mineral and geothermal leasing or mineral materials. Requested Remedy: Remove these acres before issuing the Record of Decision.

Friends of the Inyo
Kayla Browne

Issue Excerpt Text: On May 9th, 2024, the BLM published the Conservation and Landscape Health Rule, commonly known as the Public Lands Rule, advancing the BLM’s multiple-use and sustained yield mission by addressing the health and resilience of public lands. The Public Lands Rule will help safeguard the health of our public lands by ensuring the BLM protects the most intact, functioning landscapes by establishing new regulations for the use of conservation to ensure ecosystem resilience and prevent permanent impairment, unnecessary degradation, or undue degradation of public lands. Allowing solar development in the rare, intact landscapes of the easily damaged and difficult-to-restore native plant communities misidentified as previously disturbed lands violates the Public Lands Rule.

Summary:

Protestors state that the BLM's approval of the USS FPEIS/PRMPAs would violate a number of Federal laws and policies, including:

1. EO 14072 and the associated U.S. Department of Justice (DOJ) Memorandum by proposing to develop Bahsahwahbee and the swamp cedars which infringes on Tribal rights.
2. The Clean Water Act (CWA) and Nevada Revised Statute 278.020 by allowing water-intensive solar thermal projects in arid regions.
3. The Resource Conservation and Recovery Act (RCRA) by failing to adequately address waste-management challenges associated with large-scale renewable energy development.
4. The APA and National Renewable Energy Policy by including arbitrary exclusion criteria and programmatic design features that significantly burden the solar industry.
5. The National Defense Authorization Act by designating lands as available for solar development that have been withdrawn and expanded for Fallon Naval Air Station bombing ranges.
6. The Public Lands Rule by allowing solar development in lands misidentified as previously disturbed lands.

Response:

Protestors asserted that the BLM would violate a number of Federal laws and policies if it were to finalize the USS FPEIS/PRMPAs. Contrary to those protest points, the PRMPAs would comply with applicable law and policy, including for the following reasons:

1. EO 14072, signed on April 22, 2022, mandates that the Federal government categorize and monitor old-growth trees on Federal lands and directs Federal agencies to strengthen mature and old-growth forests, which includes the swamp cedar forests of concern by protestors. Under Exclusion #18 (USS FPEIS/PRMPAs, p. 6-12), old-growth forests identified in applicable land use plans are excluded from solar. This exclusion is unmapped, and the BLM would identify any excluded old-growth forests during project-specific evaluations. Other old-growth resources, such as old-growth desert vegetation, would also be considered in project-specific analysis, and impacts on sensitive resources could be avoided or minimized, as appropriate. As described in the *Historic and Cultural Resources and Religious Practice* section of this report, the Bahsahwahbee area is excluded from solar development under Exclusion #16 and Exclusion #17 because it is listed on the NRHP, and the BLM recognizes it as a TCP. Portions of the Bahsahwahbee area are also within the Swamp Cedar ACEC, which is excluded under Exclusion #1. Nothing about this approach to accounting for old-growth trees and forests is contrary to the requirements of EO 14072.
2. FLPMA requires that, when preparing land use plans, the BLM must "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans," including the CWA (FLPMA, § 202(c)(8)). States and the U.S. Environmental Protection Agency have primacy with regard to implementation of the CWA. The BLM has no regulatory authority related to use of water or enforcement of water quality laws. Impacts of potential solar development on water resources are evaluated at a programmatic level in Section 5.20 (USS FPEIS/PRMPAs, pp. 5-179–5-186). The analysis includes estimates of construction- and operations-related water uses based on estimated generation capacity under the RFDS. However, the USS FPEIS/PRMPAs does not authorize any specific project. Project developers (and the BLM) would be required to comply with all applicable laws and regulations, including state and Federal water use and quality standards when reviewing and developing solar projects. Programmatic design features and project guidelines in the USS FPEIS/PRMPAs would mitigate impacts on water resources, and several measures refer to applicable CWA requirements (USS FPEIS/PRMPAs Appendix B, p. B-23). All solar projects

- will be subject to additional analysis of possible effects on water resources, as appropriate.
3. The RCRA gives the U.S. Environmental Protection Agency the authority to control hazardous waste. Potential impacts from solar energy projects related to hazardous waste are disclosed in the USS FPEIS/PRMPAs. Regarding potential releases of hazardous materials to the environment, Section 4.7 (USS FPEIS/PRMPAs, p. 4-53) and Design Feature HMW-2 (USS FPEIS/PRMPAs Appendix B, pp. B-22–B-23) discuss the requirement to develop and implement a Hazardous Materials Waste Management Plan for any future utility scale solar project within the USS FPEIS/PRMPAs planning area. This would include procedures for dealing with environmental releases through the course of normal activities and as a result of a catastrophe. Design Feature HMW-13 requires that, at the end of their life, solar panels be recycled unless recycling facilities are unavailable (USS FPEIS/PRMPAs, p. B-24). USS FPEIS/PRMPAs Section 5.7.1.3 also notes that, given current Federal emphasis on resolving the environmental issues associated with future disposal of large volumes of solar panels, it is likely that solar panel recycling facilities will be available by the time that these solar facilities on BLM-administered lands reach decommissioning (USS FPEIS/PRMPAs, pp. 5-95–5-96). It is also noted that future developers and the BLM will assess the ability for local disposal facilities to accommodate the hazardous material and waste derived from decommissioning at the project level. Under Design Features HMW-4, HMW-7, and HMW-8, developers are subject to applicable laws regarding the disposal of hazardous material and waste, regardless of location (USS FPEIS/PRMPAs, p. B-23). Regarding concerns about cradle-to-grave impacts, Appendix I includes discussion of the development phases of solar energy development, including discussion of potential hazardous materials.
 4. The exclusions and programmatic design features in the USS FPEIS/PRMPAs respond to the purpose and need of this planning action, including updating solar planning in the western states to reflect changes in solar energy-generation technology and increased interest in solar energy projects in areas outside of the southwest. The resource-based exclusions for wildlife, including the endangered Mojave desert tortoise, incorporate updated information about important habitat areas identified through coordination with USFWS. Regarding the slope exclusion, the BLM explained in the USS FPEIS/PRMPAs that, although technological advances since the 2012 Western Solar Plan may enable solar projects in steeper areas, potential resource-related issues associated with development on high slope lands, such as visual impacts and soil erosion, remain (USS FPEIS/PRMPAs Appendix M, p. M-27). If, during project-specific review, the BLM determines that a proposed project includes exclusion areas, then the BLM may consider modifying the proposal or pursuing a project-specific plan amendment to address any inconsistencies. The BLM updated programmatic design features from the 2012 Western Solar Plan to incorporate the BLM's additional experience with solar energy project review and improve consistency across the planning area. The BLM believes that the exclusion criteria and design features provide an appropriate balance between allowing flexibility for project siting on BLM-administered lands, while mitigating impacts on sensitive resources. Furthermore, acknowledging that changing management could affect projects that are currently under review, the BLM's USS FPEIS/PRMPAs include a process for transitioning between plans in a way that reduces potential impacts to solar development proponents. See the *NEPA – Pending Applications* section of this report for more information. The USS FPEIS/PRMPAs are not arbitrary and capricious nor otherwise in violation of the APA because they appropriately balance Federal policies promoting resource protection and renewable energy development.
 5. Regarding lands withdrawn under the National Defense Authorization Act or other law, these areas would be further assessed during project-specific review. If the BLM receives an application for a solar project in an area subject to a military withdrawal, then the BLM would determine whether utility-scale solar would be consistent with the terms of the withdrawal and with any applicable law more broadly, and, if not, would work with the applicant to modify the

- proposal to be consistent with law or otherwise deny the application.
6. The proposed planning decision would not violate the Conservation and Landscape Health Rule (also known as the Public Lands Rule). The Public Lands Rule itself would not preclude solar development in any particular area, and, in any event, the planning decision to identify lands as available for solar projects would not approve any such projects. As for the specific concern that the BLM may be misidentifying “previously disturbed” lands, the BLM is using appropriate criteria and data to identify previously disturbed lands within the planning area at a programmatic level. In response to public and cooperating agency feedback, the BLM adjusted those criteria and the data used to identify lands as previously disturbed between the DPEIS and USS FPEIS/PRMPAs to better reflect appropriate parameters for arid versus non-arid lands (USS FPEIS/PRMPAs Appendix K). At the same time, the BLM recognizes that a programmatic identification of lands as previously disturbed may be overinclusive. For that reason, and to ensure that lands are properly identified as previously disturbed and that restored lands are not used for solar development, the BLM added a design feature that requires project developers to verify that lands are, in fact, previously disturbed where projects are proposed on lands identified at the programmatic level as previously disturbed that are more than 15 miles from existing or planned transmission lines (i.e., lands that would not otherwise be available by virtue of the transmission proximity criterion). If the developer cannot verify that the lands proposed for use in a solar project are in fact previously disturbed (and assuming the lands are more than 15 miles from an existing or planned transmission line), then the lands would not be considered available. In this way, the USS FPEIS/PRMPAs would identify areas as previously disturbed.

The BLM’s USS FPEIS/PRMPAs are consistent with applicable Federal laws and policies. Accordingly, this protest issue is denied.

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