



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

Supplement

**Gemini Solar Project
Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

August 14, 2020

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Reason for Supplement

The Gemini Solar Project Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (PRMPA/FEIS) was posted to the BLM website on May 11, 2020. Following the release of the report, the BLM discovered that an additional protest letter had been received at the post office but had not been delivered to the BLM. Consequently, this letter and any issues raised in the letter were not included in the original protest report. Because this letter met all the requirements for filing a valid protest (43 CFR 1610.5-2), the BLM has treated it as a valid protest letter. In this supplemental protest resolution report the BLM ***will respond*** to all valid protest issues that were not already addressed in the BLM's original protest report posted on May 11, 2020.

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Acronyms

ACEC	Area of Critical Environmental Concern
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
NEPA	National Environmental Policy Act
NOI	Notice of Intent
PRMPA	Proposed Resource Management Plan Amendment
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROW	Right-of-way

Protesting Party Index

Protester	Organization	Letter ID	Determination
Kevin Emmerich, Laura Cunningham ¹	Basin and Range Watch, Western Watersheds Project	PP-NV-GSPRMP-19-006	Denied – Issues and Comments

¹This letter was cosigned by multiple parties. In this supplement, it is referenced as Kevin Emmerich et al., Basin and Range Watch et al.

FLPMA – Areas of Critical Environmental Concern

Kevin Emmerich et al.

Basin and Range et al.

Issue Excerpt Text: In particular, we asked for a conservation status that designated the region as an Area of Critical Environmental Concern (ACEC) particularly for the desert tortoise and rare plants. Because the desert tortoise is designated as Threatened under the Endangered Species Act, a conservation alternative should be considered a “reasonable alternative”.

Summary:

- The BLM violated FLPMA by: Failing to adequately consider a conservation alternative that designates an ACEC

Response:

In FLPMA Section 103(a), an ACEC is defined as “an area on BLM-administered 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 ensure safety from natural hazards.” This special designation is used to delineate areas for special management to protect important and relevant resource values. Furthermore, FLPMA Section 202(c)(3) requires that, in the development and revision of land use plans, the BLM give priority to the designation and protection of ACECs. The implementing regulations at 43 CFR § 1610.7-2 provide the agency with direction for the identification and consideration of ACECs for designation and protection during the resource management planning process. However, there is no statutory or regulatory requirement that the BLM designate any or all ACECs identified or considered during the planning process. BLM Manual 1613, Areas of Critical Environmental Concern, establishes the agency’s policy and procedures for the evaluation and designation of ACECs as part of the land use planning process.

Generally, the BLM must review all nominated ACECs for the presence of relevant and important values, which is one of the two requirements for a nominated ACEC to be considered for potential ACEC designation (BLM Manual Section 1613.11). The BLM must also review those areas found to have relevant and important values for a need for special management attention, which is necessary for the BLM to designate the area as an ACEC (BLM Manual Section 1613.12). If a potential ACEC meets the criteria, the BLM must include it as recommended for designation in at least one alternative (BLM Manual Section 1613.22B).

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

1790-1 at 6.6.3).

The BLM's purpose and need was reasonably focused on responding to the right-of-way (ROW) application submitted by the Applicant in accordance with FLPMA's multiple-use mandate and other Federal statutory and policy directives regarding the development of renewable energy on public lands. The Gemini Solar Project PRMPA/FEIS considered a range of reasonable alternatives to the proposed action designed to meet the BLM's purpose and need for action.

The Gemini Solar Project PRMPA/FEIS identified two alternatives to the Proposed Action and one no action alternative. Alternatives to the Proposed Action were developed by the BLM to avoid or reduce various resource conflicts (Gemini RMPA/FEIS, Appendix D, pp. 7, Figure 2-4, Resource Constraints). However, the BLM also analyzed several alternative sites, technologies, and methods but eliminated these potential alternatives from further consideration in accordance with 40 CFR § 1502.14(a), BLM Instruction Memorandum 2011-059, and BLM NEPA Handbook, H-1701 at 6.6.3. Section 2.1.2 of the Gemini Solar Project PRMPA/FEIS lists the eight criteria used to eliminate alternatives from further analysis. Many of the alternatives brought up in protest were eliminated from detailed study following the Gemini Solar Draft RMPA/EIS. Reasons for elimination are described in section 4 of the *Alternatives Report* (pp. 4-1 to 4-8).

A conservation alternative was not considered. Creation of such an area instead of the Project does not meet the purpose and need to respond to the Applicant's application for a right-of-way (ROW) grant to construct, operate, and decommission a solar PV facility on public lands in compliance with FLPMA and BLM ROW regulations. The evaluation and consideration of an RMP amendment to designate the Project area as a Conservation Area or to evaluate and consider this area as an ACEC is outside the scope of this plan amendment process. The BLM is not obligated to evaluate ACEC nominations during every plan amendment process, particularly plan amendments that are small in scope and targeted to a particular change in allocation, such as this plan amendment process. The NOI published on July 13, 2018 identifies the preliminary issues and planning criteria from which the scope and process for developing the plan amendment and associated EIS were determined. The preliminary issues identified include threatened and endangered species, biological resources, visual resources, cultural resources, tribal interests, recreation, cumulative impacts, the Congressionally designated Old Spanish National Historic Trail, and habitat for the federally listed desert tortoise. The planning criteria identified includes a change to the VRM Class allocation to a Class IV because the project would not be in conformance with the VRM Class II and III allocations in the 1998 Las Vegas RMP. Notably, the NOI did not request ACEC nominations or include the evaluation of ACECs as planning issue. Accordingly, the evaluation of ACECs for designation was outside the scope of this narrow plan amendment process.

For the reasons stated above, this protest is denied.