

**RECORD OF DECISION**

**for the**

**Chevron Energy Solutions Lucerne Valley Solar Project**

**and**

**Amendment to the California Desert Conservation Area Plan**

Lead Agency:

*United States Department of Interior  
Bureau of Land Management*

*Environmental Impact Statement FES-10-40  
Case File Number: CACA-49561*

*Chevron Energy Solutions Lucerne Valley Solar Project  
Decision to Amend the RMP and to Grant Right-of-Way*

*United State Department of the Interior  
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## **Executive Summary**

This document constitutes the Record of Decision (ROD) of the United States Department of Interior (DOI) and Bureau of Land Management (BLM) for the Lucerne Valley Solar Project and Amendment to the California Desert Conservation Area Plan (CDCA Plan). Chevron Energy Solutions (CES) applied for a right-of-way (ROW) grant from BLM under Title V of the FLPMA, 43 United States Code (USC) 1701, to approve the Lucerne Valley Project. BLM's actions were to determine whether to approve the ROW grant, to approve the grant with modifications or to deny the grant. If BLM decides to approve the ROW grant, an amendment to the CDCA Plan is necessary to include the Lucerne Valley Project site for solar use in the CDCA Plan because it was not already identified as a site for power generation in the Plan.

This ROD includes a CDCA Plan Amendment, ROW grant decision and a route relocation decision. These decisions approve a site location for and approve the Lucerne Valley Project 45-Megawatt (MW) Alternative which was analyzed in the Final Environmental Impact Statement (Final EIS) as BLM's Agency Preferred Alternative, which is also referred to as the Selected Alternative in this ROD. The Selected Alternative encompasses approximately 422 acres of BLM lands in San Bernardino County, California. Amendment of the CDCA Plan is required to allow a solar energy generation project on this site. These decisions reflect careful consideration and resolution of the issues by BLM and the DOI, and were thoroughly analyzed during the Lucerne Valley Project environmental review process.

This ROD applies only to BLM-administered lands. The DOE is responsible for issuing its own decisions and applicable authorizations for the Lucerne Valley Project.

The proposed CDCA Plan Amendment was reviewed by the Governor's Office of Planning and Research and was found to be consistent with State and local plans.

### **Decision Rationale**

These decisions fulfill legal requirements for managing public lands. Granting the ROW to CES contributes to the public interest in developing renewable power to meet State and federal renewable energy goals. The stipulations in the grant ensure that authorization of the Lucerne Valley Project will protect environmental resources and comply with environmental standards. These decisions reflect careful balancing of many competing public interests in managing public lands. These decisions are based on comprehensive environmental analysis and full public involvement. The BLM engaged highly qualified technical experts to analyze the environmental effects of the Lucerne Valley Project. During the scoping process and following the publication of the Draft EIS, members of the public submitted comments that enhanced the BLM's consideration of many environmental issues relevant to this project. The BLM, DOE, DOI, and other consulted agencies used their expertise and existing technology to address the important issues of environmental resource protection. The BLM and DOI have determined that the mitigation measures contained in the Final EIS and the Biological Opinion (BO) avoid or minimize environmental harm to the maximum extent practicable.

## **1.0 Decisions**

### **1.1 Background**

This ROD for CES' Lucerne Valley Solar Project and Associated Amendment to the California Desert Conservation Area Plan (CDCA Plan) approves the construction, operation, maintenance, and termination (which includes decommissioning) of the proposed Lucerne Valley Project on public lands in San Bernardino County, California, as analyzed in the Lucerne Valley Project Final EIS and Proposed Land Use Plan Amendment and as noticed in the August 13, 2010, Federal Register. This approval will take the form of a Federal Land Policy and Management Act (FLPMA) ROW grant, issued in conformance with 43 USC Title V of FLPMA, and implementing regulations found at 43 CFR Part 2800. In order to approve the site location for the Lucerne Valley Project, the BLM also approves a land use plan amendment to the CDCA Plan of 1980, as amended. The BLM also approves the relocation of a portion of Zircon Road, a BLM open route which traverses the approved project site.

The ROW grant will allow CES the right to use, occupy, and develop the described public lands to construct, operate, maintain, and terminate up to a 45-MW solar energy facility in the Lucerne Valley that was identified and evaluated in the Final EIS. This decision is conditioned, however, on implementation of mitigation measures and monitoring programs as identified in the Final EIS, the BO issued by the US Fish and Wildlife Service (USFWS), and the issuance of all necessary local, state, and federal approvals, authorizations and permits. It is also conditioned on the energy development capacity not exceeding the available capacity in the 33-kV distribution line to which this project connects.

This decision approves the Lucerne Valley Project Agency Preferred Alternative as analyzed in the Final EIS, which is also referred to as the Selected Alternative in this ROD. The up to 45-MW Selected Alternative will be built on approximately 422 acres of BLM land.

One ROW grant will be issued to Chevron Energy Solutions, for a term of 30 years with a right of renewal so long as the lands are being used for the purposes specified in the grant. Chevron Energy Solutions, may, on approval from the BLM, assign the ROW grant to another party in conformance with the Part 2800 ROW regulations. Construction of the project may be phased; however, the BLM typically requires the initiation of project construction within two years of the issuance of a ROW grant. In addition, initiation of construction will be conditioned on final BLM approval of the construction plans. This approval will take the form of an official NTP for each phase or partial phase of construction.

CES has applied for a ROW grant from the BLM Barstow Field Office for the up to 45-MW project located on approximately 422 acres of public land managed by the BLM in the southwest part of San Bernardino County, California, approximately 7 miles east of the community of Lucerne Valley (Appendix 4). The Lucerne Valley Project is a photovoltaic solar electrical generating facility and related amenities. The photovoltaic panels may be fixed tilt or may be single axis tracking. In addition to the solar panels, the other main features of the project

include a connection to an existing 33 kilovolt (kV) electrical distribution line located adjacent to the project site, a switchyard, communication line, site security and fencing, parking, and a maintenance building (Appendix 4).

CES cannot begin construction until compliance with federal, state and local laws and regulations is completed. Once federal, state and local approvals, permits and authorizations are obtained by CES, BLM will issue an NTP for the first phase of the project. Construction is planned to begin in late 2010 or early 2011. Construction of phase one will take less than a year. The project is expected to be operational and deliver power to the grid in 2011. Phase two is contingent on available capacity in the 33 kV line. It is unknown when Southern California Edison (SCE) will complete their study to determine if there is available capacity in the line. If the SCE study is complete and there is available capacity, phase two could begin construction in late 2011 and become operational in 2012. The approval to build phase two limits the capacity of phase two to the available capacity in the 33 kV line, but this capacity approval will not exceed 25 kV.

This solar project is one of the first solar energy generation projects approved on public lands. The BLM worked closely with interested parties, including the public. Through this process, the BLM has gained insights into the complexity of permitting renewable energy projects on diverse public lands, and the need for flexibility throughout the process. The BLM will continue to engage agency partners and the public in this constantly evolving environment.

### **1.1.1 Application/Applicant**

CES submitted a Standard Form 299 application with the BLM Barstow Field Office for a ROW grant. CES is a private enterprise that is a division of Chevron USA, Inc. The company recently received long-term funding from a strategic partner, Fotowatio Renewable Ventures (Fotowatio). Fotowatio is an international developer and operator of solar renewable energy production in the United States, Spain, and Italy. The unique combination of CES' technical expertise and Fotowatio's track record in developing large-scale renewable energy and infrastructure projects provides a strong platform from which to realize the project.

### **1.1.2 Purpose and Need**

The BLM's purpose of and need for the Lucerne Valley Project is to respond to CES' application under Title V of the FLPMA (43 USC 1701) for a ROW grant to construct, operate, maintain, and terminate a solar energy generation facility on public lands in compliance with the FLPMA, BLM ROW regulations, and other applicable federal laws. Specifically, the BLM has decided to grant a ROW to CES for the up to 45-MW Selected Alternative. The BLM's actions also include relocating a portion of Zircon Road that currently traverses the project area. The CDCA Plan is specifically amended by this ROD to allow a solar energy generation facility on this site.

### **1.1.3 EIS Availability, 30 Day Review, Protests**

The BLM prepared a Draft EIS for the applicant-proposed 45-MW project, no action/no construction alternatives, and several construction alternatives. The Draft EIS was circulated for agency and public review on February 5, 2010; those comments and BLM's responses are provided in the Draft EIS (Appendix M) and the Final EIS (Appendix N). Comments on the Draft EIS were utilized to revise the Final EIS. After issuing this ROD, the BLM will publish a Notice of Availability of the ROD in the Federal Register.

Copies of the Final EIS (DOI Control No. FES 10-40), dated August 2010, are available at the BLM Barstow Field Office (2801 Barstow Road, Barstow, California 92311) and the BLM California Desert District Office (22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553). The Final EIS is also available online at the BLM website at: [http://www.blm.gov/ca/st/en/fo/barstow/chevron\\_energy\\_solutions.html](http://www.blm.gov/ca/st/en/fo/barstow/chevron_energy_solutions.html)

The FEIS was available for a 30-day public review and protest period from August 13, 2010 to September 12, 2010. The comments that were submitted on the FEIS and the BLM's responses are included in Appendix 1, Response to Comments on the Final EIS. The protests have been resolved by the Director.

### **1.1.4 Authority under FLPMA and NEPA**

#### **1.1.4.1 Bureau of Land Management Authorities**

**FLPMA.** The FLPMA establishes policies and procedures for management of public lands. In Section 102(a)(8) of the FLPMA, Congress declared that 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; 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 USC Part 1701(a)(8)).*

Section 202 of the FLPMA and the regulations implementing the FLPMA land use planning provisions (43 CFR Subparts 1601 and 1610) provide a process and direction to guide the development, amendment, and revision of land use plans for the use of the public lands.

Title V of the FLPMA, 43 USC 1761–1771, provides the authority for the issuance of a ROW grant on, over, under, and through the public lands for systems for generation, transmission, and distribution of electric energy. Implementation of the statutory authority for ROW authorizations is detailed in the 43 CFR Part 2800 regulations. The BLM Authorized Officer (AO) administers the ROW grant and ensures compliance with its terms and conditions. The AO is

any employee of the United States Department of the Interior (DOI) to whom the authority to perform the duties described in 43 CFR Part 2800 has been delegated. This authority is derived from the authority of the Secretary of the Interior, and may be revoked at any time. The authority to approve all actions pertaining to the granting and management of Title V ROWs on public lands is delegated to the respective BLM State Directors (BLM Manual 1203, Appendix 1, p.33). In California, the authority of the BLM State Director to approve actions pertaining to the granting and management of Title V ROWs has been further delegated to the Field Manager (Barstow Field Office) who will be responsible for managing this grant.

**NEPA.** Section 102(c) of NEPA (42 USC 4321 et seq.) and the Council on Environmental Quality (CEQ) and DOI implementing regulations (40 CFR Parts 1500–1508 and 43 CFR Part 46) provide for the integration of NEPA into agency planning to insure appropriate consideration of NEPA’s policies and to eliminate delay.

When taking actions such as approving ROW grants and CDCA Plan Amendments, the BLM must comply with the applicable requirements of NEPA and the CEQ NEPA regulations. Compliance with the NEPA process is intended to assist federal officials in making decisions about a project that are based on an understanding of the environmental consequences of the project. The Draft EIS, Final EIS, and this ROD document BLM’s compliance with the requirements of NEPA for the Lucerne Valley Project.

**CDCA Plan.** In furtherance of its authority under the FLPMA, BLM manages public lands in the California Desert District pursuant to the CDCA Plan, and its amendments. The CDCA Plan must be further amended to allow a solar energy generation project on the project site.

**Guidance and Regulations.** The BLM processes ROW applications for solar development in accordance with 43 CFR Part 2804.25 and the BLM’s 2008 “Guidance for Processing Applications for Solar Power Generation Facilities on BLM Administered Public Lands in the California Desert District” which states:

*When all or part of a proposed renewable energy project is located in a designated utility corridor, the impacts of occupying the utility corridor must be analyzed, along with alternatives that would help mitigate the impacts to the utility corridor. The EIS prepared for a proposed solar energy project should analyze the impact that the project would have on the ability of the utility corridor to serve its intended purpose, i.e., would the corridor continue to retain the capacity to site additional utilities in the corridor or would the project so constrain the available land within the corridor that it would limit the corridor’s ability to locate additional linear facilities, e.g. transmission lines, pipelines, etc.*

As discussed in Section 3.9.2.3, Existing Utility Corridor, in the Final EIS, the project site extends 1.4 miles into the 3-mile wide “contingent” Utility Corridor “S”.

The potential project impacts related to occupying a utility corridor are evaluated in the Final EIS (Section 4.9, Land Use and Realty). In the immediate vicinity of the project site and within Utility Corridor “S”, additional capacity is available for future projects.

**Other Authorities and Policies.** In conjunction with the FLPMA, BLM authorities also include:

1. Energy Policy Act (119 Statutes 594, 600), Section 211, which states “It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on public lands with a generation capacity of at least 10,000 megawatts of electricity.”
2. BLM’s Solar Energy Development Policy (April 4, 2007) which states the BLM’s general policy is issued under Instruction Memorandum 2007-097 *Solar Energy Development Policy* to facilitate environmentally responsible commercial development of solar energy projects on public lands and to use solar energy systems on BLM facilities where feasible. Applications for commercial solar energy facilities will be processed as ROW authorizations under Title V of the FLPMA and Title 43, Part 2800 of the Code of Federal Regulations (CFR). Commercial concentrating solar power (CSP) or photovoltaic (PV) electric generating facilities must comply with BLM’s planning, environmental, and ROW application requirements, as do other similar commercial uses.
3. Executive Order 13212 (May 18, 2001) which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the “...production and transmission of energy in a safe and environmentally sound manner.”
4. Secretarial Order 3285 (March 11, 2009), which “...establishes the development of renewable energy as a priority for the Department of the Interior.”

## **1.2 Information Developed Since the Final EIS**

Since the preparation and publication of the Final EIS, there have been no project modifications or additions that resulted in the development of new information.

The only new information developed since the Final EIS is additional hydrologic modeling that resulted in a revised hydrologic study (Final EIS Response to Comments, Appendix N). The information in Appendix 6, Revised Hydrology Report Summary, derived from the revised hydrology study described above, further describes the hydrologic function of the project site as it relates to engineering and construction. Based on the information in the initial and revised hydrologic studies, BLM has determined that this project should have little impact on water flow from the site. The revised study’s predictions of differences between pre- and post-development hydrology are the same as the initial study. The only change anticipated from the revised model is a difference in the magnitude of expected storm flow events which was determined to not substantially change the impacts identified in the Final EIS.

### **1.3 Decisions Being Made (40CFR 1505.2(a))**

#### **1.3.1 Bureau of Land Management Right-of-Way Grant**

Under federal law, the BLM is responsible for processing requests for ROW grants to determine whether and to what extent to authorize proposed projects such as renewable energy projects and other appurtenant facilities on land it manages. Because the project is a privately initiated venture that would be sited on lands managed by the BLM, CES applied for a ROW grant from BLM. The BLM concludes that the acreage approved by the ROW grant is the acreage the Lucerne Valley Project will occupy and that is necessary for constructing, operating, maintaining, and terminating the authorized facilities on public lands. In addition, BLM has limited the grant to those lands necessary to protect public health and safety, which will not unnecessarily damage the environment, and will not result in unnecessary or undue degradation of the public lands. These determinations and the approval of the grant are based on the analysis and the conditions in the Final EIS, the BO, and other laws and regulations applicable to public lands. On approval of the ROW grant, CES will be authorized to construct and operate the project if it meets the requirements specified in the ROD. The ROD requires the applicant to secure all necessary local, state and federal permits, authorizations and approvals before the BLM will issue an NTP for the first phase of the project. On receipt of the NTP and consistent with it, CES will be able to construct and operate the project, including facility construction and all associated aspects of the project including the upgrade of the Santa Fe Fire Road.

#### **1.3.2 Land Use Plan Amendment**

The management of BLM lands in the California Desert District is governed by the CDCA Plan and its amendments. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a specific project site be considered through the CDCA Plan Amendment process. The Planning Criteria for considering a CDCA Plan Amendment are discussed in the Final EIS (Chapter 4.9, Land Use Plan Amendment Analysis) and in Chapter 7 of the CDCA Plan.

The project site is currently classified as Multiple-Use Class (MUC) M (Moderate Use) in the CDCA Plan. The CDCA Plan provides guidance concerning the management and use of BLM lands in the California Desert while balancing other public needs and protecting resources. The CDCA Plan contemplates industrial uses analogous to the solar use analyzed by the proposed plan amendment, including utility ROWs outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p.95). The CDCA Plan provides in its guidelines that solar development in Class M areas "...may be allowed after NEPA requirements are met." (CDCA Plan, p. 15) In the CDCA Plan ROD, the Assistant Secretary for Land and Water Resources (ASLW) discussed remaining major issues in the final CDCA Plan.

The Class M classification is intended to balance higher-intensity uses, such as mining, livestock grazing, recreation, and energy, with the protection of sensitive, natural, scenic,

ecological, and cultural resource values. Based on the MUC Guidelines provided in Table 1 in the CDCA Plan, solar uses are conditionally allowed in the MUC M designation contingent on NEPA requirements being met for the proposed use. The Final EIS and ROD for the Lucerne Valley project meet NEPA requirements. The CDCA Plan is specifically amended by this ROD to allow the Lucerne Valley Project Selected Alternative to be located on public lands as identified in the ROW grant (Serial number CACA-47740).

### **1.3.3 Revisions to Open Routes**

In 2003, in an amendment to the CDCA Plan, the BLM identified and designated many routes of travel in the *Western Mojave Desert Off Road Vehicle Designation (WEMO)* plan amendment. This plan amendment clarified, updated, and assigned designations (Open, Closed, or Limited). One open route, Zircon Road, traverses the project site.

The process for changing routes on BLM lands is described in the CDCA Plan Motorized Vehicle Access Element and in BLM guidance, the Comprehensive Travel and Transportation Management (CTTM) policy (IM 2008-14). These revision processes recognize the changing contexts and need for flexibility in allowing OHV public access on BLM-managed lands. The Motorized Vehicle Access Element of the CDCA Plan (page 82) describes the process for changing the designations of vehicle access routes as:

*Decisions affecting vehicle access, such as area designations and specific route limitations, are intended to meet present access needs and protect sensitive resources. Future access needs or protection requirements may require changes in these designations or limitations, or the construction of new routes... Access needs for other uses, such as roads to private lands, grazing developments, competitive events, or communication sites, will be reviewed on an individual basis under the authority outlined in Title V of FLPMA and other appropriate regulations. Each proposal would be evaluated for environmental effects and subjected to public review and comment. As present access needs become obsolete or as considerable adverse impacts are identified through the monitoring program, area designations or route limitations will be revised. In all instances, new routes for permanent or temporary use would be selected to minimize resource damage and use conflicts, in keeping with the criteria of 43 CFR 8342.1.*

The administrative process for revising route designations given the evolving and changing priorities for lands under its control is expressed in the BLM's travel management policy (IM 2008-14). According to that policy, changes to a travel network in a limited area may be made through activity level planning or with site-specific NEPA analysis. While changes to area designations (e.g. limited to open) require a plan amendment, changes to route designation (e.g. open to closed, closed to open) do not require a land use plan amendment.

It is DOI's decision to authorize the BLM to issue a route designation decision to relocate Zircon

Road by closing the segment of the road that traverses the project area and constructing a new relocated portion which will be designated as open. The Zircon Road relocation is part of the POD and CES will reroute the road as mitigation to reduce impacts to recreation access. The route designation decision is not part of the ROW grant.

Rerouting Zircon Road through the project area was described in the Final EIS as a land use plan decision. However, BLM guidance specifies that “[a]ny modifications in the transportation network will occur through activity-level planning or site-specific NEPA.” *Clarification of Guidance and Integration of Comprehensive Travel and Transportation Management Planning into the Land Use Planning Process* (Instruction Memorandum 2008-014, Oct. 27, 2007). Rerouting Zircon Road as part of the Lucerne Valley Solar Project meets the intent of IM 2008-14 for rerouting a road as part of activity level planning in compliance with the NEPA process. Moreover, rerouting this road through an implementation decision also achieves greater consistency with the BLM’s approach to route designations in other solar development planning efforts in California, all of which also comply with the guidance in IM 2008-014. Approval of the rerouting of Zircon Road through an implementation level decision rather than through a planning decision is a minor administrative change in the processing of the decision and does not affect the environmental impacts of the proposal or constitute a substantial change to the proposed action.

### **1.3.4 What is Not Being Approved**

During pre-application, CES contacted BLM to evaluate a number of potentially feasible sites. The initial project site was evaluated in the Final EIS as Alternative 3. However, to reduce impacts to resources, and to reduce to ROW size to the minimum size required to construct the project, BLM also evaluated Alternative 4 in the Final EIS which removed approximately 94 acres from the project area.

The ROW grant application submitted to the BLM by CES proposed the development, operation, maintenance and decommission of a photovoltaic power plant capable of generating 45 MW of electrical solar power. Five alternatives were developed for full consideration in the Final EIS. They included a no action alternative, a land use plan amendment without construction alternative, the applicant’s proposal, a modified site layout alternative to reduce impact on resources, and a smaller, 30-MW alternative.

After consideration of the impact analysis in the Final EIS and comments from the public, federal and state agencies, and local groups, the Selected Alternative is the Agency Preferred Alternative in the Final EIS, a combination of Alternative 3, the Proposed Action, and Alternative 4, Modified Site Layout. The Selected Alternative includes all of the features in Alternative 4 except that the surface water would follow natural pathways as identified in Alternative 3. As a result, a total of 422 acres is included in the ROW. A total of 94 ac is not being approved as part of the Selected Alternative. The approved capacity is up to 45 MW, limited to the available capacity of the 33 kV distribution line.

## **1.4 Right-of-Way Requirements (43 USC 1764 and 1765)**

SF 2800-14 BLM (Right-of-Way Lease/Grant), the instrument to authorize the ROW grant for the project, includes the POD and all other terms, conditions, stipulations, and measures required as part of the grant authorization. Consistent with BLM policy, the Lucerne Valley Solar Project ROW grant will include a due diligence requirement for installation of facilities consistent with the approved POD. Construction of solar energy facilities must commence within two years after the effective date of the ROW grant, as well as beginning construction for subsequent phases, for the ROW holder to be compliant with the terms of the grant.

## **1.5 Summary of Conclusions**

The proposed site was chosen because of its excellent solar radiation, minimal slope, appropriate soils, fewer resource impacts compared to other locations, proximity to potential customers, and access to existing electric transmission. The selected alternative is the action alternative that provides the best balance between providing public benefits and avoiding impacts to cultural, biological and hydrological resources for the following reasons:

- Based on the conditions in the BO and mitigation measures (Appendix 5) the ongoing consultation with the USFWS during project construction and operations, many biological resources in the area are avoided or impacts to them are substantially mitigated.
- Based on the setback requirements, visual effects to local residents and travelers on Santa Fe Fire Road will be substantially mitigated.
- Based on the denial of redirecting surface water, the potential impacts to natural surface water flow will be reduced.
- Rerouting of Zircon Road will allow local and recreational travelers to have continued access to the same locations as prior to the project approval.
- Photovoltaic solar technology uses less water than other solar technologies.
- Total cost of the project is estimated at \$90,000,000, which is estimated to input \$36,100,000 into the local economy through direct, indirect and induced effects.
- Groundwater quality would not be altered. No new water sources would be developed.

Additionally, the Lucerne Valley Solar project is expected to provide climate, employment, and energy security benefits to California and the nation. The project takes a step toward meeting state and federal climate change goals. It will provide enough clean electricity to power up to 13,500 homes. The Lucerne Valley Project is expected to create 45 construction jobs, as well as 2 or 3 permanent jobs during the plant's operation (Final EIS Section 2.2.3.4 Construction).

## **2.0 Mitigation and Monitoring**

### **2.1 Required Mitigation**

The Chevron Lucerne Valley Project includes the following measures, terms, and conditions:

5. Avoidance, Minimization, and Mitigation Measures (Final EIS Appendix 6)
6. Terms and Conditions in the USFWS BO (ROD, Appendix 2)

The complete language of these measures, terms, and conditions is provided in the POD for the Selected Alternative as stipulated in the ROW grant for compliance purposes. These measures, terms, and conditions are determined to be in the public interest pursuant to 43 CFR 2805.10(a)(1).

### **2.2 Monitoring and Enforcement (40 CFR 1505.2(c))**

A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation (40 CFR 1505.2(c)). Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (40 CFR 1505.2(c)) and other conditions established in the Final EIS or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

- a. Include appropriate conditions in grants, permits or other approvals;
- b. Condition funding of actions on mitigation;
- c. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures they have proposed and that were adopted by the agency making the decision; and
- d. Upon request, make available to the public the results of relevant monitoring (40 CFR 1505.3).

The Environmental and Construction Compliance Monitoring Plan (ECCMP) for the Lucerne Valley Project will be developed and approved by the BLM before an NTP is issued for the first phase of construction.

As the NEPA federal lead agency for the Lucerne Valley Project, the BLM is responsible for ensuring compliance with all adopted mitigation measures for the project as outlined in the Final EIS. The complete language of all the mitigation measures, terms, conditions, stipulations, including those found in the BO, ROW grant, and any other federal or state approvals, is provided in the POD. The BLM has also incorporated this mitigation into the ROW grant as

terms and conditions. Failure on the part of CES, as the grant holder, to adhere to these terms and conditions could result in various administrative actions up to and including a termination of the ROW grant and requirements to remove the facility and rehabilitate disturbances.

### **2.3 Mitigation Measures Not Adopted (40 CFR 1505.2)**

The USFWS issued a BO for this project on June 10, 2010. After completion of the Final EIS and after the applicant held meetings with the California Department of Fish and Game (DFG), it was determined that DFG requirements specified in the BO may change once the DFG completes their permitting process. The BLM notified the USFWS of this situation and requested to re-initiate consultation on this project. The USFWS issued a second BO on September 29, 2010. The new BO removed all parts of the initial BO that referred to compliance with State laws or DFG and replaces the first BO.

### **2.4 Statement of All Practicable Mitigation Adopted (BLM H-1790, p.104; 40 CFR 1505.2(c))**

As required in the BLM *NEPA Handbook H-1790-1* and 40 CFR 1505.2(c), all practicable mitigation that is necessary to fully mitigate the potential effects of the project according to the federal laws, rules, policies, and regulations is adopted by this decision. Additional mitigation may be necessary to fully mitigate potential effects of the project according to state laws (including the California Environmental Quality Act), rules, policy, or regulations.

### **2.5 Coordination with Other BLM Monitoring Activities (BLM H-1790, p. 106)**

In some instances, the BLM identified potential mitigation measures for impacts to public land resources that would not be, and have not been, identified as mitigation measures required by other agencies. In those instances, individual mitigation measures were developed by the BLM which were incorporated in the ROW grant, and will be monitored and managed solely by the BLM. In addition, standard terms and conditions for approval of the use of public land were incorporated in the ROW grant and, therefore, will be enforced by the BLM as part of any ROW grant approved for the project.

The BLM is also developing a protocol for long-term monitoring of solar energy development with Argonne National Laboratories, and the U.S. Department of Energy. The draft protocol recommends the development of a comprehensive monitoring program covering a broad list of resources. The draft protocol also recommends the involvement of other federal and state agencies with a likely interest in long-term monitoring, as well as stakeholder engagement. As the protocols are finalized for this monitoring program, the BLM expects to participate fully in these endeavors and to engage solar energy applicants. As long term monitoring plans evolve, the BLM and its assigns may exercise the United States' retained right to access the lands covered by the grant, and conduct long-term monitoring activities.

## 3.0 Management Considerations

### 3.1 Decision Rationale

This decision approves a right-of-way (ROW) grant for the Lucerne Valley Solar project in accordance with the Agency Preferred Alternative (Selected Alternative) as analyzed in the Final EIS. The Bureau of Land Management (BLM) decision to authorize this activity is based on the rationale described throughout the ROD and as detailed in the following sections.

#### 3.1.1 Respond to Purpose and Need

The BLM's purpose and need for the Lucerne Valley project is to respond to CES' application under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 United States Code [USC] 1701) for a ROW grant to construct, operate, maintain, and terminate (including decommissioning) a solar energy generation facility on public lands in compliance with the FLPMA, BLM ROW regulations, and other applicable federal laws. Specifically, the BLM has decided to approve a ROW grant to CES for the 45-MW Selected Alternative. The BLM will also amend the *California Desert Conservation Area Plan* (CDCA Plan, 1980, as amended). The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not already identified in that plan be considered through the plan amendment process. Therefore, prior to issuance of a ROW grant for the Chevron Lucerne project, the BLM will amend the CDCA Plan as required to allow for solar energy development on the project site.

Under the Energy Policy Act (2005), federal agencies are directed to encourage the development of renewable energy. By entering into a Memorandum of Understanding (MOU) with the California Energy Commission (CEC), National Park Service (NPS), United States Department of Energy (DOE), and the United States Army Corps of Engineers (Corps), the BLM has committed to work with State and federal agencies to achieve California's Renewable Portfolio Standards (RPS) energy goals and greenhouse gas emission reduction standards in a manner that is timely and in compliance with federal and State environmental laws. The purpose of the MOU is to assist with the implementation of applicable State and federal laws, regulations, and policies.

The construction, operation, maintenance, and termination activities associated with the Selected Alternative, either singularly or with mitigation, are in conformance with the following land use plans and policies:

- BLM policy and guidance for issuing ROW grants, including BLM Manual 2801.11;
- *California Desert Conservation Area Plan* (1980, as amended); a plan amendment is required to identify the site as one used for solar generation within the CDCA; and,
- *Western Mojave Desert Off Road Vehicle Designation Plan*, June 2003.

The Lucerne Valley 45-MW alternative meets the BLM purpose and need for the project.

### **3.1.2 Achieve Goals and Objectives**

The 45-MW Selected Alternative meets all project objectives, and is technically and legally feasible. It also helps meet federal and state objectives for renewable energy development. The Selected Alternative provides for the best balance between maximizing renewable energy capacity while reducing adverse impacts as compared to the other action alternatives. The project complies with CDCA Plan objectives for the Multiple Use Class M – Moderate, land use designation. Multiple Use Class M lands are managed in a controlled balance between higher-intensity use and protection. A wide variety of uses, such as mining, livestock grazing, recreation, energy, and utility development are allowed. The project complies with Multiple Use Class M guidelines. See Section 3.3 of the ROD, below and Sections 3.9 and 4.9 of the FEIS for more information regarding land use plan conformance with the objectives of the CDCA Plan.

### **3.1.3 Required Actions**

The following federal statutes require that specific actions be completed prior to issuance of a Record of Decisions (ROD) and project approval.

#### **3.1.3.1 Endangered Species Act of 1973**

Under Section 7 of the Endangered Species Act (ESA), as amended (16 United States Code [USC] 1531 et seq.), a federal agency that authorizes, funds, or carries out a project that “may affect” a listed species or its critical habitat must consult with the United States Fish and Wildlife Service (USFWS). The BLM submitted a Biological Assessment (BA) and initiated formal consultation for the desert tortoise with the U.S. Fish and Wildlife Service (USFWS) for the project on December 10, 2009. The USFWS issued a BO for this project on June 10, 2010, followed by a revised BO on September 29, 2010. The BO concluded that the Lucerne Valley Project would not affect desert tortoise critical habitat and would not be likely to jeopardize the continued existence of the desert tortoise. Measures included in the BO would reduce any anticipated adverse impacts, and the BLM’s issuance of an NTP will require that CES complies with the BO. Furthermore, the ROW grant contains a standard stipulation that requires compliance with the BO.

#### **3.1.3.2 The Bald and Golden Eagle Protection Act**

This Act provides for the protection of bald and golden eagles by prohibiting, except under certain specified conditions, disturbance or harm of these species. To comply with the Act and based on the US Fish and Wildlife Service’s recommendation (memo dated September 15, 2010, available as part of the project record), and in accordance with BLM’s Instruction Memorandum (IM) 2010-156, the BLM will require CES to develop an Avian Protection Plan (APP) within six months of initiating facility construction. This APP will identify steps CES will take to ensure eagle impacts are mitigated to the extent possible including but not limited to on-going surveys, impact monitoring, and facility design.

### 3.1.3.3 **National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects that their federally funded activities and programs have on significant historic properties. "Significant historic properties" are those properties that are included in, or eligible for, the National Register of Historic Places. The BLM initiated consultation under Section 106 of the NHPA. The Section 106 process has been completed for the Lucerne Valley Project through a Class 3 site survey and records search. In a letter dated February 26, 2010, the California State Historic Preservation Office "concluded that implementation of this undertaking will not affect historic properties" (Appendix 3).

### 3.1.3.4 **Clean Air Act, as Amended in 1990**

The Clean Air Act is the law that defines EPA's responsibilities for protecting and improving the nation's air quality and the stratospheric ozone layer. The Clean Air Act is a federal law covering the entire country. However, states, tribes and local governments do a lot of the work to meet the Act's requirements and are responsible for reviewing and approving permit applications for industries such as solar energy generation. The NTP issued by the BLM is contingent upon CES obtaining any necessary permits and compliance of the Lucerne Valley Project with any mitigation, terms, conditions, and stipulations related to emission controls and reductions during project construction, maintenance, operation, and decommissioning, as determined by the applicable state permitting authority.

### 3.1.3.5 **Clean Water Act**

Section 404 of the Federal Clean Water Act (CWA) authorizes the U.S. Army Corps of Engineers to regulate the discharge of dredged or fill materials into navigable waters of the United States (waters of the U.S.), including certain wetlands and other waters of the U.S. A letter requesting concurrence on a no-jurisdiction determination has been sent to the Corps, and the applicant will be required to comply with the Corps' ultimate determination, if any, prior to receiving an NTP for the first phase of construction from the BLM.

## 3.1.4 **Incorporate CDCA Plan Management Considerations**

An amendment to the CDCA Plan is warranted. The record indicates that the Selected Alternative for the Lucerne Valley Project can be constructed on BLM-administered lands and that project construction will result in fewer significant, unmitigable impacts to biological, cultural, water, and visual resources than would occur with the other Build Alternatives with comparable energy production analyzed in the Final EIS.

### **3.1.5 Identify Site Location per the California Desert Conservation Area Land Use Plan**

The BLM has found that the lands in the Selected Alternative can be approved for solar energy development based on compliance with the requirements of NEPA. The CDCA Plan amendment applies to the public lands within the boundary of the site for the Selected Alternative shown in Appendix 5, Maps.

### **3.1.6 Statement of No Unnecessary or Undue Degradation (43 USC 1732(b))**

Congress declared that the public lands be managed for multiple use and sustained yield, in a manner to protect certain land values, to provide food and habitat for species, and to provide for outdoor recreation and human occupancy and use (43 USC 1701 (a)(7), (8)). Multiple use management means that public land resources are to be managed to best meet the present and future needs of the American public, balanced to take into consideration the long term needs of future generations without permanent impairment of the lands (43 USC 1702(c)). BLM manages public land through land use planning, acquisition, and disposition, and through regulation of use, occupancy, and development of the public lands (Subchapters II and III, respectively, 43 USC 1711 to 1722, and 1731 to 1748). The FLPMA specifically provides that in managing the use, occupancy, and development of the public lands, the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands (43 USC 1732(b)).

As noted above, Congress specifically recognized multiple use and sustained yield management for the CDCA, through the CDCA Plan, providing for present and future use and enjoyment of the public lands, The 1980 CDCA land use plan, as amended, identifies allowable uses of the public lands in the CDCA. In particular, it authorizes the location of solar power generating facilities in MUC M and other land classifications upon NEPA review. BLM has conducted that review, and as indicated in the FEIS and portions of this ROD, has adjusted the project to meet public land management needs and concerns. In particular, the BLM has determined that the Selected Alternative meets national renewable energy policy goals and objectives and falls within the guidelines of the CDCA Plan. In addition, the project meets the requirements of applicable ROW regulations inasmuch as it includes terms, conditions and stipulations that are in the public interest; prevents surface disturbance unless and until an NTP is secured; is issued for a period of 30 years, subject to renewal and periodic review; and contains diligence and bonding requirements to further protect public land resources. This approval provides that public land will be occupied only with authorized facilities and only to the extent necessary to construct, operate, maintain and terminate the project. BLM conditions of approval provide for public health and safety and protect the environment and public lands at issue. These conditions of approval include compliance with this ROD, the FEIS, the Biological Opinion and section 106 requirements. All of these federal requirements provide the basis for BLM's determination that the project will not unnecessarily and unduly degrade these public lands.

### **3.1.7 Statement of Technical and Financial Capability (43 USC 1764 (j))**

FLPMA and its implementing regulations provide the BLM the authority to require a project application to include information on an applicant's technical capability to construct, operate, and maintain the solar energy facilities applied for (43 CFR 2804.12(a)(5)). This technical capability can be demonstrated by international or domestic experience with solar energy projects or other types of electric energy-related projects on either federal or non-federal lands. CES has provided information on the availability of sufficient capitalization to carry out development, including the preliminary study phase of the project, as well as site testing and monitoring activities.

Currently, Southern California Edison has not yet determined the full capacity of the distribution line for the Lucerne Valley Project. The BLM can only authorize use for what is technically feasible. In the event the distribution line does not have capacity for a 45-MW project, authorization to construct will be limited by the available capacity. This ROD authorizes a ROW grant for up to a 45-MW project. Therefore, this project is planned for phased construction as described in the Plan of Development and Final EIS for the Lucerne Valley Project.

## **3.2 Relationship to BLM and Other Agency Plans, Programs and Policies**

### **3.2.1 Tribal Consultation**

The BLM conducted government-to-government consultation with a number of Tribal governments and held discussions with Tribal representatives as described in detail in the Final EIS, section 5.2.3. Additionally, consultation efforts also included follow-up letters and copies of the accepted cultural report in September 2009. The San Manuel Band of Mission Indians requested face-to-face consultation on all fast tracked energy projects within Barstow Field Office Jurisdiction. A face-to-face meeting was held on December 4, 2009, at the San Manuel Reservation with the Tribe's Cultural Resources Field Manager. After discussion, it was determined that there were no concerns with this project. The goals of tribal contact and consultation for the proposed project were to notify tribal authorities of the BLM's intent to prepare an EIS for the ROW application, to identify tribal organizations that may attach religious and cultural significance to historic properties within the proposed project area, and to document traditional values associated with these types of properties, in accordance with various federal environmental laws.

### **3.2.2 United States Fish and Wildlife Service Section 7 Consultation**

The BLM permit, consultation, and coordination with the USFWS required for the Chevron Lucerne project complies with the Federal Endangered Species Act (ESA) regarding potential take of the Desert Tortoise. For details on the consultation, see section 3.1.3.1 above.

Based on the conditions in the BO and the ongoing consultation with the USFWS during project construction and operations, many biological resources in the area are avoided by the Selected

Alternative or the impacts are substantially mitigated. As a result, the 45-MW Alternative would result in impacts less than or similar to the other Build Alternatives related to biological resources.

### **3.2.3 Section 106**

The BLM consulted with the State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act. On February 26, 2010, the SHPO concluded that the “undertaking will not affect historic properties. See also Section 3.1.3.3, above.

### **3.2.4 Consultation with Other Agencies**

Section 5.5, below, lists other federal, State, regional and local agencies with which the BLM and/or CES have consulted, as part of one or more of the following project phases: planning, scoping, public review of the Draft EIS, and public review of the Final EIS. In addition to the NEPA coordination process, CES may have to obtain permits and other approvals from other agencies or comply with requirements of other agencies that did not provide written input on the project and/or the EIS. Those agencies include, but may not be limited to:

- Regional Water Quality Control Board
- Regional Air Pollution Control District
- California Department of Fish and Game
- United States Army Corps of Engineers

## **3.3 San Bernardino County LUP Conformance (43 CFR 1610.5-3(a)) and Other Consistency (43 CFR 1610.3-2)**

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

#### **3.3.1.1 California Desert Conservation Area Plan**

The FLPMA (43 CFR 1600, Section 501; 43 USC 1761) establishes public land policy; guidelines for administration; and provides for the management, protection, development, and enhancement of public lands. The FLPMA specifically establishes BLM’s authority to grant rights-of-way for the generation, transmission, and distribution of electrical energy as follows:

- (a) The Secretary, with respect to the public lands ... are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for:
  - (4) systems for generation, transmission, and distribution of electric energy

The FLPMA is relevant to the Lucerne Valley project because it establishes BLM’s authority to grant rights-of-way on public lands for the generation, transmission, and distribution of electrical energy (FLPMA 2001). Because the FLPMA authorizes the issuance of a ROW grant for

electrical generation facilities and transmission lines, the Lucerne Valley project would be consistent with the FLPMA.

The CDCA Plan was developed as mandated by the FLPMA and is the land use plan (LUP) for the Lucerne Valley project site and the surrounding area within the defined CDCA. The CDCA Plan is a comprehensive, long-range plan for the management, use, development, and protection of the public lands in the CDCA. The 25-million acre CDCA contains over 12 million acres of public lands in the California desert, which includes the Mojave Desert, the Sonoran Desert, and a small part of the Great Basin Desert. Those 12 million acres of public lands are approximately half of the total land area in the CDCA. The site proposed for the Chevron Lucerne project includes approximately 422 acres of land in the CDCA administered by the BLM.

Goals and actions for each resource managed by the BLM are established in the 12 Elements in the CDCA Plan. Each Plan Element provides a Desert-wide perspective of the planning decisions for one major resource or issue of public concern as well as more specific interpretation of multiple-use class guidelines for a given resource and its associated activities.

The Chevron Lucerne project site is classified in the CDCA Plan as Multiple-Use Class (MUC) M (Moderate Use). Multiple Use Class M lands are managed in a controlled balance between higher-intensity use and protection. A wide variety of uses, such as mining, livestock grazing, recreation, energy, and utility development are allowed. The CDCA Plan ROD approved solar electrical generation plants within the Moderate Use designation. Specifically, the guidelines in the Plan provide that solar electrical generating facilities within Class M areas "... may be allowed after NEPA requirements are met."

### **3.3.1.2 Need for a CDCA Plan Amendment**

To accommodate the Chevron Lucerne project, the CDCA Plan is being amended because "Sites associated with power generation or transmission not identified in the Plan will be considered through the Plan Amendment process." As specified in Chapter 7, Plan Amendment Process, in the CDCA Plan, there are three categories of Plan Amendments. Approval of the Chevron Lucerne project would require a Category 3 amendment to the CDCA Plan to accommodate a request for a specific use or activity that will require analysis beyond the Plan Amendment Decision.

The amendment to the CDCA Plan to designate (identify) the Chevron Lucerne project site for solar energy generation is provided in the ROD through the following LUP amendment analysis.

### **Land Use Plan Amendment Analysis**

The proposed LUP Amendment to be made by the BLM is a site identification decision only. Because the proposed solar project and its alternatives are located within MUC M, the classification designations govern the type and degree of land use action allowed within each classified area. All land use actions and resource management activities on public lands within an MUC designation must meet the guidelines for that class. MUC M allows electric generation

plants for solar facilities after NEPA requirements are met. These guidelines are listed in Table 1, Multiple Use Class Guidelines, in the CDCA Plan (1980, as amended). The specific application of the MUC designations and resource management guidelines for a specific resource or activity are further discussed in the plan elements section of the CDCA Plan.

The proposed site location for the project meets the Multiple Use Class M Guidelines in the CDCA Plan as outlined in detail in the FEIS Section 4.9 and summarized below:

1. Agriculture: The site is not currently used for agriculture and the Selected Alternative would not use the site for agriculture.
2. Air Quality: The air emissions that would be associated with the Selected Alternative are well below the limitations required for Class II areas.
3. Water Quality: Development and operation of the project on or near active washes raised concerns that the project would change storm water surface flow. The incorporation of low impact development practices, limited grading to maintain natural sheet flow and compliance with State regulations for streambed alteration will reduce these potential impacts.
4. Cultural and Paleontological Resources: The sites that would be disturbed by the Selected Alternative were identified as not eligible for inclusion in the NRHP.
5. Native American Values: Native American cultural and religious values will be protected and preserved on Multiple Use Class M lands with appropriate Native American groups consulted.
6. Electrical Generation Facilities: Solar generation may be allowed after NEPA requirements are met. The analysis contained in the EIS, which addresses the proposed action and its alternatives, comprise the NEPA compliance required for this MUC guideline.
7. Transmission Facilities: Class M guidelines will be met because the project will construct a distribution line, not a transmission line. In any event, the project is in a designated transmission corridor.
8. Communication Sites: A communications site would not be installed.
9. Fire Management: Fire suppression measures in Class M areas will be taken in accordance with the California Desert District Fire Management Plan, March 2008.
10. Vegetation: Native plants would be removed as allowed for in Class M guidelines following compliance with NEPA, development of stipulations and issuance of a permit, in this case, the ROW grant. The mitigation measures in the EIS and conditions of approval to be required in the Record of Decision would constitute the stipulations to avoid or minimize impacts from the removal.

All federally listed species will be fully protected and have been consulted on with US Fish and Wildlife Service (FEIS Section 4.6). Identified sensitive plant species will be given protection in management decisions consistent with BLM's policy (BLM Manual 6840). Further information on sensitive plant species may be found in Section 4.6, including mitigation measures to reduce the potential impact of the action alternatives. Because these measures are intended to reduce threats to this species to minimize the likelihood of listing, these measures are in conformance with the MUC guidance in the CDCA Plan. No unusual plant assemblages have been identified. Consultation with the State is ongoing for State-listed special status species and will be completed before issuance of an NTP.

No vegetation manipulation (removing noxious or poisonous plants from rangelands; increasing forage production; creating open areas within dense brush communities to favor certain wildlife species; or eliminating introduced plant species) will occur.

11. Land Tenure Adjustment: The Selected Alternative does not involve a change in land ownership.

12. Livestock Grazing: No livestock grazing allotments are in the project area.

13. Minerals: The project does not involve mineral development.

14. Motorized Vehicle Access/Transportation: Pursuant to the CDCA LUP guidelines in Class M areas and in compliance with IM 2008-014, Zircon Road will be relocated as part of this project and the Santa Fe Fire road would be improved.

15. Recreation: The Selected Alternative will not involve the use of the project site for recreation.

16. Waste Disposal: The project will not involve the development of waste disposal sites.

17. Wildlife Species and Habitat: As per Class M guidelines and consultation with the US Fish and Wildlife Service, the federally endangered desert tortoise will be fully protected through stringent avoidance measures, the full level of compensation required by USFWS for this category of tortoise habitat, and enhancement and protection measures in other areas. The project area does not contain critical habitat for the desert tortoise. No BLM sensitive species have been identified in the project area.

The project will not involve the control of depredation wildlife and pests, other than potentially providing financial support for the California Department of Fish and Game's Raven Management Plan; this plan will be evaluated under a separate authority.

18. No wetlands or riparian areas are in the project area.

19. No wild and free-roaming horses are in the project area.

### 3.3.1.3 Required CDCA Plan Determinations

As discussed in Chapter 7 in the CDCA Plan, the BLM must make certain required determinations in amendments to the CDCA Plan. The required determinations and how they were made for the CDCA Plan amendment for the Lucerne Valley project are provided below.

**Required Determination:** Determine if the request has been properly submitted and if any law or regulation prohibits granting the requested amendment.

The applicant's request for a ROW grant was properly submitted, and the Final EIS was the mechanism for evaluating and disclosing environmental impacts associated with that application. No law or regulation prohibits granting the amendment to the CDCA Plan.

**Required Determination:** Determine if alternative locations within the CDCA are available which would meet the applicant's needs without requiring a change in the Plan's classification, or an amendment to any Plan element.

The CDCA Plan does not currently identify any sites as solar generating facilities. Therefore, there is no other location within the CDCA which could serve as an alternative location without requiring a LUP Amendment similar to that which is required for the project on the Lucerne Valley site. The Lucerne Valley project does not require a change in the MUC classification for any area within the CDCA.

**Required Determination:** Determine the environmental effects of granting and/or implementing the applicant's request.

The Final EIS evaluated the environmental effects of approving the CDCA Plan Amendment and the ROW grant application for the Lucerne Valley project.

**Required Determination:** Consider the economic and social impacts of granting and/or implementing the applicant's request.

The Final EIS evaluated the economic and social impacts of the Plan Amendment and the ROW grant.

**Required Determination:** Provide opportunities for and consideration of public comment on the proposed amendment, including input from the public and from Federal, State, and local government agencies.

A Notice of Intent (NOI) to amend the CDCA Plan was published in the Federal Register July 23, 2009. The Draft EIS was available for a 90-day public review period beginning on February 5, 2010. Public meetings were also held during that time. The Final EIS was available for further comment and protest for 30 days beginning August 13, 2010.

**Required Determination:** Evaluate the effect of the proposed amendment on BLM management’s desert-wide obligation to achieve and maintain a balance between resource use and resource protection.

The balance between resource use and resource protection is evaluated in the Final EIS. Title VI of the FLPMA, as addressed in the CDCA Plan, provides for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and maintenance of environmental quality. Multiple use includes the use of renewable energy resources, and through Title V of the FLPMA, the BLM is authorized to grant ROWs for the generation and transmission of electric energy. The acceptability of use of public lands within the CDCA for this purpose is recognized through the CDCA Plan’s approval of solar generating facilities within MUC M. The Final EIS identifies resources which may be adversely impacted by approval of the Lucerne Valley project, evaluates alternative actions which may accomplish the purpose and need with a lesser degree of resource impacts, and identifies mitigation measures which, when implemented, would reduce the extent and magnitude of the impacts and provide a greater degree of resource protection.

#### 3.3.1.4 **CDCA Plan Decision Criteria**

The Energy Production and Utility Corridors Element of Chapter 3 in the CDCA Plan define specific Decision Criteria to be used by the BLM in evaluating applications. The consideration of these Decision Criteria for the Lucerne Valley project is described below.

**Decision Criterion:** Minimize the number of separate rights-of-way by utilizing existing rights-of-way as a basis for planning corridors.

The Lucerne Valley project helps minimize the number of separate ROWs by being proposed within an existing utility corridor as described later in this section. Electrical transmission associated with the Lucerne Valley project will occur within this existing corridor.

**Decision Criterion:** Encourage joint-use of corridors for transmission lines, canals, pipelines, and cables.

Placement of the Lucerne Valley project within existing Corridor S maximizes the joint-use of this corridor for electrical transmission.

**Decision Criterion:** Provide alternative corridors to be considered during processing of applications.

This decision criterion is not applicable to the Lucerne Valley project. Placement of the proposed facility adjacent to existing corridors does not require designation of alternative corridors to support the Lucerne Valley project.

**Decision Criterion:** Avoid sensitive resources wherever possible.

The extent to which the Lucerne Valley project has been located and designed to avoid sensitive resources is addressed throughout the Final EIS. BLM and other Federal regulations that restrict the placement of proposed facilities, such as the presence of designated Wilderness Areas or Desert Wildlife Management Areas, were considered in the original siting process used by the applicant to identify potential sites for the Lucerne Valley project. The project site and the configuration of the site boundary were modified in consideration of mineral resources. The alternatives analysis considered whether the purpose and need of the Lucerne Valley project could be achieved in another location, but with a lesser effect on sensitive resources. That analysis indicated that the same project on an alternative site would likely result in generally similar impacts as the project on the Lucerne Valley site.

**Decision Criterion:** Conform to local plans whenever possible.

The extent to which the Lucerne Valley project conforms to local plans is addressed in Section 4.9, Land Use and Realty, in the Final EIS. The project was also found to have no inconsistencies with state or local plans during the Governor’s Consistency Review (letter dated August 26, 2010).

**Decision Criterion:** Consider wilderness values and be consistent with final wilderness recommendations.

The Lucerne Valley project is not in a designated Wilderness Area or Wilderness Study Area.

**Decision Criterion:** Complete the delivery systems network.

This decision criterion is not applicable to the Lucerne Valley project.

**Decision Criterion:** Consider ongoing projects for which decisions have been made.

Approval of the Lucerne Valley project would not affect any other projects for which decisions have been made.

**Decision Criterion:** Consider corridor networks which take into account power needs and alternative fuel resources.

This decision criterion is not applicable to the Lucerne Valley project. The Lucerne Valley project does not involve the consideration of an addition to or modification of the corridor network. However, it does use facilities located in Corridor S, which were designed with consideration of both power needs and locations of alternative fuel resources.

### **3.3.2 Western Mojave Desert Off Road Vehicle Designation**

Various federal regulations, EOs, and the CDCA Plan require the BLM to designate routes of travel as Open, Limited, or Closed to vehicular travel and to assure that resources are properly managed in a multiple use context.

In 2003, in an amendment to the CDCA Plan, the BLM identified and designated many routes of travel in the *Western Mojave Desert Off Road Vehicle Designation (WEMO)* plan amendment. This plan amendment clarified, updated, and assigned designations (Open, Closed, or Limited) to all travel routes within the WEMO amendment area.

The Lucerne Valley project site is within the WEMO amendment area. Zircon Road will be relocated and the Santa Fe Fire Road will be upgraded as part of this project.

Under the policy provisions of the BLM Washington Office Instruction Memorandum No. 2008-014 (Clarification of Guidance and Integration of Comprehensive Travel and Transportation Management Planning into the Land Use Planning), selection and designation of individual routes within a Limited area is an implementation decision, not a land use plan decision.

### **3.3.3 Utility Corridors**

The Lucerne Valley project site lies largely within an existing 3-mile wide designated contingent Utility Corridor “S”. The Energy Production and Utility Corridor Element of the CDCA Plan currently allows only linear facilities, such as highways, pipelines, transmission lines, communications lines, and natural gas pipelines, to be sited within the corridor without a plan amendment. Because the portion of the project in the utility corridor is in a rugged area that would inhibit placement of linear facilities and because linear utilities would more likely be sited to the north of the project area, the BLM determined that the project location would not adversely affect the BLM’s ability to site future utilities within the corridor (FEIS p. 4.9-2).

### **3.4 Adequacy of NEPA Analysis**

The additional hydrologic modeling discussed in section 1.2 above confirmed that the information provided in the Final EIS (Sections 3.4, 3.5, 4.4, and 4.5) was accurate. The BLM has determined that a supplemental analysis is not required because no changes were made to any of the action alternatives and the new hydrological information does not substantially change the previous analysis and identifies effects that are similar to or less than those analyzed in the Final EIS (40 CFR 1502.9(c)).

## **4.0 Alternatives Considered (40 CFR 1505.2(b))**

### **4.1 Alternatives Fully Analyzed**

#### **4.1.1 Alternative 1: No Action / No Plan Amendment**

The No Action Alternative assumes that the ROW application is denied, that the Lucerne Valley Solar Plant and associated facilities, would not be constructed and operated, Zircon Road would

not be relocated, and that the CDCA Plan would not be amended. The adoption of Alternative 1 would leave current management practices intact and would be in conformance with the CDCA Plan.

#### **4.1.2 Alternative 2: Land Use Plan Amendment**

Alternative 2 would deny the ROW application, but the CDCA Plan would be amended to classify the project site as either suitable or unsuitable for large-scale solar development. The area within the project site would then be managed in accordance with the plan amendment.

#### **4.1.3 Alternative 3: CES's Proposed Action**

The applicant applied for a BLM ROW authorization to construct, operate, maintain, and decommission up to a 45-MW, solar PV power plant and associated facilities. The proposed site is just south of State Route 247, approximately eight miles east of the junction of Barstow Road and Old Woman Springs Road in Lucerne Valley. The total ROW would span 422 acres and consists of land under the jurisdiction of the BLM in San Bernardino County, California.

The proposed project would be built in two phases. Phase I would be a 20–MW facility, with construction beginning in late 2010, or as soon as the required state and local permits are issued. It would interconnect to the existing SCE 33-kV distribution line immediately north of the site and across Foothill Road and could be built without upgrading the existing line. Phase II would be no more than 25 MW and is contingent on available transmission capacity and future power sales. The exact size of Phase II is limited by the available capacity in the distribution line without any upgrades to this line.

A portion of Zircon Road would be realigned that passes through the project area. The approximately 0.27 miles of Zircon that would no longer be used as an open route would be designated as closed. This area would be used by the project and would be included in the ROW. The newly constructed section of Zircon Road would be designated open. This relocation of Zircon Road would not change access to any destinations.

The applicant's project would require an amendment to the CDCA Plan that would allow a solar energy facility in the project area.

#### **4.1.4 Alternative 4: Modified Site Layout**

In response to comments received during public scoping, an alternative was developed in order to reduce impacts on visual resources. This alternative is the same as Alternative 3, with three modifications to reduce environmental impacts: To reduce visual impacts, the minimum distance from the edge of Santa Fe Fire Road where the proposed project perimeter fence could be located (or set back) would be increased to 50 feet. The setback would remain unaltered by project construction, so the existing vegetation would screen the project from nearby residents and, somewhat, from users of Santa Fe Fire Road. Some of the drainage for the graded area

would be redirected to flow from the site into the setback, increasing the water available to the setback vegetation.

#### **4.1.5 Alternative 5: Smaller Project Alternative**

This alternative would reduce the output of the solar power plant from 45 MW to 30 MW. It would also reduce the size of the developed area to 238 acres.

### **4.2 Alternatives Not Fully Analyzed**

#### **4.2.1 Alternate BLM Land**

During pre-application meetings, BLM and CES discussed several alternative site locations on BLM managed land but each was rejected for one or more reasons. The Palen Site, located over 100 miles to the southeast of the proposed site in Riverside County, is a 640-acre property that was dismissed from full consideration because it lacked suitable transmission capacity. The tract consisted of Sonoran creosote brush scrub. Additionally, one federally-listed species, the Harwoods' milkvetch, is located near to the site (CEC 2009).

A second location, Cottonwood Site 1, located about three miles to the southwest of the proposed site, is a 160-acre property for which the BLM had concerns about the potential for effects to biological resources. It is located within an area that is habitat for carbonate endemic plants, which thrive in dry carbonate soils on the lower slopes of the San Bernardino National Forest and BLM land. The area is habitat for several federally protected plant species including the endangered Cushenbury oxytheca (BLM 2010).

A third alternative location, Cottonwood Site 2, located about four miles to the southwest of the proposed site next to Cottonwood 1, is an 80-acre property that was deemed too small and had prohibitive drainage concerns. The area contains arroyos and shows susceptibility to severe erosion during flood events. Because of the topography and its size, this site was deemed to be an undesirable location to build a solar plant.

#### **4.2.2 Private Land**

During discussions with CES, BLM determined that private land alternatives would be considered, but not carried forward for full analysis. The reason for this determination was that no single parcel of private land capable of accommodating the proposed project had been identified. Therefore, if available, use of multiple private parcels would have presented too much uncertainty in the company's ability to obtain all the necessary leases, permits and approvals. Furthermore the BLM's NEPA Handbook (H 1790-1) states that "an action alternative may be eliminated from detailed analysis if it is ineffective (would not meet the purpose and need)." The Handbook further states:

*For most actions, we recommend that the purpose and need statement be constructed to reflect the discretion available to the BLM, consistent with existing decisions and statutory and regulatory requirements; thus, alternatives not within BLM jurisdiction would not be “reasonable”.*

#### **4.2.3 Alternate Power Generating Technologies**

While BLM does not advocate specific energy technologies, it does consider the relative effects of various technologies when evaluating applications to utilize the public lands. The following descriptions summarize information from the *Best Management Practices & Guidance Manual: Desert Renewable Energy Projects*, developed collaboratively among the California Energy Commission, California Department of Fish and Game, BLM, and the U.S. Fish and Wildlife Service. October, 2009 (CEC-700-2009-016-SD).

#### **4.2.4 Concentrating Solar Power Technologies**

CES did not propose using solar thermal technology for the project because of the long-term costs inherent in maintenance and operations. Solar thermal arrays require more water and personnel to maintain optimal energy production efficiency.

None of the alternative concentrated solar power technologies would substantially reduce the size of the site required to generate 45 MW of renewable energy. Ground disturbance and the associated effects would not be reduced. In addition, the structures required would be larger than those identified for CES’s Proposed Action and would not reduce visual effects. Since the mirrors must be maintained in a clean state to function properly, this technology consumes a much greater volume of water than CES’s Proposed Action. Therefore, an alternative power generating technology was eliminated from further consideration

#### **4.2.5 Wind Energy**

Modern wind energy development uses utility-sized turbines that typically range from 100 kW up to 5 MW to convert the wind’s kinetic energy to electricity. These turbines primarily are grouped into large wind farms, which produce power for the electric grid. Turbines catch the wind’s energy with their propeller-like blades.

National Renewable Energy Laboratory data identified this area as “poor to marginal” for wind energy potential (DOE 2010). Based on the local wind energy potential at the site, this technology was not fully analyzed.

#### **4.2.6 Four Sided Project**

To potentially reduce impacts to species, a four-sided project with fewer boundaries was

considered. Land to the west of the project side and surrounding the western part of the project are privately owned. Public land to the east has a slope that is too steep for solar energy development. It is also less geologically stable. So, due to the small amount of public land near the project site, the size needed for the project, and the available public land with the desirable slope for solar energy development, it is not possible to configure the project into a four sided parcel. Thus this alternative was not feasible or fully analyzed.

#### **4.2.7 Residential Roof Top Solar Panels**

In California, construction of roof top solar panels on homes requires electrical upgrades to interconnect the panels to the local distribution lines to allow sales of excess energy to the grid and installation of meters. The BLM recognizes that roof top solar panels could produce renewable energy, and the applicant is free to pursue that type of development in addition to the proposed solar project.

### **4.3 Environmentally Preferred Alternative**

The environmentally preferred alternative would be either the no action alternative or the land use plan amendment alternative (Alternatives 1 and 2). Both of these alternatives would not allow development of the energy generating project and would have no impacts on the ground. However neither alternative would allow the development of renewable energy which is a national priority.

Alternative 4, the modified site layout, would be the environmentally preferred alternative that still allows the development of renewable energy. It would reduce the impacts to visual resources and allow the fully requested 45 MW of energy development.

### **4.4 Agency Preferred Alternative**

The BLM has identified a combination of Alternative 3, the Proposed Action, and Alternative 4, modified site layout as the Preferred Alternative. This combination of alternatives includes all of the features in Alternative 4, with the exception of rerouting some of the surface water drainage to provide additional water to the vegetative screen area. The surface water would follow the natural pathways as identified in Alternative 3.

The Preferred Alternative would include all of the Best Management Practices listed in Section 2.2.2.3 of the FEIS and the mitigation measures in Appendix 5 of this ROD. This alternative provides the least environmental impacts to resources while allowing the development of a renewable energy project at the full capacity requested by the applicant. The Preferred Alternative has the least environmental impacts because it reduces the impact to visual resources and does not divert surface storm water flow from its natural course.

## **5.0 Agency and Public Involvement**

### **5.1 Scoping**

The Notice of Intent for the Lucerne Valley Solar Project EIS was published in the *Federal Register* on July 23, 2009, initiating a 30-day scoping period. The BLM also held two public scoping meetings near the location of the Proposed Action. The meetings were held in Lucerne Valley, California, on July 29, 2009, and San Bernardino, California, on July 30, 2009. Approximately 40 scoping comment letters were received. Scoping comments were considered in the DEIS and are contained in the BLM's Scoping Summary Report, available as part of the project record.

### **5.2 Draft EIS Public Comment Period**

The BLM prepared a Draft EIS for the proposed project incorporating information received during scoping.

The Draft EIS review period was initiated by publication of the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on February 5, 2010. Interested parties identified in the updated EIS mailing list were notified of the publication of the Draft EIS.

A public comment meeting was held on March 9, 2010 in Lucerne Valley, California. Initially, the 90-day public comment period was to end on May 13, 2010. On February 19, 2010, the BLM announced that the comment period on the Draft EIS and Draft Plan Amendment for the proposed Chevron Energy Solution's Lucerne Valley Solar Project had been extended to May 19, 2010. This extension was because EPA's Notice of Availability was published in the *Federal Register* on February 19, 2010.

Twelve comment letters were received and covered a variety of issues including desert tortoise, visual resources, air quality, hydrology/erosion, changing character of rural communities due to cumulative renewable energy and transmission impacts, and pristine desert land impacts (FEIS, Table N-1).

### **5.3 Final EIS Public Comment Period**

The NOA of the Final EIS was published in the FR on August 13, 2010 and the public review period ended September 12, 2010. The six comment letters received on the Final EIS and the responses to those comments are provided in Appendix 1, Responses to Comments on the Lucerne Valley Final EIS, in this ROD. The BLM reviewed the comments on the Final EIS and determined that they did not raise any significant new circumstances or information relevant to environmental concerns associated with the Chevron Lucerne project. Therefore no changes to the proposed decision were determined warranted.

## **5.4 Protest Period**

The EPA Notice of Availability of the Final EIS was issued on August 13, 2010. Release of the Final EIS initiated the 30-day protest period, which closed on September 12, 2010. During that period, any person who participated in the planning process and believed they would be adversely affected by the CDCA Plan amendment had the opportunity to protest the proposed amendment to the Director of the BLM. Four formal protest letters were filed with BLM.

In general, protesters were not in support of the proposed amendment and raised the following issues, among others: water use, cumulative effects, appropriate use of Class “M” lands, golden eagle impacts, adequacy of cost/benefit analysis, and visual impacts

All protesting parties received response letters from the BLM Director conveying the Director's decision on the concerns raised in their protests. The responses concluded that BLM followed the applicable laws, regulations, and policies and considered all relevant resource information and public input in developing the CDCA Plan Amendment/FEIS. Therefore, all protests were dismissed, and no changes were made to the proposed CDCA Plan Amendment decision as a result of the protests. Detailed information on protests may be found on the BLM Washington Office Website at: [http://www.blm.gov/wo/st/en/prog/planning/protest\\_resolution.html](http://www.blm.gov/wo/st/en/prog/planning/protest_resolution.html)

## **5.5 Consultation/Coordination with Other Agencies and Entities**

The BLM and the project applicant have been consulting and coordinating with public agencies that may be requested to take action on the Chevron Lucerne project and other interested parties as part of one or more of the following project phases: planning, scoping, public review of the Draft EIS, and/or public review of the Final EIS. Those consultation and coordination activities are summarized in the following sections.

### **5.5.1 Governor’s Office of Planning and Research**

The proposed CDCA Plan Amendment was reviewed by the Governor’s Office of Planning and Research following the issuance of the Final EIS and the proposed plan amendment. In their letter dated August 26, 2010, they found no inconsistencies between this plan amendment and any local or state plans or regulations.

### **5.5.2 US Fish and Wildlife Service**

Pursuant to the Endangered Species Act Section 7 consultation requirements, the United States Fish and Wildlife Service (USFWS) issued a Biological Opinion for the project which is provided in Appendix 2, Biological Opinion.

### **5.5.3 California State Historic Preservation Office**

A key part of a cultural resources analysis under NEPA and Section 106 of the National Historic Preservation Act of 1966 (NHPA) is to determine which of the cultural resources that a proposed or alternative action may affect are important or historically significant. The BLM initiated

consultation with the Office of Historic Preservation for this project under Section 106 of the National Historic Preservation Act (NHPA). The Section 106 process has been completed for the Lucerne Valley Project through a Class 3 site survey and records search. In a letter dated February 26, 2010, the California State Historic Preservation Office “concluded that implementation of this undertaking will not affect historic properties” (Appendix 3).

#### **5.5.4 Department of Defense Army Corps of Engineers**

CES is seeking concurrence from the Army Corps of Engineers that there are no jurisdictional waters in the project. An NTP will not be issued until this decision is made and appropriate permits, if applicable, are obtained.

#### **5.5.5 Department of Defense Naval Air Systems Command**

DOD - NAVAIR reviewed the project and determined that the project as proposed will not have significant impacts on the military mission.

#### **5.5.6 Department of Energy (DOE)**

DOE provided language for the EIS that would allow DOE to use the FEIS to meet their NEPA requirements in the event that CES applies for funding through and DOE programs.

#### **5.5.7 State of California Coordination**

##### **5.5.7.1 California Department of Fish and Game**

The California Department of Fish and Game (CDFG) provided expertise on the impacts to Desert Tortoise habitat, other State-listed species, and possible impacts to waters of the State. CES is responsible for obtaining State permits including a Section 1602 Lake and Streambed Alteration Agreement if required for the project for impacts to jurisdictional state waters.

##### **5.5.7.2 State, Regional, and Local Agencies Coordination**

Additional agencies/local governments consulted include:

- County of San Bernardino
- Lucerne Valley Economic Development Association
- Town of Apple Valley
- United States Environmental Protection Agency.

The following non-governmental organizations also provided comments:

- California Desert Coalition
- California Wilderness Coalition
- Defenders of Wildlife
- Desert Protective Council
- Mojave Desert Land Trust

- Natural Res. Defense Council
- Partnership for Johnson Valley
- Sierra Club
- The Audubon Society
- The Nature Conservancy
- The Wilderness Society
- The Wildlands Conservancy

## 6.0 Final Agency Action

### 6.1 Land Use Plan Amendment

It is the decision of the BLM to approve the Proposed Plan Amendment to the California Desert Conservation Area Plan (CDCA Plan, 1980, as amended) to allow a solar energy generation facility on the Lucerne Valley project site. The State Director, California, published the Proposed Plan Amendment and related Final EIS in the Federal Register on August 13, 2010. The Director has resolved all protests on the Proposed Plan Amendment and, in accordance with BLM regulations at 43 CFR 1610.5-2, the decision of the Director on the protests is the final decision of the Department of the Interior as to those protests.

Based on the recommendation of the State Director, California, I hereby approve the Proposed Plan Amendment. This approval is effective on the date this Record of Decision is signed.

Approved by:

  
\_\_\_\_\_  
Director  
Bureau of Land Management  
U.S. Department of the Interior

OCT 04 2010  
\_\_\_\_\_  
Date

### 6.2 Right-of-Way and Route Relocation Authorization

It is the decision of the BLM to approve a solar energy right-of-way grant to Chevron Energy Solutions, subject to the terms, conditions, stipulations, plan of development, and environmental protection measures developed by the Department of the Interior and reflected in this Record of Decision. It is my further decision to relocate Zircon Road within the solar energy power facility site as described in this Record of Decision and Final EIS. These decisions are effective on the date this Record of Decision is signed.

Approved by:

  
\_\_\_\_\_  
Director  
Bureau of Land Management  
U.S. Department of the Interior

OCT 04 2010  
\_\_\_\_\_  
Date

### 6.3 Secretarial Approval

I hereby approve these decisions. My approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4. Any challenge to these decisions, including the BLM authorized officer's issuance of the right-of-way as approved by this decision, must be brought in federal district court.

Approved by:

  
\_\_\_\_\_  
Ken Salazar

  
\_\_\_\_\_  
Date

Secretary

U.S. Department of the Interior

## **7.0 Appendices**

- 7.1 Response to Comments on the Lucerne Valley FEIS**
- 7.2 Biological Opinion**
- 7.3 State Historic Preservation Office Letter of Concurrence**
- 7.4 Maps**
- 7.5 Required Mitigation**
- 7.6 Revised Hydrology Report Summary**