

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
BARSTOW FIELD OFFICE**

Decision Record

Southern California Edison

**CACA-52616 - Abengoa-Mojave, CACA-52096 - Lockhart-Hinkley, CARI-01280 -
Kramer-Lockhart, CALA-030913 - Hinkley-Tortilla, and CACA-21596 – Victor-Kramer**

Environmental Assessment No. DOI-BLM-CA680-2010-0083

It is the decision of the Bureau of Land Management (BLM) to approve the issuance of one new right-of-way (ROW) grant, two pre-Federal Land Policy and Management Act (FLPMA) ROW grants converting to FLPMA ROW grants, and two ROW amendments in support of the construction, operation and maintenance, and termination of ancillary facilities for the Abengoa Mojave Solar Project (AMSP) and other electrical transmission system protection requirements subject to the mitigation measures identified in the Abengoa Mojave Solar Environmental Assessment (EA), the terms and conditions for this project as outlined in the U.S. Fish and Wildlife Service's (FWS) Biological Opinion (BO), other protection measures identified in this decision, stipulations included in the ROW grants, and all other standard conditions and best management practices summarized or outlined in this decision. The ROW grants are conditioned on the implementation of and compliance with the above stated measures. These measures are identified in the Mitigation Measures section of this decision, and a complete list will be attached as stipulations to the new and amended ROW grants.

MANAGEMENT CONSIDERATIONS (RATIONALE)

My decision on these five grants is consistent with and fulfills the BLM's legal requirements for managing public lands. The mitigation measures and stipulations in the grants ensure that authorization of these ROWs will protect environmental resources, accommodate other authorized uses, and comply with environmental standards. This decision reflects careful balancing of many competing public interests in managing public lands, and is consistent with the California Desert Conservation Area (CDCA) Plan. This decision is based on the Abengoa Mojave Solar EA, associated public involvement activities, and other management considerations, as outlined below.

Purpose and Need

The BLM's purpose and need for the proposed action is to respond to five FLPMA ROW applications submitted by Southern California Edison (SCE) to provide ancillary facilities in support of the development of a solar energy generation facility and associated infrastructure. The ancillary facilities are in the form of fiber optic lines that would be located partially within public lands administered by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws and policies. This proposed action would further the purpose of

Secretarial Order 3285A1 (March 11, 2009), which establishes the development of environmentally responsible renewable energy as a priority for the Department of the Interior. This decision meets the purpose and need for the project.

Alternatives

The range of alternatives addressed in the Abengoa Mojave Solar EA for these ancillary facilities includes the Proposed Action (Agency-preferred alternative) and No Action alternatives. Alternative locations were not identified for the proposed fiber optic lines because the AMSP and associated Lockhart Substation need to connect to existing transmission lines and substation in the area. Siting within existing ROWs has the smallest impact on the environment; therefore there are no options that would avoid or lessen impacts to critical habitat for desert tortoise or the associated BLM Area of Critical Environmental Concern. Additionally, siting within existing ROWs, to the extent feasible, is consistent with the BLM's regulations and CDCA Plan guidance to minimize new impacts to sensitive resource values, utilize existing corridors to the extent possible, and provide maximum flexibility for additional ROWs within the utility corridors (43 C.F.R. § 2801.2.; CDCA Plan, Energy Production and Utility Corridors Element). The solar facility and transmission system that these ancillary facilities support also meet BLM and California siting criteria as evaluated in the California Energy Commission (CEC) Supplemental Staff Assessment process and summarized in the Abengoa Mojave Solar EA and this Decision Record. An evaluation of only the Agency-preferred alternative and No Action alternative for the ROW grants is appropriate and reasonable for the proposed fiber optic lines, as supported by the Abengoa Mojave Solar EA. This range of alternatives is consistent with Council on Environmental Quality (CEQ) guidance, which does not require analysis and documentation in an EA of alternatives unless an unresolved conflict, consistent with Section 102(2)(E) of the National Environmental Protection Act (NEPA) and 40 CFR 1501.2(c), exists. Consistent with NEPA and CEQ guidance, this decision is based on an analysis of an adequate range of alternatives. The No Action alternative was not selected because it would not allow the development of renewable energy, which is a national priority.

Public Involvement

While CEQ regulations do not require agencies to make EAs available for public comment and review, agencies are directed to encourage and facilitate public involvement in the NEPA process to the fullest extent possible [40 CFR § 1500.2(d), 40 CFR § 1506.6]. A draft of the EA was published on the Department of Energy's (DOE) website on April 4, 2011, initiating a 30-day comment period lasting until May 4, 2011. The DOE received only three comment letters on the draft EA, from the U.S. Environmental Protection Agency, the Native American Heritage Commission, and SCE. Issues raised in the comment letters included water resources, the range of alternatives, tribal consultation, and hazardous materials. The Abengoa Mojave Solar final EA has provided additional information in response to these comments which clarifies and supports the analysis provided in the draft EA. Responses to the comments received can also be found in an appendix to the final EA. A record of public contact can be found in Appendix A of the final EA. In addition to the public process under NEPA, opportunities for agency and public participation were provided during the CEC's licensing process for the AMSP, which these transmission facilities support. A summary of this process can be found in section 1.2 of the final EA.

Tribal consultation efforts were also conducted under Section 106 of the National Historic Preservation Act (NHPA). The DOE sent letters to local federally recognized Native American tribes on September 27, 2010, formally inviting them to participate in government-to-government consultation regarding the AMSP. In February 2011, the tribes were contacted again. Follow-up letters were sent to inform them of the results from the Class III Cultural Resources Survey Report. The formal Section 106 consultation process has been completed.

I have determined that all substantive comments have now been satisfactorily addressed and documented in the final EA, including those that pertain to this decision.

Consistency with Other Relevant Federal, State, and Local Law and Regulation

Related laws and policies relevant to the issuance of these grants include the Energy Policy Act of 2005 (EPA), Pub. L. No. 109-58, NHPA, 16 U.S.C. § 470 *et seq.*, and the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* The EPA and BLM Instruction Memorandum No. 2007-097 (April 4, 2007) support the development of transmission facilities to support renewable energy power generation projects on both public and private lands. The BLM has complied with applicable Federal laws. The BLM initiated Section 7 consultation pursuant to the ESA relating to one federally- and State-threatened species – desert tortoise (*Gopherus agassizii*) – known to occur along the proposed ROW grant areas, major portions of which are located within designated critical habitat for this species. The FWS issued a BO as part of the consultation for the overall AMSP, including the five fiber optic lines. The FWS concluded in its BO that the proposed project is “not likely to jeopardize the continued existence of the desert tortoise.” FWS, BO at 39 (March 17, 2011). The FWS identified specific terms and conditions to minimize impacts to desert tortoise, which are adopted by this decision.

The BLM has also satisfied the requirements of Section 106 of the NHPA, 16 U.S.C. § 470f. As required by the Advisory Council on Historic Preservation’s Section 106 regulations, 36 C.F.R. Part 800, the BLM worked with the DOE to initiate the Section 106 process to identify, evaluate, and resolve, if necessary, any adverse effects to historic properties listed in or eligible for the National Register of Historic Places. The Agencies initiated consultation with the California State Historic Preservation Officer (CA SHPO) and with Indian tribes with historic ties in the general vicinity of the project area. Through the identification and evaluation process outlined in the Section 106 regulations, it was determined that the proposed project would have no adverse effects on National Register-listed or eligible historic properties. The CA SHPO issued a conditional No Adverse Effect determination on June 27, 2011, with conditions including a requirement that archaeological and tribal monitors be on site during ground disturbance.

The Army Corps of Engineers provided a No Jurisdiction Determination for the project on February 26, 2010, indicating that no permit would be necessary under Section 404 of the Clean Water Act.

Compliance with these laws is fully documented in the Abengoa Mojave Solar EA and related consultations, including the adoption of appropriate measures in this decision. In addition, the

issuance of all other necessary local, State, and Federal approvals, authorizations, and permits as identified in the EA is required as a standard stipulation to the ROW grants.

CDCA Plan Conformance

This decision is consistent with the CDCA Plan of 1980, as amended. The CDCA and the West Mojave Planning Area allow for the authorization of new ROWs on public lands, consistent with Title V of FLPMA and the Energy Production and Utilities Corridor Element of the CDCA Plan. New transmission and distribution facilities are allowed on public lands that are unclassified, or classified as “Limited”, “Moderate”, or “Intensive” use as identified in the CDCA Plan. To the extent they are reasonably available, for “Limited” lands, new ROWs should be placed within existing ROWs. Additionally, the CDCA Plan allows for upgrades to facilities and may be included upon amendment of the original ROW grants. This decision is also consistent with additional specific plan strategies to minimize new disturbances and impacts to the listed desert tortoise from these authorizations, as outlined in Section 2.2.4.2, DT1 and DT11 of the West Mojave Plan (2006), an amendment to the CDCA Plan for this area.

MITIGATION MEASURES

The ROW grants are conditioned on implementation of required mitigation measures and monitoring programs. The complete language of all the mitigation measures, terms and conditions, and stipulations is included in the five ROW grant authorizations as terms and conditions of the ROW grants. They include all measures in the Abengoa Mojave Solar EA (Appendix S: *Environmental Protection Measures, Design Measures, and BMPs*), the required terms and conditions from the BO for this project issued by FWS, measures identified by the CA SHPO to comply with its conditional No Adverse Effect determination under Section 106 of the NHPA, and standard stipulations for grants under Title V of FLPMA within the CDCA in this area.

Failure of the applicant to adhere to these mitigation measures, terms and conditions, measures identified by the CA SHPO, and stipulations could result in administrative actions up to and including termination of the ROW grants and requirements to relocate or remove the facilities and rehabilitate disturbances. These measures, terms and conditions, and stipulations are determined to be in the public interest pursuant to 43 CFR 2805.10(a)(1).

All practicable means to avoid or minimize environmental harm have been adopted under this decision.

PROJECT MONITORING AND ADAPTIVE MANAGEMENT

Project monitoring and adaptive management ensure compliance with all grant stipulations and document such compliance. Resource Protection compliance monitoring for this project will be conducted by the BLM or a third-party contractor approved by the BLM. Construction compliance may be conducted by the BLM, a third-party contractor, or SCE, upon BLM approval, and coordinated with the DOE. Monitoring will consist of the following components:

- Compliance Monitors will be identified by the BLM prior to initiation of activities on public lands, to conduct routine site visits to determine compliance with grant stipulations. The BLM site visits may be coordinated with SCE or conducted unannounced. Supplemental information provided by SCE, including preconstruction submittals, survey reports, monthly reports, meeting notes, and agency correspondences, will also be used to determine future compliance needs and verify compliance.
- Compliance Monitors will document observations through the use of daily field notes and digital photography. Field inspection forms will also be utilized in the field to document compliance of specific crews, construction activities, or mitigation measures. The forms will provide a standardized checklist to facilitate inspections, as well as list mitigation measures that were verified during site visits. Information gathered from the inspection forms and field notes will be used to generate weekly status reports and update the status of implementation of grant stipulations to include in the project case files.
- A construction activity that deviates from grant conditions requires prior approval by the Authorized Officer. Failure to do so is considered as non-compliance with the ROW grant and requires immediate notification of the BLM upon discovery, in order to determine corrective actions that may be needed. Examples of non-compliance include, but are not limited to:
 - Use of new access roads, staging areas, or extra workspaces not identified on the project drawings or not approved for use during construction;
 - Encroachment outside of the ROW or into an exclusion zone or sensitive resource area designated for avoidance;
 - Brush clearing outside the approved work limits;
 - Grading, foundation, or line work without required advance notification, preconstruction surveys, or monitor on site;
 - Failure to install, or improper installation of, erosion or sediment control structures;
 - Discharge of sediment-laden trench or foundation-hole water into a water body or storm drain.
- A copy of the Compliance Monitors' Non-Compliance report will be filed with SCE that lists actions required to bring the activity back into compliance and provides a timeline for follow-up. SCE is required to contact the California Public Utilities Commission (CPUC) Project Manager and the BLM Compliance Project Manager within 5 working days to resolve the non-compliance. Depending on the severity of non-compliance, the BLM may issue a stop work order or an immediate temporary suspension of the activity or grant.
- If a construction activity or observed resource protection measure only slightly deviates from project requirements and does not put a resource at risk, the CPUC Environmental Monitor may elect to issue an incident report to rectify the issue. Construction activities that could result in an incident report include, but are not limited to:

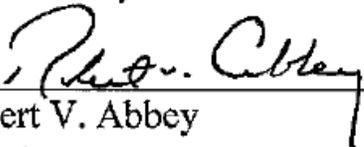
- Failure to properly maintain an erosion or sediment control structure, but the structure remains functional;
 - Use of an existing unapproved access road (first offense);
 - Work outside the approved work limits where the incident is within a previously disturbed area, such as a gravel lot.
- Incident reports will generally not be issued twice for the same compliance issue. In other words, repeated incidences will result in a finding of non-compliance.
 - At various times throughout the project, the need for extra workspace or additional access roads may be identified. Similarly, changes to the project requirements (e.g., grant conditions, specifications, etc.) may be needed to facilitate construction or provide for more effective protection of resources. The BLM and SCE should work together to find solutions when variations or adjustments are necessary for specific field situations to avoid conflicts with adopted conditions or specifications.
 - The holder shall not initiate any construction or other surface disturbing activities as a minor change to the ROW or Plan of Development without prior written approval of the Authorized Officer, or his delegate. Such authorization shall be a written Change of Condition or Adjustment. Each Change of Condition/Adjustment shall authorize construction or use only as therein expressly stated and only for the particular location and use therein described. All Changes of Condition/Adjustments are subject to such terms and conditions as deemed necessary by the Authorized Officer at the time of approval. Approved changes authorize construction or use only as therein expressly stated and only for the particular location, phase, area, or use described. The Authorized Officer may, by written notice, suspend or terminate in whole or in part any change of Condition/Adjustment which has been approved, when in the Authorized Officer's judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment. At the conclusion of project construction or as project phases are completed, as-built drawings must be provided to the BLM for the purpose of conforming the ROW to the as-built locations. All Conformance Requests will be documented and tracked to ensure the acreages of disturbance affected by post-authorization conformance changes remain within the limits of impacts analyzed in the Environmental Impact Statement and approved in the Decision Record and ROW.
 - If a project change is proposed, the BLM Compliance Project Manager may request a site visit from the BLM with SCE or other pertinent agencies to determine the need for additional information to process the change request or determine the extent of the change proposed. In some cases, a change may also require approval by other jurisdictional agencies. In general, these change requests must include the following information:
 - Detailed description of the location, including maps, photos, and/or other supporting documents;
 - How the variance request deviates from a project requirement;

- Biological resource surveys or verification that no biological resources would be significantly impacted;
 - Cultural resource surveys or verification that no cultural resources would be adversely or significantly impacted;
 - Landowner approval if the location is not within SCE's BLM ROW or property;
 - Agency approval (if necessary).
- Inspection forms will be completed for each site visit, and weekly status reports will be filed with the BLM, DOE, and individual Compliance Monitors to prepare a final environmental compliance report following the completion of construction. The final report will provide a discussion on how each grant condition was implemented and include copies of submittals required for compliance. In addition, the success criteria will be evaluated and used for future projects.

ROW AUTHORIZATION

It is my decision to approve the right-of-way and right-of-way amendments reflected in this Decision Record, subject to the terms, conditions, stipulations, and environmental protection measures developed by the Department of the Interior. This decision is effective on the date this Decision Record is signed.

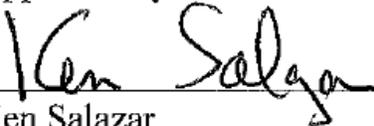
Approved by:

 7-6-11
 Robert V. Abbey Date
 Director
 Bureau of Land Management

SECRETARIAL APPROVAL

I hereby approve this decision. My approval of this decision 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 this decision, 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:

 7-11-2011
 Ken Salazar Date
 Secretary
 Department of the Interior