

**Appendix 1**  
**Response to Comments on the**  
**Final Environmental Impact Statement**

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## 1.1 Introduction

The Bureau of Land Management's *Final Environmental Impact Statement [FEIS] and Proposed Amendment to the California Desert Conservation Area [CDCA] Plan for the Calico Solar (formerly SES Solar One) Project, San Bernardino, California* was published on August 6, 2010 and accompanied by a Notice of Availability (NOA) from the Environmental Protection Agency (EPA) (75 FR 47591) and from the BLM (75 FR 47620) in the *Federal Register (FR)*. By regulation, the NOA publication by the EPA began a 30-day CDCA Plan protest period and FEIS comment period that ended on September 7, 2010. The FEIS comments received are organized into topic categories to facilitate technical review, development of responses, and, where needed, incorporation into the Record of Decision (ROD). The land use plan (LUP) amendment protest response summary is attached as Appendix 2 to the ROD.

## 1.2 Index of Comments Received

Table 1-1 is an index list of the agencies, organizations, and individuals who submitted substantive and timely comments on the FEIS during the 30-day comment period. Each comment is assigned a unique code with each comment individually numbered. For example, EPA-1 refers to the first substantive comment in the comment letter submitted by the EPA.

**Table 1-1 Summary of Comments Received on the Calico Solar Project Final Environmental Impact Statement**

<b>Comment Code</b>	<b>Agency/Person</b>	<b>Document Type and Date</b>
<b>Comments from Federal Agencies</b>		
EPA-1 through EPA-27	United States Environmental Protection Agency	Letter, September 7, 2010
<b>Comments from State or Local Agencies</b>		
NAHC-1 through NAHC-7	Native American Heritage Commission	August 11, 2010
<b>Comments from Organizations</b>		
BNSF-1 through BNSF-18	Burlington Northern Santa Fe Railway (BNSF)	Letter, September 3, 2010
BRW-1 through BRW-13	Basin and Range Watch (BRW)	Letter, September 7, 2010
Calico-1 through Calico-32	Calico Solar, LLC (Calico)	Letter, September 7, 2010
CURE-1 through CURE-76	California Unions for Reliable Energy (CURE) and William Perez (as submitted by Adams Broadwell Joseph and Cardozo)	Letter, September 7, 2010

Comment Code	Agency/Person	Document Type and Date
DEF-1 through DEF-21	Defenders of Wildlife (Defenders), Natural Resources Defense Council (NRDC), Center for Biological Diversity (CBD) and The Wilderness Society (TWS)	Letter, September 3, 2010
SC-1 through SC-24	Sierra Club (SC)	Letter, September 7, 2010
WWP-1 through WWP-25	Western Watersheds Project (WWP)	Letter, September 7, 2010
<b>Comments from Members of the General Public</b>		
Jackson-1 through Jackson-22	Patrick C. Jackson	Letter, August 31, 2010

## 1.3 General Comments

### 1.3.1 Adequacy of Analysis (20900)

**Comment CURE-23:** C. Failure to Take a “Hard Look” At Environmental Consequences... NEPA requires that agencies take a “hard look” at the environmental consequences of a proposed action. A hard look is defined as a “reasoned analysis containing quantitative or detailed qualitative information.” The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of the impact caused by the proposed action and the alternatives (p. 22)... As stated in CURE’s comments on the DEIS, BLM failed to take a hard look at the Project’s effects on cultural and biological resources. The FEIS similarly fails to analyze the Project’s effects on these resources. (p. 23).

**Comment CURE-41:** IV. BLM FAILED TO INTEGRATE ITS NEPA REVIEW WITH STUDIES AND ANALYSES REQUIRED UNDER THE NATIONAL HISTORIC PRESERVATION ACT, THE FEDERAL ENDANGERED SPECIES ACT AND THE BALD AND GOLDEN EAGLE PROTECTION ACT... As detailed in these comments, BLM has made little effort to coordinate its environmental review with the development of the Programmatic Agreement under Section 106 of the NHPA, its consultation with the U.S. Fish and Wildlife Service regarding impacts to desert tortoise under Section 7 of the Endangered Species Act or its need for a permit under the Bald and Golden Eagle Protection Act. This haphazard and segmented environmental review has greatly comprised BLM’s ability to fully evaluate the environmental consequences of the Project and the public’s ability to meaningfully participate in the environmental review process. The BLM should have drafted and circulated a Programmatic Agreement, a meaningful Desert Tortoise Translocation Plan, a Draft Incidental Take Permit, Protocol Golden Eagle Surveys and the take analysis pursuant to the Bald and Golden Eagle Protection Act. (p. 36)

**Response:** The FEIS does take a “hard look” at the environmental consequences of the proposed action and alternatives. Section 4.0 of the document titled “Environmental Consequences” is solely dedicated to assessing and analyzing the direct, indirect, and cumulative effects to the human and physical/natural environment that could result from the implementation of the proposed action and its alternatives.

All studies or reports that were not available prior to the DEIS that subsequently became available were analyzed in the preparation of the FEIS. Each of the studies and reports clarified or complemented earlier understandings or assumptions; none has caused a substantial change in a proposed action, and none is “significant” for purposes of NEPA. Additional surveys are anticipated to be required or completed as a result of other agencies’ statutory or regulatory obligations, or within specific areas of expertise. For example, the FWS Endangered Species Act Section 7 consultation and the Section 106 Programmatic Agreement are in progress. These processes are independent of and separate from the NEPA process, and are being pursued in accordance with the schedule and procedures established in the relevant regulatory regimes. Studies required or completed in satisfaction of other agencies’ requirements that become available before the ROD is issued will be evaluated by the BLM. The BLM is making every effort to complete these processes in coordination with NEPA, and to finalize these other processes before the issuance of the ROD. Other agencies and the public have the opportunity to review such reports to the full extent of the relevant governing law. (See ROD Appendix 3 – Biological Opinion and Appendix 4 – Programmatic Agreement)

### **1.3.2 Decision-making Process and Methods (10100)**

**Comment SC-1:** [S]ubsequent to the release of the SA/DEIS, the Applicant submitted a revised application that reduced the footprint of the proposed Project to 6,215 acres while maintaining an expected capacity of 850 MW. Despite this substantial change, BLM did not issue a supplemental EIS (“SEIS”), and instead simply incorporated the Applicant’s altered design as a new alternative in the FEIS. Several other details of the Calico Project continued to change subsequent to the BLM’s release of the FEIS on August 6, 2010, yet the BLM did not issue any supplemental environmental analysis in direct violation of NEPA. (p. 3)

**Comment SC-2:** Given the massive number of recent changes in agency analyses for the Project, the FEIS is an entirely new document from that which BLM circulated on March 30, 2010. BLM’s issuance of the FEIS therefore violated NEPA’s requirement that, “environmental impact statements shall be prepared in two stages and may be supplemented.” Thus, rather than issuing an FEIS, NEPA required BLM to prepare a supplemental EIS (“SEIS”) to address the substantial changes made in the document. BLM must prepare a supplemental NEPA document and circulate it for public review and comment. (p. 4)

**Comment SC-3:** It is impossible for the public or other reviewing agencies to meaningfully compare the two documents because they offer completely different assessments of the proposed Project. (p. 4)

**Comment SC-4:** BLM acknowledged that CEQ regulations require an EIS “...to identify the agency’s preferred alternative...in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such preference.” Despite this clear requirement to identify and analyze the preferred agency alternative at the draft stage, BLM simply crafted a new alternative that it described and analyzed for the first time in the FEIS. This was a clear violation of NEPA. (p. 5)

**Comment SC-5:** NEPA requires BLM to issue a supplemental EIS to disclose and analyze the myriad of alleged environmental benefits related to Alternative 1a. Without such a supplement, the public will not have an opportunity to comment on the adequacy of BLM’s determination that the benefits were legitimate or that they adequately addressed the overall impacts of the Project. (p. 6)

**Comment SC-24:** NEPA requires BLM to withdraw the FEIS and produce an SEIS for public review and comment. The SEIS must address and remedy both the deficiencies in BLM’s impacts analysis as well as the significant and cumulative environmental impacts that would result from the Translocation Plan. Therefore, Sierra Club respectfully requests that BLM draft and circulate a SEIS consistent with these comments, or in the alternative reject the ROW application. (p. 20)

**Response:** Subsequent to publication of the SA/DEIS, and based on discussions with USFWS and CDFG, among other agencies, the Applicant proposed to reduce the footprint of the project site from 8,230 acres to 6,215 acres to reduce impacts to biological and cultural resources. As described in Section 1.4 (page 1-9) in the FEIS, the BLM chose to use a Determination of NEPA Adequacy (DNA), (Appendix C in the FEIS), as an internal administrative tool to determine whether a supplemental to the Draft EIS was required as a result of the applicant proposed modifications. The BLM determined that no supplement was required because the applicant-proposed modifications were similar to features of previously analyzed alternatives, resulted in an alternative within the range of the alternatives analyzed previously in the SA/DEIS and FEIS, did not substantially change the previous analysis, and had effects that were similar to or less than those analyzed for the Calico project and the other build alternatives, per the direction of the BLM NEPA Handbook H-1790-1. The potential effects of these modifications were presented in the analysis provided in the Final EIS and the DNA. The public review period for the Final EIS began on April 2, 2010 and was completed on July 1, 2010, thus allowing the public to review and comment on the FEIS (in compliance with 40 CFR 1506.6).

### 1.3.3 Public Comment Process Comments (11500)

**Comment BNSF-2:** The FEIS does not address the comments previously submitted by BNSF on July 1 and 29, 2010. Nor does it address the concerns expressed by BNSF in its Post-Hearing Brief. Consistent with the May 5th Notice of Availability, the FEIS does not incorporate by reference or otherwise adopt the study, analysis and concomitant findings of the CEC in relation to the CEC's supplemental staff assessments. (p. 4)

**Comment CURE-13:** B. BLM Failed to Adequately Respond to Public Comments (p. 14)... BLM failed to provide a good faith, reasoned analysis in response to public comments. These omissions violate NEPA. (p. 15)

**Comment DEF-1:** The Center submitted comments on the Calico Draft Environmental Impact Statement (“DEIS”) on July 1, 2010 and provided a CD with references to the BLM. Those comments are incorporated herein by reference as well.

**Comment DEF-11:** Project modifications intended to reduce impacts to these resources were developed after the DEIS and were disclosed in the FEIS along with the proposed plan amendment, allowing for only a 30 day public review and protest. The significant new information should have been disclosed in a supplemental DEIS along with additional time for public review and comment prior to BLM announcing a proposed decision on the proposed project in the FEIS. Such disclosure and public review would have stimulated greater attention to on and off-site alternatives that would have provided opportunities for more meaningful and effective impact avoidance and minimization strategies. This shortcoming in the NEPA process was driven by the arbitrary date of December 31, 2010 for a final project decision tied to eligibility for obtaining American Recovery and Reinvestment Act funding through the U.S. Department of Energy. (p. 5)

**Comment EPA-1:** EPA's comments on the DEIS were not included in the Response to Comments. Although some of our concerns were resolved in the FEIS, we request that our comments on the DEIS be considered along with the enclosed comments on the FEIS. (p. 1)

**Comment Jackson-1:** The following documents were previously submitted to Jim Stobaugh and Richard Rotte, Project Manager, Calico Solar Project, Alan Stein and/or Roxie Trost during the planning process. These documents are hereby incorporated in this Protest (p. 4)... 25. May 1, 2010 Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application for Certification (08-AFC-13) San Bernardino County, Part 1...27. May 27, 2010 Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application for Certification (08-AFC-13) San Bernardino County, Part 2... 28. June 26, 2010 Patrick C. Jackson's Comments on the Draft Environmental Impact Statement For The Calico Solar Project (p. 4)

**Response:** The FEIS Appendix G contains responses to all comments on the SA/DEIS that were timely received by the BLM.

The comments submitted by BNSF in the July 1, 2010 letter were addressed in Appendix G of the FEIS as BNSF-1 through BNSF-5. The July 29, 2010 comments were received after the close of the SA/DEIS comment period and after the FEIS production and printing process. Subsequent to joint release of the SA/DEIS the CEC and BLM opted to produce independent environmental documents, a SSA and FEIS, respectively, and the scheduling of the production and publication of these environmental documents ran according to independent state and federal processes and regulations. Comments submitted by CURE were addressed in Appendix G of the FEIS.

EPA's comments on the SA/DEIS were received subsequent to the close of the 90-day comment period that expired on July 1, 2010 and were inadvertently not identified in the FEIS. However, the BLM received similar comments during the comment period that were addressed in the FEIS. The comments submitted by Patrick Jackson in the May 1, 2010 letter were addressed in Appendix G of the FEIS as Jackson-1 through Jackson-12; the comments in the May 27, 2010 letter were addressed as Jackson-13 through Jackson-24; the comments in the June 26, 2010 letter were addressed in Appendix G of the FEIS as Jackson-25 through Jackson-29.

The BLM believes that the opportunities for public participation under NEPA were adequate and included opportunities to review the DEIS and FEIS on either the BLM or CEC project websites, and that the additional information provided by the Applicant was readily available on the CEC website. The BLM has documented analysis of the modified project components based on the Applicant-proposed changes in the project description in Chapter 4 of the FEIS, Environmental Consequences, which is also summarized in Appendix C, Determination of NEPA Adequacy (DNA).

A supplemental EIS, as defined by the CEQ regulations 40 CFR 1502.9, is not warranted. According to the BLM's NEPA Handbook, the agency may use a Determination of NEPA Adequacy (DNA) to evaluate new circumstances or information prior to issuance of a decision to determine whether the preparation of supplemental environmental analysis is necessary (BLM NEPA Handbook H-1790-1, at 22). As discussed in Appendix C (Determination of NEPA Adequacy) of the FEIS, the BLM concluded, after analyzing the new information, that the modifications to the Agency Preferred Alternative are not the types of changes requiring analysis through supplementation of the EIS.

The responses to comments on the SA/DEIS address each comment and clarify any project features that have been included in the comments. All comments on the Final EIS are included and are addressed in this appendix of the ROD. In addition, please refer to Appendix G: SA-

DEIS Comments-Responses for additional discussion regarding responses to comments on the Draft EIS.

### **1.3.4 Interagency Coordination (11100)**

**Comment EPA-26:** In light of the decision to separate CEC's and BLM's environmental review processes, the responses to FEIS comments should discuss the resolution procedure that will be employed if BLM's FEIS presents a preferred alternative that differs from what CEC approves through its process. (p. 4)

**Comment EPA-27:** Clarify, in responses to FEIS comments, how BLM's and CEC's now separated alternative selection processes will be reconciled. (p. 4)

**Response:** All of the information docketed in the CEC review and approval process will be incorporated into the administrative record for the BLM decision. The BLM has maintained its coordination with the CEC and other agencies throughout the NEPA process. In particular, the BLM will coordinate the implementation of mitigation and the requirements of the Environmental and Construction Compliance Monitoring Program with the Conditions of Certification the CEC adopts in its decision.

## **1.4 Purpose and Need (20200)**

**Comment DEF-2:** I. The Proposed CDCA Plan Amendment and FEIS Do Not Comply with NEPA... A. The purpose and need statement is too narrow. BLM considers the purpose and need as responding to the applicant's right of way application under Title V of the FLPMA. (FEIS at 1-5). It is focused on meeting the objective of the applicant (FEIS at 1-4) and on amending the CDCA for this project only, thus essentially foreclosing serious consideration of meaningful alternatives during the formulation of the final decision. See *National Parks Conservation Assn. v. BLM*, 586 F.3d 735 (9th Cir. 2009). The Parties commented on the DEIS in this regard, strongly advocating that BLM comply with NEPA by analyzing a range of alternatives that would contribute to achieving the national and state goals for generation and distribution of electrical energy from renewable sources. In preparing the FEIS, BLM considered a relatively large number of alternatives (i.e., 25) but prematurely dismissed all but three for further analysis. (FEIS at Ch.2) (p. 3)

**Comment DEF-5:** Furthermore, BLM's purpose and need rationale referred to the needs of the applicant in meeting their obligations under a power purchase agreement with the local utility company, a contractual matter not involving BLM or its management responsibilities under FLPMA. (p. 3)

**Response:** Your comment has been noted and your concerns have been addressed in Chapters 1 and 2 in the FEIS. Alternatives were considered but eliminated from detailed analysis per criteria provided in the BLM's NEPA Handbook H-1790-1.

## 1.5 Document Text (21000)

**Comment Calico-1:** After July 12, 2010...Calico made three additional revisions to Alternative 1a, which have been presented to the CEC, but were not made in time to be included in the FEIS.

First, BNSF requested that the project not use the previously planned temporary construction access across its right-of-way...This change has been analyzed and found to cause no adverse change in the project's impacts. (p. 2)

**Comment Calico-2:** After July 12, 2010...Calico made three additional revisions to Alternative 1a, which have been presented to the CEC, but were not made in time to be included in the FEIS...Calico proposes to use two diesel generators to provide construction power until the Phase I upgrade to SCE's Pisgah substation is complete...With these generators, the use of a nearby water well rather than water delivery by train and/or truck from Cadiz, and a refinement of offsite vehicle exhaust emission factors to reflect a 50 mph, rather than a 10 mph travel speed, the construction emissions from Alternative 1a will be lower than previously reported. (p. 2)

**Comment Calico-4:** [T]he FEIS provides photographs of SunCatcher dishes. The photographs depict an older model of the dish; photographs of the current generation of SunCatcher dish are provided in the Plan of Development at page 14 (Figure 8). (p. 3)

**Comment Calico-5:** The following statement at page 2-8 of the FEIS is incorrect and should be deleted: "Following the completion of the 30 percent engineering drawings in April 2009, the Applicant determined that it would be necessary to place SunCatcher units throughout the site, including in washes, to attain the proposed 850-MW yield." (p. 3)

**Comment Calico-6:** [I]t has been determined that with both reverse osmosis and chlorination, the water from well 3 will be potable. Accordingly, the last sentence of the third paragraph of FEIS section 2.2.3.2 should be revised along with following lines: "This water would require RO and chlorine treatment on site prior to use for potable purposes." The paragraph headed "Potable Water" on the same page should be deleted. (p. 3)

**Comment Calico-7:** The detention basin area for the 8,230-acre Proposed Action was 600 acres, but the detention basin area for the 6,215-acre Agency Preferred Alternative is now 470 acres, with actual disturbance for detention basins comprising approximately 114 acres of the detention basin area. (p. 3)

**Comment Calico-8:** Chapter 2 of the FEIS does not describe the reliability of the SunCatcher system or site security. Please see Calico's CEC Exhibits 80 and 89, and the supplemental Staff Assessment pages C.5-14 - C.5-15, which provide information on these topics. (p. 3)

**Comment Calico-9:** The discussion of Alternative 3 includes the following sentence: "Operations emissions would be less than the Proposed Action due to smaller footprint (7,050 acres) and less area of disturbance." The same should be said of Alternative 1a, i.e. "Operations emissions would be less than the Proposed Action due to the smaller footprint (6,215 acres) and less area of disturbance." The FEIS should be clear that Alternative 1a is superior to both the Proposed Action and the Avoidance of Donated and Acquired Lands Alternative in this respect. (p. 3)

**Comment Calico-10:** Calico does not intend to mow the entire project site...and re-mowing is anticipated to be needed on only 5% of the SunCatcher array area...Because mowing would be very limited in both extent and frequency, the FEIS overstates the impacts to vegetation and wildlife of Alternative 1a. (p. 4)

**Comment Calico-11:** [T]he FEIS states, without a citation, that noise from an individual SunCatcher is 84 dBA at a distance of 50 feet. In fact, sound measurements of operating SunCatchers at the Maricopa Solar site in Arizona show that the noise level from each unit is approximately 74 dBA, not 84 dBA...Therefore, the FEIS overstates the noise impacts of the project on wildlife at all locations and should be corrected to reflect the lower expected noise levels...[T]he reduction in the project footprint from 8,230 acres for the Proposed Action to 6,125 acres for Alternative 1a, the Agency Preferred Alternative, means that noise impacts to the north of the project will be further reduced. (p. 4)

**Comment Calico-12:** It should also be noted that noise levels in some areas of the project site are already fairly high under existing conditions, primarily due to the presence of the BNSF rail line...sound levels of 75 dBA Lea and 81 dBA Ldn. (p. 4)

**Comment Calico-13:** [T]he FEIS suggests that under the Proposed Action, the applicant would be required to "mitigate for the loss of 1,180 acres of donated and acquired lands"...Calico notes that neither the BLM nor the CEC would require mitigation for donated and acquired lands simply because those lands were donated or acquired with LWCF funds. Instead, mitigation would be required based on the habitat values that those lands represent. For Alternative 1a, thousands of acres of mitigation lands would be acquired; this reflects the habitat value of the site's acquired lands, donated lands, and other lands that would be utilized under Alternative 1a. (p. 4)

**Comment Calico-14:** [T]he FEIS states that the Proposed Action would cause electrocution risk to Golden Eagles. Elsewhere, however, the FEIS explains that the electrocution risk to all birds

that would be caused by the types of transmission lines needed for the project would be "extremely low"...Any electrocution risk to Golden Eagles would be extremely low. (p. 4)

**Comment Calico-17:** [T]he FEIS quantifies CO2 emissions due to train transport of water from Cadiz. This emissions category should be deleted because local well water is not the primary water source for the project and water will be transported to the main services complex by pipeline. (p. 5)

**Comment Calico-18:** This section provides tables showing CO2 emissions per kilowatt-hour for all action alternatives other than Alternative 1a. It should be noted, however, based on the tables that are provided, that if a similar table were prepared for Alternative 1a, that alternative would demonstrate the most favorable ration of emissions per kilowatt hour. (p. 5)

**Comment Calico-22:** [T]he FEIS describes the local economic benefits of the Proposed Action as "negligible in comparison with the existing populations of the nearby communities"...Based on testimony before the CEC, representatives of local communities do not view these benefits as "negligible". (p. 6)

**Comment Calico-24:** [T]he FEIS identifies loss of grazing as an irreversible and irretrievable commitment of land use resources...As the FEIS states elsewhere, however, the project site is not currently used for grazing and is not known to have been used for grazing at any time in the past. Grazing is not a genuine land use resource on the project site, so lost opportunities for grazing do not represent an irreversible and irretrievable commitment of resources resulting from the Calico Solar Project. (p. 6)

**Comment Calico-25:** Section 4.22, titled a "summary" of the unavoidable adverse impacts of the various Calico Solar Project build alternatives, does not accurately reflect the analyses that precede it. (p. 6)

**Comment Calico-26:** Whereas Section 4.3 of the FEIS finds that the Proposed Action would cause significant unavoidable impacts to biological resources, it also finds that Alternative 1a would greatly reduce the scale and magnitude of these impacts. The biological resources impacts of Alternative 1a are not identified as unavoidable adverse impacts in Section 4.3 of the FEIS. (p. 6)

**Comment Calico-27:** As the CEC's Supplemental Staff Assessment concluded, with the reduction of the project's size from 8,230 to 6,215 acres, almost all of the impacts of the project level and cumulative impacts of the Agency Preferred Alternative would be mitigated...The combination of avoidance and minimization measures with the provision of habitat reduces the impacts of the Agency Preferred Alternative to a level that is not significant, whether the project is considered individually or in combination with cumulative project. The FEIS should acknowledge this. (p. 7)

**Comment Calico-28:** [S]ection 4.22 identifies a significant unavoidable impact to special-status species because some species potentially in the area have not been found on the project site after repeated surveys, but might in fact occur there...Section 4.3 of the FEIS draws no such conclusion. If this analytical approach were valid, every project would be found to result in significant unavoidable impacts to special status species...This conclusion is unjustified and should be deleted. (p. 7)

**Comment Calico-30:** [T]he summary states that the closure of open BLM routes through the project site would represent an unavoidable adverse impact to private property owners and recreational users of these routes. The build alternatives would, however, provide different access routes for these travelers, so this impact would be mitigated. (p. 7)

**Comment Calico-32:** Typographical errata submitted with comment letter. Fourteen errata were submitted.

**Response:** Subsequent to publication of the FEIS, additional information regarding the Calico Solar Project has been provided to and docketed by the CEC, and CEC staff has published a Supplemental Staff Assessment acknowledging that information. BLM can likewise acknowledge new information received after publication of the FEIS in development of the ROD. BLM has considered new information and changes in circumstance in light of the information and analysis of the FEIS, pursuant to the provisions of Section 5.1 of the BLM NEPA Handbook H-1790-1.

Requests to change the text of the FEIS and address typographical errata are noted.

## **1.6 Alternatives (22500)**

### **1.6.1 Range of Alternatives (22500, 22900)**

**Comment DEF-4:** B. In its search for and consideration of potential alternative locations for the proposed project, BLM appeared to take an overly narrow approach by searching for sufficient land in essentially one contiguous block that could accommodate the size of the project proposed by the applicant. This approach is perplexing because the Stirling dish-engine technology proposed for the Calico project is highly modular, unlike other solar-thermal technologies that rely on large-scale integrated arrays of mirrors, heat transfer devices and powerplants. Thus, the Stirling dish-engine technology is suited for smaller, isolated or fragmented parcels of land rather than large continuous blocks that would be sufficient for the entire project. (p. 3)

**Comment WWP-2:** The CDCA Plan Amendment/FEIS Analysis of Alternatives Violates NEPA...In the FEIS the BLM has failed to consider and analyze alternatives that would allow the project to proceed but would avoid impacts to desert tortoise, rare plants, cultural resources and other scarce and sensitive resources. (p. 2)

**Comment WWP-4:** The BLM has eliminated from detailed study alternatives that would avoid or minimize impacts to biological resources or avoid or minimize impacts to public lands. Locating the project on private lands would obviously minimize impacts to public land resources...the BLM dismissed this alternative from detailed study on the grounds that the analysis of impacts would not define issues or provide a basis for choice in a manner any different than the No Action Alternative. But given the size of the project, there will be cumulative effects from constructing the project on private lands that cannot possibly be the same as “no action”. BLM also argues that the applicant would have to buy the land and acquire multiple parcels which would be costly and time-consuming. But by this token, the BLM will never consider private land alternatives for projects. This is not in keeping with the spirit or intent of NEPA. (p. 3)

**Comment WWP-5:** In order to address impacts to LWCF acquisitions and donated lands, the BLM has contrived Alternative 3. This is not a reasonable alternative since it compensates for the loss of impacts to the acquired and donated lands by increasing the project footprint and thus drastically increasing impacts on other resources. (p. 4)

**Response:** Twenty-four alternatives were identified and considered by the BLM and CEC in the SA/DEIS, including alternative sites, a range of solar and renewable and nonrenewable energy generation technologies, and conservation/demand-side management. Of these 24 alternatives, 3 action alternatives were determined by BLM to meet its purpose and need for the proposed Calico Solar Project. The FEIS describes the alternatives screening methodology, and explains the process by which the action alternatives, the No Action alternative, and two land use plan amendment alternatives were selected for detailed analysis. Section 2.9.2 of the FEIS generally describes the rationale for why some classes of alternatives were determined to not be reasonable or feasible alternatives to meet the purpose and need for the proposed project.

## **1.6.2 Private Land Alternatives (22510)**

**Comment SC-23:** BLM impermissibly omitted analysis of the private lands alternative: The FEIS did not evaluate the private lands alternative, which would involve the Applicant’s acquisition of private parcels for development of the solar plant. The SA/DEIS included a private lands alternative, but the FEIS dropped the issue and did not consider or analyze it as an alternative...The private lands alternative clearly falls within the range of reasonable alternatives because it would potentially allow the Applicant to develop a solar facility on previously disturbed desert lands, which could dramatically reduce the impacts from the Project. BLM’s

failure to even consider the private lands alternative was therefore unjustified and constituted a violation of NEPA. (p. 19)

**Comment DEF-3:** The dismissal of private land alternatives is contrary to the requirements of NEPA, yet BLM has systematically dismissed all private land alternatives for all the “fast-track” renewable energy projects proposed in the CDCA, and failed to carry any of them forward for analysis on the ground that it has no jurisdictional authority. BLM’s dismissal of private land alternatives is also based on the conclusion that they would be contrary to BLM’s perceived purpose and need for the proposed project, which is to respond to the application for a right of way under Title V of FLPMA. Based on BLM’s rationale for dismissing private land alternatives from analysis under NEPA, it is reasonable to conclude that private land alternatives will never be carried forward to analysis under NEPA for any project. This is clearly a violation of NEPA. (p. 3)

**Response:** The environmental and other impacts of the Private Lands Alternative are extensively addressed in the SA/DEIS (Section B.2.7.2). The rationale for eliminating the Private Lands Alternative from detailed analysis is discussed in the FEIS.

A private land alternative is not a reasonable alternative to the BLM since analysis in the FEIS of such an alternative, over which BLM has no discretionary approval authority, would not present an analysis of impacts in a form that would define issues or provide a basis for choice in a manner any different than the No Action Alternative, which is fully considered in this document. Impacts on public land resources would not occur if the project was located on private land, just as impacts on public land resources would not occur if the No Action Alternative was approved (and the project was denied). In addition, since the BLM’s responsibility related to the Proposed Action in this EIS is whether to approve, or deny, or approve with modification an application for a Solar Project to be sited on public land, analysis of a private land alternative would be ineffective in that it does not respond to BLM’s purpose and need. Finally, approval of any specific private land alternative would be remote and speculative. The northern section of the Private Lands Alternative that was analyzed by the State is made up of approximately 64 parcels with 27 separate landowners. The southern portion of the Private Lands Alternative is made up of 45 parcels with 22 separate landowners. Due to the highly fragmented land ownership pattern, development of these sections would be impractical and economically infeasible. Because the BLM has no approval jurisdiction over such an alternative and since no application is before the CEC, and/or the County of San Bernardino, the BLM determined the private land alternatives to be speculative and remote.

## **1.7 Cumulative Impacts - Reasonably Foreseeable Future Actions (20940)**

### **1.7.1 Cumulative Impacts Generally**

**Comment EPA-11:** The response to comments on the FEIS should provide the rationale for limiting the scope of the cumulative impacts analysis to the specified local area. If the Project would affect the ability of other foreseeable projects to be permitted, the ROD and responses to comments on the FEIS should discuss this. (p. 2)

**Comment EPA-7:** EPA is concerned that the scope of the cumulative air impacts analysis has been improperly confined, both temporally and geographically... Regardless of whether other projects in the cumulative effects study area have received permits to date, they appear to be reasonably foreseeable and should be analyzed in the cumulative impacts analysis. (p. 2)

**Comment EPA-8:** Furthermore, the scope of the cumulative impact analysis in the Final EIS is geographically limited to focus on 'localized' cumulative impacts. Determination of the affected environment should not be based on a predetermined geographic area, but rather on perception of meaningful impacts for each resource at issue. (p. 2)

**Response:** The cumulative impact assessment of air quality and climate clearly describes the procedure used to assess cumulative impacts. The air quality impacts of past, present and reasonably foreseeable projects are discussed in Section 4.2, Air Quality and Climate, in the FEIS, to the extent feasible given available data regarding the other cumulative projects.

The FEIS identifies existing renewable and non-renewable energy projects, other past and existing projects, and energy and non-energy related reasonably foreseeable future actions as the context for cumulative impacts analysis. The FEIS also provides additional information on resource impacts for all of the analyzed alternatives to supplement the cumulative impacts analysis. The Office of Energy Efficiency and Renewable Energy and BLM are preparing a Solar Energy Development Programmatic EIS (PEIS) to develop utility-scale solar energy development; develop and implement agency-specific programs that would establish environmental policies and mitigation strategies for solar energy projects; and amend relevant BLM land use plans with the consideration of establishing a new BLM solar energy development program. The PEIS included lands within the CDCA which are open to solar energy development in accordance with the provisions of the CDCA Plan. The Calico Solar Project site is located within the boundaries of the Pisgah solar energy zone. The BLM is processing active solar applications while the PEIS is being prepared.

## 1.7.2 Transmission Upgrade Projects Comments

**Comment BRW-13:** The 850 MW project is simply not feasible due to the need for a 65-mile long stretch of the 220kV line from the Pisgah Substation to Lugo in Hesperia needing to be replaced with a new 500 kV transmission line by SCE. No ROW application has even been filed yet for this, and therefore its location is yet to be determined, and would need separate environmental review.

SCE would also need to upgrade the Pisgah-Lugo substation to as much as 100 acres, and again no ROW application has been filed. (p. 8)

**Comment CURE-42:** Additionally, BLM must draft and circulate an analysis of the impacts associated with the transmission upgrades necessary for the Project. The analysis of the transmission upgrades must be integrated into the Biological Assessment, the Programmatic Agreement and the Translocation Plan and all federal approvals. BLM is required to prepare a supplemental EIS that adequately evaluates the Project's potentially significant effects to cultural and biological resources. (p. 36)

### **Comment CURE-43: V. BLM FAILED TO INCLUDE A COMPLETE DESCRIPTION AND ANALYSIS OF ALL CONNECTED ACTIONS**

Perhaps the most glaring error in the FEIS is the failure to study a number of significant environmental impacts associated with all connected actions, such as the transmission upgrades necessary for the Project...The FEIS dismisses the need for this analysis by stating that the transmission line is not a proposal before the BLM yet. This is nonsensical since transmission is required for the Project to proceed, and it violates NEPA. (p. 37)

**Comment CURE-44:** Here, it is undisputed that the proposed Project cannot be constructed or operated without transmission upgrades. Because the transmission upgrades are a critical component of the Project without which the Project cannot proceed, impacts resulting from the construction and operation of transmission upgrades for the Project is a connected action that must be analyzed in this EIS. Moreover, the inclusion of the transmission impacts in the Project's EIS will undoubtedly result in a more integrated, logical and efficient analysis of the direct, indirect and cumulative impacts of the Project as is recommended in the BLM NEPA Handbook. (p. 38)

**Comment CURE-45:** 1. BLM Has Not Analyzed Biological Impacts of Transmission Upgrades... According to biologist Scott Cashen, numerous other special-status species have the potential to occur along the route were not identified by the Applicant. For example, the Upper Johnson Valley Yucca Rings ACEC contains a unique assemblage of ancient vegetation. Impacts to this ACEC would be significant and unmitigable. White-margined beardtongue occurs along the transmission line route. This species has an extremely limited distribution in California, with most known occurrences in the immediate Project area. The continued existence of white-

margined beardtongue in California would be threatened by the Project. Because the species is known to occur along the transmission line route, transmission upgrades required for the Project would exacerbate the threat, and might not be mitigable.

Therefore, the BLM has failed to undertake a meaningful analysis of the biological impacts that will occur as a result of the transmission upgrades necessary for the Project to operate. Although BLM has known for over a year that the transmission upgrades are connection actions under NEPA, BLM did not follow through with the analysis. As a result, there are unanalyzed and unmitigable impacts associated with the Project that have not even been considered by BLM, not least of which will be additional significant impacts to desert tortoise.

The BLM cannot approve the Project until it provides a complete analysis of the impacts of each of the connected transmission upgrades. (p. 38)

**Comment CURE-46:** 2. BLM Has Not Analyzed Cultural Impacts from Transmission Upgrades

The Applicant did not conduct a cultural resources survey of the areas where the transmission upgrades would be built. The BLM attempts to defer this analysis until after the Project has been approved. However, the significant cultural resource impacts that will result from the transmission upgrades must be studied as a connected action. To permit this Project without knowing the magnitude of the cultural resources that will be affected improperly segments the analysis in violation of NEPA. (p. 39)

**Comment CURE-47:** 3. BLM Has Not Analyzed Impacts to Water Resources from Transmission Upgrades

Transmission upgrades will require water for construction. Construction will result in a large amount of grading and earth moving activities, most likely requiring water for dust control. Although water is in short supply in the Mojave desert and the availability of water can determine the viability of most development, this significant impact was not considered by Staff. (p. 39)

**Comment CURE-66:** 4. Transmission Upgrades (pg. 51)... Again, the Supplemental BA fails to analyze whether the transmission components of the Project may jeopardize the continued existence of desert tortoise. The BLM undertook no efforts whatsoever to determine how many tortoises would need to be moved, where they would be moved, and whether the transmission components of the Project comply with FESA. This is a fundamental flaw in the Supplemental BA, the Translocation Plan and the FEIS and renders the analysis incomplete and inadequate in violation of FESA. (p. 52)

**Response:** The upgrades to the Southern California Edison (SCE) electrical transmission grid are addressed in the FEIS as a reasonably foreseeable future action. Because SCE has not yet submitted completed applications (ROW or other) to the BLM for system upgrades, the project

is not yet a proposal. The designs and specific details of the upgrades would be discussed in future separate environmental documentation. In the future environmental documentation, consideration of the two projects cumulatively would occur with the Calico Solar project being considered either a cumulative/connected action or in the cumulative effects analysis. In this way, all environmental impacts of both projects will be analyzed under NEPA.

## **1.8 CDCA Plan Amendment (20930, 20940)**

**Comment BNSF-5:** Moreover, BNSF does not believe that a determination can be made that the proposed CDCA amendment is in accordance with applicable laws and regulations and will provide for the immediate and future management, use, development, and protection of the public lands within the CDCA, as required by Chapter 7 of the CDCA. (p. 6)

### **Comment CURE-48: VI. FLPMA VIOLATIONS**

BLM must carefully consider the extensive programmatic inventory that went into the establishment of the CDCA plan. In keeping with the plan, BLM must not approve intensive industrialization in areas that were not designated for intensive use. (p. 40)

**Comment CURE-49:** 1. CDCA Plan Should Not Be Amended in a Piecemeal Fashion... The BLM is proposing to amend the CDCA on a project-by-project basis for a whole swath of industrial-scale renewable power plants.... Because the CDCA was developed as a concerted effort with many federal and state agencies and enormous public input, it is improper to amend the Plan in such a piecemeal fashion on a Project by Project basis. The decision of whether to fundamentally change the character of the CDCA by permitting large industrial renewable development on areas not currently designated for intensive use should only be considered on a programmatic basis. (p. 41)

**Comment CURE-50:** 2. The Industrial Character of the Project Does Not Strike CDCA's Controlled Balance or Protect Sensitive Resources in Violation of the CDCA's Designation (pg. 41)... Although it might be appropriate to allow some solar development on Class M lands, not all solar development is the same size or level of intensity. The intensity and size of the use associated with the proposed Project is fundamentally incompatible with the BLM's Class L and M designations. The proposed power plant will severely impact every aspect of the resources on the site by covering the site with a network of roads, SunCatcher dishes and other infrastructure. The fragile desert pavement will be destroyed and the site will not likely recover for centuries, if ever. (p. 42)

**Comment CURE-51:** Thus, the Project design has not been constrained to “maintain a controlled balance between higher intensity uses and protection of public land” as is required by the CDCA Class M designation. Nor is the Project designed to “accommodate sensitive, natural,

scenic, ecological, and cultural resource values on the project site”, as is required for the portions of the Project under the CDCA Limited Use designation. Thus, the Project is incompatible with the CDCA Plan designations that were adopted after a comprehensive planning effort and the BLM should not override the wisdom of this planning effort for the short-term benefits that may or may not accrue from the siting of this experimental power plant.

BLM failed to assess the proposed Project’s impact on sensitive values or to strike the controlled balance between the high intensity use and protection of public lands, as required by FLPMA and the CDCA Plan. (p. 42)

**Comment DEF-12:** II. The Proposed CDCA Plan Amendment and FEIS Do Not Comply with FLPMA and the CDCA Plan, as amended... A. The proposed CDCA Plan amendment and project have not been analyzed in the context of the CDCA and the CDCA Plan. Although specific management principles and guidelines are contained in the CDCA Plan, they have not been applied to either the proposed amendment or project. Nor have landscape level issues and management objectives been considered in evaluating these proposals or in selecting meaningful alternatives to them. Specifically, the analysis of proposed plan amendment and project have not been adequately analyzed in the context of FLPMA’s mandate for the CDCA: “...to provide 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 the maintenance of environmental quality. FLPMA Sec. 601(b). (p. 5)

**Comment DEF-21:** For the reasons set out above, the Proposed CDCA Plan Amendment and FEIS for the proposed Calico Solar Project violates NEPA, FLPMA and BLM policies. BLM must therefore prepare a new or amended FEIS that fully addresses and appropriately avoids, minimizes and compensates for the impacts to the species and their habitats noted above. (p. 9)

**Comment WWP-1:** The CDCA Plan Amendment/FEIS Project Conflicts with State Policy in Violation of NEPA...On September 3, 2010...the CEC committee reviewing the Calico Solar Project licensing process issued a determination that they cannot recommend approval of the configuration of the Calico Solar Project as currently proposed by the Applicant due to the scope and scale of high quality habitat affecting desert tortoises and bighorn sheep that would be lost in order to construct and operate the project...Since the CEC will not license the Calico project as currently proposed, the BLM must suspend its environmental review pending clarification as to what if any project will be moving forward, and then issue a new NEPA document for public review as appropriate. (p. 2)

**Comment WWP-3:** If the BLM decides to approve the ROW grant, the BLM will also amend the CDCA Plan as required by the ROW. FEIS at C-4. Presumably then, the BLM’s proposed action for the CDCA plan amendment is to allow solar development on 6,215 acres in the project area. Or is it? What happens if the subsequent BLM ROD for the ROW modifies the size of the ROW?

The FEIS is unclear in not specifying what acreage would be subject to land use modification to allow solar development under the land use plan amendment. (p. 3)

**Comment WWP-22:** The Federal Land Policy Management Act (FLPMA) guides the BLM's management and uses of public lands. 43 U.S.C. § 1732(a) directs that these lands be managed under principles of multiple use and sustained yield...The adoption of the proposed plan amendment will change the multiple-use character of these lands. (p. 8)

**Comment WWP-23:** The CDCA Plan Amendment/FEIS violates Federal Land Policy Management Act...BLM has failed to conduct an adequate inventory of the resources of the affected lands as required by 43 U.S.C. § 1711(a), including the inventory of cultural resources, listed species, and sensitive species. Without this baseline inventory, BLM cannot ensure that its decisions will prevent unnecessary and undue degradation of the public's lands in violation of FLPMA sections 1732(b) and 1732(d)(2)(a). (p. 8)

**Comment WWP-25:** In order to comply with NEPA and FLPMA, the BLM must deny the Calico solar project and should adopt a plan amendment that makes the project area unavailable to renewable energy projects. (p. 9)

**Response:** The CDCA Plan is a comprehensive, long-range plan that was adopted in 1980; it since has been amended many times. It establishes goals and specific actions for the management, use, development, and protection of the resources and public lands within the CDCA. Frequently, long range plans that cover large geographic areas such as the California Desert are "living" documents intended to provide overall land use planning guidance and general regulation with more detailed land use information provided through amendments, special area plans, or other more focused planning documents.

The proposed plan amendment is consistent with the BLM's multiple use and sustained yield mandate pursuant to the FLPMA. FLPMA (Section 103(c)) defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. Accordingly, the BLM is responsible for the complicated task of striking a balance among the many competing uses to which public lands can be put. The BLM's multiple use mandate does not require that all uses be allowed on all areas of the public lands. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses, which involves tradeoffs between competing uses.

The proposed plan amendment is also consistent with the specific management principles and guidelines listed in the CDCA Plan. The CDCA Plan itself recognizes that proposed plan amendments such as the proposed plan amendment may occur, and outlines a process to approve or deny them (CDCA Plan, pp. 119-20). The management principles listed are: "multiple use, sustained yield, and maintenance of environmental quality contained in law."

(CDCA Plan, p. 6). These principles were the basis for BLM's development of the proposed plan amendment. The CDCA Plan recognizes the potential compatibility of solar generation facilities on public lands, and requires that all sites proposed for power generation or transmission not specifically identified in the CDCA Plan be considered through the Plan Amendment process. The CDCA Plan outlines a framework for balancing use and protection in the context of the entire CDCA, but recognizes that certain sites will strike the balance one way or another depending on relevant factors. The CDCA Plan specifically cites energy development and transmission as a "paramount national priority" to consider in striking that balance (CDCA Plan, p. 13).

The CDCA Plan originally included, has been amended several times to include, and contemplates additional industrial uses analogous to the use analyzed by the proposed plan amendment, including utility rights of way outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p.95). As the FEIS states, the sole purpose of this amendment is to allow power generation and transmission on the Calico project site, which was not previously identified in the CDCA plan. This amendment is limited geographically to only the Calico project site, and further, by the accompanying right-of-way grant application. This amendment will allow solar energy use on the Calico project site only, and will not result in any changes in land use designations or authorized land uses anywhere else in the CDCA.

The FEIS also analyzes the effects of amending the CDCA Plan to designate the proposed project site as unsuitable for power generation or transmission. The BLM considered the suitability of the entire 8,230 acre project site for solar power generation, and noted the variations in habitat and cultural resource values across the site. The Agency Preferred Alternative was identified based on the greater suitability of the southern portion of the project site as compared to the higher-value habitat present in the northern portion of the site.

## **1.9 Air Quality (40000)**

**Comment EPA-2:** The ROD and responses to FEIS comments should thoroughly evaluate the additional use of diesel powered equipment for Project construction and incorporate appropriate mitigation measures to reduce impacts. (Please see our July 6, 2010 DEIS comment letter for additional construction mitigation recommendations for mobile and stationary sources.) The evaluation in the ROD and responses to comments should include consideration of the feasibility and impacts of avoiding the need for diesel power by altering the construction schedule. (p. 1)

**Comment EPA-3:** At a minimum, any additional non-road, diesel-powered engines should comply with federal requirements, as applicable, for 40 CFR Part 89. (p. 1)

**Comment EPA-4:** For those engines that will be sited and operated for 12-months or more, federal applicable requirements should be identified for, at a minimum, air quality permitting, hazardous air pollutants (40 CFR Part 63, Subpart ZZZZ), and new source performance standards (40 CFR Part 60, Subpart IIII). (p. 1)

**Comment EPA-5:** The ROD and responses to FEIS comments should discuss and address whether the diesel equipment would require a permit from the Mojave Desert Air Quality Management District. (p. 1)

**Comment EPA-6:** The Response to Comments should assess whether the diesel powered equipment that will be used for a period of time during construction of the Calico Project will contribute to an exceedence of the General Conformity de minimis thresholds. (p. 1)

**Comment EPA-9:** EPA disagrees that there is never significant overlap for sources separated by six miles. This would depend on the emissions, size of the source, and release height, among other criteria. For example, in our permitting process, we require modeling of the significant impact area plus 50 kilometers out. Due to the serious nature of the PM10 and 8-hour ozone conditions in the Mojave Desert Air Basin, the cumulative effects study area could be the entire air basin because ozone precursors are reactive over hundreds of miles.(p. 2)

**Comment EPA-10:** It is also unclear what "significant" means with respect to concentration overlap. While this may be true in CEC's experience for some source types, the FEIS will need to substantiate this in the specific case of the Calico Solar Project emissions. (p. 2)

**Response:** Impacts to air quality and climate, including impacts from diesel-fueled construction equipment and vehicles, are discussed in Section 4.2 of the FEIS. All equipment used for the project will comply with all applicable federal requirements. BLM will review the construction mitigation recommendations for mobile and stationary sources from EPA's comments on the DEIS prior to issuance of the ROD.

### **1.9.1 Climate Change (40500)**

**Comment BRW-3:** Section 3.4 analyzes Climate Change and greenhouse gases. Sulfur hexafluoride is mentioned as a GHG, but no analysis is given as to how to mitigate it when transmission upgrades are undertaken and 65 miles of new 500 kV line are put in. Less SF6 is emitted than CO2 in California, but its effect is 20,000 times greater according to the EPA. (p. 2)

**Response:** Transmission Line upgrades are addressed in the FEIS as reasonably foreseeable future actions, and are therefore not analyzed in the FEIS.

**Comment Calico-15:** The FEIS asserts that the Calico Solar Project could, by disturbing desert soils, result in 115,000 tons per year of lost carbon sequestration...Neither the FEIS for the Imperial Valley Solar Project, nor the FEIS for any other desert solar project...suggests that desert solar projects would cause such impacts, much less that any such impacts could be quantified. Moreover, the Calico FEIS does not provide usable citations for its conclusion; nothing on this topic is included in the References section of the FEIS; and Calico has been unable to locate the FEIS's references using the incomplete citations provided. (p. 4)

**Comment Calico-16:** Calico respectfully submits that the FEIS should not purport to conclude that the project would cause a loss of carbon sequestration in desert soils, much less assert that the effect would occur equally every year the project is in operation, and still less attempt to quantify and purported loss of carbon sequestration for the various project alternatives. (p. 5)

**Comment Calico-29:** The climate change discussion in section 4.22 states that the project's CO<sub>2</sub> emissions during construction represent a short-term, unavoidable adverse impact of the build alternatives. Section 4.4 of the FEIS quantifies these construction emissions, but does not identify them as an unavoidable adverse impact of the build alternatives. In comparison to the climate change benefits of the build alternative - and particularly Alternative 1a - these emissions are negligible. (p. 7)

**Comment CURE-14:** 1. BLM Failed to Provide a Good Faith Reasoned Response to CURE's Comments Regarding Climate Change (p. 15)

**Comment CURE-15:** The evaluation of global climate change under NEPA must include an analysis of the Project in the context of global climate change; the agency's analysis should not be limited to the greenhouse gas (GHG) emissions associated with the proposed project. (p. 15)

**Comment CURE-16:** NEPA requires agencies to provide a "reasoned analysis containing quantitative or detailed qualitative information." As such, the information provided in those sections of the FEIS does not respond to CURE's comments regarding the effect of climate change on the proposed Project. BLM's response violates NEPA, because BLM's response hardly equates to a good faith effort to respond to public comment. (p. 16)

**Response:** Emissions of SF<sub>6</sub> are quantified in Section 4.4, Climate Change, in the FEIS. The project-related emissions are no more than for any other type of electrical power plant, as they are from high voltage equipment. This is the only greenhouse gas (GHG) that is the same as traditional electrical power plants. All the other GHG emissions for the project are either tremendously reduced or nonexistent for a solar power plant. Section 4.4 discusses construction and operational GHG emissions and climate change impacts. As stated in the FEIS, no mitigation measures related to GHG emissions are proposed because the Calico Solar Project would result in net beneficial GHG impacts. The project owner would have to comply with any

future applicable GHG regulations formulated by the CARB or the EPA, such as GHG reporting or emissions cap and trade markets.

CURE's comment regarding Climate Change is addressed in the FEIS in section G.8.1 Climate Change (40500). The BLM reviewed the recommended revisions and incorporated them as appropriate. The FEIS also provides discussion of the Calico Solar Project and climate change impacts in Section 4.4. Air quality mitigation and BMPs would help reduce criteria pollutants which contribute to the formation of GHGs. Since the proposed project will result in a net beneficial impact on GHG emissions and climate change, it therefore does not contribute meaningfully to this cumulative effect.

The FEIS provides discussion of the Calico Solar Project and climate change impacts in Section 4.4. Air quality mitigation and BMPs would help reduce criteria pollutants which contribute to the formation of GHGs. Since the proposed project will result in a net beneficial impact on GHG emissions and climate change, it does not contribute meaningfully to this cumulative effect.

## **1.10 Biological Resources (30000)**

### **1.10.1 Inventory of Biological Resources (30000)**

**Comment DEF-13:** B. BLM failed to conduct an adequate inventory of the resources of the affected lands prior to preparing the DEIS and FEIS as required by 43 U.S.C. § 1711(a), as the result of which it cannot ensure that its decisions will prevent unnecessary and undue degradation of the public's lands in violation of id. §§ 1732(b), 1732(d)(2)(a). (pg. 5)

**Response:** In support of development of the FEIS, the BLM has worked with the Applicant to conduct the full scope of resource inventories necessary to support consultation with respect to biological resources for a Federal project. Although the BLM realizes that more data could always be gathered, the baseline data provided in Chapter 3 and various appendices to the FEIS provide the necessary basis to make an informed decision regarding the project and the proposed CDCA plan amendment.

### **1.10.2 Wildlife (30200)**

#### **1.10.2.1 Desert Tortoise – Significance of the Project Site**

**Comment CURE-68:**1. Importance of Project Site to Survival of the Species... Not only would the Project eliminate a considerable portion high quality habitat in the region, but it would also

completely sever essential connectivity for desert tortoise the eastern and western populations of tortoises in the Mojave Desert. An action of this magnitude would impede recovery of a species that is known to require landscape-level connectivity, and, according to biologist Scott Cashen, it could very easily lead to local extinctions. (pg. 53)

**Comment DEF-14:** The biological resources that would be affected by the proposed project and their significance weren't appreciated until applicant-supported surveys were conducted and corresponding reports issued. The high-density Desert Tortoise population in the proposed project area and its strategic location at the crossroads of two Desert Tortoise Recovery Areas is particularly relevant to the issue of consistency with FLPMA mandates for the CDCA. An adequate description and analysis of the Desert Tortoise and its habitat on the proposed project site was not fully disclosed until the FEIS was published. (pg. 5)

**Comment WWP-6:** The FEIS fails to analyze the significance of the desert tortoise population at the project site and the importance of the habitat there in the light of the population declines that have occurred throughout the region. (pg. 4)

**Comment WWP-7:** The FEIS fails to consider that desert tortoise critical habitat designation and subsequent DWMA designation are based on data collected over 20 years ago. (pg. 4)

**Comment WWP-8:** The FEIS fails to explain why this population [of desert tortoise] appears to be doing so well and thus fails to analyze what the impacts of the loss of the proposed project site will have on desert tortoise recovery. (pg. 4)

**Response:** The BLM recognizes that the Pisgah Valley is an important part of the desert tortoise habitat which connects the West Mojave Desert Wildlife Management Areas and Mojave National Preserve. The valley serves as an important habitat linkage connecting not only the critical habitat units (Ord-Rodman, Superior-Cronese, and Ivanpah), but it also provides one of the few pathways connecting the Western Mojave and Eastern Mojave recovery units, as well as the Western Mojave and Colorado Desert recovery units. The Agency Preferred Alternative was specifically developed to minimize impacts to desert tortoise by avoiding disturbance to high quality habitat in the northern portion of the project area.

Subsequent to publication of the FEIS, and in response to information submitted to and docketed by the CEC, the Applicant has proposed reducing the project footprint to 4,614 acres. Approval of the reduced-footprint project would result in a further, substantial decrease in direct impacts to desert tortoises and would avoid most of the highest-quality habitat identified in the northern portion of the originally proposed 8,230-acre project site.

### 1.10.2.2 Desert Tortoise – Analysis of Impacts

**Comment CURE-3:** ...BLM has both underestimated the number of tortoises that would be impacted and failed to provide an adequate assessment of the significant effects on the species from the translocation of desert tortoises into offsite populations. (pg. 9)

**Comment CURE-4:** ...the estimate of 883-1,228 tortoises that will be impacted by the Project does not include tortoises that will not be handled but will nevertheless be impacted by increased predator densities and other inadvertent effects of human disturbance in areas around the Project site and in the receiver and control sites.

BLM failed to accurately disclose indirect impacts to offsite desert tortoise populations. Nevertheless, the FEIS estimate that the Project will impact 883- 1,228 tortoises is ten times higher than what was disclosed and discussed in the DEIS. The change from 100 tortoises impacted to 1,228 tortoises impacted constitutes significant new information relevant to environmental impacts that warrants recirculation of the EIS for comment and response. And, certainly, this change has implications on the proposed action and its effects that are not yet known and which will certainly affect the environmental in a different manner. (pg. 10)

**Comment CURE-7:** The DEIS and FEIS have not provided adequate or accurate information to inform the public and decision-makers about the magnitude of the impacts to desert tortoise populations in the Project region. BLM must identify the receptor sites and provide an analysis of the likely impacts to those populations that include identification of impacts to the offsite tortoise populations that are not directly handled. Finally, BLM should revise the translocation plan so that it is complete, and this should be circulated to the public for review and comment. (pg. 12)

**Comment CURE-22:** BLM is required to include high quality information in the FEIS, such as accurate scientific analysis and expert agency comments, to meet the public disclosure requirements of NEPA. Here, BLM has impermissibly strayed from its duty under NEPA by failing to undertake a good faith effort to examine the proposed Project's effects on the environment. In effect, BLM has misled the public by obscuring the mitigation for one of the most controversial aspects of the proposed Project. BLM's failure to adequately analyze the Project violates NEPA. (pg. 21)

**Comment CURE-33:** b. BLM Failed to Take a Hard Look at Impacts to Desert Tortoise... The BLM failed to take a hard look at the proposed action's impacts to desert tortoises in the receptor sites such as the Ord-Rodman Desert Wildlife Management Area ("DWMA"). Although the FEIS includes a cursory statement about potential effects at receptor sites, the FEIS does not contain detailed analysis and instead defers this analysis to future planning efforts (pg. 29)...The FEIS's conclusory and unsupported statements do not constitute the hard look required by NEPA. (pg. 30)

**Comment CURE-56:** ...BLM and the USFWS correctly determined that the Project is likely to adversely affect the desert tortoise. However, the consultation to date is incomplete because the BLM failed to adequately or accurately define the baseline for impact assessment. Specifically, the BLM failed to adequately determine the appropriate action areas that will be impacted by the Project and the conditions on the action areas. This determination is essential to determine whether the Project impacts could reasonably be expected to, directly or indirectly, “reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” In order for consultation to be adequate, the agencies must accurately define the environmental baseline, including the description of areas where tortoises will be impacted. (pg. 47)

**Comment CURE-57:** The BLM failed to provide adequate and accurate facts to support the required determination that must be made under FESA. Moreover, new facts show that the Project may jeopardize the continued existence of the species triggering the requirement that USFWS provide reasonable and prudent alternatives to the proposed action, none of which have been proposed, to date. Finally, since the release of the Supplemental BA and FEIS, new and significant information has been provided to the BLM that compels the BLM to revise the Supplemental BA and recirculate the FEIS. (pg. 47)

**Comment CURE-58:** A. BLM Failed to Provide Accurate and Adequate Baseline Information to Conduct an Analysis under FESA

BLM has not adequately or accurately identified the areas that will be impacted by the development of the Project. For example, in the Supplemental BA, the BLM identified the Pisgah ACEC and the Northern Linkage Area as sites for the short distance relocation of tortoises. However, these areas are unavailable to receive more than two tortoises total. (pg. 48)

**Comment CURE-69:** 2. Importance of DWMA's to the Survival of the Species (pg. 54)... By moving desert tortoise into the Ord-Rodman DWMA, the Project would result in human disturbance to the DWMA, thereby increasing the density of tortoises and potentially increasing disease that also, in turn, can increase predator density. Therefore, the Project could trigger a decline in the populations in a DWMA, a very serious impact on the overall recovery efforts for the species... The impacts from this transmission line to the species have not been analyzed at all by the BLM. These impacts must be thoroughly analyzed as a part of the jeopardy determination.

Impacts to the Project area, when coupled with impacts to the Ord-Rodman DWMA, provide overwhelming evidence that BLM's action would jeopardize the continued existence of the species. (pg. 55)

**Comment CURE-75:** D. The Severity of the Expected Mortality to Tortoises and the Impacts to Offsite Recovery Areas and Critical Habitat Show that the Project Will Jeopardize The Continued Existence of the Species and Result In the Destruction of Habitat

Based on the dismal survival rate expected for translocation (25% mortality per year), the sheer numbers of individual tortoises that will be impacted and killed, and the recovery areas and critical habitat that may suffer declines in desert tortoise populations, the BLM's action would jeopardize the continued existence of the species and result in the destruction or adverse modification of critical habitat. Moreover, there is no evidence to show that the proposed translocation would alleviate jeopardy to the species. In fact, the BLM must undertake a specific analysis as to whether translocation is likely to result in higher mortality of tortoises. (pg. 58)

**Comment DEF-6:** Desert Tortoise translocation is considered by the U.S. Fish and Wildlife Service an experimental procedure intended to minimize “take” of this threatened species. However, due to recently documented high rates of mortality due to increased predation of Desert Tortoises affected by translocation, its value even as a take-minimization strategy is questionable. Translocation, by definition, is not an impact mitigation measure. (pg. 3)

**Comment DEF-7:** The FEIS does not adequately address the issue of mortality to both resident and translocated Desert Tortoises, and the impacts to public land habitat or this species associated with anticipated mortality due to predation by Coyotes and Common Ravens. (pg. 4)

**Comment SC-10:** NEPA requires an agency to assess at the earliest practicable point all of the “reasonably foreseeable” impacts that a project will create. The Draft Translocation Plan constitutes a reasonably foreseeable consequence of the Calico Project...Instead of analyzing the impacts that would result from the Draft Translocation Plan, the BLM simply attached the company's plan as an appendix. (pg. 9)

**Comment SC-15:** BLM's assertion that it did not have sufficient data to evaluate the impacts of the Draft Translocation Plan does not relieve it of its obligations under NEPA...Ms. Blackford of U.S. Fish and Wildlife summarized the constraints as follows: “I would agree that if we had started two years ago and we didn't have ARRA pushing us, that [additional] information would be – we would be looking to achieve that information.”...NEPA does not allow for the exclusion or deferral of relevant information due to the Applicant's funding deadline. (pg. 12)

**Comment WWP-11:** The agency preferred alternative has a marginal reduction in the size of the project footprint. While this might provide some kind of potential movement corridor for wildlife, if the habitat fragments that remain are not contiguous and are not large enough to maintain viable desert tortoise populations it will not function as linkage habitat. The FEIS undertakes no analysis of the degree of fragmentation, viability of the fragmented populations, nor does it establish if the potential movement corridor is viable linkage habitat for desert tortoise. (pg. 4)

**Response:** The Applicant conducted a 100 percent survey of the 8,230-acre project site in March/April 2010. The results of this survey are provided in Section 3.3.5.4 (Special-Status Species) of the FEIS. Impacts to desert tortoises are discussed for each alternative in Section 4.3.2 (Direct and Indirect Impacts) of the FEIS. The mitigation measures that address project-related impacts to desert tortoises were provided in Section 4.3.4 (Mitigation, Project Design Features, BMPs, and Other Measures) of the FEIS.

Since publication of the FEIS, and based on the continuing proceedings before the CEC, the Applicant has proposed to further reduce the size of the project footprint to avoid high value desert tortoise and desert bighorn sheep habitat. The reduced 4,614-acre project footprint that was proposed would result in the same types of direct, indirect, and operational impacts to desert tortoises that were analyzed in the FEIS for the proposed project. However, when compared to the proposed project, the 4,614-acre footprint would result in a reduction in impacts to desert tortoise habitat and a net reduction in the number of desert tortoises lost through direct mortality from construction activities, direct loss through translocation, and from potential indirect effects of translocation mortality.

The 4,614-acre project footprint was designed to reduce impacts to areas supporting the highest concentration of desert tortoise and their burrows. The 4,614-acre footprint represents a 26 percent decrease in the amount of desert tortoise habitat that would be impacted by the project, and provides for the avoidance of 1,601 acres of high quality desert tortoise habitat that would have been impacted under the other project alternatives. The 4,614-acre footprint would provide a much wider habitat linkage. With the 4,614-acre footprint, there would be a direct loss of approximately 4,614 acres of desert tortoise habitat; this includes 2,141 acres of habitat located between the BNSF railroad and Interstate 40 and 2,472 acres located north of the BNSF railroad.

A total of six adult and four juvenile tortoises were detected during surveys within the 4,614-acre project footprint. Using the USFWS's formulas (described in the FEIS) the 4,614-acre project footprint supports an estimated 11 adult and sub-adult desert tortoise, between 5 and 11 juvenile desert tortoises, and approximately 56 eggs. The 95 percent confidence interval for this estimate ranges from a low of four to a high of 29 adult and sub-adult desert tortoises, and 11 adult and sub-adult tortoises is the median point within this range. The 4,614-acre footprint is therefore estimated to support a total population of approximately 22 adults, sub-adults, and juvenile desert tortoise, and approximately 56 eggs. In addition to the desert tortoises identified within the 4,614-acre footprint, one adult and one juvenile desert tortoise were detected in the small exclusion area west of the southern Not-A-Part parcel. These desert tortoises were not considered in the USFWS formula, but fall within the range of expected tortoises that would require translocation. A summary of the number of desert tortoises that would be impacted by the project is provided in Table 1-2.

**Table 1-2 Desert Tortoise Impact Summary**

<b>Project Component</b>	<b>Estimated Number of Tortoises— Adult/ Sub-adult (Min-Max) [Table Note 1]</b>	<b>Estimated Number of Tortoises — Juveniles (Min-Max) [Table Note 2]</b>	<b>Estimated Number of Tortoises— Eggs [Table Note 3]</b>	<b>Estimated Number of Tortoises—Total Adult/Sub-adult and Juvenile (Min-Max) [Table Note 4]</b>
<b>Direct Effects</b>				
Project Site [Table Note 5]	11 (4-29)	11 (5-11)	56	22 (9-59)
Translocation Area [Table Note 6]	11 (4-29)	11 (5-11)	N/A	22 (9-59)
Control Area [Table Note 7]	11 (4-29)	11 (5-11)	N/A	22 (9-59)
<b>Subtotal</b>	<b>33 (12-87)</b>	<b>33 (15-33)</b>	<b>56</b>	<b>66 (27-177)</b>
<b>Indirect Effects</b>				
Buffer Area [Table Note 8]	37	39 (17-39)	N/A	76 (54-76)
NAP Area A [Table Note 9]	24	15 (11-15)	N/A	39 (35-39)
<b>Subtotal</b>	<b>61</b>	<b>54 (28-54)</b>	<b>N/A</b>	<b>115 (89-115)</b>
<b>Total Direct and Indirect</b>	<b>94 (12-87)</b>	<b>87 (43-87)</b>	<b>56</b>	<b>181 (107-292)</b>

*Table Source:* Adapted from CEC's September 2010 Biological Resources Addendum.

*Table Note 1:* Estimate based on USFWS formula.

*Table Note 2:* Table assumes high end of juveniles present.

*Table Note 3:* Assumes a 1:1 sex ratio and that all females present would clutch in a given year.

*Table Note 4:* Min-Max values are not additive with the data in the preceding columns. Minimum total tortoise values use the lower limit of the 95 percent confidence level (4-29) of the USFWS formula added to the minimum percentage identified by Turner et al (5-11) for estimating the number of juvenile tortoises in a population. Therefore the minimum estimated total population on the project site is 4+5=9 desert tortoises. Maximum tortoise values use the upper limit of the 95 percent confidence level (4-29) of the USFWS formula added to the maximum percentage identified by Turner et al equation (51.1 percent) for estimating the number of juveniles tortoise in a population. Therefore the maximum estimated number of total desert tortoise on the project site is 29+30=59.

*Table Note 5:* Includes 4,614 acres project site.

*Table Note 6:* Assumes one tortoise handled at the translocation site for each translocated tortoise.

*Table Note 7:* Assumes one tortoise handled at the control site for each translocated tortoise.

*Table Note 8:* Assumes a 1,000-foot buffer and a tortoise density of 16 tortoises per square mile.

*Table Note 9:* Assumes the 960-acre NAP Area A supports up to 24 tortoises.

Implementation of the project with a 4,614-acre project footprint would also reduce the number of desert tortoises that would require translocation compared to the Agency Preferred Alternative. Based on the information provided in Table 1-2, it is expected that 22 adult, sub-adult, and juvenile desert tortoises and 56 eggs would be directly or indirectly affected on the

project site. Under the assumption that 85 percent of juvenile tortoises would be overlooked by surveyors, it is expected that nine of the juvenile desert tortoises, in addition to 56 eggs, would be lost during construction of the proposed project. With the 4,614-acre project footprint, approximately 13 desert tortoises (11 adults and sub-adults; 2 juveniles) would require translocation from the project site compared to 107 (93 adults and sub-adults; 14 juveniles) under the Agency Preferred Alternative.

The overall strategy for translocation of desert tortoises has not changed, but the number of tortoises that would be impacted by the capture, disease testing, and relocation of desert tortoises on the project site, the control group site, and the translocation receptor sites has been substantially reduced. For every tortoise that is moved to a long distance translocation site, two other tortoises must be handled, disease tested, and radio tagged; therefore, three tortoises are handled for each translocation, including one tortoise from the project site, one tortoise from the host population at the proposed recipient site, and one tortoise at the control site. With the 4,614-acre footprint, an estimated 39 tortoises ([11 adults and sub-adults and 2 juveniles] x 3) that would potentially require handling, radio tagging, and long term monitoring compared to 321 tortoises ([93 adults + 14 juveniles] x 3) under the Agency Preferred Alternative. Some juveniles may be too small to accommodate a radio-tag, and the final number of desert tortoises that are detected and translocated may be somewhat lower than what is described in this analysis. It is expected that a total of 181 tortoises and 56 eggs would be subject to direct and indirect effects with the 4,614-acre project footprint; this includes effects associated with capture, disease testing, and translocation of tortoises on the project site, the control group site, and the recipient site.

With the 4,614-acre project footprint, there is not likely to be a need to obtain or identify additional translocation sites to accommodate the desert tortoises that are translocated from the project site. The larger habitat linkage area to the north of the project site that is associated with the 4,614-acre project footprint provides more opportunity for the translocation of tortoises that are detected within 500 meters of the northern project boundary. Allowing the translocation of tortoises into this area will likely reduce translocation-related mortality because it is likely that some of the desert tortoises will remain within a portion of their home range. Based on the reduced number of desert tortoises expected to occur within the 4,614-acre project footprint, the ability of the northern linkage area to accommodate additional tortoises, and placement of two tortoises into the Pisgah ACEC, the existing translocation sites should be large enough to support all of the tortoises that would need to be translocated from the project site.

With regard to potential impacts to resident desert tortoises at translocation receptor sites, potential density-dependent effects such as increased spread of upper respiratory tract disease or increased rates of predation are expected to be minor, and will be minimized by limiting the number of tortoises that can be translocated into any one area and using appropriate protocols for disease testing and handling.

The BLM agrees that translocation poses risks for the translocated and resident desert tortoises, and is aware of the outcome of large scale translocation efforts at Fort Irwin and elsewhere. The BLM considers translocation to be a minimization measure for desert tortoise rather than mitigation for project impacts. Since the publication of the draft translocation plan, additional detail has been added based on the concerns and input from the various individuals, organizations, and agencies that were provided during the CEC's evidentiary hearings and staff workshops. The revised Desert Tortoise Translocation Plan was submitted to the US Fish and Wildlife Service, along with a Biological Assessment Supplement that addresses the 4,614-acre footprint, on September 27, 2010. The terms and conditions of the US Fish and Wildlife Service's Biological Opinion for the project will be incorporated as project mitigation requirements in the ROD (see ROD Appendix 3 – Biological Opinion).

### **1.10.2.3 Desert Tortoise - Translocation Plan**

**Comment CURE-8:** The translocation plan was not released with the DEIS and has only been circulated for the first time in the FEIS. The translocation plan is rife with omissions, inaccuracies and wholesale incompetence. (pg. 12)

**Comment CURE-9:** Dr. Kristin Berry, a renowned desert tortoise biologist who is currently studying the nearby Ft. Irwin translocation effort, testified under oath at the California Energy Commission regarding the inadequacy of the current translocation plan:

“The translocation plan seems to be hastily assembled, lacks basic and careful science, and it's not a rigorous, thoughtful plan. Very little background information is presented and no supporting scientific or quantitative data on such important topics that are raised in the documents such as annual and perennial vegetation, soils and surficial geology...The second point I'd like to make is that the writers of the translocation plan used layers of assumption unsupported by scientific evidence...”

Dr. Berry's warnings that the Translocation Plan needs a lot of improvement should be heeded. She has witnessed first-hand the tragedy of the nearby Ft. Irwin translocation effort that has resulted in 50% mortality of desert tortoises. (pg. 13)

**Comment CURE-10:** Similarly, Scott Cashen reviewed the newly released translocation plan and found it wholly inadequate. Mr. Cashen's testimony on the translocation plan is attached and incorporated herein. According to Mr. Cashen's professional opinion, if the translocation plan were to be adopted, most of the tortoises on the Project site would not survive. (pg. 13)

**Comment CURE-12:** NEPA requires the BLM to circulate a draft translocation plan in the DEIS in order to obtain meaningful input and revise the plan prior to approving the Project. Now, the translocation plan is new and incorrect. The BLM's decision to present the numbers of impacted

tortoises and this mitigation strategy for the first time in the FEIS undermines public participation and fundamentally violates the NEPA process. (p. 14)

**Comment CURE-34:** Dr. Kristin Berry of USGS, Tonya Moore of CDFG and biologist Scott Cashen all testified that the translocation plan's analysis of impacts to offsite populations is incomplete and additional analysis is needed to determine the likely impacts to these populations. The Applicant's proposal to move tortoises to DWMA's is a very serious undertaking that must be carefully considered because the DWMA's were set aside by the US Fish and Wildlife Service as the core locations to enable recovery of the desert tortoise. There are only 14 DWMA's and the long-term persistence of populations in DWMA's are listed as critical elements in the strategy to recover the desert tortoise in the Desert Tortoise Recovery Plan. The BLM must identify which offsite desert tortoise populations will be affected and provide additional analysis of impacts to these offsite populations. (pg. 30)

**Comment CURE-39:** A. BLM Failed to Include in the FEIS Reasonable Measures to Reduce Significant Adverse Affects to Desert Tortoise

Although BLM agrees that mitigation is necessary to minimize significant adverse effects on desert tortoise, the translocation plan presented in the FEIS is nothing more than an incomplete first draft that is not scientifically defensible.

Moreover, the draft translocation plan provides absolutely no mitigation for indirect impacts to desert tortoise adjacent to the Project site or to tortoises in the receptor sites that are not handled.

For these reasons, BLM's conclusion that significant adverse impacts to desert tortoise will be fully mitigated is arbitrary and capricious and violates NEPA. (pg. 35)

**Comment CURE-63:** Consequently, the BLM analysis is fundamentally lacking in the information necessary to determine how the translocation effort would impact the desert tortoise population in the Ord-Rodman DWMA and how conditions at the Ord-Rodman DWMA would impact the newly translocated tortoises. At a minimum, BLM must conduct a comprehensive health survey of all resident tortoises in the Ord-Rodman DWMA prior to designating these areas as eligible recipient sites. (pg. 50)

**Comment CURE-64:** 2. Northern Linkage Area... The Supplemental BA and the Translocation Plan are inconsistent (pg. 50)... The widely inconsistent and inaccurate information about the existing capability of the Northern Linkage Area to accept desert tortoises, as proposed in the Translocation Plan and Supplemental BA, mandates that the BLM prepare a new analysis of where potentially displaced tortoises on the Project site would be moved and the baseline conditions at the new proposed receptor locations. (pg. 51)

**Comment CURE-74:** 3. Translocation Plan Is Laden with Unsupported Assumptions and Inaccuracies and Must be Substantially Rewritten Before Project Impacts Can Be Adequately Analyzed

Given the results of the Fort Irwin translocation project, the fate of the 131 to 185 tortoises that the Applicant proposes to translocate off the Calico Solar Project site is clear: most are likely to die. Selection of appropriate translocation sites, health evaluation techniques, and remedial action measures each are critical considerations of a desert tortoise translocation plan that have not been adequately evaluated by BLM or USFWS. Dr. Kristin Berry and Scott Cashen provided substantial testimony regarding the inadequacies of the Draft Translocation Plan for the Project. BLM must conduct additional analysis and substantially revise the Supplemental BA as a result of this information and include this information in an SEIS before the Project can be approved. (pg. 57)

**Comment DEF-8:** Dr. Berry, considered among the most qualified scientists involved with Desert Tortoise biology, ecology and translocation, should be a key participant in discussions on Desert Tortoise translocation ecology by the regulatory agencies. (pg. 4)

**Comment DEF-10:** The use of public lands for Desert Tortoise translocation associated with the proposed Calico project is a significant action warranting involvement by the public under the provisions of NEPA, which to date has not occurred. The draft translocation plan should be included in a supplemental DEIS and released to the public for review and comment for a minimum of 45 days, and a supplemental FEIS containing a proposed translocation plan should be released for an additional 30 days to allow for public review, comment and protest before a decision on the proposed project is made. (p. 4)

**Comment SC-7:** According to CEC Staff's findings, the Draft Translocation Plan could result in the mortality of up to 282 tortoises, an estimate that included mortality in the host/receptor population and the control population of tortoises. Despite these acknowledged impacts, the FEIS discussion of the Draft Translocation Plan did not include any analysis of the impacts that the plan would cause to the host/receptor sites or the control sites. It also did not include a quantification of the expected mortality to the translocated tortoises. (pg. 8)

**Comment SC-9:** [T]he impacts that would result from the proposed Draft Translocation Plan require BLM to engage in a full NEPA review of its environmental impacts. As a reasonably foreseeable consequence of the proposed Project, and in fact a necessary component of the proposed mitigation, NEPA requires BLM to assess the cumulative impacts to the desert tortoise that would result from the Translocation plan, which the FEIS did not do. (pg. 9)

**Comment SC-11:** [I]t is unclear which process BLM is relying on for the public to comment on the company's Draft Translocation Plan or what deadline defines the 30-day comment period.

The Draft Translocation Plan is clearly not the subject of an independent DEIS, although it should be, and BLM did not officially notice an EIS that fully assesses the plan. (p. 10)

**Comment SC-12:** NEPA required BLM to include a thorough discussion of the cumulative impacts that would result from both the Calico Project and the Draft Translocation Plan in the DEIS and the FEIS. This did not occur, and in fact it could not occur because BLM failed to gather the required information to fully analyze the impacts of the Draft Translocation Plan. This omission violated NEPA's requirement to take a hard look at the impacts of the proposed plan. (pg. 11)

**Comment SC-13:** Neither the Applicant nor BLM have any idea whether the receptor sites are sufficient for the Draft Translocation Plan, and as a result they could not make any informed conclusions regarding the impacts that the Draft Translocation Plan would have on the translocated tortoises or the receptor sites. (pg. 11)

**Comment SC-14:** As a result of this lack of data, BLM cannot make an informed and reasoned assessment of the impacts that the Draft Translocation Plan would have...Therefore, it is a violation of NEPA for BLM to approve the Calico Project and the Draft Translocation Plan without having first identified and analyzed the environmental impacts in the EIS...BLM must therefore withhold its record of decision until it gathers sufficient information on the Draft Translocation Plan and distributes a supplemental EIS for public review and comment. (pg. 12)

**Comment WWP-12:** The draft translocation plan will take an experimental approach to judge success by establishing "control" groups of tortoises that are outside the project area...However, as with the Fort Irwin translocation, the proposed translocation plan does not have a true control group because there will be no group of tortoises that remain at the project site that are not translocated. (pg. 5)

**Comment WWP-14:** The BLM needs to address the general issue of desert tortoise translocation within the CDCA prior to considering any individual renewable energy project. (p. 6)

**Comment WWP-15:** [T]he BLM must allow full public review of the [desert tortoise] translocation plan for the Calico project prior to making a decision. (p. 6)

**Response:** While still in draft form because of the ongoing agency input that was occurring at the time, the Draft Desert Tortoise Translocation Plan was circulated with the FEIS because it provided substantive information regarding BLM's strategy for removing desert tortoises from the project site and placing them in suitable habitats off-site. The Draft Desert Tortoise Translocation Plan identified the number of tortoises that would potentially be impacted, clearance survey methodologies, potential receptor sites for tortoises that are removed from the project site, tortoise handling and translocation methodologies, tortoise health considerations, a

translocation schedule, requirements for monitoring, and reporting requirements. The FEIS identified and discussed potential impacts to tortoises that would be translocated over the course of the project, as well as potential impacts to resident desert tortoises at translocation receptor sites.

Since the publication of the draft translocation plan, additional detail has been added based on the concerns and input from the various individuals, organizations, and agencies that were provided during the CEC’s evidentiary hearings and staff workshops. With the recent proposal of the reduced 4,614-acre project footprint by the Applicant, the overall strategy for translocation has not changed, but the number of tortoises that would be impacted by the capture, disease testing, and relocation of desert tortoises on the project site, the control group site, and the translocation receptor sites has been substantially reduced. Please refer to the response under 1.10.2.2, above for additional information regarding the number of tortoises that would be impacted under the reduced footprint project.

#### **1.10.2.4 Desert Tortoise - Translocation Receptor Sites not Adequate**

**Comment CURE-5:** It has also become clear since the release of the FEIS that two of the named receptor locations in the FEIS, the northern “linkage” area and the Pisgah Area of Critical Environmental Concern (“ACEC”) will not be appropriate locations to accept more than collectively two tortoises. The remaining tortoises that will require translocation exceed the capacity of the identified receptor locations. Therefore, BLM does not have adequate receptor locations for the tortoises that would need to be moved for Project development. (pg. 11)

**Comment CURE-6:** The determination that the identified receptor areas will not be adequate to receive desert tortoises is significant new information bearing on environmental concerns that triggers the need for supplemental analysis. It is apparent that a substantial planning effort is needed prior to the conclusion of the BLM’s analysis on this Project. (pg. 12)

**Comment CURE-59:** Furthermore, the primary translocation receptor area identified by the BLM in the Supplemental BA and the FEIS is the Ord-Rodman Desert Wildlife Management Area (“DWMA”). However, BLM’s analysis to date is wholly inadequate to determine the baseline conditions in this DWMA. Establishing the baseline conditions in the Ord-Rodman DWMA is necessary to evaluate the likely impacts to the survival of the tortoises in this DWMA and whether it is an appropriate receptor site for any of the 131-185 tortoises that must be relocated from the Project area. (pg. 48)

**Comment CURE-60:** 1. Ord-Rodman DWMA

According to the Applicant’s proposed draft Translocation Plan, an estimated 131 (but possibly as many as 185) desert tortoises must be moved off the Project site. The Translocation Plan

proposes to move most of the desert tortoises found on the project site to locations in the Ord-Rodman DWMA. However, the Translocation Plan specifically states that the proposed DWMA locations can support up to 60 translocated tortoises. Therefore, the Applicant identified potentially suitable translocation sites for 62 tortoises when the Pisgah ACEC area is included. The Applicant does not have a plan for the 71 to 125 remaining tortoises requiring translocation. This error must be remedied before the Project, including the Translocation Plan, can be approved. (pg 48)

**Comment CURE-61:** Additionally, the Ord-Rodman DWMA may not be an appropriate translocation area for any tortoises from the Project site. (pg 48)

**Comment CURE-62:** Furthermore, although BLM is well-aware of the significant affects to the Ord-Rodman DWMA and to threatened desert tortoise, the BLM did not study the populations and habitat in the DWMA adequately to determine whether any areas in the DWMA are appropriate receptor locations where such impacts would not occur. Instead, the BLM listed sites within the Ord-Rodman DWMA as eligible recipient locations without conducting the necessary full health assessment, including blood and tissue samples of all resident tortoises, as has been required by USFWS. In fact, disease prevalence and large die-off events have already been observed throughout the Ord-Rodman DWMA, including in the areas that the Translocation Plan has targeted for receptor areas. It is undisputed that translocating tortoises into this area could exacerbate the decline of the tortoise in these areas and for the population as a whole. (pg. 49)

**Comment CURE-65:** 3. Pisgah ACEC

The Draft Translocation Plan proposes to move tortoises into the Pisgah ACEC. However, the Applicant's biologist admitted that no more than two tortoises may be moved into this ACEC.

The Draft Translocation Plan is incorrect. This incorrect information about the existing capability of the Pisgah ACEC to accept desert tortoises, as proposed in the Translocation Plan, mandates that the BLM prepare a new analysis of where potentially displaced tortoises on the Project site would be moved and the baseline conditions at the new proposed receptor locations. (pg. 51)

**Response:** The BLM's selection of designated critical habitat within the Ord-Rodman DWMA as a translocation receptor site is consistent with the guidance provided in the US Fish and Wildlife Service's *Translocation of Desert Tortoises (Mojave Population) From Project Sites: Plan Development Guidance* (2010). Preliminary habitat assessments and tortoise density surveys have been conducted by the Applicant in preparation for the translocation activities, and the required site assessments will be completed before any desert tortoises are translocated.

As identified in the response under 1.10.2.2, above, the substantially lower number of tortoises that would need to be translocated from a 4,614-acre project footprint should eliminate the need to obtain or identify additional translocation sites to accommodate the desert tortoises that are translocated from the project site. The larger habitat linkage area to the north of the project site that is associated with the 4,614-acre project footprint provides more opportunity for the translocation of tortoises that are detected within 500 meters of the northern project boundary, and allowing the translocation of tortoises into this area will likely reduce translocation-related mortality because it is likely that some of the desert tortoises will remain within a portion of their home range. With the reduced number of desert tortoises expected to occur within the 4,614-acre project footprint, the ability of the northern linkage area to accommodate tortoises, and the ability to place two tortoises into the Pisgah ACEC, the existing translocation receptor sites are expected to be large enough to support all of the tortoises that would need to be translocated from the project site.

### **1.10.2.5 Desert Tortoise – Translocation Plan Conformance with BLM Manual 1745**

**Comment DEF-9:** Assessment of conditions of the Desert Tortoise translocation sites proposed by the project applicant and contained in the Draft Desert Tortoise Translocation Plan in the FEIS has not been completed to the standards established in BLM Manual 1745 regarding ecological condition, and disease occurrence among the translocation sites “host population” of Desert Tortoises has not been established. (pg. 4)

**Comment DEF-19:** IV. The Proposed CDCA Plan Amendment and FEIS do not conform with the requirements contained in BLM Manual 1745: Introduction, Transplant, Augmentation and Reestablishment of Fish, Wildlife and Plants (pg. 7)

**Comment DEF-20:** Meaningful public participation mandated by Manual 1745 policy has not occurred and cannot be fulfilled until a complete and accurate draft Desert Tortoise translocation plan has been prepared and released for public review and comment. A final translocation plan could be developed after the required public participation has occurred. Such participation must include specific organizations or groups having expertise in Desert Tortoise biology, ecology and the Independent Science Advisors to the DRECP. (pg. 8)

**Response:** BLM Manual 1745 (1992) is guidance that applies to the introduction, transplant, augmentation and re-establishment of fish, wildlife and plant species. Translocation of a species, as is being proposed for desert tortoises in the project area, is not addressed in BLM Manual 1745. Further, BLM Manual 1745 references land use planning manual sections that have been removed; in November 2000, the BLM removed BLM Manual Sections 1617 and 1622 and issued BLM Manual 1601. BLM Manual Section 1601 (2000) explains that site-specific plans (for example, habitat management plans) are implementation level decisions

rather than planning decisions. The BLM's translocation plan for this project is considered an implementation or activity plan, rather than an element of the land use plan, and is consistent with the guidance provided in the US Fish and Wildlife Service's *Translocation of Desert Tortoises (Mojave Population) From Project Sites: Plan Development Guidance* (2010).

### **1.10.2.6 Desert Tortoise – Translocation Plan Violates the ESA**

**Comment CURE-11:** Finally, it is not clear that desert tortoise translocation should be conducted as a minimization strategy. Dr. Berry testified that the very high mortality rate of the tortoises in the nearby Ft. Irwin translocation effort leads her to believe that translocation may not be an effective minimization strategy... (pg. 13)

#### **Comment CURE-55: VIII. ESA VIOLATIONS**

The Project's elimination of a sizable and healthy population of desert tortoises is a significant impact that cannot be mitigated. The BLM's efforts to minimize the decimation of the tortoises on the Project site and around the Project site, and in offsite populations in recovery areas, without any information whether even minimization will work is a clear violation of the Federal Endangered Species Act ("FESA"). Substantial evidence shows that the Project would jeopardize the continued existence of the species and result in the destruction of habitat for the species. The BLM's approval of the Project would be arbitrary and capricious and would violate FESA. (pg. 45)

**Comment CURE-67:** B. The Project Could Jeopardize the Continued Existence of the Species; USFWS Must Develop Reasonable and Prudent Alternatives to the Proposed Action. (pg. 52)

**Comment CURE-76:** The BLM has an enormous amount of analysis that still must be done to identify adequate receptor sites, study the baseline conditions at the receptor sites and analyze whether translocation would alleviate the Project's impacts to the species that, thus far, show that the Project would result in jeopardy to desert tortoise as prohibited by FESA. If the BLM approves this Project without conducting this analysis, the BLM would violate FESA. (pg. 58)

**Comment SC-6:** The project and the impacts of the proposed Draft Translocation Plan would result in the destruction of over 6,000 acres of high quality desert tortoise habitat, the mortality of up to 282 individual desert tortoises, and the destruction of up to 863 desert tortoise eggs. This proposed travesty directly contradicts the clearly articulated policy of the Endangered Species Act ("ESA"), which requires BLM and all other Federal departments and agencies to use their authorities to conserve, protect and restore the desert tortoise. (pg. 7)

**Comment SC-8:** BLM's support of the Draft Translocation Plan violates the ESA's requirement to conserve and restore the desert tortoise and insure the BLM's actions do not jeopardize the continued existence of the species.

**Comment WWP-13:** Translocation of desert tortoises to the DWMA could place the entire Ord-Rodman DWMA tortoise population at risk...[and]...directly contravenes the specific recommendation of the 1994 Desert Tortoise (Mojave Population) Recovery Plan. There are no provisions in the West Mojave Plan for a large-scale translocation of desert tortoises into the Pisgah ACEC or the DWMA that that CDCA Plan Amendment established. (pg. 5)

**Response:** The BLM is fulfilling the procedural and regulatory requirements of the Endangered Species Act through formal Section 7 consultation with the US Fish and Wildlife Service. Since the publication of the FEIS, the proposed project footprint has been reduced to avoid impacts to most of the highest-density tortoise habitat and to provide a larger habitat linkage area to the north of the project site. In addition, a suite of project-specific mitigation measures has been developed to reduce the project's impacts on the desert tortoise, including requirements for compensatory mitigation, funding of regional raven management activities, implementation of worker awareness training and construction monitoring, installing tortoise-proof fencing along the project boundary and access roads, and removing desert tortoises from the project site prior to construction.

Desert tortoises that are removed from the project site will be translocated to suitable habitats off-site, including the habitat linkage area to the north of the project site, the Pisgah Area of Critical Environmental Concern, and designated critical habitat within the Ord-Rodman Desert Wildlife Management Area. Ongoing monitoring will be used to determine the ultimate fate of these tortoises and ongoing reporting and agency coordination will allow the BLM, CDFG, and the US Fish and Wildlife Service to address any unforeseen issues that arise during the course of the project and the implementation of the project mitigation measures. The BLM's translocation plan for this project is considered an implementation or activity plan, rather than an element of the land use plan, and is consistent with the guidance provided in the US Fish and Wildlife Service's *Translocation of Desert Tortoises (Mojave Population) From Project Sites: Plan Development Guidance* (2010).

### **1.10.2.7 Desert Tortoise – Compensatory Mitigation**

**Comment WWP-9:** The CEC proposed mitigation ratio of 5:1 for acquisition of replacement habitat...is arbitrary based on comparative mitigation ratios for ground disturbance in DWMA. Full analysis may establish that an appropriate mitigation ratio should to be much higher. (pg. 4)

**Response:** The BLM is requiring 1:1 mitigation across the project site, as identified in the West Mojave Plan. Additional mitigation requirements have been proposed by the CDFG and subsequently supported by the CEC, and are the responsibility of the State of California.

### 1.10.2.8 Biological Assessment

**Comment CURE-70:** C. Since Critical Information in the Supplemental BA is Inadequate and Incorrect, the BLM Must Prepare and Circulate a New BA

After BLM's release of the FEIS, the Draft Translocation Plan, and the Supplemental BA, new information was made available that rendered the analysis and baseline in the Supplemental BA inadequate and inaccurate. (pg. 55)

**Comment CURE-71:** 1. Information About Receptor Sites is Inaccurate (pg. 55)

The BLM must significantly revise the Supplemental BA to provide sufficient information about the Ord-Rodman DWMA as a potential translocation site, if that is the plan. The BLM must include a complete health assessment of resident populations and an assessment of the food source for desert tortoises, among other factors recommended by Dr. Kristin Berry and Scott Cashen and as incorporated herein. (pg. 56)

**Comment CURE-72:** 2. Assumption About the Importance of Project Changes Along Northern Boundary Is Inaccurate

The BLM's Supplemental BA assumes that the Applicant's reduction of the Project boundary along the Northern Boundary is a 4,000 foot reduction that would comply with the USFWS' Desert Tortoise Recovery Office recommendations. However, biologist Scott Cashen conducted an independent assessment of that area and found that it is not 4,000 feet wide throughout. In fact, Project construction reduces the width to as narrow as approximately 2,400 feet. Thus the BLM's Supplemental BA includes an inaccurate explanation of the linkage area north of the Project site. (pg. 56)

**Comment CURE-73:** Thus, the BLM's Supplemental BA must be revised to correct the inaccuracies in the description of the width of the corridor and to take into account the expert opinions provided by Scott Cashen and Jeff Aardahl that the current corridor is insufficient to maintain connectivity for desert tortoise populations and violates the 1994 recovery plan. (pg. 57)

**Comment EPA-15:** When finalized, [the Biological Opinion and the final Desert Tortoise Translocation Plan] should play an important role in informing the decision on which alternative to approve and what commitments, terms, and conditions must accompany that approval. (pg. 3)

**Response:** The BLM initiated formal consultation under the Endangered Species Act to address adverse impacts to the desert tortoise associated with the 8,230-acre project footprint on April 1, 2010, and has continued to coordinate with the US Fish and Wildlife Service during the subsequent revisions to the project footprint. The reduced 4,614-acre project footprint that

has been proposed by the Applicant would expand the habitat linkage area between the project site and the foothills of the Cady Mountains, where the highest density of tortoises was observed, and would reduce substantially the project-related impacts to desert tortoises compared to the Agency Preferred Alternative that was identified in the FEIS.

The BLM has prepared Supplement #5 to the Biological Assessment that addresses the proposed 4,614-acre project footprint; the Biological Assessment Supplement was submitted to the US Fish and Wildlife Service on September 27, 2010, along with a revised Desert Tortoise Translocation Plan. The Biological Assessment Supplement and revised Desert Tortoise Translocation Plan take into consideration the comments and testimony presented by various individuals, agencies, and organizations at the CEC's evidentiary hearings and staff workshops. Upon the completion of the Endangered Species Act consultation, the BLM will incorporate the terms and conditions of the US Fish and Wildlife Service's Biological Opinion, as well as the terms and conditions of the California Department of Fish and Game's Incidental Take Permit, into the project mitigation requirements.

#### **1.10.2.9 Mojave Fringe-toed Lizard (30213)**

**Comment BRW-4:** Based on these field observations, it is my professional opinion that more than 164.7 acres of Mojave fringe-toed lizard habitat exists on the Calico Solar Project site, especially when considering connectivity corridors. Formal surveys should be undertaken to determine habitat extent during March through May when lizards are most active. (p. 4)

**Comment BRW-5:** Connectivity habitat has not been adequately considered... if most of the Mojave fringe-toed lizard habitat sand is from the west, then the potential exists that the project will block sand flow to the east, to Mojave fringe-toed lizard habitat patches in Pisgah Area of Critical Environmental Concern. This needs to be considered in approval of the project and mitigation. The area may be a unique geographic connectivity location, which cannot be mitigated. (p. 4)

#### **Comment CURE-37: II. BLM FAILED TO TAKE A "HARD LOOK" AT THE CUMULATIVE EFFECTS OF THE PROPOSED PROJECT ON THE MOJAVE FRINGE-TOED LIZARD**

The FEIS fails to analyze or mitigate cumulative impacts to Mojave fringetoed lizards and their habitat from compaction of soils; the introduction of exotic plant species; alterations to the existing hydrological conditions; alterations in the existing solar regime from shading; modification of prey base; and altered species composition. Further, the placement of fencing and other structures would provide roosting opportunities for avian predators that target lizard prey. Studies show that fencing depletes lizard populations around the edges of human development.

The proposed action's contribution to a significant cumulative impact on Mojave fringe-toed lizard would be considerable. This is primarily due to the net habitat loss and interruption of suitable breeding and dispersal habitat between occupied habitat to the east and west. The FEIS proposes no additional mitigation for the Project's cumulative impacts to Mojave fringe-toed lizard. Given the population dynamics exhibited by this species, including its reliance on a functioning metapopulation structure to persist, biologist Scott Cashen concluded that the cumulative impacts from the proposed action would result in the extirpation of the Mojave fringe-toed lizard from the region.

The BLM failed to take a hard look at the cumulative impacts to this species. (p. 33)

**Comment EPA-14:** We note that BLM does not propose mitigation for the Mojave fringe-toed lizard (pg. 154, BIO-13), although the FEIS acknowledges that that species has been observed on the Calico project site and the Proposed Action will contribute to a potentially significant cumulative effect on the lizard (pg. 4-102-103). (p. 3)

**Comment SC-17:** BLM's Proposed Mitigation Measures Were Unclear and Inadequate: "Impacts on the Mojave fringe-toed lizard would be unavoidable, but would be minimized and mitigated through the implementation of project-specific mitigation measures." The FEIS provided no additional discussion or analysis of which mitigation measures would reduce those impacts or what the likely outcome of the mitigation would be. The only subsequent mention of mitigation for the impacts to the Mojave fringe-toed lizard occurred in the mitigation section of the FEIS under BIO-13...However, the FEIS stated that, "this [BIO-13] is not a mitigation measure that is proposed by the BLM," ...[T]herefore,...BLM has not independently proposed any mitigation measures... As a result, the FEIS did not contain any indication or assurance that BLM will require mitigation for the recognized impacts to the Mojave fringe-toed lizard. (p. 14)

**Comment WWP-17:** During the CEC Hearings additional evidence was presented that the amount of Mojave fringe-toed lizard habitat on the project site has been underestimated. (p. 7)

**Comment WWP-18:** The analysis must include full consideration of Aeolian transport of sediment to blowsand habitat on the Pisgah ACEC, to protect the Pisgah Mojave fringe-toed lizard populations. (p. 7)

**Response:** The CEC has estimated the amount of potentially suitable habitat for the Mojave fringe-toed lizard on the project site as including 21.4 acres of breeding habitat and 143.3 acres of foraging and cover habitat. In producing this estimate, the CEC indicated that there is potentially more suitable habitat present on the project site. To more accurately assess the extent of breeding habitat and adjacent foraging and cover habitat on the project site, the Applicant would be required to contract with an expert on the species' ecology to provide a delineation of habitat for Mojave fringe-toed lizards on the project site and provide compensatory mitigation based on that delineation of suitable habitat.

The FEIS does take a “hard look” at the environmental consequences of the proposed action on the Mojave fringe-toed lizard. Chapter 4 of the FEIS is solely dedicated to assessing and analyzing the direct, indirect, cumulative and residual effects to the human and physical/natural environment that could result from the implementation of the proposed action and its alternatives. Potential impacts to the Mojave fringe-toed lizard associated with each alternative are discussed in Section 4.3.2 and an analysis of cumulative effects is provided in Section 4.3.3. As was discussed in the FEIS for the white-margined beardtongue, while the built structures on the project site would likely alter the wind-driven transport of sand across the site to downwind habitat within the adjacent Pisgah ACEC, the BLM has determined that the blow-sand habitats within the ACEC are supported by sediment transport processes within the ACEC and the project is not considered likely to result in habitat degradation that would reduce the quality of blow-sand habitat farther east.

The proposed 4,614-acre project footprint would result in a reduction in the project footprint north of the BNSF railroad; however, this reduction in the project footprint would not reduce the amount of potentially suitable Mojave fringe-toed lizard habitat that would be impacted. The Applicant has proposed to implement a 223-foot set back from the railroad, which would result in increased habitat connectivity for east-west movement of Mojave fringe-toed lizards along the north and south sides of the railroad tracks.

#### **1.10.2.10 Bighorn Sheep (30213)**

**Comment CURE-35:** c. BLM Failed to Take a Hard Look at Impacts to Bighorn Sheep (pg. 30)... Although the Project would result in the loss of approximately 1,078 acres of spring foraging habitat, BLM inexplicably failed to require any mitigation for the loss of this habitat. Moreover, BLM failed to find that the Project would significantly impact a movement corridor for bighorn sheep.

Dr. Bleich testified about the importance of maintaining connectivity and the potential for recolonization by avoiding disruption of natural dispersal routes. Dr. Bleich provided unrebutted testimony that the Project area also provides a movement corridor for bighorn sheep. BLM’s failure to adequately analyze and mitigate significant impacts to bighorn sheep forage and movement violates NEPA. (p. 31)

**Comment WWP-16:** The CDCA Plan Amendment/FEIS fails to take NEPA’s requisite “hard look” at impacts to bighorn sheep...FEIS fails to propose mitigation measures such as the acquisition of replacement habitat or construction of land bridges to compensate for impacts to connectivity (as called for in the West Mojave Plan). (p. 6)

**Response:** The BLM has considered the direct, indirect, and cumulative impacts of the proposed project on Nelson’s bighorn sheep and their movement. Discussions of impacts to

Nelson's bighorn sheep and wildlife movement can be found in Section 4.3.2 (Direct and Indirect Impacts) of the FEIS. The BLM recognizes that the proposed project would impact wildlife movement and habitat connectivity, and has considered project alternatives that would reduce these impacts as well as appropriate mitigation measures that would minimize potential impacts under any of the project alternatives. The reduction in acreage under the proposed 4,614-acre project footprint would provide Nelson's bighorn sheep greater access to foraging habitat and would provide a greater buffer between the project site and the foothills of the Cady Mountains. The mitigation measures that address project-related impacts to Nelson's bighorn sheep are provided in Appendix 6 (Environmental and Construction Compliance Monitoring Program) of the ROD.

### **1.10.2.11 Golden Eagle (30213)**

**Comment CURE-32:** a. BLM Did Not Take a Hard Look at Impacts to Golden Eagle... Even though an active nest was detected, the Applicant failed to conduct golden eagle surveys in accordance with USFWS regulations and, therefore, failed to establish an accurate environmental setting for impacts to golden eagles. Thus, the approval of the Project may result in an unanalyzed and unpermitted take of golden eagle in violation of the Bald and Golden Eagle Act. Project approval may also violate the California Endangered Species Act, because golden eagles are designated as “fully protected” under California law and thus may not be taken or possessed (pg. 28)... Consequently, by failing to establish the affected environmental setting for golden eagle, BLM failed to take the hard look at the Project's impacts required by NEPA. (p. 29)

**Comment DEF-17:** III. The Proposed CDCA Plan Amendment and FEIS Do Not Comply with BLM Policy contained in Instruction Memorandum No. 2010-156 (7/13/2010) regarding Golden Eagle protection

A. Impacts to the BLM Sensitive Golden Eagle through loss of a foraging habitat is recognized and analyzed in the FEIS, but potential impacts to this species from collision with project facilities and mortality caused by concentrated reflected sunlight between the mirror fields, transmission lines and towers have not been adequately studied. Rather, the FEIS states that monitoring for such impacts would be required and that additional, but unspecified, mitigation may be required through adaptive management provisions contained in the Avian Protection Plan, which would be submitted to the agencies for review, necessary modification and approval within 30 days of project approval. Due to the sheer size of the proposed project, proximity to known Golden Eagle nesting territories in the adjacent Cady Mountains, and known foraging habitat on the proposed project site, it is inappropriate to defer additional impact analysis and mitigation to a future date after construction has commenced. (p. 7)

**Comment DEF-18:** There is no documentation in the FEIS that the Avian Protection Plan could reasonably achieve the “no net loss standard” established by the U.S. Fish and Wildlife Service for Golden Eagles... There is no indication or documentation in the FEIS that the U.S. Fish and Wildlife Service has confirmed that an APP could potentially fully mitigate the impacts anticipated to occur due to the proposed project, including the loss of several thousand acres of foraging habitat adjacent to known nesting territories. (p. 7)

**Comment SC-20:** The FEIS failed to analyze impacts to golden eagle: In the context of the Calico Project, the FEIS did not gather sufficient data or address the known risks to the golden eagle and other birds from potential collisions with the solar facilities. This omission was particularly concerning given the sensitive status of golden eagles and Congress’ clear intention, articulated through the Eagle Act, to protect that species. Following, *National Audubon Society v. Department of the Navy*, BLM’s failure to analyze the risks to golden eagles prior to issuing the DEIS or the FEIS constituted a violation of NEPA. (p. 17)

**Response:** Helicopter surveys for golden eagle nests were conducted in March 2010; the results of these surveys are provided in Section 3.3.5.4 (Special-Status Species) of the FEIS. Impacts to golden eagles are discussed for each alternative in Section 4.3.2 (Direct and Indirect Impacts) of the FEIS. Mitigation measures that have been developed to address potential impacts to golden eagles include requirements for pre-construction surveys, monitoring of active nests, and the use of adaptive management to avoid construction-related impacts. These mitigation measures can be found in Section 4.3.4 (Mitigation, Project Design Features, BMPs, and Other Measures) of the FEIS. As discussed in the FEIS, an Avian Protection Plan (APP) would be required by the BLM as a condition of the right-of-way grant. The APP would evaluate options to avoid and minimize the potential project-related impacts, and would be developed by the Applicant in coordination with the US Fish and Wildlife Service and the BLM.

The BLM’s Instruction Memorandum No. 2010-156 (dated July 13, 2010) states that the BLM will not issue a Record of Decision approving a project unless the US Fish and Wildlife Service concurs that an APP is sufficient to meet the standards of the Bald and Golden Eagle Protection Act (Eagle Act). The BLM has consulted with the US Fish and Wildlife Service regarding potential impacts to golden eagles, as recommended in BLM’s Instruction Memorandum. The US Fish and Wildlife Service has provided a concurrence letter (dated September 15, 2010) indicating that, while there would be no impact to breeding pairs or their progeny and it is unknown if there would be project-related impacts to floaters, migrating birds, or wintering birds, an APP is sufficient to meet the standards of the Eagle Act’s take provision (refer to Appendix 6 of the ROD, Environmental and Construction Compliance Monitoring Program).

### **1.10.2.12 Bats (30210)**

**Comment CURE-17:** 2. BLM Failed to Provide a Good Faith Reasoned Response to CURE’s Comments Regarding Project Impacts to Special Status Bats. (pg. 17)

**Comment CURE-18:** As stated in Mr. Cashen’s comments on the DEIS, BLM did not conduct (or require the Applicant to conduct) the surveys necessary to establish the absence of roosting bats, as is required by the West Mojave Plan. Indeed, BLM provides no evidence to support its claim that construction of the Calico Solar Project is not likely to result in the loss of bat roosts. (pg. 19)

**Comment CURE-19:** BLM’s response to CURE’s comment is not consistent with information in the FEIS and entirely fails to address CURE’s comments regarding the effects on bat roosts on or adjacent to the Project site. As such, BLM failed to provide a good faith reasoned response to CURE’s comments in violation of NEPA. (pg. 19)

**Response:** As discussed in Section 4.3.2 of the FEIS, construction of the Calico Solar facility would not be expected to result in the loss of maternity colonies, day roosts, or hibernacula for bats. These features are not known to occur on the project site and, while bats will utilize large trees for day roosts, the habitat on the project site (primarily creosote bush scrub and windrows of sparse salt cedar) is generally not suited for this behavior; however, it may be possible that some areas of the project site that have rock outcrops or exposed lava formations may have limited potential to support small bat roosts. As stated in the FEIS (Section 4.3.2), in general, bats are highly mobile and it is unlikely that construction activities would result in any direct impacts. However, because potential roost sites occur on the project site (e.g., railroad trestles, areas of rock outcrop) and special-status bats are known to occur nearby at Pisgah Crater, the BLM would require the development of a Bat Protection Plan and implementation of project mitigation measures by the Applicant to address potential impacts to bats. These measures would include conducting pre-construction surveys of suitable roosting habitats including rock outcrops and railroad trestles, allowing bats to leave prior to demolition of any roosts, and avoiding impacts on any maternity colonies that are found by providing alternate roosting habitat.

CURE’s comments regarding special status bats are addressed in Section G.9.4.2 of the FEIS. The BLM reviewed the comments and requested revisions, and incorporated the revisions into the project mitigation measures, as appropriate. This included protection of “significant roosts”, as identified in the West Mojave Plan (i.e., all maternity and hibernation roosts containing more than 10 Townsend’s big-eared bats or California leaf-nosed bats, or 25 bats of any other species). Mitigation Measure BIO-25 (Bat Impact Avoidance and Minimization Measures) specifically addresses mitigation measures for special status bats (see ROD Appendix 6 – Environmental and Construction Compliance Monitoring Program).

### **1.10.2.13 Consistency with CDCA Plan and WEMO**

**Comment CURE-52:** A. BLM May Not Approve the Project Because it Would Severely Diminish Wildlife Resources Within the Project Region... As explained above, the FEIS determined that impacts to desert tortoise, golden eagle, burrowing owl, Mojave fringe-toed lizard and other special status species would be unavoidable if the Project is developed. Moreover, due to the Project's immense size, the Project will completely block the north south corridor for a number of species, including desert tortoise and bighorn sheep. In light of this finding, BLM may not approve the Plan Amendment to allow the significant diminishment of wildlife resources within the Planning Area. Such approval would be inconsistent with the CDCA Plan. (p. 43)

**Comment DEF-15:** C. The proposed action conflicts with the CDCA Plan Wildlife goals... Clearly, the habitat that would be affected by the proposed project is sensitive to the proposed action as demonstrated in the DEIS and FEIS. The project site north of the railroad contains high quality habitat for the Desert Tortoise as evidenced by its relatively high density population. Overall, the project site contains habitat that supports BLM Sensitive Species, including the Mojave Fringe-toed Lizard, Burrowing Owl and White-margined Beardtongue. (p. 6)

**Comment WWP-10:** The March 2006 WMP ROD includes "Goal 3: ensures genetic connectivity among tortoise populations, both within the West Mojave Recovery Unit, and between this and other recovery units." The FEIS does not explain how the proposed plan amendment will be consistent with this biological goal...the proposed mitigations do not address how the loss of linkage habitat will be mitigated. (p. 4)

**Comment WWP-24:** The West Mojave Plan ROD signed March 2006 includes "Goal 3: ensures genetic connectivity among tortoise populations, both within the West Mojave Recovery Unit, and between this and other recovery units." The preferred alternative does not explain how the proposed plan revision will help the BLM meet this biological goal and comply with current CDCA Plan as amended. (p. 8)

**Response:** The CDCA Plan Amendment/FEIS is not contrary to the BLM's conservation commitments in the CDCA or the West Mojave Plan Amendments. The CDCA Plan is specifically referenced and analyzed throughout the proposed CDCA Plan Amendment/FEIS. As the FEIS states in Section 3.9.3.2, "All CDCA land-use actions and resource management activities must meet the multiple-use guidelines within the Plan..." The BLM has the discretion, based on its expertise, to determine whether a plan amendment adheres to the principles of multiple use, sustained yield, and maintenance of environmental quality. The proposed plan amendment adheres to the management principles and guidelines in the CDCA Plan and considers the broader CDCA context. As discussed in Section 4.18 of the FEIS, the project would be in conformance with the multiple-use guidelines and elements from the CDCA Plan that pertain to the various resources analyzed.

### 1.10.3 Vegetation (30100)

#### 1.10.3.1 Special Status Species (30117)

**Comment BRW-2:** On P. 3-32 a new species or variety of lupine was found on the project site, so far endemic to the Cady Mountains. This alone should require the No Action alternative and designation of the area as an ACEC. (p. 2)

**Comment DEF-16:** D. The proposed action conflicts with the CDCA Plan for conservation of the White-margined Beardtongue, a BLM Sensitive Species. (p. 6)

**Comment SC-21:** The FEIS failed to analyze impacts to white-margined beardtongue: FEIS based its evaluation and proposed mitigation of the white-margined beardtongue on the 2010 spring surveys prepared by the Applicant. Given the nature of the white-margined beardtongue, a single survey in spring is not adequate to determine the presence of the plant on the site. BLM's failure to obtain sufficient information on the presence of this species prior to conducting its analysis violated NEPA's requirement that BLM take a hard look at the information on potential impacts prior to issuing a decision. (p. 18)

**Comment SC-22:** The FEIS also failed to explain how the proposed mitigation measure to create a 250-foot buffer around existing white-margined beardtongue within the Project site would prevent direct impacts to the population. The white-margined beardtongue exhibits population fluctuation within its habitat. Therefore, although the 250-foot buffer may protect an individual plant during one season, the shifting nature of the species over time would likely result in the extirpation of the on-site population. (p. 18)

**Comment WWP-19:** The FEIS fails to quantify the project's impacts to white-margined beardtongue impacts in reference to the 50 acre-threshold [of the West Mojave Plan]. (p. 7)

**Comment WWP-20:** The FEIS fails to quantify cumulative white-margined beardtongue loss since the West Mojave Plan ROD was signed. (p. 7)

**Response:** As identified in Section 4.3 of the FEIS, all known occurrences of the unnamed lupine species would be avoided by the reduced project footprint associated with the Agency Preferred Alternative. The 4,614-acre project footprint that has recently been proposed by the Applicant would also avoid all known occurrences of this species. The presence of a new species or variety of lupine would not, in itself, require designation of the area as an ACEC.

The white-margined beardtongue is a BLM Sensitive plant species that is known to occur on the project site, as well as in the adjacent Pisgah ACEC. With BLM's adoption of Alternative B under the West Mojave Plan Amendment to the CDCA, no additional protections were provided to this species (i.e., there is no requirement to limit impacts to white-margined beardtongue

habitat to less than 50 acres). The presence of white-margined beardtongue in the proposed project area is described in Section 3.3.5.4 of the FEIS. As proposed in Mitigation Measure BIO-12 (Special-Status Plant Impact Avoidance and Minimization), the applicant would be required to conduct additional late season surveys for special status plants, and all occurrences of white-margined beardtongue would be avoided in specially-designated Environmentally Sensitive Areas (ESAs) that are established in fenced areas on the project site. As part of Mitigation Measure BIO-12, the Applicant would also be required to prepare and implement a White-margined Beardtongue Impact Avoidance and Minimization Plan. The plan would be designed to prevent any direct or indirect impacts from project construction and operation to all white-margined beardtongue occurrences within the project boundary; the plan would also specify success standards for protection of special-status plant occurrences within the ESAs and identify specific triggers for remedial action (e.g., numbers of plants dropping below a threshold). An ongoing monitoring program would be implemented to determine whether remedial action is necessary at some point in the future.

As identified in Section 4.3.3 (p. 4-99 to p. 4-100), there is no quantitative data available on population sizes or areal extent of occupied habitat for white-margined beardtongue. In the absence of quantitative data on populations and habitat area, the project's cumulative impacts on this species were evaluated in qualitative terms in the FEIS.

#### **1.10.4 Biological Resources Mitigation (30000)**

##### **1.10.4.1 General Biological Mitigation (30170/30270)**

**Comment BRW-1:** On page 4-31 of the FEIS it is admitted that the project will disturb over 7,000 acres of desert and that decommissioning and restoration will most likely not restore or revegetate the original Mojave Desert vegetation due to compaction, removal of biotic soil crusts and desert pavement, weed management, and other activities. Therefore the desert here will be permanently lost, and the area will no longer serve as functioning habitat for desert tortoise, golden eagle, Mojave fringe-toed lizard, or rare plants. Multiple use will be reduced. Therefore the No Project alternative should be chosen, and the area denied any further solar applications. (p. 1)

**Comment CURE-20:** 3. BLM Failed to Respond to Comments Submitted by Scott Cashen Regarding the Effectiveness of Unidentified Compensation Land to Mitigate for Significant Effects on Desert Tortoise (p. 19)

**Comment CURE-21:** BLM's response does not satisfy its obligation under NEPA because it provides no evidence that lands of adequate quality and quantity will be available for purchase to mitigate impacts to desert tortoise. Although it may be true that BLM is coordinating the

review of this Project with other agencies, there is nothing in the record that shows that there is adequate land available to mitigate impacts to this Project, or to the other proposed Projects on desert tortoise land in the Project area. (p. 20)

**Comment CURE-38:** III. BLM FAILED TO INCLUDE A COMPLETE DISCUSSION OF MEASURES REQUIRED TO MITIGATE THE PROJECT'S SIGNIFICANT EFFECTS ON DESERT TORTOISE

The mandate to thoroughly evaluate all feasible mitigation measures is critical to NEPA's purposes. Hence, a "perfunctory description" or a "mere listing" of possible mitigation measures is not adequate to satisfy NEPA's requirements. That individual harms are somewhat uncertain due to limited understanding of the Project characteristics and baseline conditions does not relieve BLM of the responsibility under NEPA to discuss mitigation of reasonably likely impacts at the outset. (p. 34)

**Comment EPA-12:** Detailed compensatory mitigation measures are determined on a project-specific basis, and must be contained in each project's environmental analyses and decision documents. The ROD should describe the final biological resources mitigation commitments and how they would be funded and implemented. (p. 3)

**Comment EPA-13:** The FEIS specifies that the applicant shall contribute to the National Fish and Wildlife Foundation (NFWF) Account to compensate for the loss of tortoise habitat (p. 4-168). For each species requiring compensatory mitigation, the ROD should state whether and how the project applicant would use the NFWF Account, an in-lieu fee strategy, or an applicant-directed implementation strategy. (p. 3)

**Comment EPA-16:** Incorporate final information on the compensatory mitigation proposals (including qualification of acreages, estimates of species protected, costs to acquire compensatory lands, etc.) for unavoidable impacts to biological resources including desert tortoise, peninsular bighorn sheep, Mojave fringe-toed lizard, and Special-status plants. (p. 3)

**Comment EPA-17:** If the applicant is to acquire compensation lands, the location(s) and management plans for these lands should be fully disclosed in the ROD. (p. 3)

**Comment EPA-18:** Include the provisions or mechanism(s) in the ROD that will ensure that habitat selected for compensatory mitigation will be protected in perpetuity. (p. 3)

**Comment EPA-19:** All mitigation commitments should be included in the ROD. (p. 3)

**Comment SC-16:** BLM's Proposed Mitigation Measures Were Unclear and Inadequate: The FEIS simply cut and pasted the proposed conditions of certification drafted by CEC Staff and proposed in the SA/DEIS...the FEIS stated that BLM has not finalized any of the proposed mitigation measures related to the Calico Project, and all of those mitigation measures are

subject to change depending on BLM's whim. The FEIS's ambiguous assertions regarding the proposed mitigation measures make it impossible for the public or any agency to determine what the actual impacts from the Project would be. This is a clear violation of NEPA. (p. 14)

**Comment SC-18:** BLM's Proposed Mitigation Measures Were Unclear and Inadequate: The Supplemental Staff Assessment ("SSA"), which BLM did not sponsor, contained numerous substantial changes to the proposed conditions of certification. Those conditions of certification continued to change as the CEC conducted evidentiary hearings on biological resources and other issues...It was premature, therefore, for the FEIS to conclude that, "Mitigation measures described here address environmental impacts...to reduce intensity or eliminate the impacts." Furthermore, if BLM adopts the CEC's final conditions of certification in the Record of Decision, it will have violated NEPA's requirement to discuss the mitigation measures... (p. 15)

**Comment SC-19:** The FEIS did not include sufficient information to analyze the effectiveness of impacts from compensatory mitigation: The FEIS relied on several proposed CEC conditions of certification that would require the Applicant to pay compensatory mitigation...However, the public and other agencies cannot evaluate or consider the potential impacts of this proposed mitigation because neither BLM nor the Applicant identified which lands would serve as compensatory habitat...The compensatory mitigation proposals completely fail as a mitigation strategy under NEPA because they did not adequately identify or analyze the lands that the Applicant would acquire to purportedly reduce the impacts of the Project. (p. 16)

**Response:** The SA/DEIS and the FEIS include extensive mitigation addressing the potential adverse project impacts. Many of the proposed mitigation measures have been used extensively throughout the State and, therefore, are anticipated to effectively address the adverse project impacts. In addition, many of the proposed measures include performance standards or other requirements that, if not met, would trigger the need for additional mitigation. The BLM's position is that the mitigation as presented in the FEIS is adequate to address the potential adverse project impacts and includes sufficient performance standards and other requirements to ensure that the impacts are properly mitigated. Many of the mitigation measures require the preparation of detailed plans during final design and prior to any activity on the project site. This is consistent with the requirements of NEPA because these measures identify the impacts intended to be addressed by those plans and key activities that would be included in those plans to mitigate the identified impacts. Where there are adverse impacts that cannot be entirely mitigated, these impacts have been identified as unavoidable adverse impacts of the Proposed Action and the other build alternatives.

## **1.11 Cultural Resources and Paleontology (60000)**

**Comment BRW-6:** On July 12, 2010, we visited the project site and found what appears to be a geoglyph on low desert pavement hills between the BNSF railway and I-40. The location is UTM

11S, 0551672E, 3850618N (WGS84)...This feature should be preserved, and the area needs to be avoided from SunCatcher placement. The feature could be historically significant and needs assessment. (p. 5)

**Comment BRW-7:** The quality of artifacts and features described in the FEIS indicates the need for the applicant to carry out much more thorough archaeological surveys, better assessment of what is eligible under NRHP, and potentially the entire project site should be avoided and considered for designation as an Area of Critical Environmental Concern. (p. 5)

**Comment BRW-8:** P. 3-58 of the FEIS states that the ACHP does not have a reasonable time period to comment on the finds in the project site. Clearly the finds can be considered important to science to revealing information about the prehistory of the area, even as Dr. David Whitley related, "to the peopling of the Americas" (CEC evidentiary hearing August 12, 2010). The CDCA plan states: Ensure cultural resources are given full evaluation in land use planning. This is being denied in the rush to meet ARRA deadlines, and is unacceptable. (p. 5)

**Comment BRW-9:** P. 3-63 says that desert pavements predate humans in the New World. However Dr. David Whitley disagreed with this statement. Saying new evidence shows buried archaeological resources have been found under desert pavement, including ceramics. Therefore desert pavement formation can be more recent, and the existence of such surfaces cannot be used to deny the presence of archaeological sites. (p. 6)

**Comment Calico-19:** [T]he FEIS states that an adverse indirect impact of the Agency Preferred Alternative is vandalism to cultural resources, in part "as a result of improved access to the project site." As noted elsewhere in the FEIS, all of the action alternatives would eliminate, rather than improve, the general public's existing access to the project site. (p. 5)

**Comment CURE-1:** A. BLM Must Prepare a Supplemental Environmental Impact Statement (pg. 3)... on August 25, 2010, after release of the FEIS, the BLM, in consultation with the California State Historic Preservation Office, conceded that additional testing should be conducted to determine whether additional significant cultural resources are present on the Project area. (pg. 5)... Dr. Hunter's acknowledgement of the potential for subsurface cultural resources is a significant departure from the conclusions reached in the FEIS and constitutes significant new information bearing on the potential for new significant adverse environmental effects from the proposed project. In this instance, the BLM's complete reversal about the potential for significant subsurface resources constitutes new circumstances relevant to environmental concerns that necessitate the circulation of a supplemental EIS. (p. 6)

**Comment CURE-2:** The use of mechanical excavation in sites known to contain cultural resources was not mentioned in the DEIS or the FEIS and would pose significant unmitigated impacts to cultural resources on the Project site. (pg. 7)... BLM must analyze significant effects

on cultural resources associated with the new proposal to use mechanical excavation in a supplemental EIS that is circulated for public review and comment. (p. 9)

**Comment WWP-21:** [T]he cultural surveys and analysis are incomplete. Additional evidence and testimony presented at the recent CEC Hearings indicates that the project site is of great scientific significance and may harbor evidence of early human occupation of the Americas. Although the site likely harbors subsurface cultural resources, the cultural surveys have been largely surficial...the BLM must undertake detailed and thorough surveys for cultural resources so that it can analyze the direct, indirect, and cumulative effects of the proposed project (p. 7-8)

**Comment CURE-24:** 1. BLM Failed to Take a “Hard Look” at the Significant Cultural Resources Consequences of the Project... The BLM failed to adequately identify the cultural resources that constitute the affected environment and, as a result, have not, and could not, identify the environmental consequences of the project on these resources or develop appropriate mitigation. (p. 23)

**Comment CURE-25:** a. BLM Did Not Adequately Define the Affected Environment (pg. 23)... According to testimony of Dr. Whitley, additional analysis and testing is also necessary to develop appropriate mitigation measures for each of the Project’s adverse impacts. The types of mitigation that will be appropriate will vary depending upon the nature of the specific resource, and the significance values that are identified through the additional analysis and testing. A prehistoric village containing a cemetery, for example, will likely be determined significant based both on its religious importance to Native Americans, and its potential to yield valuable scientific information about the past. A prehistoric tool-making workshop, in contrast, may be identified as significant solely due to its potential to provide archaeological information. These very different types of resources would require substantially different mitigation that was not analyzed anywhere in the FEIS. (p. 24)

**Comment CURE-26:** b. BLM Neglected to Develop Adequate Mitigation for Cultural Impacts (p. 25)

**Comment CURE-27:** After BLM’s release of the FEIS, BLM has now decided a PA is necessary and that additional testing will be required to determine the extent of the impacts to cultural resources on the Project site. The recent 180-degree shift in mitigation strategy for significant effects on cultural resources belies the BLM’s continued failure to take a hard look at the resources on the Project site. Moreover, BLM has not drafted the PA or circulated it for public review and comment in the FEIS, as the DEIS stated would occur. (p. 25)

**Comment CURE-28:** BLM’s “analysis” in the FEIS is insufficient under NEPA because it is devoid of evidence that would ensure that BLM has been informed of the environmental consequences of the proposed action, and because it precludes meaningful public comment.

Certainly, the discussion provided in the FEIS falls far short of the “full and fair discussion of every significant impact” that is required under NEPA.

This scant record clearly demonstrates that BLM failed to take a “hard look” at cultural resources within the Project site and its area of impact, as required by NEPA. In the absence of evidence, the only reasonable conclusion that could be drawn from the impact analysis provided is that BLM should not act at all in order to avoid significant adverse impacts to cultural resources. (p. 26)

**Comment CURE-29:** c. PA Does Not Comply With Full & Fair Disclosure Requirements

In deferring the development of the PA until after the circulation of the FEIS, the BLM has improperly shielded the mitigation plan from public scrutiny in violation of NEPA. The National Historic Preservation Act’s Section 106 process will not cure this defect. This process is not open to the public and does not meet NEPA’s public disclosure requirements. (p. 26)

**Comment CURE-30:** It is a blatant and egregious violation of NEPA to defer the entire environmental review process, from the identification of the resources in the affected environment to the determination of environmental consequences and mitigation measures, until after both the DEIS and FEIS have been released for review and comment. Furthermore, to defer the identification of impacts and development of mitigation to the Section 106 consultation process where members of the public would have to apply and demonstrate an interest before being allowed to participate, offends the fundamental public disclosure requirements of NEPA.

The BLM must develop the PA now as part of the NEPA process and provide the public with an opportunity to review the PA, comment on the PA, and receive responses to comments from BLM on this mitigation strategy for cultural resources. (p. 27)

**Comment CURE-31:** d. PA Does Not Comply with the National Historic Preservation Act... If a PA is developed to mitigate significant impacts to cultural resources, the PA must fully consider the impacts to cultural resources and propose mitigation for those impacts, PRIOR to the issuance of any license for the Project. (p. 27)

**Comment CURE-40:** 1. BLM Failed to Mitigate for Project Effects to Cultural Resources

BLM failed to include in the FEIS the mitigation plan for impacts to cultural resources. A final PA has not yet been prepared, or attached to FEIS.

A plan to make a plan does not satisfy the BLM’s obligation under NEPA and the NHPA. BLM clearly failed to thoroughly evaluate all feasible mitigation measures, as required by NEPA. (p. 35)

**Comment CURE-53:** B. BLM Failed to Evaluate and Preserve the Cultural Resources Within the Project Site

As explained above, BLM failed to adequately survey or analyze subsurface cultural resources at Project site. These resources were not analyzed in the DEIS or the FEIS; in fact, the FEIS includes no information about the direct, indirect or cumulative effects on subsurface resources other than at 3 of the 335 sites. The PA was improperly omitted from the DEIS and the FEIS.

Further, BLM has failed to devise enforceable measures to prevent significant effects to cultural resources as a result of the proposed Project. As such, BLM has unequivocally failed to evaluate and ensure that cultural resources are evaluated and preserved, as required by FLPMA and the CDCA Plan. BLM may not approve the Plan Amendment until it has ensured that it has balanced the need for development with efforts to preserve cultural resource values. (p. 43)

**Comment CURE-54:** VII. NHPA VIOLATIONS (pg. 44)... In this case, BLM has opted to use a PA to comply with its Section 106 obligation. A PA may not be used to improperly defer an agency's Section 106 obligations. To date, BLM has failed to, (1) identify historic properties within the Planning Area; (2) determine which of these properties would be eligible for listing in the National Register; or (3) identify measures to avoid and minimize any adverse effects on eligible resources.

BLM may not approve the Project until it has made a good faith effort to comply with Section 106 of the NHPA. (p. 45)

**Comment NAHC-1:** Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the culturally affiliated tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts.

**Comment NAHC-2:** Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.

**Comment NAHC-3:** Consultation with tribes and interested Native American tribes and interested Native American individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470[f] et se), 36 CFR Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 et seq.) and NAGPRA (25

U.S.C. 3001-3013), as appropriate. The 1992 Secretary of the Interior's Standards for the Treatment of Historic Properties were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e).

**Comment NAHC-4:** Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health and Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery. Discussion of these should be included in your environmental documents, as appropriate.

**Comment NAHC-5:** The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of "historic properties of religious and cultural significance" may also be protected the under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C. 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

**Comment NAHC-6:** CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens. Although tribal consultation under the California Environmental Quality Act (CEQA; CA Public Resources Code Section 21000-21177) is 'advisory' rather than mandated, the NAHC does request 'lead agencies' to work with tribes and interested Native American individuals as 'consulting parties,' on the list provided by the NAHC in order that cultural resources will be protected. However, the 2006 SB 1059 the state enabling legislation to the Federal Energy Policy Act of 2005, does mandate tribal consultation for the 'electric transmission corridors. This is codified in the California Public Resources Code, Chapter 4.3, and §25330 to Division 15, requires consultation with California Native American tribes, and identifies both federally recognized and non-federally recognized on a list maintained by the NAHC.

**Comment NAHC-7:** Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation.

**Response:** As part of a good faith and reasonable effort to identify historic properties in the project APE, a cultural resource survey was conducted for the entire APE. Following the completion of the survey and site recordation, three sites were determined eligible because the sites have the potential, under Criterion (d) of the NRHP, to have yielded, or may be likely to yield, information important in prehistory or history (36 CFR 60.4). As the BLM has determined that the project would have no adverse effect on those or any historic properties, no mitigation is necessary. However, because there may be potential for subsurface deposits, a Programmatic Agreement (PA) has been executed (September 21, 2010) to mitigate any potential impacts to historic properties. Cultural monitoring will be required during construction and specific protocols to follow during construction are discussed in Section 4.5.4 Mitigation, Project Design Features, BMPs, and Other Measures.

As stated in the FEIS, with the filing of the application for a right-of-way, the BLM took the lead for formal tribal consultation pursuant to the NHPA as well as other laws and regulations. The PA will serve to mitigate potential impacts to historic properties within the APE. (see ROD Appendix 4 – Programmatic Agreement, and Appendix 5 – Historic Properties Findings and Determination) Cultural monitoring will be required during construction, as discussed in Section 4.5.4 Mitigation, Project Design Features, BMPs, and Other Measures. In consultation with the tribes, the BLM shall seek to develop a written plan of action pursuant to 43 CFR 10.5(e) to manage the inadvertent discovery or intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony.

The Agency Preferred Alternative described in the FEIS includes a modification of the Proposed Action project site. The cultural resources located in the southern portion of the Proposed Action project site are located outside the boundaries identified for the Agency Preferred Alternative and would not be disturbed by the proposed project. Tribal consultation was conducted for this project. (see ROD Appendix 4 – Programmatic Agreement, and Appendix 5 – Historic Properties Findings and Determination.

## **1.12 Geology, Soils and Mineral Resources (42000)**

### **1.12.1 General Soils Comments**

**Comment CURE-36:** 3. BLM Failed to Take a Hard Look at Soil Resources... Desert pavement and cryptobiotic crusts are critical resources that stabilize the desert soil and prohibit fine particle transport in the winds and storm water flows from the Project site. Despite being

informed of these resources, BLM failed to establish the extent of desert pavement and cryptobiotic crusts as part of the baseline environmental conditions on the Project site. Because these important features were not surveyed or acknowledged, BLM did not adequately analyze or mitigate significant impacts to onsite and offsite resources. (p. 31)

**Response:** Specific quantification of desert pavement types has not been conducted. Desert pavement does occur on the site and will be disturbed during construction. Impacts to biological resources from the loss of biotic soil crusts are identified for each alternative in Section 4.3.2, Direct and Indirect Impacts; these impacts would occur across the entire project site, and the mapping of biotic soil crusts would not result in any additional information that is required to analyze these impacts.

### **1.13 Public Health and Safety and Hazardous Materials (63000)**

**Comment BNSF-1:** The FEIS, however, does not properly analyze the impacts of glare and glint previously identified in the SA/DEIS. The FEIS does reference the temporary access roads proposed by Calico Solar within the BNSF RoW. This reference, however, is a brief comment in the mitigation measures section that it will be an "all-weather road designed to allow for fire-truck and emergency vehicle access." [See FEIS, at Section 4.15.4.] There is no reference to any environmental study or analysis performed relating to the impacts of those proposed Project features. (p. 3)

**Comment BNSF-6:** 1. The FEIS fails to adequately describe the impacts of glint and glare from the Project on BNSF's rail line.

The FEIS fails to provide a "full and fair discussion of significant environmental impacts" as required by NEPA with regard to the Project's impacts relating to glint and glare. 40 C.F.R. 1502.1. Without such a discussion, the BLM District Manager, Desert District is not able to determine the environmental impact of the proposed CDCA amendment as required by Chapter 7 of the CDCA. (p. 6)

**Comment BNSF-7:** Daytime glint and glare from the 34,000 SunCatcher mirrors and associated structures, in particular when the mirrors are in offset tracking position, may significantly impact BNSF engineers' ability to see the signal. The situation would be exacerbated by the site elevations which Calico Solar has proposed. Experts for both the Staff and BNSF uniformly agree that a comprehensive study has not been done and needs to be done before any SunCatcher is put into place. (p. 7)

**Comment BNSF-8:** Both FRA regulations and the BNSF General Code of Operating Rules ("GCOR"),<sup>13</sup> BNSF's federally-regulated operating procedures, require BNSF to maintain visual

contact with signals. The illuminated background created by the SunCatcher field could interfere with this contact, because it could result in an engineer perceiving the signal to be dark or to be displaying a white light. Both of these circumstances, under GCOR Section 9.4, require the engineer immediately to stop the train. This often requires an emergency application of the brakes, risking derailment of the train, collision with another train, and other catastrophic events. When a train has been stopped through emergency application of the brakes, GCOR Section 6.23 requires the engineer to inspect all cars, units, equipment and track pursuant to BNSF special instructions and rules. This can cause significant delays to rail operations with ramifications reaching from the Ports of Los Angeles and Long Beach to Chicago and beyond. Thus, glint and glare are critical safety and operational issues. (p. 7)

**Comment BNSF-9:** The FEIS addresses glint and glare as relates to potential impacts on wildlife (FEIS pp. 4-40 – 4- 41), and as relates to possible visual or scenic impacts with an emphasis on changes in aesthetic values. FEIS pp. 4-349. The FEIS acknowledges the visual impacts to rail where it states: “From [the BNSF Railroad], the Proposed Action would create a strong degree of contrast. The magnitude of change from this viewpoint would be very high, and the Proposed Action would dominate the landscape.” FEIS 4-345. The FEIS, however, does not address the potential for glint and glare to adversely affect the safety of rail operations and personnel on BNSF property adjacent to the proposed right-of-way for the Project. (p. 7)

**Comment BNSF-10:** 2. The FEIS fails to discuss potential mitigation measures for the glint and glare impacts of the Project.

Without an adequate discussion of glint and glare impacts, the discussion of the “means to mitigate adverse environmental impacts” required by NEPA (40 C.F.R. 1502.1) is impossible. The discussion of mitigation measures for Traffic and Transportation defers discussion of mitigation measures until the issuance of the Record of Decision... As a result, with the exception of the below, BNSF is unable to provide meaningful comments on possible mitigation measures at this time. (p. 8)

**Comment BNSF-11:** ...the FEIS does not propose to condition the issuance of the proposed right-of-way or the approval of the CDCA amendment upon Calico Solar cooperating as described, nor does it propose any mitigation measures to address these adverse environmental impacts. BNSF therefore requests that the following be incorporated into the Project as Mitigation Measure TRANS-1:

TRANS 1 – Prevention of Glare and Glint from SunCatchers to BNSF Train Crews and Motorists on Hector Road; Route 66; Interstate 40 [Note: see BNSF letter for full text of proposed Mitigation Measure TRANS-1] (p. 8)

**Response:** These comments raised concerns about glint/glare from the SunCatchers and cumulative glint/glare impacts associated with other solar development projects. Mitigation

measure TRANS-4 specifically requires that: “The project owner shall prepare and implement a SunCatcher Mirror Positioning Plan that would avoid the potential for human health and safety and significant visual distractions from solar radiation exposure.” This plan will be coordinated with the Federal Aviation Administration (FAA), the California Department of Transportation (Caltrans), the California Highway Patrol (CHP), and Imperial County and will be updated on an annual basis for the first five years and at 2-year intervals after that. The project applicant will be specifically required to coordinate with the FAA on the placement of the SunCatchers, pursuant to the FAA regulations in the Code of Federal Regulations Part 77.

The recommended mitigation measure will be considered prior to issuance of/incorporated into the ROD.

## **1.14 Recreation (50600)**

**Comment Calico-20:** [T]he FEIS states that the impacts of the alternatives on recreation would be the "same" as the impacts of the 8,240-acre Proposed Action. But because of their reduced footprints, all of the alternatives would reduce direct recreation impacts, and Alternatives 1a and 2 would reduce indirect impacts as well. (p. 5)

**Comment Calico-21:** [T]he FEIS notes the potential for the project to cause on-site recreational uses to be relocated to other areas nearby, including the Pisgah Crater ACEC. However, as the FEIS states elsewhere, the project site currently receives "minimal" use by OHV and other recreational users (page 4-230). Therefore, any recreation displacement effect would also be minimal. (p. 5)

**Response:** BLM agrees that direct impacts to recreation would be less for the Agency Preferred Alternative than for the Proposed Action, and that, because the project site currently is receiving minimal recreational use, any recreational use displaced to adjacent areas would likewise be minimal.

## **1.15 Traffic and Transportation (50700)**

**Comment BNSF-4:** As a major transcontinental transportation corridor responsible for the shipment of a significant portion of the goods to and from the west coast, the federal government has an important economic interest in ensuring that rail traffic is not interrupted. This issue has been raised repeatedly by BNSF and it has not been addressed by the FEIS. Additionally, the FEIS fails to analyze or address how the proposed Project will protect BNSF's lawful use of its ROW. (p. 5)

**Comment BNSF-12:** 3. The FEIS list of Applicable Laws, Regulations, Plans and Policies relating to Traffic and Transportation is incomplete.

FEIS Table 3-33, Traffic and Transportation Laws, Regulations, Plans and Policies, fails to include a number of applicable laws, regulations plans and policies relating to rail (pg. 11)... Based on the evidence received at the CEC evidentiary hearings, which are incorporated herein by reference, the issuance of the proposed right-of-way to Calico Solar and the approval of the CDCA amendment may adversely affect BNSF's ability to operate consistent with these laws, regulations and standards. Moreover, an approval of the CDCA amendment would require the BLM Desert District Manager to make a threshold determination that the proposed CDCA amendment is in accordance with applicable laws and regulations. CDCA Chapter 7. Because the FEIS does not include all applicable laws, regulations, plans and policies, that threshold determination cannot be made. (p. 12)

**Comment BNSF-13:** Table 3-33 must therefore be augmented with the following:

Federal: CFR; Title 49, Transportation, Part 209 to Part 244, Federal Railroad Administration...  
Federal: Federal Railroad Safety Act of 1970 (FRSA) (pg. 12)... Rail Safety Improvement Act of 2008 (RSIA)... BNSF General Code of Operating Rules (p. 13)

**Comment BNSF-14:** ...the FEIS does not address potential impacts to rail from any access roads and at-grade and above-grade crossings proposed to be constructed over the BNSF right-of-way, nor does it propose any mitigation for impacts to rail other than those associated with the temporary access road. BNSF is concerned that any proposed access roads and at-grade and above-grade crossings be constructed in conformance with applicable railroad laws, regulations, plans and policies, including those listed above, and that they be constructed using materials which meet with approval from the proper regulatory authority. These access roads and at-grade and above-grade crossings, subject to BNSF's voluntary agreement to allow them, must be conditioned on measures which ensure the safety of railroad operations. (p. 13)

**Comment BNSF-15:** ...BNSF requests that a proper environmental study be conducted of the potential impact of the proposed access roads and at-grade and above-grade crossings within the BNSF ROW and that the following mitigation measure be incorporated into the FEIS:

TRANS-2 Construction of All-Weather Roads and Bridge.

If an easement is granted and the applicant begins construction, the applicant shall construct an all-weather road according to (1) California State Fire Marshall specifications as outlined in California Fire Code Section 902.2.1 et seq.... In addition, the applicant shall coordinate its activities with BNSF Railway... During construction of both the temporary and permanent road, temporary crossing of BNSF tracks, and permanent crossing of BNSF tracks, the applicant shall prepare and coordinate with BNSF Railway; California Public Utilities Commission; and Federal

Railroad Administration a safety plan for ensuring that all state and federal safety requirements for railroad crossings are followed. (p. 13)

**Comment BNSF-16:** For all the foregoing reasons, BNSF respectfully requests that the BLM supplement the FEIS to include: (1) a comprehensive glare/glint study that will address the impact of 34,000 SunCatchers on BNSF rail operations and safety; and (2) a proper environmental analysis of the potential impact of the proposed access roads and at-grade and above-grade crossings within the BNSF ROW. (p. 14)

**Comment BNSF-17:** BNSF further requests that the Conditions of Certification set forth in Exhibit 1209 and as set forth hereinabove in TRANS 1 and TRANS 2 be incorporated into the FEIS and adopted by the BLM. (p. 14)

**Comment Jackson-2:** The Applicant proposes and the PRMP-A/FEIS mandates the closure of long-established California Desert Conservation Area (CDCA) Plan designated open routes and the substitution of alternative “Public Access Routes” but the Applicant’s “Public Access Routes” have not been proven legal or safe for public use. The Applicant also has not conducted environmental studies for the off-site “Public Access Routes” as required by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). (p. 5)

**Comment Jackson-4:** I request the BLM Director rule the closure of existing CDCA designated “open routes” and the substitution of the Applicant’s “Perimeter Road” and “Public Access Routes” do not comply with FLPMA, CDCA, NEPA, CEQA, ESA, SUWA v. BLM and CBD v. BLM. (p. 5)

**Comment Jackson-5:** I also request the BLM Director rule the Land Use and the Traffic and Transportation sections are incomplete and do not comply with NEPA and CDCA on the grounds the withholding of information by the BLM Barstow Field Office prevents me and other interested third parties from participating fully in the PRMP-A/FEIS process. (p. 6)

**Comment Jackson-6:** Part of the preceding statement is not correct. The “proposed project access road outside the site perimeter fence would not provide non-exclusive alternative access from AF133, on the westerly boundary of the project site” as AF133 will be closed. (p. 7)

**Comment Jackson-7:** The Tenth Circuit ruling in SUWA v. BLM mandates the BLM lacks the unilateral authority to make binding determinations on the validity of existing rights-of-way and the BLM cannot close CDCA designated open routes as closure of the routes would constitute as an irreversible binding determination. The Applicant and the BLM do not have the authority to amend the CDCA Plan to deprive the private property owners of adjacent lands of their right to use CDCA designated open routes...Given established history and the above facts and law, I request the BLM Director rule the CDCA designated open routes in the Project area remain

open in keeping with FLPMA and CDCA and so the adjacent private lands will not be landlocked. (p. 10)

**Comment Jackson-8:** The Applicant’s proposed perimeter access roads are not safe and do not comply with all applicable laws, ordinances, regulations and standards (LORS).

1. The Applicant has not presented evidence as required by CEQA the proposed perimeter access roads are safe. The proposed perimeter access roads are to be within 223 feet of the Project’s SunCatchers and motorists on the perimeter access roads will be subject to flash blindness from glint and glare.

2. The Applicant and the BLM have not established the necessary environmental baseline conditions for the proposed perimeter access roads as required by Center for Biological Diversity v. Bureau of Land Management, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006).

3. The Applicant has not presented evidence motorists on the perimeter access road can cross the Southern California Edison (SCE) right-of-way or the BNSF railroad crossing on the east side of the Project. (p. 11)

**Comment Jackson-9:** The Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with CEQA Guidelines as these sections do not identify the environmental consequences of the “Proposed Public Access Routes”. The Applicant has not presented evidence of any environmental studies conducted on the “Proposed Public Access Routes”. (p. 11)

**Comment Jackson-10:** Section 15088.5(a) of the CEQA Guidelines state: A lead agency is required to re-circulate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification... The fact the Applicant has not presented any evidence to show environmental studies were conducted on the 24 and 17 miles of “Proposed Public Access Routes” is significant... (p. 12)

**Comment Jackson-11:** As the Applicant has not conducted environmental studies for the “Proposed Public Access Routes,” I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with CEQA Guidelines §§ 15088.5(a), 15151.

I also request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete as the PRMP-A/FEIS does not mention or discuss the off-site “Public Access Routes”. (p. 13)

**Comment Jackson-12:** To date, the BLM Field Office has not provided relevant and material information requested under FOIA. In not providing the requested information, the BLM's actions do not meet the legal requirements of Title 20 California Code of Regulations § 1716.

The BLM's withholding of relevant and material records prevents me and other interested parties from presenting evidence and participating fully in commenting on the PRMP-A/FEIS as required under NEPA and Title 20 California Code of Regulations §§ 1711, 1723(b).

Pursuant to the BLM/CEC MOU, the BLM Director is bound by California Code of Regulations to rule the BLM Barstow Field Office did not comply with Title 20 California Code of Regulations § 1716 and further rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete and do not comply with all applicable LORS. (p. 14)

**Comment Jackson-13:** NEPA requires the BLM to provide information requested under FOIA... The Land Use and the Traffic and Transportation sections of PRMP-A/FEIS do not comply with Section 1500.1 of NEPA as the BLM Barstow Field Office withheld significant information on CDCA designated open routes requested under FOIA. (p. 15)

**Comment Jackson-20:** I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete and do not comply with FLPMA, CDCA, NEPA, CEQA, ESA, SUWA v. BLM and CBD v. BLM. (p. 16)

**Comment Jackson-21:** I request the BLM Director rule the Land Use and the Traffic and Transportation sections are incomplete and do not comply with NEPA and CDCA on the grounds the withholding of information by the BLM Barstow Field Office prevents me and other interested third parties from participating fully in the PRMP-A/FEIS process. (p. 16)

**Comment Jackson-22:** I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS be revised to comply with all applicable LORS and recirculated for public comment. (p. 16)

**Response:** The ROW grant would specifically be subject to all existing pre-existing rights within and adjacent to the project site. The BLM acknowledges the commenter's request to consider augmenting Table 3-33, Applicable Laws, Regulations, Plans and Policies relating to Traffic and Transportation, and will ensure that all applicable laws, regulations, plans and policies are referenced in the ROD. The BLM may consider incorporating the suggested mitigation measures TRANS-1 and TRANS-2 when developing the ROD.

The BLM does not propose to designate any new public routes in the vicinity of the project site. As described in the FEIS, Applicant proposes to construct a perimeter access road around the project site within the ROW grant area. The terms of the ROW grant would specify that such perimeter roads are for the non-exclusive use of the Applicant, meaning the Applicant would be unable to deny the use of perimeter roads to the general public.

Since this document is an EIS developed under NEPA, and not an EIR developed under CEQA, there is no requirement to comply with CEQA guidelines. However, environmental consequences of the perimeter roads are discussed in the FEIS in Chapter 4, with mitigation measures for road impacts located in BIO-8 Impact Avoidance and Minimization Measures, as well as other various resource mitigation measures. In addition, when developing the Record of Decision for the proposed Calico Solar Project and CDCA Plan Amendment, the BLM may consider the SA/DEIS Conditions of Certification, additional Conditions of Certification from the Supplemental SA, and other mitigation measures developed by the BLM, the CEC and other regulatory agencies.

The Applicant has explained that, due to additional safety requirements, BNSF requires gates to be installed at all crossings where an entity other than BNSF (i.e., the Applicant) would have access. The private crossing granted to Calico Solar/Tessera Solar is for the purposes of establishing an access to the western side of the proposed project site. In addition to installation of the gate and barricades, the Applicant was required to acquire insurance for potential damage to BNSF property and attend a safety course. The Applicant complied with these conditions and was granted access, which established the need for gates and barricades. The crossing was established as a BNSF ROW for access to, and maintenance of, the rail line and, and therefore, the crossing is not a public road. Therefore, the installation of the gate at this crossing does not result in a conflict with any applicable laws or regulations.

## **1.16 Visual Resources (64000)**

**Comment BRW-10:** It is my opinion that the Calico Project will impact the view, quality of life and property values of any land-owners that have property in or adjacent to the project. (p. 7)

**Comment BRW-11:** My visitor experience of the Monument would be negatively impacted by seeing a large industrial development so close, with glare and night lighting, as I plan to visit the Cady Mountains again in the future. Based on my NPS experience, many visitors to the new monument and the nearby Wilderness areas would not appreciate the desert landscape developed to such an extent so close to their boundaries... The impacts to the local scenery could not be mitigated. (p. 7)

**Comment BRW-12:** We have visited the Pisgah Crater Area of Critical Environmental Concern and the Rodman Mountains Wilderness Area on 28 March 2010 and 17 April 2010. The industrial look that development of the Calico project would bring to the area would take away from the wild character of these two areas. (p. 7)

**Comment Calico-23:** Figure 4-3 is a simulated view of the Proposed Action site from Key Observation Point 1, U.S. Route 66/Interstate 40. It should be noted that this simulated view depicts the project site as it would appear without the 223-foot setback from Interstate 40

agreed to by Calico after the simulation was prepared. With this setback, the view of the Proposed Action site will change and the potential visual impacts of the Calico Solar Project on motorists will be significantly reduced. (p. 6)

**Response:** Section 4.16 Visual Resources in the FEIS considers the direct, indirect, and cumulative impacts on visual resources associated with the Applicant's proposal and all project alternatives. As stated in the comments, the EIS states that direct adverse impacts to visual resources will occur, and cannot be mitigated. This information has been considered by BLM in the selection of a preferred alternative in the FEIS, and will be considered in the decision whether or not to authorize the ROW grant in the Record of Decision.

## **1.17 Hydrology and Water Resources**

### **1.17.1 Water Resources Generally (43000)**

**Comment BNSF-3:** The FEIS fails to meet BLM's requirements under NEPA. There is no environmental analysis whatsoever of the impact of utilizing temporary "all-weather" access roads within the BNSF ROW. Nor is there any analysis of the glare and glint issues identified in the SA/DEIS. (p. 5)

**Comment EPA-20:** EPA is concerned about the increased erosion, migration of channels, local scour, and potential destabilization and damage that could result from installing equipment in drainages, and we strongly recommend maximum avoidance of these waters and high risk flood hazard zones. (p. 3)

**Comment EPA-21:** The DEIS indicated that there would be numerous sediment basins throughout the site, including 4 separate basins constructed on the northern boundary. These are also depicted in the layout of the Proposed Project in the FEIS (Fig. 1-2). The FEIS states that the Agency Preferred Alternative will result in similar hydrological impacts and that the detention basins in the northern boundary would be designed and constructed to perform in the same manner as in the Proposed Action (pg. 4-371). However, Figure 2-6 shows the layout of the Agency Preferred Alternative and indicates one large detention basin instead of 4 smaller ones. (p. 4)

**Comment EPA-22:** The Response to Comments should discuss the effectiveness and hydrological impacts of the modified detention basin location(s) including whether the sediment basins would substantially change the pattern of sediment delivery in ephemeral waters downstream. (p. 4)

**Comment EPA-23:** The ROD and responses to comments on the FEIS should discuss all measures to avoid washes and placement of SunCatchers in drainages. (p. 4)

**Comment EPA-24:** The Response to Comments should demonstrate that the downstream flows will not be disrupted due to proposed changes to natural washes nor the accumulation of large amounts of sediment that will be trapped in the sediment basins and not permitted to flow through the site. (p. 4)

**Comment EPA-25:** Fully discuss, in responses to FEIS comments, how many SunCatchers will be installed in drainages for the final design. Impacts from such construction to waters of the State should be quantified. All analyses should be updated to include a full evaluation of impacts to waters, sedimentation, scouring, etc. from locating SunCatchers in flood hazard areas. (p. 4)

**Comment Calico-3:** After July 12, 2010...Calico made three additional revisions to Alternative 1a, which have been presented to the CEC, but were not made in time to be included in the FEIS...Third, Calico has determined that with appropriate treatment, including chlorination, water from Lavic Basin well 3 could be used for the project's potable water requirements, eliminating the need for potable water to be trucked to the project site. (p. 2)

**Comment Calico-31:** [S]ection 4.22 identifies unavoidable impacts to surface hydrology on and off the project site. The mitigation measures provided in the CEC Conditions of Certification would avoid any such significant impact.

**Response:** Section 4.17 Hydrology and Water Resources of the FEIS considers the direct, indirect, and cumulative impacts on water resources associated with the Applicant's proposal and project alternatives. Impacts to erosion, channel migration, scour, and destabilization are discussed in Chapter 4 of the FEIS, in Section 4.17 Hydrology and Water Resources. The project has avoided and minimized direct and indirect impacts to desert washes to the extent practicable. As noted in the FEIS, no structural buildings are proposed to be located in areas susceptible to flooding resulting from a 100-year storm. The project's Stormwater Damage Monitoring and Response Plan would ensure that structures are protected and that redirected flows are designed such that they not cause adverse impacts. The existing flooding patterns would remain once the Project is constructed.

The CEC has received and docketed additional information regarding the hydrology of the project site and has issued a Supplemental Staff Assessment that addresses some of the concerns raised by comments. In response, the Applicant has proposed a reduced 4,613-acre project footprint, and has proposed to remove the sediment detention basins from the proposed project, allowing the natural function of project site drainages to continue. Removal of the detention basins will eliminate surface impacts to the approximately 600 acres proposed to be disturbed for their construction and operation. The Applicant has agreed to conduct a

hydrological evaluation of the reduced 4,613-acre project and implement mitigation to prevent any off-site flooding impacts. A final decision of the CEC has not yet been made. However, when developing the Record of Decision for the proposed Calico Solar Project and CDCA Plan Amendment, the BLM may consider the SA/DEIS Conditions of Certification, additional Conditions of Certification from the Supplemental SA, and other mitigation measures developed by the BLM and other regulatory agencies.