

# RECORD OF DECISION

## For the Imperial Valley Solar Project and Amendment to the California Desert Conservation Area Land Use Management Plan

Lead Agency:

*United States Department of the Interior  
Bureau of Land Management*

*Environmental Impact Statement FES-10-29  
Case File Number: CACA 47740*

*Imperial Valley Solar Project  
Decision to Amend the RMP and to Grant Right-of-Way*

*United States Department of the Interior  
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Interior  
National Park Service*

*United States Department of  
Energy*

*United States Department of  
Defense  
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## **Executive Summary**

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

This ROD includes both a CDCA Plan Amendment and right-of-way (ROW) grant decision. These decisions approve a site location for and approve the IVS Project 709-Megawatt (MW) Alternative as analyzed in the Final Environmental Impact Statement (FEIS) as the BLM's Agency Preferred Alternative, which is also referred to as the Selected Alternative in this ROD. The Selected Alternative encompasses approximately 6,359.56 acres of BLM lands in Imperial County, California. Amendment of the CDCA Plan is required to identify the project site as available for solar energy production. These decisions reflect careful consideration and resolution of the issues by BLM and the DOI, and were thoroughly analyzed during the IVS Project environmental review process.

Throughout the National Environmental Policy Act (NEPA) review process, consultation with the United States Army Corps of Engineers (Corps) was required because the Corps is to provide a permit for the IVS Project in compliance with the Federal Clean Water Act (CWA) Section 404(b)(1) Guidelines promulgated by the United States Environmental Protection Agency (EPA). During this process, recommendations provided by the Corps were incorporated in the project to comply with the guidelines and to reduce impacts to resources where appropriate. The Agency Preferred Alternative and the Least Environmentally Damaging Practicable Alternative (LEDPA) have become the proposed action because of the analyses provided by the Corps.

The Department of Energy (DOE) was a cooperating agency during the NEPA process for the IVS Project because of the Secretary of Energy authorizes loan guarantees for a variety of types of projects. The two purposes of the loan guarantee program are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. The purpose and need for

action by the DOE is to comply with its mandate under the Energy Policy Act by selecting eligible projects that meet the goals of that Act.

This ROD applies only to BLM-administered lands. Each cooperating Federal agency is responsible for issuing its own decisions and applicable authorizations relative to the IVS Project.

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

## **ES.1 Decision Rationale**

These decisions fulfill legal requirements for managing public lands. Granting the ROW to Imperial Valley Solar, LLC, contributes to the public interest in developing renewable power from the Imperial Valley to meet State and Federal renewable energy goals. The stipulations in the grant ensure that authorization of the IVS Project will protect environmental resources and comply with environmental standards. These decisions reflect the careful balancing of the many competing public interests in managing the public lands for public benefit. These decisions are based on comprehensive environmental analysis and full public involvement. The BLM engaged highly qualified technical experts to analyze the environmental effects of the IVS Project. During the scoping process and following the publication of the Staff Assessment/Draft Environmental Impact Statement (SA/Draft EIS), members of the public have submitted comments that have enhanced the BLM's consideration of many environmental issues germane to the authorization of the IVS Project. The BLM, the California Energy Commission (CEC), DOE, DOI, and other consulted agencies used their expertise and existing technology to address the important issues of environmental resource protection. The BLM and DOI have determined that the mitigation measures contained in the Final EIS, the Programmatic Agreement regarding the management of cultural resources, the Biological Opinion/Conference Opinion, and the Section 404(b)(1) approvals avoid or minimize environmental harm to the maximum extent practicable.

# 1.0 Decisions

## 1.1 Background

This Record of Decision (ROD) for the Imperial Valley Solar (IVS) Project and Associated Amendment to the *California Desert Conservation Area Plan* (CDCA Plan) approves the construction, operation, maintenance, and termination (which includes decommissioning) of the proposed IVS Project on public lands in Imperial County, California, as analyzed in the IVS Project Final Environmental Impact Statement (Final EIS) and Proposed Land Use Plan Amendment and as noticed in the July 28, 2010, Federal Register. This approval will take the form of a Federal Land Policy and Management Act (FLPMA) right-of-way (ROW) grant, issued in conformance with 43 U.S.C. Title V of FLPMA, and implementing regulations found at 43 Code of Federal Regulations (CFR), Part 2800. In order to approve the site location for the IVS Project, the BLM also approves a land use plan amendment to the CDCA Plan of 1980, as amended. The BLM also approves the redesignation of 10 Open Routes that traverse the approved project site.

The ROW grant will allow Imperial Valley Solar, LLC (the applicant), the right to use, occupy, and develop the described public lands to construct, operate, maintain, and terminate a 709-megawatt (MW) solar energy facility in the Imperial Valley that was identified and evaluated in the Final Environmental Impact Statement (EIS). This decision is conditioned, however, on implementation of mitigation measures and monitoring programs as identified in the Final EIS, the Biological Opinion/Conference Opinion (BO/CO) issued by the United States Fish and Wildlife Service (USFWS), the National Historic Preservation Act (NHPA) Section 106 Programmatic Agreement (PA), the United States Army Corps of Engineers (Corps) 404(b)(1) approvals, and the California Energy Commission (CEC) Conditions of Certification.

This decision approves the IVS Project Agency Preferred Alternative as analyzed in the Final EIS, which is also referred to as the Selected Alternative in this ROD. The 709 MW Selected Alternative will be built on approximately 6,144 acres of BLM land, although the total public land acreage to be authorized is 6,359.56 acres. To the extent the approved alternative does not progress to construction, operation, or is proposed to be changed to the extent that it appears to the BLM to be a new project proposal on the approved project site, that proposal is subject to NEPA review.

The decisions contained herein apply only to the BLM-administered public lands within the Selected Alternative.

One ROW grant will be issued to IVS, for a term of 30 years with a right of renewal so long as the lands are being used for the purposes specified in the grant. IVS may, on approval from the BLM, assign the ROW grant to another party in conformance with the 43 CFR Part 2800 ROW regulations. Construction of the project may be phased; however, the BLM typically requires the initiation of project construction within 18 months of the issuance of a ROW grant. In addition, initiation of construction will be conditioned on final BLM approval of the construction plans. This approval will take the form of an official Notice to Proceed (NTP) for each phase or partial phase of construction.

The 709 MW project will be located on both privately owned land and public land managed by the BLM in Imperial County, California. The project applicant has applied for an ROW grant from the BLM California Desert District for the part of the project site managed by the BLM. The project site totals approximately 6,500 acres in the southwest part of Imperial County, California, approximately 100 miles east of the City of San Diego, 14 miles west of El Centro, and 4 miles east of Ocotillo. Figure 1, provided in Appendix 5, Location Maps, shows the location of the project site. The IVS project is a concentrated solar electrical generating facility using the proprietary SunCatcher technology and facilities. The IVS project site includes approximately 6,144 acres of BLM managed lands, and approximately 332 acres of private land under the jurisdiction of Imperial County. In addition to the SunCatcher fields site, the project includes an 230-kilovolt (kV) electrical transmission line with approximately 93 acres of public lands from the site to an off-site existing San Diego Gas and Electric (SDG&E) substation, a water supply pipeline with 4 acres more or less of public lands from an off-site water treatment plant to the project site, and a new 230-kV substation, a main services complex, with other ancillary structures and facilities within the project site, as shown on Figure 2 in Appendix 5.

Construction of the 709 MW project is planned to begin in late 2010. Although construction will take approximately 40 months to complete, power will be available to the grid as each 60 unit group of Stirling Energy Systems (SES) engine modules is completed.

The IVS project is one of the first large-scale solar energy generation projects approved on public lands. The BLM worked closely with state and federal partners and the public in an unprecedented collaborative effort. Through this process, the BLM has gained insights into the complexity of permitting utility-scale renewable energy projects on diverse public lands, and the need for flexibility throughout the process. The BLM will continue to engage agency partners and the public in this constantly evolving environment.

### **1.1.1 Application/Applicant**

IVS submitted a Standard Form (SF) 299 (title) application with the BLM El Centro Field Office for a ROW grant. IVS is a private enterprise that is a wholly owned subsidiary of Stirling Energy Systems, Inc. The company recently received long-term funding from a strategic partner, NTR plc (NTR). NTR is an international developer and operator of renewable energy and sustainable waste management businesses in the United States, the United Kingdom, Ireland, and continental Europe. The unique combination of IVS' technical expertise and NTR's track record in developing large-scale renewable energy and infrastructure projects provides a strong platform from which to realize the project. This partnership will allow IVS to develop additional solar projects in other states and internationally.

### **1.1.2 Purpose and Need**

#### **1.1.2.1 Bureau of Land Management Purpose of and Need for the Proposed Action**

The BLM's purpose of and need for the IVS Project is to respond to the IVS application under Title V of the FLPMA (43 USC 1701) for a ROW grant to construct, operate, maintain, and terminate a solar energy generation facility on public lands in compliance with the FLPMA, BLM ROW regulations, and other applicable Federal laws. Specifically, the BLM has decided to grant an ROW to IVS for the 709 MW Selected Alternative for the IVS Project. The BLM's actions also include closing routes within the project locations. The CDCA Plan is specifically amended to read by this ROD to allow a solar energy generation facility on this site.

#### **1.1.2.2 United States Army Corps of Engineers Basic and Overall Project Purpose**

The Corps is a cooperating agency with the BLM on the Final EIS for the IVS Project.

The Federal Clean Water Act (CWA) Section 404(b)(1) Guidelines (Guidelines) promulgated by the United States Environmental Protection Agency (EPA) explain that, when an action is subject to NEPA and the Corps is a permitting agency for some or all of that action, the analysis of alternatives prepared for the National Environmental Policy Act (NEPA) will in most cases provide the information needed for analysis under the Guidelines. The Guidelines also state that, in some cases, the NEPA document may have addressed "...a broader range of alternatives than required to be considered under [the Guidelines] or may not have considered

alternatives in sufficient detail to respond to the details of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.” (40 CFR 230.10(a)(4)). In light of this statement in the Guidelines, and because the project purpose statements under NEPA and the Guidelines are not necessarily identical, the Corps reviewed and refined the project purpose, for its needs, to ensure it meets the standards of the Guidelines.

The Corps’ *Final Section 404B-1 Alternatives Analysis for the Imperial Valley Solar Project*, provided in Appendix 6, Additional Agency Approvals and Review, includes the following statement of basic and overall project purpose:

“The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed action, and is used by the Corps to determine whether an applicant’s project is water dependent (i.e., whether it requires access or proximity to or siting within a special aquatic site). The basic project purpose for the proposed action is ‘Energy Production.’ Although the basic project purpose is not water dependent, the project will not affect any special aquatic sites. Therefore, the rebuttal presumptions that there are less damaging alternatives for the proposed activity that would not affect special aquatic sites does not apply (40 CFR 230.10(a)(3)).”

The Corps’ overall purpose for the IVS Project is “To provide a solar energy facility ranging in size from approximately 300 MW to 750 MW in Imperial County, California.”

### **1.1.2.3 United States Department of Energy Purpose and Need**

The United States Department of Energy (DOE) is a cooperating agency with the BLM on the Final EIS.

The Energy Policy Act of 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of that Act authorizes the Secretary of Energy to make loan guarantees for a variety of types of projects, including those that “...avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases, and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.” The purposes of the loan guarantee program are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. The purpose and need for the IVS Project for action by the DOE is to comply with its mandate under the Energy Policy Act by selecting eligible projects that meet the goals of that Act.

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

The BLM and the CEC prepared a joint Staff Assessment (SA)/Draft EIS for the applicant-proposed 750 MW project and several other Build Alternatives. The SA/Draft EIS was circulated for agency and public review on February 10, 2010, and the comments received on that report and responses to those comments are provided in Appendix D, Public Comments on the Draft Environmental Impact Statement, in the Final EIS. The comments on the Draft EIS received by the BLM are summarized in Chapter 5, Consultation, Coordination, and Public Participation, in the Final EIS and are responded to in the responses to comments provided in Appendix D of the Final EIS. After issuing this ROD for the 709 MW project, the BLM will publish a Notice of Availability of the ROD in the Federal Register.

Copies of the Final EIS (DOI Control No. FES 10-29) dated July 2010 are available at the BLM El Centro Field Office (1661 South 4th Street, El Centro, California 95825) and the BLM California Desert District Office (22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553). The Final EIS is also available online at the BLM website at: <http://www.blm.gov/ca/st/en/fo/elcentro/nepa/stirling.html>.

The FEIS was available for a 30 day public review and protest period. The 30 day public comment and protest period closed on August 27, 2010. The comments that were submitted on the FEIS and the Bureau's responses thereto are included in Appendix 1, Response to Comments. The protests have been resolved by the Director or, as noted below, have been withdrawn by the protesting party. At the request of various interested organizations, the BLM met, in accordance with its policy (BLM Land Use Planning Handbook, Appendix E, p. 6 (2005)) in an effort to resolve the protest issues raised by these organizations.

As a result of these meetings, the organizations and the project applicant agreed to certain project conditions which were reduced to writing and presented to the BLM for inclusion in the BLM Preferred (709 MW) Alternative (Appendix 8). These conditions require developing the project in two distinct stages pursuant to specified terms which include transmission availability, a performance standard for the project's technology, and information about flat-tailed horned lizard impacts. According to the agreement between and among the project applicant and the organizations, these and other agreed upon terms have been incorporated into a modified Plan of Development for the project. The BLM has analyzed these terms and has determined that they do not require BLM to supplement the FEIS prior to issuance of the ROD (Appendix 9)

The BLM has determined that the terms fall within the alternatives analyzed in the FEIS, has accepted these agreed upon terms as part of the amended plan of development, and has incorporated into and will administer these terms as part of the right-of-way grant in accordance with 43 CFR 2805.12(i)(5), 2807.16, and 2807.17. The agreed upon terms are not subject to

amendment without the agreement of the applicant and the organizations and only if approved by the BLM in accordance with 43 CFR 2807.20. The organizations have withdrawn their protests.

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

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

**FLPMA.** FLPMA establishes policies and procedures for management of public lands. In Section 102(a)(8) of the FLPMA, Congress declared that it is the policy of the United States that:

“...the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use (43 U.S.C. Part 1701(a)(8)).”

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

Title V of the FLPMA, 43 USC 1761–1771, provides the authority for the issuance of a ROW grant on, over, under, and through the public lands for systems for generation, transmission, and distribution of electric energy. Implementation of the statutory authority for ROW authorizations is detailed in the 43 CFR Part 2800 regulations. The BLM Authorized Officer (AO) administers the ROW grant and ensures compliance with its terms and conditions. The AO means any employee of the United States Department of the Interior (DOI) to whom the authority to perform the duties described in 43 CFR Part 2800 has been delegated. This authority is derived from the authority of the Secretary of the Interior, and may be revoked at any time. The authority to approve all actions pertaining to the granting and management of Title V rights-of-way on public lands is delegated to the respective BLM State Directors (BLM Manual 1203, Appendix 1, p.33). In California, the authority of the BLM State Director to approve actions pertaining to the granting and management of Title V rights-of-way has been further delegated to the Field Managers, in this case the Field Manager, Bureau of Land Management, El Centro Field Office, who will be responsible for managing this grant..

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

When taking actions such as approving ROW grants and CDCA Plan Amendments, the BLM must comply with the applicable requirements of NEPA and the CEQ NEPA regulations. Compliance with the NEPA process is intended to assist Federal officials in making decisions about a project that are based on an understanding of the environmental consequences of the project and identifying actions that protect, restore, and enhance the environment. The Draft Environmental Impact Statement (Draft EIS), Final EIS, and this ROD document BLM’s compliance with the requirements of NEPA and NEPA regulations for the IVS Project.

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

**Guidance and Regulations.** Pursuant to the Guidance for Processing Applications for Solar Power Generation Facilities on BLM Administered Public Lands in the California Desert District (BLM 2008) and 43 CFR Part 2804.25:

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

As discussed in Section 3.9, Land Use and Corridor Analysis, in the Final EIS, the project site is within existing designated Utility Corridor “N” Section 368 115-238 (CDCA N, 368 115-238). The site occupies approximately 60 percent of the north half of Utility CDCA N 368 115-238.

The potential project impacts related to occupying a utility corridor are evaluated in Section 4.9, Land Use and Corridor Analysis, in the Final EIS. In the immediate vicinity of the project site and in Utility Corridor CDCA N, 368 115-238, additional capacity is available in that utility corridor for future and currently unproposed projects. Joint use of the corridor is adequate to

accommodate the 709 MW project and its ancillary facilities, as well as currently authorized but yet unbuilt and pending projects.

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

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

#### **1.1.4.2 United States Army Corps of Engineers Authority**

Section 404 of the CWA authorizes the Secretary of the Army, acting through the Corps, to issue permits regulating the discharge of dredged or fill material into the waters of the United States (waters of the U.S.). Waters of the U.S. are broadly defined in 33 CFR Section 328.3(a) to include navigable waters; perennial, intermittent, and ephemeral streams; and lakes, rivers, ponds, wetlands, marshes, and wet meadows. The regulations at 33 CFR Section 328.3 and the definitions contained in that section have been the subject of recent litigation. In addition, the United States Supreme Court recently addressed the scope and extent of Corps jurisdiction

over “navigable waters” and “waters of the United States” under the CWA. (See *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 US 159 [2001] and *Rapanos v. United States*, 126 Superior Court 2208 [2006].) Despite the impact of these recent decisions, the definitions continue to provide guidance to the extent that they establish an outer limit for the extent of Corps jurisdiction over “waters of the United States,” and, therefore, are referenced here for that purpose.

#### **1.1.4.3 National Park Service Authority**

Under the National Trails System Act (16 USC 1241 et. seq.), Congress established the Juan Bautista de Anza National Historic Trail (Anza Trail) in 1990 to commemorate a 1775-1776 expedition covering 1,200 miles in the southern United States. The National Park Service (NPS) is the primary administrator of the trail in partnership with federal, state, and local agencies along the trail. The Act states that “National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment”. Because the BLM is the land manager of the project site through which the Anza Trail corridor passes, the NPS collaborates with the BLM on administering the trail corridor in this area. Due to NPS authority under the National Trails System Act, the NPS is a cooperating agency with the BLM on the Final EIS.

## **1.2 Information Developed Since the Final Environmental Impact Statement**

Since the preparation and publication of the Final EIS, there have been no modifications to the project features or new project features or components that resulted in the development of new information. However, as described above, the applicant and certain protesting parties agreed to modifications to certain project mitigation measures to strengthen, expand, and/or clarify those measures. Those modifications are listed below and are included the POD for the 709 MW project.

- 1.0 **Staging of Project.** The IVS project will be developed in two Stages. For the purposes of this Agreement, Stage 1 consists of what has been called in other documents Phase 1A, Phase 1B, plus 50 MW of what has been called Phase 2. Stage 2 consists of what has been called in other documents Phase 2 minus 50 MW.

IVS’ Obligations. IVS agrees to comply with each of the Conditions set forth in sections 2.3 and 2.4 below.

- 2.0 Conditions for Construction of Stage 2. The conditions that must be met before BLM will issue a Notice to Proceed to Imperial Valley Solar to proceed with Stage 2 and develop more than 350 MW of SunCatchers include and are limited to the following:
- 2.1 **Transmission.** Sunrise Powerlink Project is substantially constructed. The parties have agreed to define “substantially constructed” as the point in time when 70% of the total number of new transmission towers required for the Sunrise Powerlink Project have been completely erected.
- 2.2 **Availability.** Stage 1 has achieved 90% availability, as certified by the project’s Independent Engineer. The Independent Engineer must provide to BLM certification that Stage 1 of the project has met or exceeded 90% availability at two points: 1) one year after the first power from this project is brought on line; and 2) prior to the commencement of construction of Stage 2. Commencement of construction of more than 350 MW of SunCatchers will be conditioned on certification by the Independent Engineer of the availability of more than 90% for all SunCatcher megawatts online at the time certification is made, as defined immediately below.
- 2.3 “Availability” is defined to mean the ratio of the number of hours that the installed SunCatchers are generating electricity divided by the number of hours that the installed SunCatchers are capable of producing energy.
- 2.4 “Installed SunCatchers capable of producing energy” is defined as when 1) the sun is present and delivering direct energy to the SunCatchers in excess of 350 watts/square meter; 2) site conditions are within the technical limits of the equipment (i.e., wind is less than 35 miles/hour and ambient temperature is between 14 and 122 degrees Fahrenheit; 3) the delivery point on the transmission grid is capable of receiving energy; and 4) the power purchaser is willing to take the energy.
- 3.0 **Flat-tailed Horned Lizard.** IVS shall provide to the relevant agencies a report that evaluates FTHL mitigation measures, including whether mitigation and adaptive management measures are necessary, and any other information needed to demonstrate compliance with the measures described in the CEC’s Conditions of Certification.

- 3.1 The Parties agree that the BLM should review the report, as well as other available and relevant information, such as the BLM's own monitoring of this species, should prepare a summary of the impacts to the species, and should assess the success of the various measures already required to determine whether adaptive management measures are warranted. In addition, the BLM should consult with the relevant agencies, IVS, and the Environmental Parties in making this determination, and should make this determination before Stage 2 commences.
- 3.2 IVS agrees to implement adaptive management measures, if any, which the BLM and/or CEC require as a condition of compliance.

**Additional Conditions.** In addition to the conditions set forth above, IVS agrees to the following conditions:

- 4.0 **Air Quality.** IVS agrees to purchase and install equipment for periodic and ongoing PM10 and ozone air quality monitoring at its on-site meteorological station at the Imperial Valley Project, and to maintain this equipment throughout the life of the project until decommissioning for the purpose of providing PM10 and ozone monitoring data from this equipment to the Imperial County Air Pollution Control District (APCD). The equipment that is purchased shall satisfy applicable requirements, if any, for such equipment of the State of California Air Resources Board as of the date of Imperial Valley Solar's permit approval and shall be capable of taking readings and transmitting data to the Imperial County APCD that are at least equivalent to readings and data that the APCD acquires at its existing monitoring stations. Imperial Valley Solar will transmit these data to the Imperial County APCD in a format and at the same or greater frequency as the data provided by the APCD's existing monitoring stations as of the date of Imperial Valley Solar's permit approval. This monitoring equipment shall be added to the meteorological station as soon as it is erected or, alternatively, if the station has already been erected, prior to the start of construction.
- 5.0 **Water.** IVS agrees to use wastewater from the Seeley Waste Water Treatment Facility (SWWTF) for all operations, including construction, at the IVS as soon as that water is available. The water will be considered available when all permits that are required for IVS to use the treated waste water have been obtained and IVS is authorized under the CEC certification to utilize the treated waste water. IVS agrees to truck SWWTF water to the project site if it becomes available before the pipeline is completed for operation of IVSproject, including construction, if authorized by the CEC. IVS further agrees that it will not use

water from the Dan Boyer Water Company (DBWC) for IVS project for more than 36 months for any purpose, including project construction and/or operations.

- 5.1 To mitigate for the use of groundwater from the DBWC well, IVS will provide for the conservation of DBWC well water as follows:
- 5.2 When IVS concludes its use of water from the DBWC for the Project, IVS will begin immediately to purchase from the DBWC an amount of groundwater equal to the total amount used by the project prior thereto (the “DBWC Groundwater”), and will not permit this amount of groundwater to be pumped from the well until such time as the DBWC Groundwater has been conserved as defined herein. The period of time required to conserve the DBWC Groundwater will be as short as possible subject to the restrictions included in the DBWC County Well Registration and any conditions imposed by the CEC (conservation ratio of 1:1).
- 5.3 Within 15 days of executing this Agreement, IVS will execute an option agreement with DBWC for up to 20 months of water for conservation as defined herein. The agreement shall include an additional option to extend its terms for up to a total of 36 months.
- 5.4 If IVS uses the DBWC water for construction or operations for more than 20 months, the conservation ratio will be 2:1 for the total number of months thereafter that the DBWC water is used – i.e., for month 21 and up to and including the last month in which DBWC is used.
- 5.5 IVS shall submit an annual compliance report to the BLM that includes an annual summary of water sales by the DBWC which clearly differentiates between the groundwater sold to IVS and the water purchased by customers other than IVS (which need not be identified and which may be collectively accounted for). This report shall also include copies of DBWC invoices to IVS as documentation for the reported sales. The Parties intend that BLM use this report and the DBWC invoices for purposes of determining whether the terms of this section 2.4.2 have been met.

- 6.0 **Peninsular Bighorn Sheep.** To the maximum extent possible, the acquisition of land to mitigate for impacts to the Flat-tailed horned lizard will be focused on lands which provide bighorn sheep habitat as well as Flat-tailed horned lizard habitat.

- 6.1 IVS affirms that it will mitigate the impacts to Peninsular bighorn sheep by implementing the enhancement and restoration of Carrizo Creek and marsh as described in CEC Conditions of Certification BIO-17 and agrees that the alternative mitigation described in CEC Condition of Certification BIO-17 would be conducted only at the direction of the CEC, BLM, ACOE, USFWS and/or CDFG.

These modifications were incorporated in the POD for the 709 MW IVS Project. The BLM prepared a DNA Worksheet (October DNA) as an internal administrative tool to assess the potential effects of the agreed upon modifications to the project measures described above.

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

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

Under Federal law, the BLM is responsible for processing requests for ROW grant applications to determine whether and to what extent to authorize proposed projects such as renewable energy projects, transmission lines, and other appurtenant facilities on land it manages. Because the project is a privately initiated venture that would be sited on lands managed by the BLM, Imperial Valley Solar, LLC (the applicant), applied for an ROW grant from the BLM pursuant to Federal law and regulations. The BLM concludes that the acreage approved by the ROW grant is the acreage the IVS Project will occupy and that is necessary for constructing, operating, maintaining, and terminating the authorized facilities on public lands. In addition, the BLM has limited the grant to those lands necessary to protect public health and safety, that will not unnecessarily damage the environment, and will not result in unnecessary or undue degradation of the public lands. These determinations and the approval of the grant are based on the analysis and the conditions in the Final EIS, the BO/CO as it may be amended, the PA, the Section 404(b)(1) approvals, and other rules and regulations applicable to public lands. On approval of the ROW grant, the applicant will be authorized to construct and operate the 709 MW project if it meets the requirements specified in the ROD. The ROD requires the applicant to secure certification from the CEC before the BLM will issue an NTP to the applicant. On receipt of the NTP, and consistent with it, the applicant will be able to construct and/or operate the 709 MW project on the project site.

### 1.3.2 Land Use Plan Amendment

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

The project site is currently classified as Multiple-Use Class (MUC) L (Limited Use) in the CDCA Plan. The CDCA Plan provides guidance concerning the management and use of BLM lands in the California Desert while balancing other public needs and protecting resources. The CDCA Plan contemplates industrial uses analogous to the solar use analyzed by the proposed plan amendment, including utility rights-of-way outside of existing corridors, power plants, and solar energy development and transmission (CDCA Plan, p.95). The CDCA Plan provides in its guidelines that solar development in Class L areas "...may be allowed after NEPA requirements are met." (CDCA Plan, p. 15) In the CDCA Plan ROD, the Assistant Secretary for Land and Water Resources (ASLW) discussed remaining major issues in the final CDCA Plan before he approved the same. (CDCA ROD, p.10 et seq.) One of the remaining major issues was the allowance of wind, solar, and geothermal power plants within designated Class L lands. (CDCA ROD, p. 15) That ROD recognized that:

"These facilities are different from conventional power plants and must be located where the energy resource conditions are available. An EIS will be prepared for individual projects."

The recommended decision, which was ultimately approved, noted:

"Keep guidelines as they are to allow these power plants if environmentally acceptable. Appropriate environmental safeguards can be applied to individual project proposals which clearly must be situated where the particular energy resources are favorable."

Issue number 2, the allowance of wind, solar, and geothermal power plants on designated Class L lands in the CDCA, was approved by the ASLW, and concurred in by the Secretary of the Interior on December 19, 1980. According to its terms, the BLM must amend the CDCA Plan to allow siting of a solar power generating facility within in the CDCA on MUC L lands.

Based on the MUC Guidelines provided in Table 1 in the CDCA Plan, solar uses are conditionally allowed in the MUC L designation contingent on NEPA requirements being met for

the proposed use. The Final EIS and ROD for the 709 MW project meet NEPA requirements for consideration of the project, and the project site location. The CDCA Plan is specifically amended by this ROD to allow the IVS Project Selected Alternative to be located on public lands as identified in the ROW grant/lease (Serial number CACA-47740).

### 1.3.3 Revisions to Open Routes

In 2002, the BLM updated access plans and routes in the western Colorado Desert through the *Western Colorado Desert Routes of Travel Designations (WECO)* Amendment to the CDCA Plan. The WECO Amendment assigned and/or revised access for off-highway vehicle (OHV) routes in the western Colorado Desert. Currently, there are 10 open routes traversing the project site.

The 10 open routes on the site are listed and described in two tables (Tables 2-2 and 4-44) in the Final EIS. After approval of the ROW grant, the BLM will close the open routes on the project site. The perimeter of the project site will be fenced, which will prevent public access within the IVS project site, except for access to holders of valid existing rights. There will be a road built around the site perimeter to be used by Imperial Valley Solar, LLC, as part of its ROW grant. The perimeter route may provide physical access for general public purposes.

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

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

minimize resource damage and use conflicts, in keeping with the criteria of 43 CFR 8342.1.”

The administrative process for revising route designations given the evolving and changing priorities for lands under its control is expressed in the Bureau’s travel management policy (IM 2008-14). According to that policy, changes to a travel network in a limited area may be made through activity level planning or with site-specific NEPA analysis. While changes to area designations (e.g. limited to open) require a plan amendment, changes to route designation (e.g. open to closed, closed to open) do not require a Land Use Plan amendment. This administrative process along with the administrative process described in the CDCA Plan is implemented to change the affected open routes on the project site to closed routes.

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

During pre-application, IVS, contacted BLM to evaluate a number of project site locations in which the project site under application was considered potentially feasible except for the approximately 1,200 ac of the original east part of the proposal. That original proposal proposed a 900 MW project with 36,000 SunCatchers on approximately 7,600 ac of BLM managed and private lands, including the IVS project site. Early analysis indicated this alternative would result in substantial adverse impacts related to the ancient Lake Cahuilla, cultural resources, drainages, and biological resources among others. The 1,200 acres on the east part of the 7,600 acre site were eliminated from the project proposal by IVS, due to the believed high-density level of cultural resources identified along the ancient Lake Cahuilla shoreline.

As a result, the applicant withdrew that proposal and submitted an application for certification to the CEC and a ROW grant application to the BLM proposing the 750 MW Alternative which was then identified by the CEC and the BLM as the proposed project/action and was evaluated in detail in the SA/Draft EIS. The Standard Form (SF) 299, ROW grant application, submitted to the BLM by IVS, proposed 30,000 SunCatchers generating 750 MW of electrical solar power. A total of 27 alternatives were developed for consideration in the SA/Draft EIS. They included 8 alternative sites; 3 alternatives that would reduce effects to jurisdictional waters of the United States; a range of solar and renewable technologies, generation technologies using different fuels, conservation/demand-side management; and a 300 MW alternative to the proposed 750 MW IVS project.

After the release of the SA/Draft EIS for public review, the BLM and the Corps continued to coordinate and consult regarding possible refinements to avoid specific drainages on the IVS project site under Section 404 of the CWA. Modifications to the IVS project were made to

reduce effects to aquatic resources, the flat tailed horned lizard (FTHL), and cultural resources. As a result of these modifications, the Agency Selected Alternative is for 28,360 SunCatchers generating a capacity of 709 MW of solar power. As a result, a total of 1,640 SunCatchers and 41 MW of power proposed in the SF 299 application (for the 750 MW project) is not being approved as part of the Agency Selected Alternative. In addition, the 900 MW original proposal and the other Build Alternatives evaluated in the Draft and Final EISs (300 MW Alternative, Drainage Avoidance #1 Alternative, and Drainage Avoidance # 2 Alternative) are not being approved as part of the 709 MW Agency Preferred Alternative.

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

SF 2800-14 BLM (Right-of-Way Lease/Grant), the instrument to authorize the right-of-way lease/grant for the project, includes the POD and all other terms, conditions, stipulations, and measures required as part of the lease/grant authorization. Consistent with BLM policy, the IVS energy development ROW grant will include a due diligence requirement for installation of facilities consistent with the approved POD. Construction of IVS solar energy facilities must commence within 3 years after the effective date of the ROW lease/grant, as well as beginning construction for subsequent phases, for the ROW holder to be compliant with use of the lease/grant.

## **1.5 Summary of Conclusions**

The Selected Alternative for the Imperial Valley Solar Project is the action alternative that provides the most public benefits and avoids the most cultural, biological and hydrological resources for the following reasons:

- As a result of consultation with Tribal governments and representatives and the PA, many cultural resources in the area are avoided by the Selected Alternative or the impacts are substantially mitigated.
- Based on the conditions in the BO/CO and the ongoing consultation with the USFWS during project construction and operations, many biological resources in the area are avoided by the Selected Alternative or the impacts are substantially mitigated.
- Based on the mitigation required by the Corps for permitting the project and the ongoing consultation with the Corps during project construction and operations, many waters of

the U.S. in the area are avoided by the Selected Alternative or the impacts are substantially mitigated.

- The mitigation provided in the PA and the ongoing consultation with the NPS on project construction, potential impacts to the possible Anza historic trail alignment on the IVS project site may be avoided by the Selected Alternative or the impacts are substantially mitigated.

As a result, the 709 MW Alternative would result in impacts less than or similar to the other action alternatives related to cultural resources, biological resources, waters of the U.S. and the Anza Trail.

Additionally, the Imperial Valley Solar (IVS) project is expected to provide climate, employment, and energy security benefits to California and the nation. The project takes a major step toward meeting state and federal climate change goals. It will provide enough clean electricity to power more than 212,000 homes. The development of the IVS project will bring badly needed jobs to the area as well. Imperial County's 30 percent unemployment rate ranks as the highest in California (California Employment Development Department). The IVS project is expected to create 360 construction jobs, as well as 164 permanent jobs during the plant's operation (IVS FEIS pg. 2-23).

Finally, the project will produce 709 megawatts of reliable electricity that won't be subject to changes in commodity prices or overseas conflicts.

## **2.0 Mitigation and Monitoring**

### **2.1 Required Mitigation**

The Imperial Valley Solar (IVS) LLC Project includes the following measures, terms, and conditions:

- Avoidance, Minimization, and Mitigation Measures from Chapter 4, Environmental Consequences, in the Final Environmental Impact Statement (Final EIS)
- Terms and Conditions in the United States Fish and Wildlife Service Biological Opinion/Conference Opinion (BO/CO) provided in Appendix 2, Biological Opinion/Conference Opinion of this Record of Decision (ROD), as amended over time
- Terms and Conditions in the Programmatic Agreement (PA) provided in Appendix 3, Programmatic Agreement, of this ROD
- Terms and Conditions in the Section 404(b)(1) approvals provided in Appendix 6, Additional Agency Approvals and Review, of this ROD

The complete language of these measures, terms, and conditions is provided in the Plan of Development (POD) for the 709 Megawatt (MW) Alternative as stipulated in the right-of-way (ROW) grant for compliance purposes.

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

#### **2.2.1 Implementing the Decision (40 CFR 1505.3)**

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

- a. Include appropriate conditions in grants, permits or other approvals;
- b. Condition funding of actions on mitigation;

- c. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures they have proposed and that were adopted by the agency making the decision; and
- d. Upon request, make available to the public the results of relevant monitoring.

The Environmental and Construction Compliance Monitoring Program (ECCMP) for the IVS Project is provided in Appendix 4 of this ROD. It is also available on the following United States Bureau of Land Management (BLM) website:

<http://www.blm.gov/ca/st/en/fo/elcentro/nepa/stirling.html>.

The BLM is the federal lead agency for the IVS Project under the National Environmental Policy Act (NEPA). The BLM is responsible for ensuring compliance with all adopted mitigation measures for the IVS project in the Final EIS. The complete language of all the mitigation measures, terms, conditions, and stipulations, including those found in the BO/CO, PA, right-of-way (ROW) grant, 404(b)(1) approvals, and the California Energy Commission (CEC) Conditions of Certification (COCs) is provided in the POD. The BLM has also incorporated this mitigation into the ROW grant as terms and conditions. Failure on the part of Imperial Valley Solar, LLC, as the grant holder, to adhere to the terms and conditions of the ROW grant could result in various administrative actions up to and including a termination of the ROW grant and requirements to remove the facility and rehabilitate disturbances.

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

An Environmental and Construction Compliance Monitoring Program (ECCMP) for the project has been adopted and is provided in Appendix 4 of this ROD. There are no BLM identified mitigation measures that have not been adopted in this ROD.

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

As required in the BLM *NEPA Handbook H-1790-1* and 40 CFR 1505.2(c), all practicable mitigation measures have been adopted for the IVS project. The complete language of those measures is provided in Appendix 6 of this ROD.

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

In 2007, the BLM and the CEC formalized a Memorandum of Understanding (MOU) for the joint environmental review of solar thermal power plant projects to be located on public lands. In September 2010, that MOU was amended to ensure that jointly reviewed and approved solar thermal power plant projects, located on public lands, are constructed, operated, maintained, and terminated in conformity with the decisions issued by the BLM and the CEC.

That MOU Amendment specifically indicates that it is in the interest of the BLM and CEC "...to share in construction compliance, environmental compliance, design review, plan check, and construction, maintenance, operation and termination inspection (collectively "compliance review") of solar thermal power plant projects on public lands, to avoid duplication of staff efforts, to share staff expertise and information, to promote intergovernmental coordination at the state and Federal levels, to develop a more efficient compliance review process, and to meet state and Federal requirements."

As documented in the MOU Amendment, BLM will provide primary compliance oversight for the right-of-way terms and conditions that are required by the BLM and that are separate and apart from those for which the primary oversight is being administered by the CEC.

As part of the MOU Amendment, the BLM and CEC agree to communicate and cooperate in a manner in order to avoid duplication of efforts and to assist each other in effective implementation of compliance efforts for the construction, maintenance, operation, and termination of the IVS project.

The MOU Amendment is an attachment to the ECCMP provided in Appendix 4.

The BLM recognizes that the CEC COCs are not generally within the enforcement authority of the BLM because those COCs are requirements originating in State laws and regulations. While the project applicant must comply with those measures, they are not directly enforceable by the BLM. For those COCs that are also within the enforcement authority of the BLM because of overlapping authorities, the BLM has incorporated those COCs into its ROW grant as its own terms and conditions subject to its enforcement authority. Attachment K in Appendix 4 contains a list of the CEC's COCs and denotes those measures that will be monitored and managed by the CEC, and those that will be subject to joint administration between the BLM and CEC.

In some instances, the BLM identified potential mitigation measures for impacts to public land resources that would not be, and have not been, identified as mitigation measures required by other agencies. In those instances, individual mitigation measures were developed by the BLM

which were incorporated in the ROW grant, and will be monitored and managed solely by the BLM. In addition, standard terms and conditions for approval of the use of public land were incorporated in the ROW grant and, therefore, will be enforced by the BLM as part of any ROW grant approved for the project.

Additionally, the BLM El Centro Field Office, as a signatory to the Flat-tailed Horned Lizard (FTHL) Rangewide Management Strategy (RMS), monitors designated FTHL Management Areas each year. According to the RMS (pg 64), “In accordance with the first objective of this RMS (to “maintain a ‘long-term stable’ or increasing population of FTHLs in all Management Areas”), a population monitoring program has been implemented to learn how FTHL populations are changing over time.” This monitoring will continue and will incorporate monitoring information gathered as a result of this project.

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

## 3.0 Management Considerations

### 3.1 Decision Rationale

This decision approves a right-of-way (ROW) grant for the Imperial Valley Solar (IVS) LLC project as the Agency Preferred Alternative (Selected Alternative) as analyzed in the Final Environmental Impact Statement (Final EIS

The Bureau of Land Management (BLM) decision to authorize this activity is based on the rationale described in the following sections.

#### 3.1.1 Respond to Purpose and Need

##### 3.1.1.1 BLM Purpose and Need

The BLM's purpose and need for the IVS project is to respond to the Imperial Valley Solar, LLC application under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701) for a ROW grant to construct, operate, maintain, and terminate (including decommissioning) a solar energy generation facility on public lands in compliance with the FLPMA, BLM ROW regulations, and other applicable Federal laws. Specifically, the BLM has decided to approve a ROW grant to Imperial Valley Solar, LLC for the 709 Megawatt (MW) Selected Alternative. The BLM will also amend the *California Desert Conservation Area Plan* (CDCA Plan, 1980, as amended). The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not already identified in that plan be considered through the plan amendment process. Therefore, prior to issuance of a ROW grant for the IVS project, the BLM will amend the CDCA Plan as required to allow for solar use on the project site.

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

The Selected Alternative is also in conformance with the requirements of Section 404(b)(1) of the Federal Clean Water Act (CWA), and avoids Aquatic Resources of National Importance as well as major drainages on the site.

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

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

The IVS Project 709 MW Alternative meets the BLM purpose and need for the project.

### **3.1.1.2 United States Army Corps of Engineers Purposes for the Project**

The Corps was a cooperating agency with the BLM on the Final EIS. Because the project purpose statement under NEPA and the Federal CWA Section 404(b)(1) Guidelines (Guidelines) are not necessarily identical, the Corps refined the project purpose to ensure it meets the standards of the Guidelines. The Corps' basic project purpose for the proposed action is "Energy Production" and its overall project purpose is "To provide a solar energy facility ranging in size from approximately 300 MW to 750 MW in Imperial County, California." The 709 MW Alternatives meets the Corps basic and overall project purposes.

### **3.1.1.3 United States Department of Energy Purpose for the Project**

The DOE was a cooperating agency with the BLM on the Final EIS. The Energy Policy Act of 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of the Energy Policy Act authorizes the Secretary of Energy to make loan guarantees for a variety of types of energy related projects. The two purposes of the loan guarantee program are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. The purpose and need for action by the DOE is to comply with its mandate under the

Energy Policy Act by selecting eligible projects that meet the goals of that Act. The 709 MW Alternative meets the defined DOE purpose and need.

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

The 709 MW Selected Alternative meets all project objectives, and is technically, legally, and regulatorily feasible. Additionally, the BLM consulted extensively with several parties to identify project modifications that would minimize impacts to natural and cultural resources. The 709 MW Selected Alternative has been found to be the environmentally preferable project.

### **3.1.3 Required Actions**

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

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

Under Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.), a Federal agency that authorizes, funds, or carries out a project that “may affect” a listed species or its critical habitat must consult with the United States Fish and Wildlife Service (USFWS). The BLM prepared a Biological Assessment for the USFWS in accordance with Section 7 of the ESA for potential effects to the listed Peninsular bighorn sheep (PBS) and the flat-tailed horned lizard (FTHL) in the event it is listed in the future. The USFWS issued a Biological Opinion (BO)/Conference Opinion (CO) for the project which is provided in Appendix 2, Biological and Conference Opinion, in this ROD.

#### **3.1.3.2 National Historic Preservation Act**

The Section 106 process has been completed for the IVS project. Section 106 compliance is in accordance with the Programmatic Agreement (PA, pursuant to 36 CFR 800.14(b)) executed by signature through the BLM, Corps, the California State Historical Preservation Officer (SHPO) Advisory Council for Historic Preservation, and other signatories in September 2010. The PA is provided in Appendix 3, Programmatic Agreement.

### **3.1.3.3 Clean Air Act as Amended in 1990**

Title 40 CFR Section 51 (Subpart W - Determining Conformity of General Federal Actions to State or Federal Implementation Plans), Title 40 CFR Section 93 (Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans), and 42 U.S.C. Section 7606(c) require Federal actions to comply with the requirements of the Clean Air Act (CAA). The IVS project is expected to meet the requirements of the CAA based on compliance with the project mitigation, terms, conditions, and stipulations related to emission controls and reductions during project construction, maintenance, operation, and termination.

### **3.1.3.4 Clean Water Act**

Section 404 of the Federal CWA authorizes the Corps to regulate the discharge of dredged or fill materials into navigable waters of the United States (waters of the U.S.), including certain wetlands and other waters of the U.S. The *404 B-1 Alternatives Analysis for the Imperial Valley Solar Project*, provided in Appendix 6, Additional Agency Approvals and Review, details the Corps' conditions placed on the IVS project for compliance with the Federal CWA.

### **3.1.3.5 Bald and Golden Eagle Protection Act**

In order to comply with the Act, and based on the US Fish and Wildlife Service's recommendation (memo dated September 15, 2010, available as part of the project record), the BLM will require Imperial Valley Solar, LLC to develop an Avian Protection Plan within six months of initiating facility construction.

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

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

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

The BLM has found that the lands in the Selected Alternative can be approved for solar energy development based on compliance with the requirements of NEPA. The CDCA Plan

amendment applies to the public lands within the boundary of the site for the Selected Alternative shown on Figure 2 in Appendix 5, Location Maps.

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

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

As noted above, Congress specifically recognized multiple use and sustained yield management for the CDCA, through the CDCA Plan, providing for present and future use and enjoyment of the public lands. The 1980 CDCA land use plan, as amended, identifies allowable uses of the public lands in the CDCA. In particular, it authorizes the location of solar power generating facilities in MUC L and other land classifications upon NEPA review. The BLM has conducted that review, and as indicated in the FEIS, and in portions of this ROD, has adjusted the project to meet public land management needs and concerns. In particular, the BLM has determined that the Selected Alternative meets national renewable energy policy goals and objectives and falls within the guidelines of the CDCA Plan. In addition, the project meets the requirements of applicable ROW regulations inasmuch as it includes terms, conditions and stipulations that are in the public interest, prevents surface disturbance unless and until a Notice to Proceed is secured, is issued for a period of 30 years, subject to renewal and periodic review, and contains diligence and bonding requirements to further protect public land resources. This approval provides that public land will be occupied only with authorized facilities and only to the extent necessary to construct, operate, maintain and terminate the project. The BLM conditions of approval provide for public health and safety, protect the environment and the public lands at issue. These conditions of approval include compliance with this ROD, the FEIS, the Biological Opinion/Conference Opinion, section 106 requirements and the PA. All of these federal

requirements provide the basis for the BLM's determination that the project will not unnecessarily and unduly degrade these public lands. In addition, the CEC Conditions of Approval and the Corps section 404 requirements are all conditions of the BLM approval of this project and provide additional protection to public land resources.

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

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

IVS' statement of technical and financial capability is provided in the Plan of Development (POD). IVS is a private enterprise that is a wholly owned subsidiary of Stirling Energy Systems, Inc. The company recently received long-term funding from a strategic partner, NTR plc (NTR). NTR is an international developer and operator of renewable energy and sustainable waste management businesses in the United States, the United Kingdom, Ireland, and continental Europe. Based upon the information provided by IVS in its POD, the BLM has determined that it has the technical and financial capability required to construct, operate, and maintain the approved facility.

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

### **3.2.1 Tribal Consultation**

The BLM conducted government-to-government consultation with a number of Tribal governments and discussion with Tribal representatives as described in detail in Chapter 7, Native American Consultation, Concerns, and Values, in the Final EIS. The consultation and discussions revealed concerns about the importance and sensitivity of cultural resources on and near the IVS project site, concerns about cumulative effects to cultural resources, and, further, that they attach significance to the broader cultural landscape. As a result of the Native

American Consultation process, many important cultural resources were identified in the project area, and subsequently avoided in the Selected Alternative.

As described later in Section 3.2.3, Section 106 and the Programmatic Agreement, the BLM also consulted with Native American Tribes and interested tribal members on the development and execution of a Programmatic Agreement (PA) for the IVS project. In accordance with 36 CFR Part 800.14(b), PAs are used for the resolution of adverse effects for complex project situations and when effects on historic properties (resources eligible for or listed in the National Register of Historic Places [National Register]) cannot be fully determined prior to approval of an undertaking.

Based on the ongoing consultation with Tribal governments and representatives and the PA, many cultural resources in the area are avoided by the Selected Alternative or the impacts are substantially mitigated. As a result, the 709 MW Alternative would result in impacts less than or similar to the other Build Alternatives related to cultural resources.

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

The BLM's consultation, and coordination with the USFWS required for the IVS project complies with the Federal Endangered Species Act (ESA) regarding potential take of the PBS and the FTHL.

Although the FTHL is not Federally listed under the ESA at this time, it is anticipated that this species may be listed during the construction or operation of the IVS project. To avoid or reduce possible time constraints, the FTHL was included in the BA for the IVS project, should this species become Federally listed. Because the FTHL has not been listed as of September 2010, the BLM underwent conferencing, rather than consultation, with the USFWS for this species.

The BLM submitted a Biological Assessment (BA) for take of PBS to the USFWS for the IVS project on December 24, 2009. The USFWS issued a Biological Opinion (BO) for PBS/Conference Opinion (CO) for FHTL for the IVS project. The BO/CO is provided in Appendix 2, Biological Opinion, of this ROD. It is also available on the BLM website.

The BO/CO concluded that the IVS project is likely to adversely affect PBS but not jeopardize the PBS species or result in adverse modification of critical habitat for that species. Measures included in the BO/CO would reduce any anticipated adverse impacts. These measures are mandatory and are conditions of approval of this ROD.

Based on the conditions in the BO/CO and the ongoing consultation with the USFWS during project construction and operations, many biological resources in the area are avoided by the Selected Alternative or the impacts are substantially mitigated. As a result, the 709 MW Alternative would result in impacts less than or similar to the other Build Alternatives related to biological resources.

### **3.2.3 Section 106 and the Programmatic Agreement**

The BLM prepared a PA for the IVS project in consultation with the Advisory Council on Historic Preservation (ACHP), the SHPO, the CEC, interested Native American Tribes (including tribal governments as part of government-to-government consultation described earlier), and other interested parties. The executed Final PA, provided in Appendix 3 of this ROD, will govern the continued identification and evaluation of historic properties (eligible for the National Register) and historical resources (eligible for the California Register of Historic Places), as well as the resolution of any effects that may result from the IVS project. Historic properties and historical resources are significant prehistoric and historic cultural resources as determined by the BLM.

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

#### **3.2.4.1 Consultation with Other Federal Agencies**

As described in the following sections, the following Federal agencies cooperated with the BLM on the Final EIS for the IVS project: the Corps, the NPS, and the DOE. In addition, the United States Environmental Protection Agency (EPA) provided input to the BLM on the project and the EIS.

#### **United States Army Corps of Engineers**

Project-related fill of waters of the U.S. would require authorization by the Corps pursuant to Section 404 of the Federal CWA under a Standard Individual Permit subject to the CWA Section 404(b)(1) Guidelines. The Corps requires mitigation for project-related fill of waters of the U.S.

The Corps was consulted during the preparation of the Final EIS and was provided a copy of the preliminary Final EIS for review. The Corps provided comments to the BLM on the preliminary Final EIS which were incorporated in the Final EIS.

The Corps prepared the *Final 404B-1 Alternatives Analysis for the Imperial Valley Solar Project*, provided in Appendix 6, Additional Agency Approvals and Review, to identify and document the

Least Environmentally Damaging Practicable Alternative (LEDPA) and mitigation required for permitting the 709 MW project. Based on that analysis, the Corps identified the Agency Preferred Alternative (709 MW project) as the LEDPA as discussed in that report.

Based on the mitigation required by the Corps for permitting the project and the ongoing consultation with the Corps during project construction and operations, many waters of the U.S. in the area are avoided by the Selected Alternative or the impacts are substantially mitigated. As a result, the 709 MW Alternative would result in impacts less than or similar to the other Build Alternatives related to waters of the U.S.

### **National Park Service**

The NPS is the primary administrator of the Anza Trail in partnership with others. Due to its standing as a cooperating agency, the NPS was consulted during the preparation of the Final EIS. The NPS was provided a copy of the preliminary Final EIS for review. The NPS provided comments to the BLM on the preliminary Final EIS which were incorporated in the Final EIS. The NPS also provided written comments during the review period for the Draft EIS as documented in Appendix D, Public Comments on the Draft EIS, in the Final EIS. In its comments on the Draft EIS, the NPS expressed concerns about the project due to its high potential to significantly impair the historic character of the trail corridor and impact the experience of visitors traveling the Anza Recreational Trail. The NPS commented that the on-site alternatives to the project would not significantly lessen impacts to the Anza Trail due to the scale and visual impacts of the project, which would result in significant alterations to the landscape. The NPS supported alternatives that would locate the project within or adjacent to existing disturbed lands, such as the Mesquite Lake or agricultural lands.

The NPS also recommended a range of mitigation measures to offset the project's impacts to the Anza Trail. The BLM incorporated those measures, in part, into Mitigation Measure REC-1 in the Final EIS, which, among other things, requires the applicant to provide funds for the development of a Comprehensive Interpretive Plan and to implement the interpretive features recommended by that plan.

With regard to Section 106, the PA described earlier and included in Appendix 3 of this ROD provides measures to verify the presence of any material remains of the Anza Trail on the project site, and to address potential degradation to any such remains found and to the visual integrity of the resource.

Based on the mitigation provided in Mitigation Measure REC-1 and in the PA and the ongoing consultation with the NPS during project construction, potential impacts to the presumed historic trail corridor on the IVS project site may be avoided by the Selected Alternative or the impacts

are substantially mitigated. As a result, the 709 MW Alternative would result in impacts less than or similar to the other Build Alternatives related to the Anza Trail.

### **United States Department of Energy**

As discussed earlier, the DOE is the agency responsible for implementing key parts of the Energy Policy Act of 2005 including the Federal loan guarantee program for eligible energy projects that employ innovative technologies. As a result, the DOE was consulted during the preparation of the Final EIS and was provided a copy of the preliminary Final EIS for review. The DOE did not provide any comments to the BLM on the preliminary Final EIS.

### **United States Environmental Protection Agency**

The EPA provided written comments on the proposed project and the EIS preparation during the scoping period, as documented in the *Final Scoping Report* (LSA Associates, Inc., September 2009). The EPA also provided written comments during the review period for the Draft EIS as documented in Appendix D, Public Comments on the Draft Environmental Impact Statement, in the Final EIS. EPA also submitted comments on the Final EIS. The responses to EPA's comments on the Final EIS are provided in Appendix 1, Response to Comments, in this ROD.

#### **3.2.4.2 Consultation with State, Regional, and Local Agencies**

Table 7-4, in Appendix 7, Tables, of this ROD lists other agencies with which the BLM and/or the project applicant have consulted, as part of one or more of the following project phases: planning, scoping, public review of the Draft EIS, and/or public review of the Final EIS.

In addition to the agencies described above and listed in Table 7-4, the applicant may have to seek permits and other approvals from other agencies or comply with requirements of other agencies that did not provide written input on the project and/or the EIS. Those agencies include, but may not be limited to:

- Federal Aviation Administration
- United States Department of Defense
- Imperial County Air Pollution Control District
- Regional Water Quality Control Board

- Seeley County Water District

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

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

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

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

- (a) The Secretary, with respect to the public lands ... are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for:

- (4) systems for generation, transmission, and distribution of electric energy

FLPMA is relevant to the IVS project because it establishes BLM's authority to grant rights-of-way on public lands for the generation, transmission, and distribution of electrical energy. Because FLPMA authorizes the issuance of a ROW grant for electrical generation facilities and transmission lines, the IVS project would be consistent with FLPMA.

The CDCA Plan was developed as mandated by FLPMA and is the land use plan (LUP) for the IVS project site and the surrounding area within the defined CDCA. The CDCA Plan is a comprehensive, long-range plan for the management, use, development, and protection of the public lands in the CDCA. The 25-million-acre CDCA contains over 12 million acres of public lands in the California desert, which includes the Mojave Desert, the Sonoran Desert, and a small part of the Great Basin Desert. Those 12 million acres of public lands are approximately half of the total land area in the CDCA. The site proposed for the IVS project includes approximately 6,359 acres of land in the CDCA administered by the BLM.

The CDCA Plan is a comprehensive, long-range plan with goals and specific actions for the management, use, development, and protection of the resources and public lands within the CDCA, and it is based on the concepts of multiple use, sustained yield, and maintenance of

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

The IVS project site is classified in the CDCA Plan as Multiple-Use Class (MUC) L (Limited Use). MUC L, "...protects sensitive, natural, scenic, ecological, and cultural resource values." Public lands designated Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished. The CDCA Plan ROD approved solar electrical generation plants within the Limited Use designation. Specifically, the guidelines in the Plan provide that solar electrical generating facilities within Class L areas "... may be allowed after NEPA requirements are met."

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

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

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

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

The proposed LUP Amendment to be made by the BLM is a site identification decision only. Because the proposed solar project and its alternatives are located within MUC L, the classification designations govern the type and degree of land use action allowed within each classified area. All land use actions and resource management activities on public lands within an MUC designation must meet the guidelines for that class. MUC L allows electric generation plants for solar facilities after NEPA requirements are met. These guidelines are listed in Table 1, Multiple Use Class Guidelines, in the CDCA Plan (1980, as amended). The specific application of the MUC designations and resource management guidelines for a specific resource or activity are further discussed in the plan elements section of the CDCA Plan. In Class L designations, the BLM Authorized Officer (AO) is directed to use his/her judgment in allowing for consumptive uses by taking into consideration the sensitive natural and cultural values that might be degraded.

The site for the IVS project meets the MUC Guidelines (as applicable to this project and site) for the following reasons:

**Air Quality:** Class L lands, including the project site and the Build Alternatives, are to be managed to protect their air quality and visibility in accordance with Class II objectives of the Federal CAA. The worst-case emissions that would be associated with the IVS project are provided in Final EIS in Section 4.2, Air Quality. Those values were compared to emissions objectives for air quality and visibility associated with Class II areas in 40 CFR 52.51, and are all well below the limitations required for Class II areas. Therefore, the Build Alternatives conform to the Class II objectives referenced in the CDCA Plan guidelines.

**Water Quality:** Class L designations will be managed to provide for the protection and enhancement of surface and groundwater resources, and best management practices (BMPs) will be used to avoid degradation and to comply with Executive Order (EO) 12088. Section 4.17, Hydrology, Water Use, and Water Quality, in the Final EIS evaluated the alternatives for groundwater use conflicts, the potential to impact groundwater quality, and the potential to impact surface water resources. Development and operation of the IVS project raised concerns for changing storm water surface flow across the site. The incorporation of low impact development practices with limited grading, and limited removal of vegetation to maintain natural sheet flow across the site were developed by the applicant, in coordination with the BLM, to reduce these potential impacts. Although the BLM has not established BMPs for solar projects, it has reviewed, and agrees with the implementation of, the BMPs that would be associated with the project and its alternatives. Those BMPs were derived from a variety of sources, including those proposed by the applicant, those required by the California Energy Commission through its Conditions of Certification, and those required for compliance with other State and Federal laws designed to protect water resources. Implementation of these BMPs, and BLM's standard terms and conditions requiring compliance with other Federal, State, and local regulations, would constitute compliance with EO 12088. Those measures are applicable to all project alternatives, and would therefore conform to the Guidelines in Table 1 of the CDCA Plan.

**Cultural and Paleontological Resources:** Archaeological and paleontological values will be preserved and protected as described in Section 4.5, Cultural and Paleontological Resources, in the Final EIS. Procedures described in 36 CFR 800 will be observed where applicable. The PA, provided in Appendix 3 of this ROD, specifically addresses compliance with 36 CFR 800 in project construction, operation, maintenance, and decommissioning, including identification of properties

listed or eligible for listing on the National Register of Historic Properties (NRHP). The identification of the site for the project was subject to the MUC Guidelines for cultural and paleontological resource protection as is evidenced by the applicability of the Guidelines to the specific facility proposal. As such, the project and the project site are within the MUC Guidelines for cultural and paleontological resource protection established by the CDCA Plan based on implementation of the PA.

**Native American Values:** Native American cultural and religious values will be protected and preserved on MUC L lands with appropriate Native American groups consulted. Repeated efforts and opportunities were provided to allow tribal entities to raise concerns regarding the project and, as a result, the cultural guidelines with respect to requirements for consultation were met. The concerns raised are addressed in the PA in Appendix 3. The protection of cultural resources, as addressed in the PA, ensures that preservation and protection of cultural and religious values is accomplished in accordance with the CDCA Plan MUC guidelines.

**Electrical Generation Facilities:** Solar generation may be allowed on the project site after NEPA requirements are met. The analysis in the Final EIS, which addresses all the Build Alternatives, comprises the NEPA compliance required for this MUC guideline.

**Transmission Facilities:** Class L guidelines allow electric transmission to occur in designated right-of-way corridors. The IVS project meets this guideline for the build alternatives by locating new transmission facilities in existing right-of-way corridors to the extent feasible.

**Fire Management:** Fire suppression measures in Class L areas will be taken in accordance with specific fire management plans, subject to such conditions as the BLM AO deems necessary. The project site is within the area covered by the BLM California Desert District and the El Centro Field Office and their relevant fire management and suppression policies. The applicant has developed fire suppression measures that would be used for the build alternatives which are discussed in Section 4.6, Fire and Fuels Management, in the Final EIS.

**Vegetation:** Table 1 of the CDCA Plan includes a variety of guidelines associated with vegetation. These are addressed in the Final EIS as follows:

**Native Plants:** Removal of native plants in Class L areas is only allowed by permit after NEPA requirements are met, and after development of necessary stipulations. Approval of the ROW grant for the Agency Selected Alternative

would constitute the permit for such removal. The mitigation measures in the Final EIS and conditions of approval described elsewhere in this ROD constitute the stipulations to avoid or minimize impacts from the removal.

**Harvesting of Plants by Mechanical Means:** Harvesting by mechanical means is also allowed by permit only. Although the Build Alternatives would include the collection of succulents and seeds to assist with reclamation, the removal of these items would not be done for distribution to the public. Also, the guidelines for vegetation harvesting include encouragement of such harvesting in areas where the vegetation would be destroyed by other actions, which would be the case with the Build Alternatives. Therefore, the Build Alternatives conform to this MUC guideline.

**Rare, Threatened, and Endangered Species, State and Federal:** In all MUC areas, all State and Federally listed species will be fully protected. In addition, actions which may jeopardize the continued existence of federally listed species will require consultation with the USFWS. As evaluated in Section 4.3, Biological Resources, in the Final EIS, no federally or State listed plants would be impacted by the Build Alternatives.

**Sensitive Plant Species:** Identified sensitive plant species would be given protection in management decisions consistent with the BLM's policy for sensitive species management (BLM Manual 6840). The objective of that policy is to conserve and/or recovered listed species, and to initiate conservation measures to reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing. No BLM sensitive plants or plant communities will be affected, as described in Section 4.3 in the Final EIS.

**Unusual Plant Assemblages (UPAs):** No UPAs was identified on the project site.

**Vegetation Manipulation:** Manipulation of vegetation in Class L areas by mechanical control or aerial broadcasting is not permitted. Vegetation manipulation is defined in the CDCA Plan as removing noxious or poisonous plants from rangelands; increasing forage production; creating open areas within dense brush communities to favor certain wildlife species; or eliminating introduced plant species. None of these actions would be conducted as part of the Build Alternatives. Therefore, each Build Alternative would conform to the guidelines.

**Motorized Vehicle Access/Transportation:** Pursuant to the CDCA LUP guidelines in Class L areas, new roads may be developed under right-of-way grants or approved plans of operations. In areas designated as limited use area for off highway vehicle (OHV) use, such as the site locations under consideration for the project, changes to the transportation network (new routes, re-routes, or closures) in Limited areas may be made through activity-level planning or with site-specific NEPA analysis (BLM Instructional Memorandum 2008-014). The existing open OHV routes on the IVS project site will be closed. These changes are made with the site-specific NEPA analysis provided in Section 4.9, Land Use and Corridor Analysis, in the Final EIS.

**Wildlife Species and Habitat:** Table 1 of the CDCA Plan includes a variety of guidelines associated with wildlife. These are addressed Section 4.3 in the Final EIS as follows:

**Rare, Threatened, and Endangered Species, State and Federal:** In all MUC areas, the CDCA Plan guidelines for wildlife require that State and Federally listed species and their critical habitat be fully protected. Actions which may jeopardize the continued existence of Federally listed species will require consultation with the USFWS. As discussed in Section 4.3, the Peninsular bighorn sheep (PBS) is federally listed and the flat-tailed horned lizard (FTHL) may be listed in the future. As specified in the guidelines, the BLM conducted formal consultation with the USFWS in accordance with Section 7 of the Endangered Species Act. As a result of the consultation, the applicant is required to fund the acquisition of 6,619.9 acres pursuant to the flat-tailed horned lizard (FTHL) Rangewide Management Strategy. The California Department of Fish and Game (CDFG) agreed to accept preservation of CDFG jurisdictional streambeds that are associated with the FTHL acquisitions. Since the BLM cannot permanently conserve lands for specific uses in perpetuity, the focus for CDFG mitigation above and beyond what is being conducted at Carrizo Marsh. The total impacts to CDFG jurisdictional streambeds for Phases 1 and 2 are 24.61 acres of permanent impacts and 223.02 acres of temporary impacts. The applicant has agreed to conduct 247 acres of restoration/enhancement of the Carrizo Marsh on California Department of State Parks lands for a combination of mitigation for impacts to the jurisdictional waters of the U.S.

Refer to the Biological Opinion/Conference Opinion in Appendix 2 for the documentation regarding that consultation and measures included in the project

to minimize impacts to and to protect the PBS and FTHL and critical habitat for those species.

**Sensitive Species:** Identified species would be given protection in management decisions consistent with BLM's policy for sensitive species management (BLM Manual 6840). The objective of this policy is to conserve and/or recovered listed species, and to initiate conservation measures to reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing. Sensitive wildlife species evaluated in Section 4.3 in the Final EIS include raptors, burrowing owl, American badger, and American kit fox.

The Build Alternatives include extensive mitigation to avoid and reduce adverse impacts to wildlife species. Introduction of native species is permitted in Class L areas, and habitat manipulation is allowed subject to environmental assessment, as is done within the Final EIS for the IVS project. Therefore, the Build Alternatives conform to these guidelines.

The Build Alternatives do not involve the control of depredation wildlife and pests. Therefore, this guideline is not applicable to these actions.

**The project and the site location do not impact the following public land resources or uses:** Agriculture, Communication Sites, Livestock Grazing, Land Tenure Adjustment, Minerals, Recreation (other than route closure), Waste Disposal, Wetland/Riparian Areas, or Wild Horses and Burros. Therefore, these guidelines are inapplicable to the land use plan decision being made in this ROD.

### 3.3.1.3 Required CDCA Plan Determinations

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

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

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

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

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

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

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

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

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

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

A Notice of Intent (NOI) to amend the CDCA Plan was published in the Federal Register (FR) October 17, 2008 (Volume 73, No. 202, pages 61902 and 61903). The EPA provided comments during the 30-day NOI scoping period. In accordance with the NOI, issues identified during the scoping period are placed in the comment categories below.

- Issues to be resolved in the Plan Amendment: Several comments were received regarding concerns over the loss of open space and recreational lands if the CDCA Plan was amended to allow industrial use. These comments were considered in the Final EIS.
- Issues to be resolved through policy or administrative action: All other comments received addressed specific environmental impacts and mitigation measures that each commenter requested be analyzed in the Final EIS. Those comments were considered in the Final EIS.

- Issues beyond the scope of the Plan Amendment: No comments were received which were outside of the scope of the Plan Amendment.

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

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

#### 3.3.1.4 CDCA Plan Decision Criteria

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

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

The IVS project helps minimize the number of separate rights-of-way by being proposed largely within existing utility corridors as described later in this section. Electrical transmission associated with the IVS project will occur within these existing corridors.

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

Placement of the IVS project within existing Corridor N maximizes the joint-use of this corridor for electrical transmission.

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

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

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

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

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

The extent to which the IVS project conforms to local plans is addressed in Section 4.9, Land Use and Corridor Analysis, in the Final EIS. The IVS project is in conformance with the Imperial County General Plan.

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

The IVS project site is not in a designated Wilderness Area or Wilderness Study Area.

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

This decision criterion is not applicable to the IVS project.

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

This decision criterion is not applicable to the IVS project. Approval of the IVS project would not affect any other projects for which decisions have been made.

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

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

### 3.3.2 Western Colorado Desert Routes of Travel Designations

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

In 2002, in an amendment to the CDCA Plan, the BLM identified and designated many routes of travel in the *Western Colorado Desert Routes of Travel Destinations* (WECO) amendment. That amendment to the CDCA Plan clarified, updated, and assigned designations (Open, Closed, or Limited) to all travel routes within the WECO amendment area.

The IVS project site is within the WECO amendment area. Ten open routes are shown within the boundary of the IVS project site and the construction laydown site, and 2 open routes are designated in the vicinity of the IVS project site and the construction laydown site. The 10 open routes on the IVS project site follow established dirt roads/trails on the site and are described briefly in Table 2-2 in the Final EIS.

The designated open routes on the IVS project site will be affected by the IVS project, which require closure of those open routes. Specifically, all the open routes on site will be closed to public access. The closure of these routes is an administrative action by the BLM taken in conformance with current BLM policy.

Under the policy provisions of the BLM Washington Office Instruction Memorandum No. 2008-014 (Clarification of Guidance and Integration of Comprehensive Travel and Transportation Management Planning into the Land Use Planning), selection and designation of individual routes within a Limited area is an implementation decision but is not a land use plan decision. All of the open routes within the IVS project site will be closed to public access, except valid existing rights. San Diego Gas and Electric holds an existing right-of-way, as does Plaster Beach; Water Stations holds a permit to access their water facilities; these valid existing rights will not be impacted. The changes to the travel network (routes) in the Limited area within the IVS Project site are being closed upon the approval of the ROW authorization for the IVS Project. Those routes are described in Table 2-2 and Table 4-44 in the Final EIS.

### **3.3.3 Utility Corridors**

The IVS project site is located within 2 related utility corridors: Corridor “N” and the Section 368 Energy Corridor. Corridor “N” in this area is approximately 3 miles wide with a centerline that generally follows the alignment of I-8. The Section 368 Corridor is approximately 2 miles wide and generally follows the route of the existing high voltage transmission line from the southeast to the southwest, trending more westerly along the north side of I-8, and then paralleling along the north side of the “N” corridor as it trends westward.

The BLM has determined that the IVS project site lies largely within an existing designated Utility Corridor “N” Section 368 115-238 (CDCA N, 368 115-238). In general, about 60 percent of the IVS project site occupies the northern half of Utility Corridor “N”, while most of the Phase II part of the IVS project (on the eastern part of the IVS project site) occupies the Section 368 corridor. Locating parts of the IVS project within these utility corridors is consistent with the designation of those corridors by the BLM as utility corridors.

## **3.4 Determination of NEPA Adequacy**

### **3.4.1 DNA in the Final EIS**

After the Draft EIS was released for public review in February 2010, the applicant proposed four modifications/refinements to the IVS project and the other Build Alternatives. The applicant-proposed modifications were incorporated into all build alternatives including the IVS project (750 MW Alternative), the 300 MW Alternative, Drainage Avoidance #1 Alternative, and Drainage Avoidance #2 Alternative. Because those modifications could potentially have resulted in environmental concerns that were not analyzed in the Draft EIS, the potential effects of these modifications were evaluated in detail in the Determination of NEPA Adequacy (DNA) provided in Appendix B, Determination of NEPA Adequacy, in the Final EIS. That completed DNA worksheet informed the BLM that the modifications/refinements to the IVS project and the other build alternatives, had, in fact been adequately analyzed under NEPA in the Draft EIS.

### **3.4.2 Assessment of the Need for an Additional DNA**

The United States Environmental Protection Agency (EPA) Notice of Availability of the Final EIS was issued on July 28, 2010. Release of the Final EIS initiated the 30-day protest period, and a 30 day public comment period, which closed on August 27, 2010. During that period, any person who participated in the planning process and believed they would be adversely affected

by the CDCA Plan amendment had the opportunity to protest the proposed amendment to the Director of the BLM. Seven formal protest letters were filed with BLM.

During protest resolution in August 2010, the project applicant and a number of the protesting parties reached agreement on several of the project mitigation measures. These measures would provide for increased mitigation (air quality, water, PBS, FTHL) and/or documentation of effects during project construction and operations (transmission and availability, FTHL). The proposed modifications were listed earlier in Section 1 of this ROD and are included by the project applicant in the POD.

The BLM used the DNA Worksheet as an internal administrative tool to assess the potential effects of these voluntary modifications to the project measures. The analysis of the proposed mitigation measures changes in the DNA Worksheet is discussed as follows.

The 709 MW project and the other build alternatives with these mitigation measures would be essentially the same as evaluated in the Final EIS. The project site and areas used for the project would be the same as evaluated in the NEPA document. These mitigation measures for the project would not materially change or modify the project, its location, or the geographic and resources conditions analyzed in the FEIS.

The proposed modifications to the mitigation measures would not alter the project location or project features, and would not change the operation or physical parameters of the 709 MW project and the other build alternatives analyzed in the FEIS. The resource values evaluated in the NEPA documentation have not changed, nor have any adverse impacts been identified as a result of the proposed modifications to the project mitigation measures. Therefore, the modifications of the project measures for the 709 MW project and the other build alternatives have no effect on the analysis discussed in the Final EIS, and would not result in the need for consideration of additional or different alternatives beyond the alternatives considered in the FEIS. In summary, considering that the recommended changes seeks to clarify, strengthen and assure compliance of existing mitigation measures, but does not propose any physical changes to the site or proposed action, it can be determined that no further environmental analysis and/or documentation (including a DNA) is warranted.

## **4.0 Alternatives Considered**

### **4.1 Alternatives Fully Analyzed**

In addition to the Agency Preferred Alternative (709 MW Alternative), also referred to as the Selected Alternative in this Record of Decision, the BLM evaluated four other Build Alternatives and three No Project Alternatives in detail in the Draft and Final Environmental Impact Statements (EISs). Those alternatives are described in Table 7-1 in Appendix 7, Tables, including the reasons why those alternatives were not selected. The Agency Preferred Alternative (709 MW Alternative) is also listed in that table for comparison purposes.

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

The Staff Assessment/Draft EIS (SA/EIS) considered three alternative sites in detail consistent with the requirements of the California Environmental Quality Act (CEQA). Those three sites are described Table 7-2 in Appendix 7. As explained in the Final EIS, two of the three alternative sites are not located on BLM managed land, and the third is subject to an existing land withdrawal. All three sites would be ineffective in meeting the BLM purpose to identify and implement renewable energy projects on available BLM-managed land, and are not within the decision space of the lead agency (the BLM). In addition, the Mesquite Lake alternative is considered to be remote and speculative since site control would need to be secured for 70 parcels from 52 land owners. The Agricultural Lands alternative consists of 7 separate and non-contiguous parcels of land, would suffer from similar site control issues, and would result in two separate transmission interconnections, each of which would require additional permitting from appropriate sources. Finally, the South of Highway 98 alternative is directly adjacent to an Area of Critical Environmental Concern and long term visitor center. These land designations do not prohibit industrial use but are not necessarily completely compatible with it either. Also, that site has been withdrawn for Federal Bureau of Reclamation purposes which have not been revoked making its use infeasible at this time. For these reasons, the three alternative sites were not fully analyzed in the Final EIS.

In addition to the three alternative sites described above, several other sites and a number of technologies for renewable energy were also considered but not carried forward for detailed analysis in the Draft and Final EISs. Those alternatives are briefly described in Table 7-3 in Appendix 7, including the rationale for why they were eliminated from detailed analysis in the environmental document.

### 4.3 Preferred Alternative

After the release of the Staff Assessment/Draft EIS for public review in February 2010, the BLM and the United States Army Corps of Engineers (Corps) continued to coordinate and consult regarding possible refinements to avoid specific drainages on the IVS project site. The following modifications to the IVS project, to reduce effects to aquatic resources, the flat-tailed horned lizard (FTHL), and cultural resources, were identified in that continued consultation:

- Relocating the Main Services Complex out of some of the primary wash segments of Drainage E.
- Removing all SunCatchers within 100 feet (ft) of the centerline of Drainage E to provide a 200-ft wide corridor along this drainage through the site.

As a result of these modifications to the IVS project (750 MW Alternative), the following specific changes were made to that Alternative, which resulted in a 709 MW Alternative, which has been identified by the BLM as the Preferred Alternative:

- Reduction in the total number of SunCatchers from 30,000 to 28,360 SunCatchers
- Reduction in the amount of energy generated from 750 MW to 709 MW

The 709 MW Alternative would be on the same approximately 6,500 acre site as the IVS project, except that specific areas within the site, particularly along Drainage E, would be avoided and no project construction or operations would occur in those areas.

Although the BLM did not anticipate this exact alternative in the Draft EIS, the BLM has determined that the 709 MW Agency Preferred Alternative is essentially similar to the 750 MW proposed action analyzed in the Draft EIS in that both alternatives would be on the same site and would be constructed and operated nearly identically. The BLM has determined that the findings of the Determination of NEPA Adequacy (DNA) analyses included in the Final EIS regarding the applicant's four modifications to the Build Alternatives, which are included in the 709 MW Alternative and the other Build Alternatives, and the modifications associated with Drainage E, which are included only in the 709 MW Alternative, are not substantially different than the findings of the analyses in the Draft EIS for the 750 MW Alternative. For further discussion and evaluation regarding the 709 MW Alternative, refer to Chapter 4, Environmental Consequences, and Appendix B, Determination of NEPA Adequacy, in the Final EIS.

The Preferred Alternative is also the Corps' Final Least Environmentally Damaging Practicable Alternative (LEDPA) as discussed in the 404(b)(1) Alternatives Analysis and LEDPA

determination, which is provided in Appendix 6, Additional Agency Approvals and Review, of this ROD.

## 5.0 Public and Other Agency Involvement

### 5.1 Scoping

Scoping activities for the Imperial Valley Solar (IVS) project were conducted by the Bureau of Land Management (BLM) in compliance with the requirements of the National Environmental Policy Act (NEPA). Many of the scoping activities were conducted jointly with the California Energy Commission (CEC). The BLM's scoping activities are described in detail in the *Final Scoping Report Stirling Energy Systems Solar Two Project* (LSA Associates, Inc. September 2009) which is available on the BLM website.

Public notice regarding the proposed joint California Environmental Quality Act (CEQA)/NEPA environmental document and the scoping and public information meetings was provided in the "Notice of Intent (NOI) to prepare an EIS/SA and Proposed Land Use Plan Amendment for the Proposed SES Solar Two Project, Imperial County, CA" (Federal Register on October 17, 2008); the CEC "Notice of Informational Hearing and Public Site Visit and Bureau of Land Management Scoping Meeting" on October 10, 2008; and the CEC "Notice of BLM and Energy Commission Staff Data Response and Issues Resolution/Scoping Meeting for the SES Solar Two Project" on December 2, 2008.

Verbal comments and written comment cards were received from attendees at the November 24, 2008, and December 18, 2008, meetings and in response to the NOI. The comments covered purpose and need, alternatives, biological resources, cultural resources, visual resources, water supply, water quality, water resources, air quality, climate change, cumulative impacts, groundwater, consultation with Tribal governments, recreation, invasive species, hazardous materials and wastes, land use, noise, aviation impacts, project description, project phasing, hazards, project financing, alternative sites, socioeconomics, environmental justice, traffic, seismic, hydrology, public participation, health and safety, Peninsular bighorn sheep (PBS), wildlife migration routes, and the flat-tailed horned lizard (FTHL).

### 5.2 Draft Environmental Impact Statement Public Comment Period

In consideration of the information generated during the scoping process, the CEC and the BLM prepared a joint Staff Assessment/Draft Environmental Impact Statement (SA/Draft EIS) for the proposed project. The SA/Draft EIS was circulated for public review between February 22, 2010 and May 27, 2010. Public notice regarding the availability of the SA/Draft EIS for the

“Stirling Energy Systems Imperial Valley Solar Project (formerly the Solar Two Project) and Proposed California Desert Conservation Area Plan Amendment” was published in the Federal Register on February 22, 2010. The Notice stated that written comments would be accepted for a 90-day period of time following publication of the Notice of Availability (NOA) of the SA/Draft EIS. The United States Environmental Protection Agency (EPA) also published an NOA of the SA/Draft EIS on February 26, 2010. That NOA incorrectly indicated that the comment period for the SA/Draft EIS would end on April 12, 2010. An amended NOA was published by the EPA on March 12, 2010 indicating that the comment period for the Draft EIS/SA would end on May 27, 2010.

The written comments on the Draft EIS, the general topics covered in those comments, and the responses to those comments are included in Appendix D, Public Comments on the Draft Environmental Impact Statement, which is provided in the Final Environmental Impact Statement (Final EIS).

### **5.3 Final Environmental Impact Statement Public Comment Period**

The NOA of the Final EIS was published in the FR on July 28, 2010 and the public review period ended August 24, 2010. The comments received on the Final EIS and the responses to those comments are provided in Appendix 1, Responses to Comments on the Final Environmental Impact Statement, in this Record of Decision (ROD). The BLM reviewed the comments on the Final EIS and determined that they did not raise any significant new circumstances or information relevant to environmental concerns associated with the IVS project. Therefore no changes to the proposed decision were determined warranted.

### **5.4 Protest Period**

The EPA Notice of Availability of the Final EIS was issued on July 28, 2010. Release of the Final EIS initiated the 30-day protest period, which closed on August 27, 2010. During that period, any person who participated in the planning process and believed they would be adversely affected by the CDCA Plan amendment had the opportunity to protest the proposed amendment to the Director of the BLM. Seven formal protest letters were filed with BLM. One was withdrawn.

In general, protesters were not in support of the proposed amendment and raised the following issues, among others: the range of alternatives considered; the impact analyses, including cumulative impacts; the need for a Supplemental EIS; the Multiple Use Class-Limited

designation; consistency of the amendment to the CDCA Plan; consistency with other plans; cultural resources; biological resources; the Juan Bautista de Anza National Trail (Anza Trail); and Tribal interests.

All protesting parties received response letters from the BLM Director conveying the Director's decision on the concerns raised in their protests. The responses concluded that BLM followed the applicable laws, regulations, and policies and considered all relevant resource information and public input in developing the CDCA Plan Amendment/FEIS. Therefore, all protests were denied, and no changes were made to the proposed CDCA Plan Amendment decision as a result of the protests. Detailed information on protests may be found on the BLM Washington Office Website at:

[http://www.blm.gov/wo/st/en/prog/planning/protest\\_resolution.html](http://www.blm.gov/wo/st/en/prog/planning/protest_resolution.html)

## **5.5 Summary of Consultation with Other Agencies and Entities**

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

### **5.5.1 Governor's Consistency Review**

The proposed CDCA Plan Amendment was reviewed by the Governor's Office of Planning and Research following the issuance of the Final EIS and the proposed plan amendment, and found to be consistent with State and local plans.

### **5.5.2 United States Fish and Wildlife Service Consultation**

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

### **5.5.3 National Historic Preservation Act and Tribal Consultation**

A key part of a cultural resources analysis under CEQA, NEPA, and Section 106 of the National Historic Preservation Act of 1966 (NHPA) is to determine which of the cultural resources that a proposed or alternative action may affect are important or historically significant. In accordance with 36 CFR Part 800.14(b), the BLM has prepared a Programmatic Agreement (PA) in consultation with the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer (SHPO), the CEC, interested tribes (including Tribal governments as part of government-to-government consultation), and other interested parties. The PA will govern the continued identification and evaluation of historic properties (eligible for the National Register) and historical resources (eligible for the California Register of Historic Places), as well as the resolution of any effects that may result from the IVS project. Historic properties and historical resources are significant prehistoric and historic cultural resources as determined by the BLM. The executed PA is provided in Appendix 3, Programmatic Agreement.

### **5.5.4 National Park Service**

The NPS is a cooperating agency with the BLM on the Final EIS. The NPS is the primary administrator with responsibility over the Anza Trail. The NPS will continue to collaborate with the BLM on the interpretation and management of the Anza Trail in the vicinity of the project site. The NPS and the BLM will collaborate on the implementation of Mitigation Measure REC-1, which requires the applicant to provide funds to interpret the Anza Trail in the project area. In addition, the PA provides measures to verify the presence of any material remains of the Anza Trail on the IVS project site. The PA is provided in Appendix 3.

### **5.5.5 United States Army Corps of Engineers**

The Corps is a cooperating agency with the BLM on the Final EIS. Project-related fill of waters of the United States (waters of the U.S.) would require authorization by the Corps pursuant to Section 404 of the Federal Clean Water Act (CWA) under a Standard Individual Permit subject to CWA Section 404(b)(1) Guidelines. The Corps will require mitigation for project-related fill of waters of the U.S. as indicated in the *404B-1 Alternatives Analysis for the Imperial Valley Solar Project*, provided in Appendix 6, Additional Agency Approvals and Review, of this ROD.

## **5.5.6 State of California Coordination**

### **5.5.6.1 California Energy Commission**

The IVS project will require approvals from the CEC for the power generation aspects of the project. The CEC has the exclusive authority to certify the construction, modification, and operation of electric power plants in California which would generate 50 or more megawatts of electricity. The CEC certification is in lieu of any permit required by state, regional, or local agencies to the extent permitted by Federal law (Public Resources Code [PRC] Section 25500). The CEC must review power plant Applications for Certification (AFCs) to assess potential environmental impacts including potential impacts to public health and safety, and potential measures to mitigate those impacts (PRC Section 25519), and compliance with applicable governmental laws or standards (PRC Section 25523 (d)). The CEC staff analyses regarding the IVS project were prepared in accordance with PRC Section 25500 et seq.; Title 20, California Code of Regulations, Section 1701 et seq.; and CEQA (PRC Section 21000 et seq.).

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

The California Department of Fish and Game (CDFG) provided expertise on the impacts to FTHL habitat and possible impacts to waters of the State. The applicant is responsible for obtaining State permits including a Section 1602 Lake and Streambed Alteration Agreement if required for the IVS project for impacts to jurisdictional state waters.

### **5.5.6.3 California Department of Parks and Recreation**

It is anticipated that the acreage requirement to offset impacts to the Peninsular bighorn sheep will be met through enhancement along Carrizo Creek and marsh areas on lands managed by State Parks.

### **5.5.6.4 Summary of State, Regional, and Local Agencies Consultation**

Table 7-4 in Appendix 7, Tables, summarizes consultation conducted with state, regional, and local agencies.

No consultation regarding the IVS project was conducted with Federal or state agencies other than those listed above and in Table 7-4.



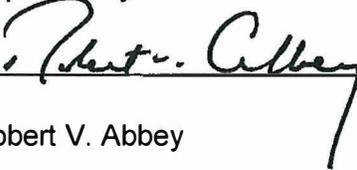
## 6.0 Final Agency Action

### 1 Land Use Plan Amendment

It is the decision of the Bureau of Land Management (BLM) to approve the Proposed Plan Amendment to the California Desert Conservation Area Plan (CDCA Plan, 1980, as amended) to identify the site as available for solar energy. The Proposed Plan Amendment and related Environmental Impact Statement (EIS) was published on July 28, 2010 in the Federal Register. I have responded to and resolved seven protests on the Proposed Plan Amendment and, in accordance with BLM regulations, 43 CFR 1610.5-2, my decision on the protests is the final decision of the Department of the Interior (DOI).

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

Approved by:

  
\_\_\_\_\_

Robert V. Abbey

Director

Bureau of Land Management

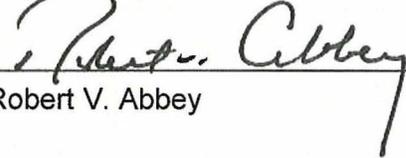
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Date

## 2 Right-of-Way and Route Closure Authorization

It is my decision to approve a solar energy right of-way lease/grant to Imperial Valley Solar, LLC, subject to the terms, conditions, stipulations, Plan of Development, and environmental protection measures developed by the Department of the Interior and reflected in this Record of Decision. It is my further decision to close routes within the solar energy power facility site as described in this Record of Decision and its Final EIS. These decisions are effective on the date this Record of Decision is signed.

Approved by:

  
\_\_\_\_\_  
Robert V. Abbey

OCT 04 2010

\_\_\_\_\_  
Date

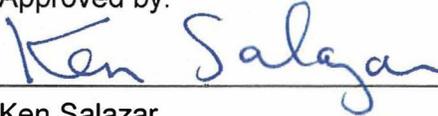
Director

Bureau of Land Management

## 3 Secretarial Approval

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

Approved by:

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

  
\_\_\_\_\_  
Date

Secretary

U.S. Department of the Interior