

Worksheet
Determination of NEPA Adequacy (DNA)
U.S. Department of the Interior
Bureau of Land Management

OFFICE: California Desert District, Needles Field Office

TRACKING NUMBER:

CASEFILE/PROJECT NUMBER: CACA-48668 and 49503

PROPOSED ACTION TITLE/TYPE: Replacement Biological Opinion

LOCATION/LEGAL DESCRIPTION:

1. CACA-48668

T. 17 N., R. 14 E., SBM
sec. 27, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 28, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
sec. 33, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
sec. 34, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.

Acres: 1,030.31

2. CACA-49503

T. 17 N., R.14 E., SBM
sec. 20, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$;
sec. 21, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
sec. 22, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
sec. 27, W $\frac{1}{2}$ NW $\frac{1}{4}$;
sec. 28, N $\frac{1}{2}$, SW $\frac{1}{4}$;
sec. 29, E $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
sec. 33, E $\frac{1}{2}$ W $\frac{1}{2}$.

Acres: 1,218.93

APPLICANT (if any):

Solar Partners I, II, and VIII, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612

A. Description of the Proposed Action and any applicable mitigation measures

On October 7, 2010, the BLM Needles Field Office granted four right-of-way (ROW) grants for construction of the Ivanpah Solar Electric Generating System. Project grants were issued for

Units 1, 2, and 3, and the common Construction Logistics Area (or CLA). The ROW grants were supported by a draft, supplemental, and final Environmental Impact Statement, and a biological opinion (BO) from the FWS. The BO (8-8-10-F-24) was in turn supported by a biological assessment.

Project construction began in fall 2010 in accordance with the project description, the biological assessment, and the BO. Pursuant to issued Notices to Proceed, the ROW holders (collectively referred to herein as Bright Source Energy, or BSE) constructed perimeter and tortoise barrier fences around the initial approved parts of the project site and moved desert tortoises off part of the project work site in accordance with the BO issued in October 2010. As construction of perimeter fences for Unit 3 was underway, clearance surveys indicated a higher than anticipated number of tortoises (the original number was based on preconstruction inventories). Due to the higher than anticipated number of desert tortoises on site, and suggested changes by BSE to the translocation of tortoises, BLM reinitiated consultation with the FWS. At that time, BSE was well within the incidental take limits established by the BO. In April, it became apparent to BLM and the FWS that BSE had become close to and in some categories, just exceeded the number of desert tortoises that could be taken under the terms of the incidental take limit established by the BO. As such, BLM issued an immediate temporary suspension of work pending receipt of a revised BO and incidental take statement. On June 10, 2011 the FWS issued a revised BO (8-8-10-F-24R) for the project which addressed the increased number of desert tortoises on site and changes to translocation of the animals.

With respect to construction, operation, maintenance, and decommissioning of the ISEGS facility, the BLM has not changed the description of the project from the previous consultation with the FWS. The June 2011 BO identifies changes to the translocation strategy: specifically, proposed modifications to desert tortoise handling procedures, installation of desert tortoise fencing and culverts along Colosseum Road and Yates Well Road, modification of the holding period for tortoises <120 mm in size, and different translocation sites one of which requires a temporary tortoise proof fence. All of these changes are designed to reduce impacts to the tortoise and do not result in any changes to the design of the solar facility.

Desert tortoise handling procedure changes: Tortoises found within the boundary of the project site will be held in quarantine pens and health assessments completed. Those tortoises found within 500 meters of the project boundary will be relocated over the fence once they are determined to be healthy. Those located greater than 500 meters from a unit boundary will be translocated in accordance with an approved translocation plan. Juveniles <120 mm will be held for up to five years to allow them to become more resistant to predation. The June 2011 Biological Opinion differs from the October 2010 BO in that it allows for additional handling of tortoises within the project area and within the resident and control populations and a more dispersed translocation zone. The area affected by the translocation plan is the same.

Desert tortoise fencing changes: Under the previous consultation, BSE fenced Colosseum Road to reduce desert tortoise injury and mortality associated with access route use. To further reduce the potential for mortality on other portions of the project access route, BSE would now fence Yates Well Road from Interstate 15 to Colosseum Road with desert tortoise exclusion fencing. The fencing of Yates Well Road would tie into the existing Colosseum Road fencing

and into the Interstate 15 fencing. To reduce habitat and population fragmentation associated with this barrier, BSE would install three culverts under Colosseum Road to allow movement of desert tortoises under the road. (BO pp. 5-6.) The fencing of Yates Well Road and the installation of the three culverts would further reduce desert tortoise injury and mortality associated with use of these routes.

Translocation site changes: Originally, specific areas for initial placement of tortoises had been identified. There was full understanding that from these initial points, tortoises would be free ranging and could therefore occur anywhere within the Valley. The revised translocation plan allows for a more dispersed initial placement with the understanding that free ranging tortoises could occur anywhere within the Valley. The effects of the two methods are substantially the same.

In spring 2011, all tortoises that were located within the approved construction areas and that were required to be quarantined were transported to, and are now held in, quarantine pens. These tortoises will not be translocated or relocated until fall 2011 if conditions are suitable. Therefore the proposed action is substantially the same action and location (or is a part of that action) analyzed in the subject FEIS and Record of Decision. The translocation plan provided by BSE is being modified to meet current terms and conditions contained in the June 2011 BO.

This DNA addresses whether the existing environmental analysis is adequate for the project as approved or whether additional analysis is necessary based upon changes to minimization measures for desert tortoise as delineated in the June 2011 BO. With issuance of a notice to BSE that it may resume activities that were suspended under the temporary suspension order, and the issuance of the final notice to proceed with construction of Units 2, and 3, BSE will be authorized to resume all remaining construction activities in compliance with the stipulations of the ROW grants, the applicant's Plan of Development, and the June 2011 BO.

B. Conformance with the Land Use Plan (LUP) and Consistency with Related Subordinate Implementation Plans

LUP Name: California Desert Conservation Area Plan Date Approved 1980

Other Document: Northern and Eastern Mojave
Desert Management Plan Amendment (NEMO) Date Approved 2002

The proposed action is in conformance with the applicable LUPs because the CDCA Plan was specifically amended to allow the ISEGS project site in the *California Desert Conservation Area Plan Amendment / Final Environmental Impact Statement for Ivanpah Solar Electric Generating System* (FEIS-10-31; July 2010).

C. Identify applicable National Environmental Policy Act (NEPA) documents and other related documents that cover the proposed action.

List by name and date all applicable NEPA documents that cover the proposed action.

- *California Desert Conservation Area Plan Amendment / Final Environmental Impact Statement for Ivanpah Solar Electric Generating System* (FEIS-10-31; July 2010)
- Record of Decision for the Ivanpah Solar Electric Generating System Project and Associated Amendment to the California Desert Conservation Area Plan, October 7, 2010.

List by name and date other documentation relevant to the proposed action (e.g., biological assessment, biological opinion, watershed assessment, allotment evaluation, and monitoring report).

- Revised Biological Assessment for the Ivanpah Solar Electric Generating System (Ivanpah SEGS) Project, dated April 19, 2011.
- Biological Opinion on BrightSource Energy's Ivanpah Solar Generating System Project, San Bernardino County, California – US Fish and Wildlife Service, June 10, 2011.

D. NEPA Adequacy Criteria

1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

Yes. The June 2011 BO does not change the disposition of tortoises found on the Ivanpah Solar Project, it only changes the project's incidental take limits and identifies terms and conditions to further reduce impacts to tortoises. The minimization requirements discussed in the June 2011 BO do not change any elements of the overall ISEGS project.

2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?

Yes. The EIS analyzed an appropriate range of alternatives given the purpose and need for the project. Four alternatives were analyzed in detail including: (1) Proposed Action, (2) No Action, (3) Mitigated Ivanpah 3 Alternative (identified as the Preferred Alternative), and (4) Modified I-15 Alternative. In addition, BLM considered but eliminated from detailed analysis 22 additional alternatives that included seven alternative site locations, five other solar energy production alternatives, five other renewable energy technology alternatives, and four other methods of generating or conserving energy alternatives. BLM also considered but eliminated a phased development approach which was a modification of the proposed action alternative.

No new environmental concerns, interests, resource values, or circumstances have been revealed since the EIS was published in 2010 that would indicate a need for additional alternatives.

3. Is the existing analysis valid in light of any new information or circumstances (such as,

rangeland health standard assessment, recent endangered species listings, updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?

Yes. The EIS's analysis of impacts to the Desert Tortoise does not change substantially due to the new information and changes to the translocation plan or to the increased estimation of desert tortoise numbers in the project area. The March 2009 draft translocation plan was developed using FWS translocation guidelines. In later revisions to the original translocation plan, a translocation zone was identified, vegetation assessments completed, and density surveys conducted. In November 2009, the draft EIS for the project identified relocation and translocation areas to the west and north of the ISEGS project. The BLM concluded that the density of tortoises in the proposed translocation area was low and that moving animals from the ISEGS site to the translocation area would not overburden the resident population. Translocation site habitat quality was discussed and, as a proposed mitigation measure, BSE was required to develop a translocation plan in consultation with the BLM, FWS, California Energy Commission and the California Department of Fish and Game. It was determined that implementation of this mitigation measure, e.g., the development of the translocation plan, would minimize harm to tortoises during relocation and translocation activities associated with construction of the ISEGS project. In the original biological assessment, the BLM included a translocation map to be considered by the FWS in its analysis of biological impact.

The supplemental EIS did not address any change in the translocation strategy. In the July 2010 final EIS, the BLM responded to comments regarding the adequacy of the translocation strategy. In addition, Renewable Energy Action Team (REAT) (BLM, FWS, CDFG, and CEC) Managers released coordinated and revised guidelines for translocation that updated the FWS translocation guidelines with modified disease testing protocols for translocated populations, and identified preferences to move tortoises into habitats that would be protected in the short and long term. The translocation strategy was modified in that healthy tortoises within 500 meters of the north and west boundary of the project would be moved west and north into the translocation area analyzed in the DEIS. No tortoises would be moved east or south because of potential conflicts with future projects in that area. Tortoises more than 500 meters from the project boundary would be moved to a translocation area in the Mojave National Preserve to afford long-term protection. Quarantine programs would be established on-site during the disease testing time frame. The National Park Service did not accept the translocation provision that would place translocated tortoise into the Preserve.

During the time period leading to the issuance of the Record of Decision (October 2010) for the project, the FWS further modified its translocation guidelines (August 2010) to change the disease testing of resident populations prior to allowing translocation. Tortoises would be moved into translocation areas west and north of the project after disease testing was conducted on both resident and translocated populations. Tortoises would be held in quarantine pens on-site in the interim pending the results of the disease tests. A final translocation area map was submitted to the BLM with the final Plan of Development.

In the April 2011, BLM's revised Biological Assessment changed the estimated number of tortoises on-site that would require translocation. The translocation strategy was revised to

clarify the within-home range translocation and outside-of-home range translocation of adults, and to identify a head start program to improve juvenile tortoise survival which recommended holding juvenile tortoises in pens for up to five years prior to release. The translocation area was revised to a two kilometer area surrounding the project excluding the east side. A map was attached to the revised biological assessment that identified the translocation area under consideration in the reinitiation of consultation effort.

Upon this informational backdrop, the FWS has now issued its June 2011 BO that addresses revisions in the translocation strategy based on the increased estimate of tortoise numbers on-site. Impacts to tortoises are expected to be minimized by translocation to areas off-site or to holding pens for the short-term. Although the specifics of the translocation strategy have changed, the act of translocation as a minimization/mitigation measure has remained constant. As such, there have been no changes to the project as approved, merely maturation of mitigation as the project moves forward during construction.

4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

Yes. The EIS already describes impacts to desert ecosystems, desert tortoise, other biological resources, soil and water impacts, and reclamation requirements for the areas addressed in the proposed action. Complete botanical and animal species inventories have been completed for the proposed action areas as well as cultural resources inventories and paleontological inventories. The Drainage Erosion and Sediment control plans and Stormwater management plans respond to all the anticipated impacts of the proposed action. The direct, indirect and cumulative impacts associated with the current proposed action are substantially unchanged from those identified in the FEIS. All mitigation measures developed for each resource in the final EIS and ROD continue to apply to the project. The additional mitigation measures identified in the Biological Assessment, such as the fencing of Yates Well Road and the installation of the three culverts, will further reduce direct, indirect, and cumulative effects to desert tortoise.

5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

Yes. The ISEGS project is within the CDCA Plan amendment which went through extensive public scoping, and public involvement during the development of the EIS. The Draft EIS was prepared jointly with the California Energy Commission. The Commission and BLM conducted multiple joint scoping meetings, public workshops, and coordinated closely with affected Federal and State agencies. The final EIS contains nearly 300 pages of public comments and responses to comments that were made on the Draft and Supplemental Draft EIS's for the project. The ROD also addresses CDCA Plan protests and comments on the final EIS.

Formal consultation as required by Section 7 of the Endangered Species Act was initiated with the US Fish and Wildlife Service (FWS). The FWS issued its first BO on October 1, 2010. Formal consultation was reinitiated on April 25, 2011 with the FWS issuing a revised BO on June 10, 2011.

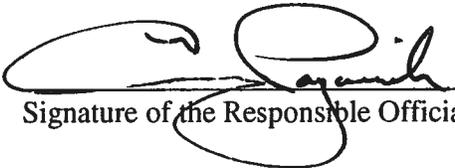
Because the authorized project has not changed, the NEPA analysis for the project remains valid. Even though some on-the-ground information has developed during construction of this project, impacts to the desert tortoise and the means to mitigate those impacts that were identified in the NEPA process are the same as those previously identified. As such, additional public involvement is not necessary.

E. Persons/Agencies/BLM Staff Consulted

<u>Name</u>	<u>Title</u>	<u>Resource/Agency Represented</u>
Tom Hurshman	Project Manager	BLM Land Use Resources
Sandra McGinnis	Planning and Environmental Coordinator	BLM NEPA issues
Larry LaPre	Biologist	BLM Biological Resources
Hanum Abouelezz	Natural Resource Specialist	BLM Biological Resources

Conclusion *(If you found that one or more of these criteria is not met, you will not be able to check this box.)*

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA.



 Signature of the Responsible Official:

06/10/2011
 Date

