

APPENDIX 1

Responses to Comments on the PA/FEIS

The Bureau of Land Management (BLM) prepared the PA/FEIS for the Blythe Solar Power Project (BSPP) in consultation with cooperating agencies, taking into account public comments received during the National Environmental Policy Act (NEPA) process. The PA/FEIS analyzed the proposed CDCA Plan Amendment and project decisions and responded to written comments received during the public review period for the SA/DEIS (see PA/FEIS Section 5.5, *Public Comment Process*). Although not required by FLPMA, NEPA, or any applicable plan, policy or program, because of the uniqueness and unprecedented nature of the project, the BLM voluntarily offered in the Dear Reader letter that accompanied the PA/FEIS to accept public comment on the PA/FEIS for 30 days after the Environmental Protection Agency published the Notice of Availability of the PA/FEIS in the Federal Register, and to respond to all substantive comments in the Record of Decision.

The additional comment period for the BSPP began on August 20, 2010, and closed on September 20, 2010. As summarized in Section A1.1, 16 comment letters were received within the 30-day comment period. Responses are provided on an issue-by-issue basis in Section A1.2. Copies of all comment letters are on file at the United States Bureau of Land Management Palm Springs South Coast Field Office.

A1.1 Comments Received on the Blythe Solar Power Project PA/FEIS

Table A1-1, *Comments on the Blythe Solar Power Project PA/FEIS*, summarizes the commenters, their affiliations, and the dates comments were received. Communications are presented in date order except that, where multiple communications were received from the same person or entity, comments are grouped together as of the date of the first communication.

**TABLE A1-1
COMMENTS ON THE BLYTHE SOLAR POWER PROJECT PA/FEIS**

Comment Letter	Commenter	Affiliation	Date Received
1	Sally Peterson	Individual	September 2, 2010
2	Sally Peterson	Individual	September 3, 2010
3	Jason Neuman, Captain	Riverside County Fire Department	September 4, 2010
4	Matthew J. Sanders	Applicant	September 10, 2010
5	Matthew J. Sanders	Applicant	September 20, 2010
6	Johanna H. Wald et al.	Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, The Wilderness Society	September 10, 2010
7	Brendan Hughes	Individual	September 13, 2010
8	Patricia Pinon and Alfredo A. Figueroa	La Cuna de Aztlan Sacred Sites Protection Circle	September 14, 2010
9	Alfredo A. Figueroa	La Cuna de Aztlan Sacred Sites Protection Circle	September 20, 2010
10	Dave Singleton	Native American Heritage Commission	September 15, 2010
11	Kim Bauer	Individual	September 16, 2010
12	Ileen Anderson and Lisa T. Belenky	Center for Biological Diversity	September 17, 2010
13	Kevin Emmerich and Laura Cunningham	Basin and Range Watch	September 17, 2010
14	John Shamma	The Metropolitan Water District of Southern California	September 19, 2010
15	Kathleen M. Goforth	United States Environmental Protection Agency, Region IX	September 20, 2010
16	Robert Lundahl	Individual	September 20, 2010

The BLM is responding in this Appendix 1 to all substantive written comments submitted on the PA/FEIS. Substantive comments do one or more of the following: (i) Question, with reasonable basis, the accuracy of information in the PA/EIS; (ii) Question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the PA/FEIS; (iii) Present new information relevant to the analysis; (iv) Present reasonable alternatives other than those analyzed in the PA/FEIS; and/or (v) Cause changes or revisions in one or more of the alternatives. Comments that do not do one or more of these things do not require a response under NEPA (BLM NEPA Handbook § 6.9.2.1). Nonetheless, the BLM wishes to acknowledge all of the input received on the proposed action, including comments in favor of or against the proposed action or alternatives that do not provide reasoning that meet the criteria listed above; comments that merely agree or disagree with BLM policy or resource decisions without justification or supporting data that meet the criteria listed above; comments that do not pertain to the project area or the project; and comments that take the form of vague, open-ended questions. With respect to input like this, the BLM’s common response hereby is provided as “noted.”

The remaining comments received on the PA/FEIS relate to fire impacts and response, biological resources, cultural resources, and water resources. Responses to these comments are provided in Section A1.2, *Issue-specific Comments and Responses*.

To the extent that comments are addressed as part of the protest process, no separate response is provided in this Appendix 1; readers instead are referred to the *Director's Protest Resolution Report*. Similarly, to the extent that comments received in connection with the PA/FEIS (including comments by some of the individuals, agencies and organizations identified in Table A1-1) were vetted thoroughly in the PA/FEIS Section 5.5, *Public Comment Process*, the responses are not separately addressed here. See, e.g., PA/FEIS Section 5.5.4.5 concerning purpose and need, PA/FEIS Section 5.5.4.6 concerning the range of alternatives, PA/FEIS Section 5.5.4.3 concerning consistency with FLPMA and NEPA.

A1.2 Issue-specific Comments and Responses

A1.2.1 Fire Impacts and Response

Multiple letters (3, 4, 12, and 13) included comments on fire-related issues. These comments are summarized as follows:

- Solar operations could increase the potential for industrial fires that could spread onto public lands,
- Cumulatively, multiple operations could create additional burdens on local fire fighting organizations, and
- Solar operations could create worker safety issues.

Existing conditions related to worker safety and fire protection and wildland fire are described as part of the affected environment in PA/FEIS Section 3.12, *Public Health and Safety*, and Section 3.22, *Wildland Fire Ecology*. Potential direct, indirect and cumulative impacts on these resource or program areas are analyzed in PA/FEIS Section 4.11, *Impacts on Public Health and Safety*, and Section 4.20, *Impacts on Wildland Fire Ecology*.

Specifically, one comment identified “HTF fires from leaks” as “one of the primary concerns of having the facility so close to a public highway” and recommended development of a plan to reduce related risks. Based on existing information provided by the Applicant, and other information in the record, the BLM has concluded that no such plan is required; however, the Applicant has completed a mutual aid agreement with Riverside County designed to increase county capability to provide appropriate public safety response should an accident occur.

Regarding the cumulative risk of increased demand on emergency response services at the facilities themselves, the FEIS does in fact recognize that cumulative impacts could occur despite the many safeguards implemented to both prevent and control fires, hazardous materials releases, and injuries/accidents, because of the great distances involved in response and expansive sites. Although the chances of two or more solar power plants requiring emergency response simultaneously may be low, a response to one distant site could impede or preclude a simultaneous response to another solar plant,

residential or commercial location, or other location in demand. However, while cumulative impacts theoretically are possible, they are not likely given the 14-stations located within the RCFD's service area and mutual aid agreements with the County of Riverside Fire Department. Emergency response capabilities would be adequate.

Another commenter states that the risk of fire is high given the past history of another similar facility. While previous fires have occurred at other solar thermal facilities, the risk of a fire at the BSPP will be significantly lower, for at least three reasons.

First, Solar Millennium's plant design will include design features that reduce the risk of HTF-related fires. Such features include: (1) larger solar collectors than previous solar thermal facilities, which have fewer ball joints and therefore fewer points at which HTF could leak, and (2) a sufficient number of isolation valves that can be manually, remotely, or automatically activated. The valves would be placed such that a maximum of 1,250 gallons of HTF would leak if all the fluid in the isolated loop should leak out. Should this leak catch fire, it would take only about 15 minutes for the HTF to burn off completely. This second feature is consistent with CEC COC HAZ-4.

Second, the fire that is most frequently cited with respect to fire hazards posed by solar thermal plants is the January 1990 incident at the 80 MW SEGS VIII facility in Harper Lake, California. This incident involved a significant fire in the plant's power block area caused by an explosion of HTF in one of the storage tanks. However, the SEGS VIII facility used HTF storage tanks that were blanketed with natural gas and were not installed or managed properly by the plant operator at the time. Since this 1990 incident, solar thermal plants have switched all components of the HTF system to use nitrogen blankets rather than natural gas blankets. Nitrogen blankets are much safer and more reliable than natural gas blankets, and therefore make the risk of a fire like the 1990 incident at Harper Lake much more remote.

Third, two fire-fighting foam trucks (for suppressing HTF fires) will be onsite and centrally located near the assembly hall. Operations personnel will be trained and qualified in fire-fighting methods and will be the first responders. In addition, when a leak is detected, operations personnel will defocus the mirrors, which will stem or stop the flow of HTF in all but the most severe leak events (i.e., rupture of a collection tube). But, even if the entire 1,250 gallons of HTF in a given loop were to drain and be ignited, it would take about 15 minutes for the fluid to completely burn.

Several comments expressed concerns regarding worker safety: The PA/FEIS at Section 3.12, *Public Health and Safety*, and Section 4.11, *Impacts on Public Health and Safety*, address in detail both specific and incremental worker safety-related impacts. The PA/FEIS does in fact acknowledge the operation of the BSPP would result in a risk level that would remain below thresholds of concern and, therefore, would not cause or contribute to any cumulative effect on worker safety. Regardless of the level of solar development or acreage developed under either of the action alternatives, the utility-scale solar energy development that would result would be subject to the same worker safety requirements as the proposed action and, therefore, also would not result in a risk level that could cause or contribute to any cumulative effect on such safety. Extensive safety planning and training are also required as a result of CEC's COCs.

Cumulative impacts could occur despite the many safeguards implemented to both prevent and control fires, hazardous materials releases, and injuries/accidents, because of the great distances

involved in response and expansive sites. Although the chances of two or more solar power plants requiring emergency response simultaneously may be low, a response to one distant site could impede or preclude a simultaneous response to another solar plant, residential or commercial location, or other location in demand. However, while cumulative impacts theoretically are possible, they are not likely given the 14 stations located within the RCFD's service area and mutual aid agreements. Emergency response capabilities would continue to be adequate and have received the concurrence of Riverside County emergency responders.

Finally, a commenter states, "the FEIS appears be attempting to separate the issue of fire on other BLM lands from fires occurring on site even if those fires originate from the project site." This is incorrect. The BLM acknowledges that any fire resulting from the BSPP would be managed as appropriate under the circumstances, and could require or involve emergency response from BLM personnel, Riverside County Fire Department personnel, or others in accordance with existing mutual aid agreements. The BLM agrees that responsibility for fire management depends on many factors.

A1.2.2 Biological Resources

Multiple letters included comments about biological resources, including bighorn sheep (see, e.g., Letters 6 and 12) and desert tortoise (see, e.g., Letters 6, 7 and 12).

Bighorn Sheep

Several comments were received that expressed concerns related to the loss of big horn sheep habitat as well as connectivity between habitats. Other comments questioned the mitigation that was proposed (i.e., guzzler development) and opposed its development.

Information about impacts on bighorn sheep is contained in the response to comments section of the PA/FEIS (Section 5.5.4.8, *Biological Resources*) as well as in PA/FEIS Section 3.23, *Affected Environment [Wildlife Resources]*, Section 4.23, *Environmental Consequences [Wildlife Resources]*, and Appendix H, *Biological Cumulative Impact Analysis*. Specific comments/concerns stated that habitat connectivity impacts to bighorn sheep are not adequately addressed. BLM disagrees with this assertion. The FEIS does indeed recognize a variety of impacts to desert bighorn in the FEIS at 4.21.2, including that the proposed BSPP would not present a complete barrier to movement between mountain ranges as they still could disperse around the site to the west, north, and south. There would be sufficient open space in the valley floor for wildlife movement to the north of the project area and a corridor would be maintained at the base of the McCoy Mountains to the west of the site. The areas to the west and north of the site, which abut mountain ranges, would be avoided by the BSPP and would have a higher probability of being utilized based on higher quality forage. Cumulative impacts of other projects could eventually make movements much more difficult. Corridors described in the NECO (BLM CDD 2002) identify potential for bighorn sheep movement from the McCoy Mountains northeast to the Little Maria Mountains and west to the Palen Mountains. Further, the BSPP site, due to the width of the valley in which the solar facility would be located, has limited value as a movement corridor.

Some commenters stated that a guzzler, as would be required by BLM-BIO-21, would be insufficient mitigation for the loss of big horn sheep habitat. As provided for in Mitigation for Bighorn Sheep at page 304 of the PA/FEIS, BIO-21, the Applicant was provided two options for

the mitigation of impacts to Bighorn sheep. Option 1 was the creation of a water source and Option 2 was the acquisition of compensatory habitat. The proponent, through negotiations with NGOs, has completed a Settlement Agreement that incorporates Option 2. Specifically, the proponent has agreed to acquire 922 acres of suitable spring foraging habitat (desert dry wash woodland and vegetated swales with intermixed Sonoran creosote bush scrub habitat) to offset the loss of such for the Southern Mojave metapopulation of Nelson's bighorn sheep. Priority acquisition areas would be in eastern Riverside County roughly bounded by I-10, Highway 62, and Highway 177. Given the above, adequate replacement values for bighorn sheep spring forage areas have been obtained.

Desert Tortoise

Numerous comments related concerns regarding direct, indirect and cumulative impacts to Desert tortoise. Specifically, several comments expressed concerns that the PA/FEIS failed to address impacts to critical habitat to Desert tortoise. The PA/FEIS did in fact err in stating that there would be impacts to critical habitat for Desert tortoise. There are no project impacts within Desert tortoise **designated critical** habitat identified for this project. This also is provided for in the errata in order to correct this misstatement.

Another commenter states that PA/FEIS mitigation ratio of 1:1 is insufficient to mitigate for Desert tortoise outside of critical habitat and alleges that the PA/FEIS does not provide for sufficient monitoring and reporting requirements but offers no rationale as to why. Compensatory mitigation ratios are specifically provided for in the CDD and NECO land use plans and were vetted through a public involvement process. These ratios are also approved by the USFWS and the California Department of Fish and Game. Additionally, BLM disagrees that monitoring and reporting programs for this project are insufficient. An extensive Environmental and Construction Compliance Monitoring Program has developed for this project and is located in Appendix 4.

Information about impacts on Desert tortoise is contained in the response to comments section of the PA/FEIS (Section 5.5.4.8, *Biological Resources*) as well as in PA/FEIS Section 3.23, *Affected Environment, Wildlife Resources*, Section 4.23, *Environmental Consequences, Wildlife Resources*, and Appendix H, *Biological Cumulative Impact Analysis*. Mitigation measures relating to Desert tortoise are discussed in Section 2 of this ROD, *Mitigation and Monitoring*; the Mitigation, Monitoring and Enforcement Plan is set forth in Appendix 4 of the ROD. Furthermore, consistent with Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.), the BLM prepared a Biological Assessment for the USFWS for potential effects to Desert tortoise. The USFWS issued a Biological Opinion for the BSPP, which is provided in full in Appendix 2 of this ROD. Failure to comply with the requirements of the Biological Opinion may be cause for suspension or termination of the right-of-way authorization (see, ROD Section 1.4).

A1.2.3 Cultural Resources and Tribal Consultation

Multiple letters (8, 9, 10, 13, and 16) included comments concerning cultural resources and tribal consultation. These comments are summarized as follows:

- Because the project site and vicinity are culturally sensitive, special care is recommended, including the use of Native American Monitors, consultation with specified Native American contacts, provision for the evaluation of accidentally discovered archeological resources or native American human remains and consideration of avoidance upon discovery of significant cultural resources;
- The rights of indigenous peoples would be affected by the project as a result of anticipated impacts of the project on geoglyphs and other sites considered to be sacred;
- Additional tribal representatives, including in Mexico and Arizona, should have been consulted and oral histories should have been accounted for, and input that was received should have been taken into account more fully;
- The additional 30-day comment period should be extended not only to allow additional consultation concerning the sacredness of the proposed solar sites, but also for the conclusion of the National Historic Preservation Act Section 106 process;
- World War II military training features and the integrity of the Halchidhoma Trail, if it runs through the Palo Verde Valley, deserve protection; and
- Brown Act violations have occurred in the context of agency meetings about cultural issues.

Cultural resources were addressed in PA/FEIS Sections 3.4, *Cultural Resources*, 4.4, *Impacts on Cultural Resources*, and 5.5, *Public Comment Process*. See also, Appendix 3 to this ROD, *Programmatic Agreement*.

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies, including the BLM, to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings (36 CFR 800.1). The goal is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties (Id).

Federal agencies have responsibilities under a number of laws that may influence the way they carry out their NHPA Section 106 consultation duties. For example, the BLM has specific responsibilities and authorities to consider, plan for, protect, and enhance historic and cultural properties that may be affected by its actions, including under the NHPA, NEPA, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order 13007, and related authorities. In carrying out its responsibilities, the BLM has developed policies and procedures through its directives system (such as BLM Manual Sections 8100-8160) to help guide the BLM's planning and decision making as it affects these properties, and has assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural

heritage policies consistent with these statutory authorities. The BLM fulfilled its responsibilities and duties under these myriad laws and policies in the context of its NHPA Section 106 process for this project.

Section 800.3(b) of the regulations implementing the NHPA encourages agencies to coordinate their Section 106 responsibilities with NEPA reviews, as 40 CFR 1502.25(a) similarly provides in the context of NEPA. However, compliance with one statute and its implementing regulations does not substitute for compliance with the other without an explicit agreement, such as the execution of a programmatic agreement. Although the regulations do allow Federal agencies to comply with Section 106 through the use of the NEPA process, the BLM has not elected to do so for the BSPP. Instead, as explained in PA/FEIS Section 5.2.2, *Section 106 Compliance*, adverse effects that the BSPP could have on cultural resources will be resolved through compliance with the terms of a programmatic agreement.

As defined in the regulations, “consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process” (36 CFR 800.16(f)). Consultation in the context of a programmatic agreement involves, as appropriate, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), the National Conference of State Historic Preservation Officers (NCSHPOs), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public (36CFR 800.14). “[A]ppropriate government-to-government consultation with affected Indian tribes” is required when an undertaking could affect historic properties of religious and cultural significance to an Indian tribe (36CFR 800.14).

Pursuant to the special relationship between the Federal government and Indian tribes, the BLM is responsible for government-to-government consultation with federally recognized Indian Tribes. For the BSPP, the BLM formally notified and invited Federally recognized tribes including the Morongo Band of Mission Indians, the Cocopah Indian Tribe, the Fort Yuma Quechan Indian Tribe, the San Manuel Band of Mission Indians, the Torres-Martinez Desert Cahuilla Indians, the Fort Mojave Indian Tribe, the Twenty-Nine Palms Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Mission Indians, the Cabazon Band of Mission Indians, the Chemehuevi Indian Tribe, and the Colorado River Indian Tribes (Tribes) to consult on the project and to participate in the Programmatic Agreement as a Concurring Party. Documentation of the BLM’s efforts to consult with these tribes is summarized in Appendix I of the Programmatic Agreement, which is set forth in full in Appendix 3, *Programmatic Agreement*, of this ROD.

As indicated in the Programmatic Agreement, the BLM will continue to consult with the Tribes throughout the implementation of the Programmatic Agreement regarding the adverse effects to historic properties to which they attach religious and cultural significance. BLM will carry out its responsibilities to consult with Tribes that request such consultation with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this Agreement.

Compliance with the procedures established by the approved Programmatic Agreement satisfies the BLM's NHPA Section 106 responsibilities (36CFR 800.14), and the terms and conditions contained in the Programmatic Agreement supersede the mitigation measures identified in the PA/FEIS as BLM-CUL-1 through and including BLM-CUL-9.

Because the NHPA, and not NEPA, governs the Section 106 consultation process for the BSPP, the request to extend the comment period for the PA/FEIS (see Letter 8) is denied. Furthermore, because it is the NHPA and not State law authorities, including the California Environmental Quality Act (CEQA, Cal. Pub. Res. Code § 21000 et seq.) and the Ralph M. Brown Act (Cal. Gov't Code § 54950 et seq.), that governs public participation opportunities during the NHPA Section 106 consultation process, alleged violations of the Brown Act are inapposite to the BLM's NHPA Section 106 process. Accordingly, related allegations about the adequacy of the PA/FEIS are misplaced.

A1.2.4 Water Resources: Surface Water, Groundwater and Water Rights

Multiple letters include comments about water resources, including surface water and groundwater (see, e.g., Letters 4, 12, 14, and 15).

Surface Water: One comment suggests that an adaptive management strategy would be appropriate to minimize the possibility of mitigation failure in the context of drainage planning and potential impacts to downstream habitat (Letter 15). The BLM will be working with the Applicant to reduce project-related impacts on surface waters. Implementation of the recommended mitigation measures, monitoring and compliance strategies will be specifically implemented to ensure that such degradation will not occur. This also will include adaptive management. BLM is committed to ensuring that all downstream impacts are mitigated to the extent practical. In addition, Mitigation Measure Soil&Water-11 specifically requires design features to allow down stream flow in a manner that will mimic existing flows, which will be monitored to ensure that significant changes in erosion, sedimentation or changes in channelization will not occur.

Groundwater: One comment stated that numerous references to mitigation / conditions of approval were confusing. BLM has addressed this to extent possible within the Errata.

Another commenter states that the proponent must apply for and receive an allocation of water from the Colorado River and raises questions the regarding the connectivity of the Palo Verde Mesa Groundwater Basin (PVMGB) to the Colorado River.

Ground water resources are discussed in PA/FEIS Section 3.20, *Water Resources*, and related impacts are analyzed in PA/FEIS Section 4.19, *Impacts on Water Resources*. See, e.g., PA/FEIS p. 4.19-1 ("Th[e] impact to the basin groundwater storage is minor. However, the BSPP's pumping would have an effect on the Colorado River by inducing subsurface flow from the river into the PVMGB."). Pursuant to comments from the applicant and other commentors regarding Colorado River groundwater issues, BLM believes the information received does not contradict

BLM's assessment that waters of the Colorado River are connected to the PVMGB. There are, however, some viable issues pertaining to how Colorado River water may migrate towards the PVMGB based on pumping from this project. Additionally, the only regulatory framework which may address subsurface allocation of Colorado River water based on the "accounting surface" methodology, and a full regulatory process to implement such methodology, has not been completed. BLM has reviewed the regulatory framework regarding the Colorado River and draft rule making that could eventually establish an accounting surface method for the River. It has been determined that no such finalized rule making exists at this time and such an allocation is currently not necessary. Should such rulemaking be finalized in the future, BLM will work with the proponent to ensure that an appropriate allocation is obtained if necessary. Furthermore, BLM will continue to monitor the groundwater in the area, and along with the Energy Commission, monitoring of the basin will be required in accordance with the mitigation measures included in Appendix 4.