

# Organizations

Renewable Energy (Sept. 30, 2011). BLM has not disclosed the result of the coordination process with UWFWS required by IM 2010-156 or that it has conducted the necessary cumulative effects analysis of impacts to golden eagles. Please disclose how BLM intends to comply with this guidance.

The DEIS improperly minimizes its discussion of the likely effects on golden eagles. For example, the DEIS does not provide any information or evidence to support its statement that “[when compared to raptor use data at other wind energy facilities, raptor use at the Proposed Project site was relatively low. Additionally, no golden eagle nests were located within 4 miles of the Proposed Project area. The level of raptor use in the Proposed Project area suggests that raptor mortality is anticipated to be low.” DEIS at 4-36. But at the same time, the DEIS claims that “it is not possible to quantify effects on bats and birds based on pre-project surveys.” *Id.* This is nonsense. BLM has routinely provided quantitative estimates of the likely number of golden eagles, other raptors, and bats that are likely to die as a result of the operation of a wind energy facility. *See, e.g.*, Exhibit 11 (pages from BLM’s North Steens Transmission Final EIS with estimates of likely bird and bat mortality from the associated Echanis generation site). At the referenced Echanis generation site, a 104-MW production project on Steens Mountain in Oregon, BLM was evaluating a project half the size of the Searchlight Wind Project that—similar to Searchlight—had one eagle nest relatively close to the turbine site (2.5 miles at Steens, 4.3 miles at Searchlight) with other potential nests within the 10-mile USFWS survey perimeter. BLM in Oregon was able to perform a calculation predicting annual golden eagle mortality of 1.7 eagles per year, which BLM then translated into take of about 0 to 3 golden eagles per year from the generation facility. *Id.* at 10 (page 3.5-47).

BLM in this DEIS provides no high quality data about likely effects, provides no evidence to support its claims of “low” raptor use in the project area, provides no evidence supporting its claim that “raptor mortality is anticipated to be low” and provides no explanation for how it can reach the previous conclusion when it “is not possible to quantify effects on bats and birds.” In short, BLM’s explanation regarding the likely effect of the project on golden eagles contradicts itself, and is in clear violation of NEPA.

BLM also shamefully ignores the most recent information about the growing awareness that industrial-scale wind energy facilities are killing significant numbers of golden eagles. The DEIS does not mention this at all, and the 2007-2009 Avian Survey says “although golden eagles have been found during mortality searches at wind facilities, most notably at Altamont Pass in California, low mean use and encounter rates are suggestive of low risk of fatality” without providing any information about the prevalence of eagle kills, mortality rates, or the probability of kills at other facilities or explanation comparing this project to others. In fact, the USFWS has documented at least 54 golden eagles killed by wind energy generation projects *outside* of Altamont Pass. Exhibit 12 at 1 (February 2012 American Bird Conservancy (“ABC”) comments on West Butte Wind BGEPA take permit). Please evaluate the information provided in the ABC’s comments (Exhibit 12) regarding the first-ever programmatic golden eagle take permit in considering the potential lethal effects of the Searchlight Wind Project on golden eagles. ABC has also expressed concern about eight golden eagle kills at California’s Pine Tree wind project over the past two years. Exhibit 13.

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BLM included sufficient discussion in the DEIS to inform the public regarding potential impacts to avian species in Section 4.4.5.11- Migratory Birds - Direct and Indirect Effects by Alternative and the strategy that would be employed to mitigate those impacts.

Avian fatalities (for non eagle) were not estimated because pre-construction data poorly predicts fatalities for birds (Ferrer et al. 2012). Appendix B-4: Bird and Bat Conservation Strategy (BBCS) (formerly referred to as the Avian and Bat Protection Plan [ABPP]) has been developed for the proposed project utilizing the recommendations within the USFWS’s March 2012 Land Based Wind Energy Guidelines, which includes a risk assessment and adaptive management measures.

BLM should pay particular attention to the situation at the Pine Tree wind project. BLM was the federal lead agency on the environmental assessment for the Pine Tree project; a copy of the Environmental Assessment/Final Environmental Impact Report for Pine Tree (“Pine Tree FEIR”) is enclosed on the CD-ROM. This project was thought to be “low risk” for golden eagles. See Exhibit 13. The avian surveys at Pine Tree confirmed that golden eagles were observed on the site, but that no golden eagle nest was found on site. Pine Tree FEIR at 2-58. Like the DEIS here, the EA/FEIR downplayed potential harm to golden eagles, nonchalantly stating that the birds “are distributed throughout the Tehachapi Mountains and Southern California. Thus, there is no local population, which by definition would require that the birds be almost completely isolated (for breeding/genetic purposes) from other populations. The loss of a golden eagle would not jeopardize the species or extirpate them from the general or local area.” Pine Tree FEIR at 2-77. The avian report for Pine Tree describes that “raptor and vulture use at Pine Tree was approximately 50% lower than the average use found at other active or proposed developments, approximately 40% lower than the average at Tehachapi WRA, and approximately 90% lower than that observed at Altamont Pass WRA.” Pine Tree FEIR, Fall Avian Report, at 2.

Comment noted.

In all of these respects, including the supposedly lower usage by raptors compared with unspecified “other” projects, BLM’s assessment of likely impacts to golden eagles at Pine Tree mirrors the DEIS’s assessment at Searchlight. Yet eight eagles have died from turbine strikes at Pine Tree in the last two years. Can BLM explain how it got Pine Tree’s assessment so very wrong, and why the same rate of eagle deaths—or at least more than “we don’t know”—will occur at the Searchlight Wind Project?

Comment noted.

The DEIS fails to explain how it will mitigate the loss of a substantial amount of foraging habitat for the golden eagles that currently use the project site, either as a result of this project, or cumulatively as a result of the other energy projects in this region. The fact still remains that significant amounts of foraging habitat will decrease carrying capacity of the landscape and could result in a potential loss of habitat needed to support a nesting pair, which would impact reproductive capacity.

As discussed in the EIS, the Proposed Project would result in the loss of some foraging habitat for the golden eagle; however, the proportion of foraging habitat that would be lost due to the Proposed Project is small compared to the total amount of available foraging habitat within the Piute and Eldorado Valleys.

Contrary to the “impossible to calculate” number of eagles, raptor and other bird deaths forecast in the DEIS, large-scale wind projects have been documented to kill up to 900 birds per year, and up to 350 raptors per year. For example, a two-year survey of the Altamont Pass wind power site in California, which is being aggressively managed to reduce raptor kills, reported over 1,800 bird kills (705 raptors killed, along with 1,095 non-raptors). Exhibit 14 at 1, 15 (excerpts; full study enclosed on CD-ROM). Despite efforts to mitigate harm to birds by, for example, a two-month shutdown during low wind season,

For a variety of reasons Altamont fatality numbers may be an outlier with regard to golden eagle fatalities at wind energy facilities. In addition to the dense configuration of older-generation turbines, high prey densities and lack of breeding eagles possibly attract sub-adults and floaters to the Altamont, contributing to the high activity and high fatality rates. In addition, the limited amount of repowering that has occurred at Altamont suggests that eagle (and raptor) fatality rates will decline as the older turbines are replaced by fewer, taller, and higher power-rated turbines. Initial results of the repowering suggest that golden eagle fatality rates could decline by more than 80% with complete turbine replacement and comparable power output (Insiguria 2009; Smallwood and Karas 2009; ICF 2011).

[t]he results of this study show an apparent continued trend of high bird fatalities, both raptors and non-raptors at APWRA. The number of annual fatalities does not appear to be decreasing despite implementation of specific conservation measures including the cross-over winter shutdown program, high risk turbine removal and blade-painting.

*Id.* at 16; *see also* US Fish & Wildlife Service presentation on “Wind Power and Birds” (on enclosed CD-ROM) (noting that it is impossible to mitigate bird kills under the Migratory Bird Treaty Act).

The DEIS’s evaluation of potential impacts to golden eagles in the cumulative effects section is inadequate. Besides not quantifying potential cumulative effects on golden eagles, the DEIS includes no information on potential cumulative impacts. DEIS at 4-131, even though an actually-acknowledged cumulative impact is a transmission line. *Id.* Transmission lines are known to cause to eagle mortality. There is no discussion of potential cumulative impacts from other wind projects proposed in the same region, despite evidence from Altamont Pass and other wind projects that these industrial facilities kill a significant number of eagles. BLM must disclose actual data showing the number of golden eagles which have been killed by wind generation and transmission projects throughout the West this year and in recent years. Again, this is an example of the cumulative effects analysis failing to quantify and detail likely impacts from cumulative and connected actions in violation of NEPA.

BLM’s (actually Duke’s consultant’s) survey methodology was flawed. The consultant did one helicopter nest survey in April 2011. USFWS survey protocols to detect eagles are being updated, and the agencies are requesting more data to be able to evaluate mortality potential. April is too late in the season to detect eagle territories, USFWS is recommending March helicopter surveys (USFWS Joel Pagels January 7, 2012 workshop with California Energy Commission for Rio Mesa Solar Electric Generating Facility). Golden eagles will return to nest sites some years, then not use the nest in other years. The purpose of such surveys is to see if eagles are in their territories, they do not nest every year but will occupy a territory. A nest may look empty but eagles may still be using the area. Breeding is based on prey availability. A quick snapshot of nests during a brief helicopter flight will not provide enough data. At least two surveys are needed, and one would be lucky to get enough data even then. Surveyors need to be completely qualified.

In addition, non-breeding surveys should be carried out to look for resident adults, “floaters,” and juveniles. How many eagles are present in the Searchlight area? Ground surveys are needed as well, to detect floater individuals waiting to take over a territory. These individuals may even kill an adult to take over its territory. Ground surveys can find the juvenile eagles which are often missed by helicopter surveys. USFWS recommends at least 2–3 years of surveys to detect non-breeding eagles. To detect presence of eagles, “Long Sit” surveys should be done, where observers remain in one spot for 1–4 hours (up to 8 hours) and scan with binoculars for eagles.

Neither the DEIS nor the applicant’s consultant’s avian survey describe the potential effects on bald eagles. However, Bald eagles have a stronghold wintering population and turbines would be constructed within seven miles of their winter habitat. While bald eagles are not recognized for being as nomadic as golden eagles, there is no mention in the DEIS as to what risks there would be to eagles arriving and departing the region for the winter. The last Lake Mead Bald Eagle count turned up more bald eagles than ever. Observers counted 177 and found

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The geographic boundaries of the cumulative impacts analysis identified in the comment are described in the EIS in Section 4.17.5-Potential Cumulative Impacts. The geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making. In many cases, the analysis should use an ecological region boundary that focuses on the natural units that constitute the resources of concern. For the purposes of eagle analyses no other projects were identified within the area of cumulative effect.

The decision as to whether an eagle take permit is requested is between the USFWS and Searchlight Wind Energy, LLC. If these parties determine that an eagle take permit for the project would be applied for; the USFWS would consider the cumulative effects of issuing such a permit.

At the time baseline surveys were completed for the project, Nevada had no official policy or protocols for avian pre-project surveys so protocols were developed between BLM and NDOW. In summary, two years of point count surveys were conducted, two spring seasons of raptor nest surveys, one season of bald eagle winter use surveys, and two aerial surveys of raptor nests.

The data collected in the project area does not reflect the high eagle used that has been recorded at Lake Mead. This is understandable as Lake Mead would be considered an attractant, providing a food source (i.e. fish) for eagle consumption. The proposed project area does not contain such an attractant as reflected by the lower observations of eagles.

a first-ever produced offspring. Bald Eagle Monitoring Final Report 2010-2011 at 1 (available at [http://basinandrangewatch.org/Bald\\_Eagle\\_Monitoring\\_Final\\_Report\\_2010\\_2011-1.pdf](http://basinandrangewatch.org/Bald_Eagle_Monitoring_Final_Report_2010_2011-1.pdf) and enclosed on the CD-ROM). The concentration of bald eagles spotted at the north end of Lake Mohave during the January 11, 2010 eagle count is within approximately six or seven miles of the project site. Bald Eagle Monitoring Final Report 2010-2011 at 7. BLM must disclose and evaluate the potential impact of the project site on bald eagles.

**b. Impacts to other avian species.**

BLM should confer with USFWS and must independently evaluate the statements regarding the impossibility of predicting bird kills by the project and disclose information regarding avian deaths from wind turbines at *all* wind projects that have reported data, and evaluate which sites are more like, or less like, the Searchlight site. Simply dismissing contrary scientific data without analysis violates NEPA. The agencies must also obtain and disclose data and analysis of likely raptor and other bird deaths from collisions with the proposed turbines at the project site.

BLM and USFWS should evaluate the attached comments of Dr. Shawn Smallwood related to the Whistling Ridge Wind project in Skamania County, Washington, a 75 MW project. Exhibit 15. As these comments demonstrate, preconstruction predictions of bird fatalities are often far lower than the actual estimated kills after a wind project begins operations. Exhibit 15 at 1–2. Dr. Smallwood extrapolated from avian kill monitoring at 23 wind sites in Oregon, California and Washington that the average annual fatalities for a project with 75 MW rated capacity would be 33 raptor fatalities, 422 total bird fatalities, and 86 bat fatalities. Exhibit 15 at 16. Again extrapolating this to the 200 MW rated capacity of the project, granting the ROW would result in 88 raptor deaths per year, 1,125 total bird deaths per year, and 229 bat deaths per year.

Dr. Smallwood's studies demonstrate that the potential for raptor, other bird, and bat deaths *can* be quantified and estimated—it *is* "possible," contrary to the assertion in the DEIS. DEIS at 4-35. In fact, BLM has done so at other proposed industrial wind energy development sites. *See, e.g.*, Exhibit 11 (estimating bird deaths at proposed 104 MW wind power generation site in Oregon). And the fact that 57 species EIS at exceeds the estimates provided in the DEIS.

Particularly given the finding that 72.7% of raptors *sighted on the project site itself* flew within the area that would be swept by the turbines' enormous rotor blades, significant kill of birds and bats is likely to occur at the Searchlight project. Even granting that fewer birds might use this site than other wind sites, the DEIS's disclosure and analysis of these effects is inadequate.

BLM should also consider that many of the methodological deficiencies in the Whistling Ridge surveys which Dr. Smallwood describes are present in the avian studies for the Searchlight project. Exhibit 15 at 3-9. BLM must fully disclose the methodology used to estimate likely bird kills in the supplemental DEIS and explain whether it conforms to best science as described in Dr. Smallwood's comments.

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A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution) on birds and the adaptive mitigation measures. The intention is not to predict the number of fatalities due to turbine collision as pre-construction data poorly predicts fatalities for birds (Ferrer et al. 2012), but to determine if any species is at high risk to inform post-construction fatality monitoring.

The DEIS also fails to ensure compliance with the Migratory Bird Treaty Act (“MBTA”). Many of the species that have been identified at the project site are protected under this Act, but the DEIS does not demonstrate that operation of the project will comply with the Act. The MBTA requires that the USFWS enforce the MBTA against “any person, association, partnership, or corporation” that “by any means or in any manner,” pursues, hunts, takes, captures, kills or attempts to take, capture or kill a migratory bird or any part, nest or eggs of any migratory bird. 16 U.S.C. §§ 703, 707. Under the MBTA, a person may take or kill migratory birds only as permitted under USFWS regulations and based on the USFWS’s determination that the take or kill is compatible with the migratory bird treaties. *Id.* §§ 703, 704. The USFWS’s determination must take into account scientific factors such as species abundance and distribution, migratory patterns, and breeding habits, as well as the economic value of birds. *Id.* § 704. The killing of a single migratory bird is sufficient to create criminal liability. *United States v. Corbin Farm Serv.*, 444 F. Supp. 510 (E.D. Cal), *aff’d*, 578 F.2d 259 (9th Cir. 1978). The killing of a migratory bird does not need to be intentional and the killing can occur “by any means or in any manner.” *United States v. Moon Lake Electric Ass’n, Inc.*, 45 F. Supp. 2d 1070, 1075–79 (D. Col. 1999) (upholding the prosecution of a utility for unintentionally electrocuting and killing seventeen birds).

Burrowing owls, a sensitive species, are present at the project site. DEIS at 3-31. The DEIS provides no information quantifying likely impacts (except reiterating how impossible it is to make any predictions), but says that any impacts will be mitigated through a mitigation plan that has not yet been developed. This violates NEPA. The DEIS presents essentially no information whatever about the baseline conditions of burrowing owls in the area or their status as a species. BLM should independently evaluate the site for burrowing owls, using the latest scientific protocol, which is in the California Department of Fish and Game’s March 2012 staff report on burrowing owl mitigation, enclosed on the CD-ROM and available at [www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf](http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf).

In addition, BLM must independently evaluate the potential that pelicans and other waterfowl using the Pacific Flyway and nearby Lake Mohave will be killed by the project’s turbines. Pelicans and other waterfowl have been spotted over the project site by local residents. While this may not be recognized migratory water fowl route, neither the DEIS nor the Tetra Tech biology reports even mention it.

Finally, the avian survey supporting the DEIS is methodologically flawed and are inappropriate and ineffectual for answering the core questions of how many birds use the Searchlight site and what potential impacts to these species will be. For example, the survey efforts appear to only disclose a general presence/absence survey of birds. *See, e.g.*, DEIS at 3-29 to 3-32. It is not clear how this survey’s results will contribute towards critical decision making since the protocols are not designed to convincingly deduce species’ “absence” and therefore remove them from concern. Avian surveys were conducted during the day, or shortly after sunset, when in fact a large portion of avian mortality from industrial wind facilities is inflicted

No permitting framework exists that allows a company to protect itself from liability resulting from take at wind facilities; however, the USFWS does not usually take action under the MBTA if good faith efforts have been made to minimize impacts. Appendix B-4: Bird and Bat Conservation Strategy (BBCS) (formerly referred to as the Avian and Bat Protection Plan [ABPP]) has been developed for the proposed project utilizing the recommendations within the USFWS’s March 2012 Land Based Wind Energy Guidelines including a risk assessment and adaptive management measures.

MM-BIO-6 specifies that Burrowing Owl Mitigation would follow USFWS Guidelines Protecting Burrowing Owls at Construction Sites in Nevada’s Mojave Desert Region, which has been specifically developed for Nevada projects.

During bird surveys, no pelicans or other waterfowl were detected in the project area.

At the time baseline surveys were completed for the project, Nevada had no official policy or protocols for avian pre-project surveys so protocols were developed between BLM and NDOW. Little evidence exists to suggest that the southwest and the area near the Searchlight wind project in the Mojave Desert are areas of high use migrant songbirds. However, migrant songbirds breed in the vicinity and likely travel through the area to reach the breeding grounds. Little data exists that correlate migrant passage rate with mortality at wind farms, but results to date indicate mortality is low (Erickson 2007).

on nocturnally migrating species (NRC 2007).<sup>4</sup> Quantification of the use of the site by nocturnally migrating species requires specialized equipment and surveys not described in the CEP's reports, such as multi-year radar studies. 60% of all flying animal mortality at wind turbine sites are bats, not birds (Baerwald *et al.* 2008).<sup>5</sup> The detection rate of bats also is likely to be underreported because of the lack of nighttime surveys.

### 3. The DEIS does not adequately address impacts to desert bighorn sheep.

Bighorn sheep need large expanses of land to roam for seasonal migrations to and from important winter range. Impediments to movement of these animals, such as an industrial-scale wind energy facility, will likely have negative impacts on big game populations that travel through the project area to reach other necessary areas of habitat. Desert bighorn sheep are present on the project site, and the site contains over 6,000 acres of bighorn sheep habitat of which 416 acres have slopes greater than 60% suitable for escape terrain. DEIS at 3-33. Bighorn sheep numbers in the nearby Newberry and Eldorado mountains have increased in recent years. *Id.* The DEIS recognizes that a Nevada Department of Wildlife management unit overlaps with the project area, and that the project area is part of the movement corridor linking the Newberry and Eldorado mountains. *Id.* The DEIS even recognizes that new structures, roads and human presence are barriers to bighorn sheep movement. *Id.* at 4-37. Then the DEIS dismisses potential impacts in less than half a page, stating without any support that "project effects are anticipated to be minimal" because "the project would only occupy a small portion of the available migratory corridor between these mountain ranges leaving some connectivity." *Id.* Significantly, the DEIS contains no map or other information that would allow the public and the decision maker to evaluate or comment meaningfully on the extent of the impact that the project will have on bighorn movement in the area.

Nowhere does BLM provide information regarding its conclusions that the occupied portion of the corridor is "small," nor what "some connectivity" means, nor how it arrived at the conclusion that blocking connectivity between two groups of sheep and fragmenting their habitat with noisy wind turbines will have "minimal" effect. The DEIS does not satisfy BLM's obligations to disclose and evaluate impacts under NEPA nor BLM's obligations to minimize harm to sensitive species in its own Manual. A supplemental DEIS should re-evaluate the impacts to habitat and the possible impacts to season migration or movement corridors for these species. Significant impacts from energy projects to bighorn sheep movement among occupied areas and to opportunities to recolonize vacant habitat have been recognized at other energy development sites, including in California's Cady Mountains at the Calico Solar Project. *See* Transcript of August 5, 2010 Evidentiary Hearing Before the Cal. Energy Resources

<sup>4</sup>National Research Council, Committee on Environmental Impacts of Wind Energy Projects. 2007. The Environmental Impacts of Wind Energy Projects. National Academies Press, Washington D.C. This is included on the enclosed CD-ROM.

<sup>5</sup>Baerwald, E. F., G. H. D'Amours, B. J. Klugand, R. M. R. Barclay. 2008. Barotrauma is a significant cause of bat fatalities at wind turbines. *Current Biology*, 16:695-696. This document is included on the enclosed CD-ROM.

EIS includes the available information provided by Nevada Department of Wildlife. Additionally, a map of potential habitat based on vegetation and topography was included in the EIS. Appendix B-3: Terrestrial Wildlife Plan has been prepared for the project and includes a risk assessment and mitigation measures for bighorn sheep.

Conservation & Development Comm. at 300–16 (Testimony of Dr. Vernon Bleitch), enclosed on CD-ROM as “2010-08-05\_Transcript – CEC”). The bighorn sheep in the Cady Mountains, like those in the area of the Searchlight project, move among different habitat areas in surrounding mountain ranges in search of forage and water resources. *Id.* at 302, 305. A project site that impedes such movement disrupts the metapopulation in the area and results in fragmentation of bighorn sheep habitat, and will result in serious impacts to bighorn sheep. *Id.* at 307–14. Please evaluate Dr. Bleitch’s testimony and assess how the impacts describe are, or are not, present for the Searchlight site.

The DEIS states that *if* Bighorn sheep are impacted by the operation of the facility, mitigation measures *may* be needed. DEIS at 4-37. But the DEIS already has established that mitigation *is* needed. The Terrestrial Wildlife Plan has not been created yet—this situation should be studied now and the bighorn herd movements researched with a telemetry study before construction blocks or disturbs movement corridors through the area. This information should be disclosed in a supplemental DEIS. What mitigation measures would be enacted in the future? Would the operating turbine facility be moved, or shut down? Again BLM has failed to comply with NEPA by disclosing no information about mitigation or its potential efficacy.

Construction of the Searchlight Wind Project would fragment crucial lower elevation foraging areas for bighorn sheep, as well as fragmenting and blocking the migration routes from the Newberry to the Eldorado mountains. BLM and the applicant have not evaluated how noise from blasting, other construction, and operation of the turbines (described in the section on desert tortoise, above) will affect bighorn sheep movement, nor delineated the area of potential impact. BLM has not identified whether particular areas on or surrounding the project site are of particular importance to bighorn sheep as lambing areas, and therefore has no baseline from which to evaluate the impacts of the project on bighorn sheep movement in this area. Because these data and subsequent analysis are lacking for this sensitive species, the DEIS fails to comply with NEPA.

It is well-documented that human disturbance in bighorn sheep habitat disrupts bighorn sheep and contributes to population decline. *See, e.g.*, Kathryn A. Schoenecker and Paul R. Krausman, Human Disturbance in Bighorn Sheep Habitat (enclosed on CD-ROM); Papouchis *et al.* 2001, Responses of Desert Bighorn Sheep to Increased Human Recreation, *The Journal of Wildlife Management* 65(3): 573-582 (enclosed on CD-ROM). The DEIS does not consider these effects, or the likelihood that installation of an industrial-scale wind energy project with more than eight miles of transmission line will have even greater impacts than a few hikers with dogs. Wildlife impacts from noise, including from wind power projects, are well documented. In addition, several other energy projects are being developed in the region in bighorn sheep habitat; BLM must disclose and evaluate the cumulative impact of these projects on this species.

Migratory big game species like bighorn sheep serve an important stabilizing function in ecosystems, acting as keystone species (Kie & Lehmkuhl, 2001) (on the enclosed CD-ROM). The halting or change in movements can have a destabilizing effect on vegetative communities and species interactions, even on otherwise intact ecological systems such as largely unroaded areas (Kie & Lehmkuhl, 2001). Maintaining secure winter range is necessary for migrating and

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Appendix B-3: Terrestrial Wildlife Plan has been prepared for the project and includes a risk assessment and mitigation measures for bighorn sheep.

The EIS includes the available information provided by Nevada Department of Wildlife. Additionally, a map of potential habitat based on vegetation and topography was included in the EIS.

Potential impacts to bighorn sheep are addressed in Section 4.4.5.14-Game - Direct and Indirect Effects by Alternative. Potential noise impacts to wildlife are addressed in Section 4.4.4-Wildlife. Appendix B-3: Terrestrial Wildlife Plan has been prepared for the project and includes a risk assessment and mitigation measures for bighorn sheep.

The proposed project would permanently remove only 152 acres of wildlife habitat, which is less than 1% of the habitat in the project ROW area (18, 949 acres of BLM-managed land).

resident populations of big game species to thrive in the area. Here, the project would obliterate 503 acres of bighorn sheep winter range.

A big game monitoring study completed by Western Ecosystems Technology Inc. (WEST) at Horizon's Elkhorn Valley Wind Project in northeastern Oregon (a 100.65 MW project) evaluated the impacts of wind energy on big game (Jeffery et al., *Elkhorn Valley Wind Project, Union County, Oregon, Big Game Monitoring Study Report*, January 2010 (on the enclosed CD-ROM)). In a letter to the project manager for the proposed Antelope Ridge Wind Project (300 MW) near the Elkhorn project, the Oregon Department of Fish & Wildlife said that the statistics in the WEST study indicated that, "elk and deer were located further from wind turbines and associated activities in winter 2008 and 2009 compared to the baseline of 2004 and 2005 prior to initiation of construction." See Exhibit 16, ODFW letter to Valerie Franklin, Project Manager, Antelope Ridge Wind Farm, May 31, 2010. Please use this information regarding effects of industrial-scale wind energy on big game species to assess the potential impacts to bighorn sheep from the Searchlight Wind Project. This should include more study into the use of big game in the area by conducting flight surveys.

The DEIS provides no support or evidence for any of its conclusory statements about the likelihood of effects of the project on bighorn sheep. For example, the DEIS states that impacts would be "minimal." DEIS at 4-37. This statement is unsupported by any study, and contrasts with evidence (such as the study at the Elkhorn Valley Wind Project, above) that big game do avoid transmission lines and turbines and therefore will be driven and impeded from their current habitat in the Searchlight Hills and surrounding mountains by the proposed project.

#### **4. The DEIS does not adequately address impacts to bats and other sensitive species.**

##### Bats

The DEIS did not adequately describe the treats to bats from the project. Once again, without any scientific or evidentiary basis, BLM provides only a general statement of possible effects, a note that mitigation (in the form of the ABPP) will be developed at some future point, and states that the number of bats that could be injured or killed "cannot be estimated." DEIS at 4-34. But BLM *has* estimated likely bat fatalities at the Echanis wind energy generation site in Oregon, estimating that "the 40 to 69 turbines at the Echanis Project site would cause from 28 to 235 bat deaths per year." Exhibit 11 at 1-2 (pages 3.5-22 to 3.5-23). The same number of species of bats (14) was identified in the Echanis project area as are present at Searchlight. DEIS at 3-28. A similar number of these species are BLM sensitive species. What is so deficient about the BLM in Nevada that it cannot provide an estimate for bat deaths at a 200 MW wind project when its counterpart in Oregon has no difficulty doing so for a 104 MW generation site? What is so deficient in the operation of BLM's Southern Nevada District that it cannot provide an estimate for bat deaths from the Searchlight Wind Project when BLM's Ely District had no difficulty estimating that 192 bats per year would be killed by the Spring Valley Wind Project? Exhibit 17. Please explain whether there any reason that the Southern Nevada District is not capable of conducting and disclosing high quality information about likely effects to bats?

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In accordance with 40 CFR 1502.2 Environmental Impact Statements shall be analytic rather than encyclopedic. Potential impacts to bighorn sheep are addressed in Section 4.4.5.14-Game - Direct and Indirect Effects by Alternative., and identify that the proposed project may cause bighorn sheep to avoid the area. Appendix B-3: Terrestrial Wildlife Plan has been prepared for the project and includes a risk assessment and mitigation measures for bighorn sheep.

A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution, barotrauma) on bats.

The wide estimation range presented in the citation (28-235 bat deaths per year) exemplifies the difficulty in predicting mortality and providing meaningful information to decision-makers.

The DEIS does not comply with NEPA or BLM's obligations to minimize harm to sensitive species. The DEIS dramatically understates the potential harm to bats, including sensitive species bats, from the project. Bats are prone to many of the same threats as avian species. There are significant and growing concerns about impacts of wind turbines on bats. Bats have low reproduction rates and high mortality rates from collisions with turbines or transmission lines could result population declines.<sup>6</sup>

Studies have documented that some wind facilities kill thousands of bats each year.<sup>7</sup> However, research on bat mortality is limited and concerns about bats grew as researchers began to discover high numbers of bats during avian mortality surveys for birds by wind energy facilities. The level of bat mortality now occurring at existing wind installations around the country raises questions about the long-term population viability of those bat species most vulnerable to wind turbines, to the point that some bat scientists and advocates are considering whether they warrant listing under the federal Endangered Species Act. The prospect of significant population declines, even extirpation, for several or most species of bats, is possible. These long-lived animals, with low reproductive rates, are notoriously vulnerable to mortality setbacks. Bat populations are already under stress from a variety of threats, including habitat loss, pollution, and possibly climate change.

The bat species at highest risk from wind energy development are long-distance latitudinal migrants, which may be present during the fall migration season when bat kills at wind facilities typically peak.<sup>8</sup> The studies done for these sites fall short and more research is needed to understand the amount of migrants going through the area around the Echanis, East Ridge, and West Ridge sites. With the increasing number of wind facilities, wind turbine heights have also increased. Recent research indicates that taller turbines pose a greater threat to bats than shorter turbines.<sup>9</sup> The wind turbines preliminarily planned for the generation sites are over 400 feet high, from base to rotor tip, presenting an unusually high risk for bat mortality. Recent research has revealed that at least some bats killed at wind facilities are dying not because of collisions with turbine towers or blades, but because of sudden drops in barometric pressure. In other words, as bats approach moving turbine blades, they experience something like a sudden and severe case of the "bends."<sup>10</sup> This causes their lungs to essentially explode.

<sup>6</sup> <http://www.batsandwind.org/pdf/Wind%20Energy%20Development%20and%20Wildlife%20Conservation.pdf> (Kuylesky et al. 2007) (on enclosed CD-ROM).

<sup>7</sup> <http://www.fort.usgs.gov/BatsWindmills> (USGS, 2010) (on enclosed CD-ROM).

<sup>8</sup> <http://www.fort.usgs.gov/Products/Publications/22170/22170.pdf> (Cryan, 2008) (on enclosed CD-ROM).

<sup>9</sup> *See id.*

<sup>10</sup> [http://www.newscientist.com/article/dn14593-wind-turbines-make-bat-lungs-explode.html?feedId=online-news\\_rss20](http://www.newscientist.com/article/dn14593-wind-turbines-make-bat-lungs-explode.html?feedId=online-news_rss20) (Brahic, 2008) (on enclosed CD-ROM).

Potential impacts to bats are discussed in Section 4.4.5.8-Bats - Direct and Indirect Effects by Alternative. A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution) on bats and the adaptive mitigation measures.

Comment noted.

Although the DEIS mentions barotrauma, it makes no effort to analyze the scope of this problem at the Searchlight site. DEIS at 4-34. Obviously, these concerns regarding drops in barometric pressure near turbines extend to other avian species that might come near the turbines. Stipulations for operation of the turbines need to take into account the latest science on how bats are being killed, and adjust operations accordingly. Turbines may need to be shutdown during times of the year and on nights when conditions are most conducive to bat mortality. Stipulations of this nature can be a condition of the generation project ROW and the DEIS should evaluate certain conditions in a DEIS supplement.

Bat scientists now hypothesize that the bat species dying at the highest rates at wind energy facilities are, in fact, attracted to the turbines. *See* Exhibit 18. Pre-siting studies are necessary to evaluate where bats are present on the site, and a proper evaluation of the impacts would disclose potential mitigation measures. It would be desirable for a permitting agency to set a limit on bat deaths, and require swift adaptive actions, including shutdown of the facility—temporary or permanent—if fatality thresholds are exceeded. Similar provisions should be included for other wildlife species. Seasonal shut down of wind turbines, particularly during the late summer/fall migratory period, is currently being examined as one way of reducing bat mortalities at other locations.<sup>11</sup> Obviously, while these techniques may enable a wind facility to operate with minimal threat to bats throughout the rest of the year, wind developers will be concerned about the economic impact of temporary shutdown, and may resist this strategy to reduce bat deaths. However, evaluation of these mitigation techniques, after adequate information has been obtained regarding bats at these sites and site-specific impacts, should be undertaken as part of a supplemental DEIS.

#### Gila Monster and Chuckwalla

Both Gila monsters and chuckwallas are BLM Sensitive Species in Nevada and the management direction from BLM Manual 6840.2 applies as previously described. The Gila monster is also protected under Nevada law. The limited survey of the site, which covered only a fraction of the project area, detected no Gila monster, but it is clear that “the preferred habitat of the banded Gila monster exists within the survey corridor and the exterior belt transects.” Terrestrial Wildlife Survey Spring 2011 at 6; *see* DEIS at 3-27. Recognizing the presence of Gila monster habitat, the survey noted that “[t]he Gila monster is rarely observed relative to other species, and given the difficulty of detection (NDOW 2007), though likely rare, absence cannot be concluded.” Terrestrial Wildlife Survey Spring 2006 at 6.

Mitigation measure “Bio-04” for Gila monsters and chuckwallas proposes capture and relocation as the mitigation strategy if the lizard is encountered. DEIS at 2-44. Relocation of banded Gila monster has been shown to be an ineffective strategy.<sup>12</sup> Similar to desert tortoises, the Gila monsters try to return to their original sites despite relocation distances. Effective

<sup>11</sup> <http://www.batsandwind.org/main.asp?page=research&sub=operational> (BWEC, 2008) (on enclosed CD-ROM).

<sup>12</sup> Sullivan, B.K., M.A. Kwiatkowski, G.W. Schuett 2004. Translocation of Urban Gila Monsters: a Problematic Conservation Tool. *Biological Conservation* 117L: 235-242.

A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution, barotrauma) on bats.

Handling and relocation measures for Gila monsters would be in compliance with NDOW guidance as stated in MM-BIO-4. More specific mitigation measures have been developed in the Terrestrial Mitigation and Monitoring Plan (Appendix B-3: Terrestrial Wildlife Plan).

mitigation for these species needs to include strategies that will minimize mortality. In addition, BLM does not evaluate the potential effects of blasting that will be necessary during construction, but rather only discusses “grading” impacts. DEIS at 4-33. How will the noise and shock effects of blasting affect these sensitive species?

The DEIS admits that Gila monsters are difficult to survey for and provides very little other information about mitigation and avoidance of the species. DEIS at 3-27. This is not adequate to satisfy NEPA. The BLM's statements regarding potential that Gila monster and chuckwalla “could be crushed, injured or killed during construction” and that “increased traffic during operation and maintenance could increase the potential for reptile/vehicle collisions to cause Gila monster and chuckwalla injury or death” (DEIS at xv, *see also id.* at 4-33) are precisely the type of “[g]eneral statements about possible effects and some risk” that the Ninth Circuit has rejected as legally insufficient in the absence of an explanation as to why more definitive information was unavailable. *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 993 (9th Cir.2004) (internal quotation marks omitted); *see id.* at 994 (rejecting as insufficient statements that a particular environmental factor was “unchanged,” “improved,” or “degraded” and whether the change was “major” or “minor”).

Because of the lack of comprehensive surveys, the DEIS failed to adequately analyze the impacts that the proposed project would have on Gila monsters and chuckwallas including direct, indirect and cumulative impacts to these species and failed to adequately identify and evaluate potential alternatives that would avoid or minimize the impacts of the project on these species.

#### **B. The discussion of mitigation measures throughout the DEIS is inadequate.**

An EIS must do more than provide a perfunctory description of possible mitigation measures. *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000). An EIS is not complete unless it contains “a reasonably complete discussion of possible mitigation measures.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989). That requirement is implicit in NEPA’s demand that an EIS must discuss “any adverse environmental effects which cannot be avoided should the proposal be implemented.” *Id.* at 351-52, 109 S.Ct. 1835 (quoting NEPA, 42 U.S.C. § 4332(C)(ii)); *see also* 40 C.F.R. § 1502.16(h) (stating that an EIS must contain “[m]eans to mitigate adverse environmental impacts”). An agency must take a “hard look” at potential mitigating measures; a perfunctory description, or a mere listing, of mitigating measures, without supporting analytical data, violates NEPA. *Okanogan Highlands Alliance*, 236 F.3d at 473.

NEPA regulations require that the BLM discuss possible mitigation measures as a means to “mitigate adverse environmental impacts.” 40 C.F.R. § 1502.16(h). An adequate discussion of mitigation measures requires the agency to analyze the effectiveness of the proposed mitigation. *S. Fork Band*, 588 F.3d at 727. This allows the public, the decisionmaker, and any reviewing court to determine “whether they constitute an adequate buffer against the negative impacts that may result from the authorized activity.” *Nat’l Parks & Conservation Ass’n*, 241 F.3d at 734. To comply with NEPA, mitigation measures proposed in an EIS “must be developed to a reasonable

Although Gila monsters are difficult to detect, during pre-project tortoise and chuckwalla surveys, biologists looked specifically for Gila monster and sign. Although no animals or sign were detected, the DEIS states that Gila monster habitat is present; therefore, the animals may reside in the project area. Preconstruction surveys as described under APM-13 Environmental Clearance would help to locate Gila monsters immediately prior to construction activities and animals would be removed per NDOW protocol as stated in MM-BIO-4.

Currently, no official protocols for Gila monster surveys exist. However, during pre-project tortoise and chuckwalla surveys, biologists looked specifically for Gila monster and sign. Although no animals or sign were detected, the DEIS states that Gila monster habitat is present; therefore, the animals may reside in the project area.

A discussion of all mitigation measures is included in the EIS. BLM requires that mitigation measures are implemented as a stipulation of the ROD and/or ROW Grant. Development of mitigation plans often requires input, review, and approval by other regulating agencies such as USFWS, NDEP, DAQ, and NDOT. As such these plans are not typically completed prior to a Final EIS. However, all the elements and basic requirements of the mitigation plans are discussed throughout the EIS. Additionally, a number of mitigation plans have been completed and are included as follows Appendix B-1: Weed Management Plan, Appendix B-2: USFWS Biological Opinion, Appendix B-3: Terrestrial Wildlife Plan, and Appendix B-4: Bird and Bat Conservation Strategy.

degree. A perfunctory description, or ‘mere listing’ of mitigation measures, without supporting analytical data” is insufficient. *Id.* (quoting *Idaho Sporting Cong.*, 137 F.3d at 1151).

The DEIS does not comply with the basic requirement under NEPA that include supporting analytical data that explains how mitigation might actually prevent harmful effects. Rather, it simply lists possible mitigation measures, but provides no details or analysis of how, or whether, the measures would actually mitigate the likely adverse impacts described. Part of this stems from the failures documented above to disclose accurate, quantified and detailed information about likely impacts. But mostly this is a failure to make the analytical connection required under NEPA.

The principle deficiency in the DEIS’s discussion of mitigation is that none of the proposed “mitigation” plans have been completed. BLM must prepare a supplemental DEIS once the plans are completed. For example, the Emergency Response Plan, Waste Management Plan, Weed Control Plan, Facility Decommissioning Plan, Wildlife Mitigation and Monitoring Plan, such as for Gila Monster, Terrestrial Wildlife Plan for Bighorn sheep, Traffic Management Plan, Hazardous Materials Handling Management Program, Cactus and Yucca Salvage Plan, Stormwater Pollution Prevention Plan, and the Spill Prevention, Control, and Countermeasures Plan should be completed, and released for public review, as part of the supplemental EIS to allow the public to participate meaningfully in the decision making process—not deferred until after project approval. There also is no meaningful way for the Secretary or BLM to make a non-arbitrary decision about whether to approve the ROW applications unless the agency’s decisionmakers have the accurate information in hand about what mitigation is actually being proposed, and also have (consistent with NEPA) the public’s views on the subject.

For example, the discussion of mitigation in the section on wildlife describes a future “Wildlife Mitigation and Monitoring Plan” and a “Terrestrial Wildlife Plan.” DEIS at 2-44 to 2-45; 4-33; 4-37. These “Plans” do not describe what mechanisms would be used or what the practical consequences would be for preventing or minimizing damage to habitat. There is no explanation how or whether these “Plans” to be developed at some future point actually would be effective in mitigating adverse environmental effects. The entire suite of mitigation described at 2-43 to 2-45 related to wildlife requires additional description and scientific citation and justification. Any plans to “mitigate” the acknowledge adverse effects on wildlife must be fully outlined with dates, actions, and rationale that can justify the actions. There should be a full description of where off-site mitigation will occur and a full description of on-site mitigation measures that will be adopted for the project site. What exists is not a reasonable discussion of “mitigation” as required by NEPA.

Similar deficiencies in descriptions of mitigation occur in the sections involving other impacts (*e.g.* DEIS at 2-34, referencing best management practices (“BMPs”) and design features) but—largely because most of the plans are not yet developed—not explaining how they would mitigate the negative effects described in the DEIS. *See* DEIS at 2-35 to 2-50 and all discussion of “mitigation” at 4-10 to 4-122. None of these descriptions of the plans, nor the later sections in the DEIS that discuss mitigation, provide any detail nor explain how the mitigation measures will work or whether they will be effective. None of the mitigation measures described

Sections of the EIS have been updated to explain how mitigation measures would reduce impacts.

BLM requires that mitigation measures would be implemented as a stipulation the ROW Grant. Development of mitigation plans often requires input, review, and approval by other regulating agencies such as USFWS, NDEP, DAQ, and NDOT. As such these plans are not typically completed prior to a Final EIS. However, all the elements and basic requirements of the mitigation plans are discussed throughout the EIS.

The Weed Management Plan was included in the DEIS (Appendix B-1: Weed Management Plan). The EIS has been updated to include the following completed mitigation: Appendix B-2: USFWS Biological Opinion, Appendix B-3: Terrestrial Wildlife Plan and Appendix B-4: Bird and Bat Conservation Strategy

in the DEIS involve a “hard look” that includes analysis of their likely effectiveness, but rather are impermissible listings and perfunctory descriptions of possible mitigation measures.

Please evaluate the following specific comments related to mitigation measures as you develop a more detailed disclosure and evaluation of the mitigation measures and their likely effectiveness:

DEIS at 2-37: How wide is the area to be graded prior to trenching? Will yucca, cholla, and Joshua trees be removed and placed in a nursery for transplanting, or is it true that, as stated, “Organic matter will be mulched”? These plants are hundreds of years old. How can the BLM issue a ROD condoning this amount of destruction of pristine desert.

DEIS at 2-39: What is the status project approval by the FAA? Safety at this air field should not be compromised by the turbines. In addition, plans exist to build homes and businesses around the airport. The necessary infrastructure has been installed. If and when the economy turns around, this project would be viable. However, if the wind turbines are built, the airport project will never be built.

DEIS at 2-40: This states the O&M Building and associated septic system would require a wellhead protection plan. Will there be a well at the O&M Building in the future? Are there private wells nearby that could be compromised by the septic system?

DEIS at 2-43: The DEIS states “Desert tortoise fencing would be installed around Western’s proposed switching station.” Will the roads and turbine pads also have tortoise fencing? The high number of tortoises counted in the area would indicate that ALL areas of construction should be fenced.

DEIS at 2-44: Sixteen varieties of bats frequent and live in the area. How will their roosts in mine shafts and natural caves be monitored during blasting and construction to ensure that no disturbance is taking place?

DEIS at 2-46: The DEIS states “To further reduce effects to the US-95/ Cottonwood Cove Road intersection, the Plan will identify an alternate access route to the Proposed Project site during peak construction if possible.” We suggest the “planners” look at a map of the town of Searchlight. The only “alternate routes” would be through residential areas with roads even narrower than the 24-foot wide Cottonwood Cove Road. These narrow side streets also have 90 degree turns that would not accommodate construction traffic.

Utility poles are also immediately adjacent to the Cottonwood Cove Road. Will the developer move these poles to ensure no disruption of service to the people who live there? There are narrow walking paths immediately adjacent to Cottonwood Cove Road in Searchlight, which locals use to walk to the library and park, and children use to walk to the elementary school. Construction and traffic of the magnitude planned has the potential to create daily life-threatening situations for the people who live in Searchlight and are simply trying to go about their lives.

Under MM-BIO-2 a Cactus and Yucca Salvage Plan would be developed. Text in Section 4.4-Biological Resources Impacts in the EIS has been updated to reflect the elements of this plan.

Status of FAA approval is pending. Input from Searchlight Airport Facilities Manager was received during scoping and was taken into consideration in developing the proposed project.

A wellhead protection plan is a State of Nevada standard for all septic systems. A well is not part of the proposed project. No private wells are anticipated to be effected.

The fencing proposed around the switching station would be permanent. Permanent fencing around roads and turbine pads has not been proposed because this would fragment tortoise habitat and result in unnecessary disturbance.

Monitoring of bat roosts would occur in compliance with the Bird and Bat Conservation Strategy (Appendix B-4: Bird and Bat Conservation Strategy).

Text regarding alternate route has been removed from the document.

There are no plans to move any existing utility poles. Refer to MM-TRAN-1 for a description of elements that would include in the Traffic Management Plan that would be prepared to address effects on local traffic (Table 2.6-2. Mitigation Measures and Section 4.7-Transportation Impacts). A Traffic Management Plan would be a stipulation of the ROW Grant.

“Providing alternate transportation routes should temporary road closures be required.” Again, it is theoretically possible that people attempting to tow their boats to Cottonwood Cove could be routed through the residential areas, but once you get to the area at the Community Center, THERE IS BUT ONE ROAD THAT GOES 14 MILES EAST TO COTTONWOOD COVE. There is simply no other way to get there. Do BLM and Duke propose to build new roads to route traffic through the existing ACEC and/or nearby wilderness areas? How will they deal with the boaters arriving to gridlock, having towed their boats for hundreds of miles to recreate on Lake Mohave?

DEIS at 2-46: The DEIS does not disclose that Cottonwood Cove Road is in poor condition already. If it is repaired to “preconstruction condition”, nothing is gained. What guarantee is there that Searchlight, Clark County and the State of Nevada won’t be left holding the bag for massive road repair costs? The weight of vehicles necessary to transport turbines and tower components and the cranes to erect the turbines are likely to cause serious damage to this rural road. Exhibit 8.

DEIS at 2-46: The proposed mitigation of visual impacts is not clearly defined. There simply is no way for the public to know whether BLM actually will “select BLM approved Flat Tone Colors for All Structures” and actually paint the turbines a “BLM-approved Standard Environmental Color intended to blend with the surrounding environment.” The DEIS presents conflicting information that “[a]ny color other than white will need to be approved by the FAA. If a color is not easily distinguishable for pilots, daytime strobe lights will be needed, thus negating the mitigation.” So, in fact, there will be *no* mitigation for visual impacts: either the color will be white (negating BLM’s claim that the color will “blend” with the environment) *or* the turbines will carry daytime strobe lights. BLM has an obligation to provide the information to the public *now* about what the turbines actually will look like, and what FAA will, or will not, approve.

More obviously and fundamentally, there is no way to disguise 87 428-foot tall structures in pristine desert.

DEIS at 2-47: According to the DEIS, construction noise can be mitigated, with the exception of the blasting that will be necessary in the granitic bedrock, for which there is no discussion of mitigation. Yet blasting is certain to occur: how do BLM and Duke propose to mitigate the noise and effects from blasting? How does applicant propose to “mitigate” the noise of the operating turbines?

DEIS at 2-48. The DEIS makes a patently false and uninformed statement that “[n]o adverse effects on socioeconomics condition are anticipated; therefore, no mitigation measures are proposed.” It is difficult to believe that BLM would make such a false statement. Property values will plummet even further than they already have; residents will move away; tourism will dwindle; local businesses dependent on tourism will fail; and the small town of Searchlight will never be able to expand beyond its present size. No one will develop anything other than more wind turbines, or possibly a hazardous waste dump, close to wind turbines that stand 430 feet tall, create 24-hour per day noise, despoil the viewshed, and have flashing lights day and night.

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Text regarding alternate routes has been removed from the document.

In Section 4.7-Transportation Impacts, the BLM disclosed that streets could receive wear from equipment and deliveries and has required a mitigation measure to address the effect. Refer to MM TRAN-2: Repair Damaged Streets for a description of the mitigation measure (Table 2.6-2. Mitigation Measures and Section 4.7-Transportation Impacts).

Visual Mitigation measures are discussed in Section 4.9-Visual Resources Impacts. Visual simulations depict the turbines as white, which would be the “worst-case scenario,” if the FAA would not allow an alternate color.

Refer to MM-NOI-1, which updated to include that blasting will be limited to 8am to 5pm weekdays only (Table 2.6-2. Mitigation Measures and Section 4.10-Noise Impacts). Areas will be quarantined prior to blast activity. MM-NOI—3 has been updated to include that an audible warning system will be used notifying public of pending blasting activities.

Commenter’s assertion is speculative and not supported by literature. Section 4.12-Socioeconomic Impacts has been updated to include potential effects on recreation and tourism. For further information see the newly added Appendix F: Literature Review of Socioeconomic Effects of Wind Projects and Transmission Lines..

In addition, the project map prepared by VTN dated 11-10-2009 neglects to show a number of private holdings located at the northwest part of the project. A copy of this high-resolution map is included on the CD-ROM ("Figure 1 Duke SWEP Project Area - LARGE MAP"), and should be incorporated into the DEIS to show the topography and more accurate information about the project site and surrounding areas. There are approximately six different landowners there, and at least six occupied residences. Why are these not shown on the project drawings?

**C. The DEIS fails to disclose and evaluate adequately the likely impacts of the project on visual and scenic resources.**

The DEIS's disclosure of the project's impacts to visual resources is misleading, deceptive, and incomplete. The scenic resources of Southern Nevada that would be affected by the proposed industrial-scale generation site and transmission lines are of national significance. This project would be built adjacent to outstanding conservation areas and the impact to visual resources will degrade the visitor experience. The project would be placed next to the Lake Mead NRA, the Piute-EI Dorado Valley ACEC, the Wee Thump Wilderness Area, the McCullough Mountains Wilderness Area. The project will be highly visible from Spirit Mountain, sacred to many Colorado River Tribes. The project will also be highly visible from several regions in the Mojave National Preserve, California. Areas that will be impacted are the Castle Mountains, the Castle Peaks, the New York Mountains and the Piute Range. The DEIS hardly mentions the breadth of these visual impacts.

This warrants the utmost care in consulting with expert agencies to ensure that the decision-making agencies have impartial and objective analysis of the likely impacts to the environment. BLM in the DEIS has provided no independent input regarding the affected visual resources, relying instead on a study apparently prepared entirely by the applicant's consultant, NewFields Environmental Planning and Compliance. *See* DEIS at 5-5 (listing Anne DuBarton, who prepared the visual simulations in Appendix E, as part of the "NewFields team.").

Also, the DEIS contains no evaluation of whether the visual impacts of the project are compatible with BLM's minimization obligations under FLPMA and the Wilderness Act. The Wilderness Act requires that wilderness areas "shall be administered ... in such a manner as to leave them unimpaired for future use and enjoyment as wilderness ... [and] the preservation of their wilderness character." 16 U.S.C. § 1311(a). The Act also requires that "each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area..." *Id.* § 1133(b). BLM, as the administering agency of the six Wilderness Areas from which the Searchlight Wind Project will be visible, has the obligation to prevent visual impacts to these areas. *See, e.g., Sierra Club Northstar Chapter v. Kimbell*, 2008 WL 4287424 (D. Minn. 2008) ("actions occurring on adjacent non-wilderness lands that have an impact on designated wilderness are regulated by the Wilderness Act"); DEIS at 3-51. BLM cannot allow projects on public lands adjoining a Wilderness to become so intense, incompatible, or intrusive that a designated Wilderness Area is degraded or is no longer a wilderness. An agency action that degrades the wilderness character of a designated Wilderness Area—

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The VTN map dated 11-10-09 is not part of the EIS. The Figures in the EIS include the private parcels in the northwestern portion of the project area and effects to those parcels have been analyzed in appropriate sections of the EIS figures and analysis. Figure 2.1-1. 96 WTG Layout Alternative and Figure 2.1-2. 87 WTG Layout Alternative have been revised to reflect area topography.

Key observation points were identified during project scoping and provide a range of representative views in the project area.

NewFields is an independent third party contractor supporting the BLM with preparation of this NEPA document, as is Truescape, the firm that developed the visual simulations. These firms have no financial interest in the outcome of the project. The contrast ratings and visual simulations were reviewed and approved by BLM visual resources specialists in accordance with VRI BLM Manual Handbook H-8431-1.

The visual impacts are in compliance with the VRM III Class designation for the area. The Wilderness area was not identified as a public area of concern during project scoping. However, 17 other KOPs were selected during project scoping and these areas provide an adequate representation of visual impacts throughout the viewshed.

regardless of the source of the allegedly degrading activity—violates the Wilderness Act’s requirement that the agency preserve wilderness character. *Izaak Walton League of America, Inc. v. Kimbell*, 516 F. Supp. 2d 982, 988–89 (D. Minn. 2007). Here, BLM has provided no simulations of visual impacts to the wilderness character of designated Wilderness within visual range of the proposed project. See DEIS Sections 3.9, 4.9 (Visual Resources, Visual Impacts sections containing no discussion of impacts to designated Wilderness Areas).

BLM must collect and evaluate its own visual impacts analysis, rather than rely on one prepared by the developer’s consultant, and disclose it to the public for review. This is particularly true because of serious deficiencies in the visual impacts analysis presented in the DEIS. NEPA case law and guidance are clear that an applicant and its consultants should not be allowed to influence the analytical content of an EIS. See, e.g., *Sierra Club v. Sigler*, 695 F.2d 957, 962 n.3 (5th Cir. 1983) (expressing serious concern over role of private firm in preparation of EIS). An EIS must be an entirely objective analysis intended to aid the decision makers and the public in understanding the consequences of an agency decision. Thus, it is standard practice for action agencies to ensure that applicants for federal action are insulated from all aspects of EIS preparation other than providing information. It is ultimately BLM’s responsibility, and not that of any consultants, to independently verify the DEIS’s content. The agencies are “responsible for the independent verification and use of the data, evaluation of the environmental issues, and . . . the scope and content of the environmental assessment.” *Save Our Wetlands v. Sands*, 711 F.2d 634, 642 (5th Cir. 1983).

Given the extremely biased nature of the DEIS, and the visual impacts section in particular, and the apparent lack of meaningful involvement by agency personnel, it is doubtful that BLM is meeting this responsibility. There is no evidence of independent analysis on the part of BLM in the DEIS. Although NEPA regulations allow an applicant to prepare a NEPA document, the agency must independently evaluate the information and is responsible for its accuracy and make its own evaluation of the environmental issues and take responsibility for the scope and content of the document. 40 C.F.R. § 1506.5.

### 1. The DEIS presents deceptive and contradictory information about turbine color.

As noted above, the DEIS does not actually disclose what color the turbines will be. DEIS 2-46. The DEIS frankly acknowledges that “[d]ue to the height of the [turbines] and the oscillating motion of the blades, it is difficult to make the towers blend into the landscape” and that a flat gray paint color “will tone down the usual white design.” *Id.* However, any color other than white has to be approved by the Federal Aviation Administration. *Id.* and any color “not easily distinguishable for pilots” will result in daytime strobe lights on the turbines. *Id.* and *id.* at 4-77. Therefore BLM has failed to disclose what the actual visual impacts of the project will be. Either the turbines will be painted white, or the turbines will carry daytime strobe lights.

But BLM does not reflect this in the visual simulations it provides. The Appendix E Key Observation Point (“KOP”) Visual Contrast Worksheet Forms (Appendix E) state for all of the KOPs under “proposed activity description” that the color of the structures will be “white.” However, the “simulations”—most clearly visible in the Appendix E simulations for KOPs 14

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NewFields is an independent third party contractor supporting the BLM with preparation of this NEPA document, as is Truescape, the firm that developed the visual simulations. These firms have no financial interest in the outcome of the project. The contrast ratings and visual simulations were reviewed and approved by BLM visual resources specialists in accordance with VRM BLM Manual Handbook H-8431-1.

FAA will determine if the turbines will be white or equipped with strobes. Visual simulations in the EIS depict the WTGs in white, which would have the highest degree of contrast and is; therefore, the worst-case scenario.

Truescape confirms that the turbines depicted in the visual simulations were white. The simulations accurately depict what the perceived color of the turbines would be under the lighting conditions of when the site photo was taken. Time of day, angle and direction of sunlight, cloud cover and other light conditions were factored into illustrating their appearance as off-white or gray in some situations.