



DESERT TORTOISE COUNCIL

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20 October 2013

Regular Mail:
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Bureau of Land Management
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Director (210)
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Attn: Brenda Hudgens-Williams
Brenda_Hudgens-Williams@blm.gov

Re: Protest of the Final Supplemental Environmental Impact Statement and Proposed Resource Management Plan Amendment for the Silver State South Solar Energy Project

Dear Ms. Williams:

Herein, the Desert Tortoise Council (Council) formally protests the Final Supplemental Environmental Impact Statement (FSEIS) and Proposed Resource Management Plan Amendment (PRMPA) for the Silver State South Solar Energy Project (Project) issued by the Las Vegas Field Office of the Bureau of Land Management (BLM) in September 2013. This protest is being filed as per 43 C.F.R. § 1601.5-2 and contains 1) the Council's interest in the proposed Project; 2) those parts of the FSEIS and PRMPA being protested; and 3) a concise statement explaining how we believe the BLM has acted unlawfully or in error. We reserve the right to supplement this protest.

1. Interests of the Council

The Council is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

The Council has actively participated in the planning process for the proposed Project. On 31 October 2011, Dr. Sidney Silliman, then a board member of the Council, submitted written comments on behalf of the Council to Gregory Helseth Renewable Energy Project Manager BLM, Las Vegas Field Office, regarding the "Notice of Intent to Prepare a Supplemental Environmental Impact Statement and a Resource Management Plan Amendment for the Proposed First Solar South Project near Primm in Clark County, Nevada."

Additionally, in October 2011, the Council joined Basin and Range Watch (2011) and the Desert Protective Council in nominating an Area of Critical Environmental Concern (ACEC) in Ivanpah Valley, including lands on which the solar development is being proposed, to protect unique biological, cultural, and visual resources. The nomination was submitted to both California and Nevada BLM District Field Managers in recognition of the overlapping responsibilities of their respective offices.

Approval of an amendment to the PRMPA authorizing this Project will affect the interests of the Council and its members because it will 1) result in adverse impacts to the desert tortoise, which is listed as threatened under the Federal Endangered Species Act (FESA); (2) result in unnecessary and irreversible destruction of public lands and desert tortoise habitats; and (3) contribute to cumulative degradation of the environmental quality in Ivanpah Valley in both Nevada and California.

2. Those Parts of the PRMPA and FSEIS Being Protested

The Council believes that the BLM in its FSEIS and PRMPA fails to comply with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and various other policies for the following reasons. We contend that the BLM has failed in planning for management of our public lands to adequately protect desert tortoises and their habitats that are considered vital to regional conservation and recovery of this threatened species. The BLM's preferred alternative in the FSEIS (Alternative D) would result 1) in the elimination of a significant population of desert tortoises; 2) the permanent degradation of high quality habitat; and 3) in severing the last, best connection between tortoise populations located north in Nevada and south in California of the proposed Project.

The BLM's FSEIS preferred alternative would still impact the same healthy and robust population of tortoises on suitable habitats that would have been affected by the preferred alternative in the DSEIS. Rather than select and analyze a new location, the FSEIS preferred alternative remains within the area constricted by a multitude of existing impacts (Silver State North, Primm, Interstate 15, the main line for Burlington Northern/Santa Fe Railway, and the Stateline Hills) to the west, Lucy Gray Mountains to the east, Ivanpah dry lake bed to the south, and Roach dry lake to the north. Even though the direct impacts associated with a smaller footprint may in fact be reduced, the Council contends that the indirect impacts associated with the new development would still affect the same tortoise populations in both the DSEIS and FSEIS preferred alternatives.

Without providing its rationale in the FSEIS for doing so, the BLM ignored the U.S. Fish and Wildlife Service's (USFWS) 2012 recommendation that the No Action Alternative was the best alternative to maintain the linkage that provides the most reliable connectivity between adjacent populations in Nevada and California. This determination was first revealed in 2011 (USFWS 2011), reiterated in 2012 (USFWS 2012), and is now being ignored by the BLM in its 2013 FSEIS analysis. Of the alternatives included in the FSEIS, only the No Action Alternative, preserving the existing 2.0-mile wide corridor, would come close to the minimum 2.8-mile wide corridor USFWS judges necessary to provide for viable connectivity.

The Council joined Basin and Range Watch (2011) and the Desert Protective Council in nominating a 129,379-acre ACEC in the Ivanpah Valley in October 2011 as a stand-alone, separate proposal. We are concerned that the BLM's preferred alternative now proposes a 31,859-acre ACEC, which is only a quarter of the original proposal, excluding proposed areas to accommodate the Project. Identifying this newly proposed ACEC as part of the preferred alternative is misleading. The Council originally endorsed this ACEC as an unrelated action intended to protect tortoises, not to serve as mitigation for a solar Project that would develop those same lands.

3. Concise Statement Explaining How the BLM Has Acted Unlawfully or in Error

a. The Analysis of the No Action Alternative is Inadequate.

The Council understands that the Las Vegas Field Office's (LVFO) 1998 Resource Management Plan (RMP) is currently being revised and the amended plan is due to be completed by 2015 (page 1-2 of the FSEIS). As a management exercise separate from the proposed Project, we believe that the No Action Alternative in the FSEIS is remiss in not revealing that an ACEC in Ivanpah Valley could still be established in the absence of constructing the proposed Project.

The Council believes that Table ES-2 on page ES-18 is remiss in indicating that the No Action Alternative would result in "No effects." In fact, adopting the No Action Alternative would have the "Beneficial effect" of dismissing the threat of this solar Project to regional tortoise populations. As one of the environmental organizations promoting the new ACEC in Ivanpah Valley in 2011, irrespective of the proposed solar Project, we are dismayed to see that the FSEIS now identifies the establishment of a new ACEC as part of Alternative D. We believe that establishing the ACEC should be identified as part of the No Action Alternative. This same comment applies to Table ES-2 on page ES-24 for Special Management Areas.

b. No Substantially New Alternatives Are Presented in the FSEIS.

By its own admission in Section 1.2 of the FSEIS (page 1.4), no new areas are analyzed in the FSEIS that would effectively avoid the same impacts revealed in the DSEIS analysis: "This new layout is located entirely within the footprint of alternatives analyzed in the Draft Supplemental EIS/PRMPA and is smaller in total area, and thus involves no new areas of effect." Although the Council acknowledges there has been a 28% reduction in the Project footprint, from 3,881 down to 2,427 acres, the FSEIS fails to analyze a separate, new site to accommodate the proposed Project.

The BLM's FSEIS preferred alternative would still impact the same healthy and robust population of tortoises on suitable habitats that would have been affected by the preferred alternative in the DSEIS. Rather than select and analyze a new location, the FSEIS preferred alternative remains within the area constricted by Silver State North to the west and Lucy Gray Mountains to the east. Even though the direct impacts associated with a smaller footprint may in fact be reduced, the Council contends that the indirect impacts associated with the new development would still affect the same tortoise populations in both the DSEIS and FSEIS preferred alternatives.

In its assessment of the DSEIS, the USFWS explained that only the No Action Alternative would provide for and maintain suitable connectivity linking tortoise populations to the north and south of the proposed Project. USFWS then advised the BLM, “If this is not possible, we ask BLM to create and select a new alternative that will minimize impacts by preserving a protected corridor of undisturbed desert tortoise habitat between the Silver State North project and the suitable desert tortoise habitat west of the Lucy Gray Mountains.” Rather than follow USFWS’ informed recommendation, the BLM’s current preferred alternative is still situated within this corridor, and the FSEIS has not identified a new alternative that would avoid this linkage.

c. Mitigation Measures Lacking Sufficient Scientific Study Prior To Implementation.

The Council understands that U.S. Geological Survey in Henderson is currently conducting an ongoing assessment of connectivity in the region including Ivanpah Valley. The assessment is designed to measure physical movement and genetic continuity of tortoises through the narrow corridor between the Lucy Gray Mountains to the east and existing impacts to the west. We assume that the BLM is aware of this study, yet it is not referenced in the FSEIS. The FSEIS should be amended to indicate that this study is being performed and publish any results, even if preliminary, as part of the available literature to assist the public in properly assessing impacts associated with this project.

When the Large-Scale Translocation Site (LSTS) was established near Jean, Nevada under the Clark County Multispecies Habitat Conservation Plan (MSHCP) in about 1996, several thousand tortoises from the Desert Tortoise Conservation Center (DTCC) were translocated not knowing how many were pets or how many might be carrying the *Mycoplasma* pathogen. The Council understands that the proponent intends to perform disease and genetic studies of the tortoises within the LSTS to determine if they can be allowed to roam freely in the valley by removing portions of the existing barrier fence. This measure would be intended to expand available linkage habitat through Ivanpah Valley to mitigate for the loss of the existing corridor within the Project area.

If these studies reveal that tortoises within the LSTS are diseased or genetically incompatible with resident, wild tortoises in adjacent areas, we assume the fences would remain in place and no tortoises would be released from the LSTS. Meanwhile the proposed Project would have been developed and the corridor between Silver State North and Lucy Gray Mountains – the last remaining corridor in this portion of Ivanpah Valley – would have been lost. BLM cannot rely on these future studies as a mitigation measure based on speculation that LSTS tortoises would be released. It is equally plausible that the tortoises cannot be released, in which case Project impacts would have already occurred with no way to mitigate for them. The studies must be performed first and confirm that no harm would result from allowing captive and wild tortoises to intermingle before the BLM can identify this as a valid mitigation measure.

d. Intent to Implement Mitigation Measures After Project Construction.

Measures to avoid or minimize adverse impacts on sensitive biological resources are a key component of the NEPA process and also germane to BLM in meeting its responsibilities under laws, regulations and policies for the protection of public lands and desert tortoises. In particular, we call attention to BLM's responsibilities with regard to FESA, FLPMA, and BLM Manual 6840 – Special Status Species Management.

We protest BLM's intent to require additional studies and develop new mitigation measures for the desert tortoise *after the Project is approved*. In particular, waiting to draft a formal translocation plan after Project approval is counterintuitive and does not allow the Council to review and comment on that plan prior to its implementation. Similarly, there is the promise to study how the implemented Project eventually affects tortoise demographics, movement, and subsequent effects on habitat linkages and gene flow. What if these studies reveal a significant impact to adjacent tortoise populations? Will the proponent willingly decommission a multi-million dollar project if the studies reveal it is jeopardizing the regional tortoise population? The proposed studies are not mitigation measures, but rather potential components of an adaptive management strategy. The FSEIS is deficient in not stating plausible measures the proponent will implement should these studies reveal subsequent adverse effects to the regional tortoise population.

Conclusion

This is a formal protest. The Council believes that we have identified significant, irreversible impacts that cannot be remedied short of relocating the proposed Project to another location that will not eliminate a thriving tortoise population and the last remaining linkage corridor in this part of Ivanpah Valley. Even so, we understand that the BLM is obligated to address our protest and correct the deficiencies in additional supplements to the FSEIS. As given herein, we judge that the BLM has failed to identify any new alternatives as recommended by the USFWS, and concur with the USFWS that the No Action Alternative, including establishment of the new ACEC, should be the alternative selected by the BLM for this Project.

Regards,



Edward L., LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Council, Chairperson

Literature Cited

Basin and Range Watch. 2011. A Nomination to the U. S. Bureau of Land Management (Needles Field Office) for Area of Critical Environmental Concern (ACEC) Status, Ivanpah Valley, California and Nevada. Submitted by Basin and Range Watch on 23 October 2011, and formally endorsed by the Council on 28 October 2011. Beatty, Nevada.

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