



DESERT TORTOISE COUNCIL

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Via email only

28 January 2023

Nancy Favour, Erica Stewart, Derek Eysenbach

BLM Yuma Field Office

Attn: Jove Solar EIS – Public Comment

7341 E 30th St., Suite A

Yuma, AZ 85365-6525

BLM_AZ_CRD_Solar@blm.gov; nfavour@blm.gov; estewart@blm.gov; deysenbach@blm.gov

RE: Additional Comments to January 4 and 5, 2023 Comment Letters on Jove Solar Energy Project - Scoping Period (DOI-BLM-AZ-C020-2022-0006-EIS)

Dear Ms. Favour, Ms. Stewart, and Mr. Eysenbach,

The Desert Tortoise Council (Council) is a 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 desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that the Bureau of Land Management (BLM) email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an “environmentally friendlier way” of receiving correspondence and documents rather than “snail mail.”

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely used by Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by BLM, which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed project.

After attending the public scoping meeting conducted by BLM online on January 17 for the Jove Solar Energy Project, the Council has additional concerns. These include:

1. Surveys for cultural resources but none for sensitive plants species;
2. The Proposed Action may require a Resource Management Plan Amendment;
3. Lands in applications for rights-of-way are “held” by BLM from other development but not considered in cumulative impact analysis;
4. BLM does not take an active role in where an applicant locates a solar energy project; and,
5. Description and analysis of alternative locations considered and analyzed in addition to the applicant’s requested location.

1. Surveys for cultural resources but none for sensitive plants species: During the scoping meeting, one of the consultants for Jove Energy Project (Project) addressed a question on sensitive species and another on cultural resources. The responses were that no sensitive plants were known to occur in the Project area, and cultural resources would be surveyed for, as little is known about them in the Project area.

The Council interprets these responses to mean that rare, sensitive, or special status plants will not be surveyed for in the Project area but cultural resources will be. We remind BLM of its obligations under BLM Manual 6840 – Special Status Species Management (BLM 2008) to “initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” Not knowing what sensitive plant species occur in the Project area does not comply with the purpose, intent, and direction in Manual 6840. Without this information, BLM is making uninformed decisions about the future of public resources that BLM is charged with managing for “sustained yield” and “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” as directed in the Federal Land Policy and Management Act (FLPMA). We request that BLM require science-based pre-project surveys of plant species in the Project area at appropriate times of the year to determine the occurrence, distribution, and abundance of special status plant species. BLM would then use this information to determine whether the Project would affect special status plants and appropriate methods to mitigate potential direct, indirect, and cumulative impacts.

2. Proposed action may require a Resource Management Plan amendment: BLM recently announced nine proposed solar projects in Arizona, all of which occur outside BLM-designated Solar Energy Zones (SEZs)/Renewable Energy Development Areas (REDAs). These SEZs/REDAs were previously identified and analyzed by BLM, and BLM amended Resource Management Plans to incorporate these SEZs/REDAs (BLM and DOE 2012a, 2012b; BLM 2013). We are concerned that there will be more than these nine solar projects proposed to be located outside SEZs/REDAs in Arizona. These nine solar projects would commit about 36,800 acres of BLM land in Arizona to a single use for 30 years or longer.

BLM should explain in the DEIS why a Resource Management Plan amendment for the Jove Solar Project, the eight other proposed solar projects, and likely future solar projects is not needed. This request is relevant, as ten years ago Arizona BLM (2013) said it “intends to assess the need for new or expanded SEZs at least once every five years.” Further, Arizona BLM (2013) committed that “[t]he process to identify new or expanded SEZs will be open and transparent, with opportunities for substantial involvement of multiple stakeholders, and follow the steps outlined in the Solar ROD [Record of Decision](BLM and DOE 2012a, page 168).”

Please include in the Jove Solar Project National Environmental Policy Act (NEPA) document and NEPA documents for all other solar energy projects in Arizona data and analysis on whether Resource Management Plans need to be amended because of the proposed solar energy projects. In addition, we request that Arizona BLM implement its intentions and commitments that we described above from the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States and the Arizona Restoration Design Energy Project Record of Decision and Approved Resource Management Plan.

3. Lands in applications for rights-of-way are “held” by BLM from other development but not considered in cumulative impact analysis: During the January 17 scoping meeting, BLM explained that when it accepts an application for a right-of-way (ROW) for a project, BLM holds this location (or reserves this location) for the project. However, this commitment is not recognized or analyzed in BLM’s NEPA document under cumulative impacts unless the project is in the active planning stage. This approach seems inconsistent with the purpose of cumulative impact analysis for reasons give below.

Cumulative effects is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions” (40 CFR 1508.7). CEQ further states “[c]ommonly, analysts only include those plans for actions which are funded or for which other NEPA analysis is being prepared. This approach does not meet the letter or intent of CEQ’s regulations. It underestimates the number of future projects, because many viable actions may be in the early planning stages” (CEQ 1997).

BLM has stringent requirements when applying for a ROW, including 43 CFR 2804.12(a)(5) that requires the applicant to demonstrate technical and financial responsibility; 43 CFR 2804.26(a)(5) that requires BLM to review pending applications and reject those where the applicant cannot demonstrate technical or financial capability; and 43 CFR 2804.25 that requires the timely submittal of a Plan of Development (POD). In addition, under 43 CFR 2804.10(a), BLM should conduct a pre-application ROW meeting to identify potential environmental and siting constraints, determine whether lands are available for proposed ROW uses, discuss potential alternative site locations, discuss timeframes for processing proposed applications, inform applicants of financial obligations in processing an application, and facilitate coordination with federal, state, tribal and local government agencies.

The Council contends that if BLM follows these requirements, it is unlikely that when BLM accepts an application for a ROW, especially for solar energy development given the directives from the current administration for renewable energy development on BLM lands, it is likely to be granted and the project implemented. We request that BLM include ROW applications it has accepted but that have not entered the active planning stage in the cumulative impacts analysis for the Jove Solar Project and for all future projects on BLM land. This would include at least the eight other solar projects mentioned above under #2.

In addition, these proposed solar energy projects are both cumulative and similar actions under 40 CFR 1508.25(a)(2) and (3). Therefore, they need to be analyzed together, not individually. These nine projects would result in the loss of more than 36,800 acres of wildlife habitat and vegetation that currently sequesters carbon to reduce climate change effects. This acreage would be dedicated to a single use. This is a substantial change and should be included in the cumulative impact analysis for these projects that were announced recently by BLM.

4. BLM does not take an active role in where an applicant locates a solar energy project:

This information was shared by BLM during the public scoping meeting on January 17 for the Jove Solar Project. The Council is concerned that this statement appears to contradict the guidance BLM has in considering and granting ROW permits, especially for solar projects, and the intent Arizona BLM stated in the Arizona Restoration Design Energy Project (BLM 2013) and the actions BLM has taken in the past regarding the siting of solar energy project (BLM and DOE 2012a, 2012b; BLM 2013).

Our understanding is that BLM through public participation during the earlier NEPA process identified development SEZs and REDAs for energy companies to site their solar energy projects in the western United States (BLM & DOE 2012a) and in Arizona (BLM 2013). BLM identified these SEZs/REDAs in areas that had the least environmental impacts and met the specific needs for siting solar energy projects. Through this process, BLM would streamline the permitting process for these projects and the mitigation required would be less than elsewhere because of reduced environmental impacts.

However, the proposed Jove Solar Energy Project (3,495 acres) is not located in a SEZ/REDA. According to Arizona BLM (January 17 public scoping meeting), ROW applications for the three Arizona SEZs/REDAs are full. Shortly after this scoping meeting Secretary Haaland announced two more utility scale solar projects in Arizona, including the 300-MW Pinyon Solar project in Maricopa County (1,880 acres) and the 300-MW Elisabeth Solar project in Yuma County (2,560 acres). In addition we found at least four more solar energy projects that are using BLM's variance process to construct and operate utility scale solar energy projects outside Arizona SEZs – Ranegras Plains Solar Project (4,930 acres) and Bouse Solar and Storage Project (6,155 acres) in the Yuma Field Office area and the Socorro Solar Project (5,862 acres) and Parker Solar Project (1,530 acres) in the Lake Havasu Field Office area¹. In researching the Pinyon Solar Project on the internet, we learned that BLM is well into the planning process for at least two other solar projects, the 650-MW Vulcan 2 Solar project (4,525 acres) and 650-MW Western Tiger Solar project (5,946 acres). These solar projects in variance areas that are being analyzed on a case-by-case basis total 36,883 acres.

Ten years ago, Arizona BLM (2013) said it “intends to assess the need for new or expanded SEZs at least once every five years. The process to identify new or expanded SEZs will be open and transparent, with opportunities for substantial involvement of multiple stakeholders, and follow the steps outlined in the Solar ROD [Record of Decision] (BLM and DOE 2012a, page 168).” Unfortunately, the Council is not aware that Arizona BLM has followed through with this intent. With BLM proposing at least nine utility scale solar projects in four counties in southwestern Arizona, and analyzing them in individual NEPA documents and through the variance process, we believe BLM is not complying with the purpose and intent of NEPA regulations, specifically 40 Code of Federal Regulations 1508.25(a)(2) and (3) or its promise in the Arizona Restoration Design Energy Project.

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<https://blmsolar.anl.gov/news/arizona/#:~:text=The%20four%20projects%20are%20the%20Ranegras%20Plains%20Solar,as%20part%20of%20the%20solar%20variance%20application%20process>

For BLM to comply with the FLPMA and manage public lands for “multiple use and sustained yield” and “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values,” BLM needs to take an active role in where solar energy projects are located. By implementing a public process to identify and designate SEZs/REDAs in the past, BLM demonstrated that it has taken an active role in where solar energy projects should be located. We request that BLM explain this change in its role. We further request that BLM take an active role in where solar energy projects are located, and this process should include stakeholders such as the Desert Tortoise Council and the interested public early in this process.

5. Description and analysis of alternative locations considered and analyzed in addition to the applicant’s requested location: During the BLM scoping meeting, a question was asked about why the Jove Solar Project was not located closer to metropolitan/urban areas such as Phoenix where the need for electricity is greater. The response was that electricity produced does not need to be close to a metropolitan area or area where it would be used. A BLM employee said BLM does not take an active role in where the solar energy project can be located.

The Council presumes from these responses that the project proponent and BLM are not interested in locating solar projects near urban areas where the demand for electricity is greatest. This is unfortunate, as natural and cultural resources on lands adjacent to urban areas usually are degraded because of direct and indirect impacts of adjacent human activities. Using these areas for solar energy production would result, generally, in fewer direct or indirect impacts to the environment, especially to biological resources (e.g., destruction of native vegetation that sequesters carbon to help reduce effects of climate change, etc.), than rural or remote areas such as where the Jove Solar Project is proposed. The Council concludes that BLM and the project proponent are not interested in avoiding or minimizing impacts to biological resources, because the location of the Jove Solar Project and other proposed solar projects are in rural areas.

We request that the NEPA document for all solar energy projects analyze locations other than the proposed projects including Distributed Generation Alternatives. Distributed Generation installs smaller scale PV facilities at or near the point of energy use, i.e., metropolitan/urban areas. The Distributed Energy Alternatives should include BLM-land only and a combination of BLM land and land owned/managed by others (e.g., private and State lands).

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BLM that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



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

cc: Tracy Stone-Manning, Director, Bureau of Land Management, tstonemanning@blm.gov
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Literature Cited

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- [BLM and DOE] Bureau of Land Management and Department of Energy. 2012a. Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States. July 2012.
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- [CEQ] Council on Environmental Quality. 1997. Considering Cumulative Effects under the National Environmental Policy Act. https://ceq.doe.gov/publications/cumulative_effects.html