



DESERT TORTOISE COUNCIL

3807 Sierra Highway #6-4514

Acton, CA 93510

www.deserttortoise.org

eac@deserttortoise.org

via BLM NEPA ePlanning Portal

30 November 2024

BLM Director
Attention: Protest Coordinator (HQ210)
Denver Federal Center, Bldg. 40
Lakewood, CO 80215

Re: Protest of Proposed Resource Management Plan Amendment for the Rough Hat Clark Solar Project (Proposed RMPA) and Final Environmental Impact Statement (DOI-BLM-NV-S010-2022-0063-EIS)

Dear BLM Director:

This Resource Management Plan Protest is submitted on behalf of the Desert Tortoise Council regarding the Proposed Bureau of Land Management (BLM) Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS) for the Rough Hat Clark Solar Project (DOI-BLM-NV-S010-2022-0063-EIS). The Notice of Availability for Final EIS was published by the Environmental Protection Agency (EPA) in the Federal Register on November 1, 2024 (89 FR 87366), and the notice from BLM was published on November 4, 2024 (89 FR 87594-96). This Protest is being timely filed in accordance with 43 C.F.R § 1601.5-2.

PROTEST

1. Protesting Party: Contact Information and Interests:

This Protest is filed on behalf of the Desert Tortoise Council by:

Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510
Phone: 760-249-4948
eac@deserttortoise.org

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.

The Council has strong interests in the survival and recovery of the desert tortoise and conservation of its habitat including habitat connectivity. The Council's concerns regarding the Proposed plan amendment for the Rough Hat Clark Solar Project and Final EIS are detailed in our comments which include: comments on the variance process submitted on December 22, 2021, scoping comments submitted December 2, 2022, and comments on the Draft Environmental Impact Statement (DEIS) dated April 11, 2024. The Council also joined a letter dated February 20, 2024, urging the Department of the Interior (DOI) and BLM to cancel the environmental review for the Rough Hat Solar Project because of its outsized impacts to the desert tortoise, to desert tortoise habitat, and to habitat connectivity.

All of the comments and references submitted by the Council are incorporated herein by reference. The Council fully participated in the public process for developing the proposed plan amendments and the EIS, and has been and continues to be an active participant in the public process for siting solar projects in desert tortoise habitat.

The Council is concerned that the environmental review pursuant to the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA) compliance, and the compliance with the Federal Endangered Species Act (FESA) for the proposed Rough Hat Solar Project is inadequate.

2. & 3. Issues Being Protested and Parts of the Plan Amendment Protested:

The Council protests the proposed adoption of the BLM's preferred alternative and the proposed plan amendment is protested in its entirety. The preferred alternative would allow construction and operation of a solar project on over 2,400 acres of high-quality occupied desert tortoise habitat that would be lost to the species and require uprooting of local tortoise individuals (estimated to be 144 adults and 947 juveniles) with translocation. *See* June 13, 2024 Biological Opinion at 58-59 (Incidental Take Statement). In order to approve the project, because the proposed project will fundamentally change the character of the landscape, the BLM would need to adopt the proposed plan amendment that would change the VRM classification from Class III to Class IV.

The basis for this protest of the proposed plan amendment is that the proposed decision to adopt the plan amendment to allow a fundamental change in character of the landscape is not consistent with long-term survival and recovery of the desert tortoise as an essential part of that landscape, and instead allow the area to be developed for a large-scale solar project. This protest is also based on facts showing that the BLM's preferred alternative and the plan amendment are

not consistent with FLPMA and are not based on adequate environmental review as required by NEPA.

4. The Council Submitted Comments and Information That Support This Protest

The Council submitted science-based comments with extensive references showing that the proposed project and plan amendment will have extensive impacts that have not been adequately addressed. The Council submitted comments on the variance process on December 22, 2021, scoping comments on December 2, 2022, and comments on the Draft Environmental Impact Statement (DEIS) dated April 11, 2024. The Council also joined a letter dated February 20, 2024, urging DOI and BLM to cancel the environmental review for the Rough Hat solar project because of its outsized impacts to desert tortoise, to desert tortoise habitat, and to habitat connectivity.

All of the comments, attachments submitted by the Council and the references are incorporated herein.

5. Why the Proposed Decision to Adopt the BLM's Preferred Alternative is Wrong:

- a) *The Protested Proposed Plan Amendment fails to Comply with FLPMA's Directive to Avoid Unnecessary and Undue Degradation.*

FLPMA requires that:

[T]he public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

43 U.S.C. § 1701(a)(8). The requirement to prevent unnecessary and undue degradation (UUD) must be considered in all aspects of BLM decision-making.

BLM must manage the public lands for multiple use and sustained yield (43 U.S.C. § 1701(a)(7)), in the context of the broad public interest:

The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resources uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber,

minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources *without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*

43 U.S.C. § 1702(c) (emphasis added).

For all public lands, Congress mandated that the BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C § 1732(b).

The FEIS shows that BLM failed to adequately consider the impacts of the proposed plan amendment and reasonable alternatives to the proposed project in the context of FLPMA because alternative sites could have far less impacts to desert tortoise and its habitat including connectivity such as previously disturbed and degraded areas of public lands and alternative types of solar projects on rooftops and/or in the urban environment should have been considered that would avoid the impacts to public lands resources. The BLM also wrongly dismissed consideration of designating an Area of Critical Environmental Concern (ACEC) in this area as an alternative plan amendment. Because this area is important for local desert tortoise populations and connectivity BLM should have considered (and adopted) an ACEC in this area as an alternative to the proposed project.

b) The Proposed Plan Amendment fails to take into account that the underlying RMP is outdated.

The BLM should not rely on the 1998 Las Vegas RMP, which is outdated and does not take into account the cumulative impacts to resources including the desert tortoise and its habitat that have occurred over the past 26 years since it was approved.

c) The NEPA review for the Proposed Plan Amendment is inadequate and, on this basis as well, BLM has failed to comply with FLPMA and other laws.

BLM’s failure to adequately comply with NEPA, as detailed herein and in earlier comments, also shows that adoption of the proposed Plan Amendment will violate FLPMA requirements. As the Interior Board of Land Appeals has stressed, “[t]o the extent BLM failed to meet its obligations under NEPA, it also failed to protect public lands from unnecessary or undue degradation.” *Island Mountain Protectors*, 144 IBLA 168, 202 (1998) (holding that to prevent unnecessary or undue degradation BLM must consider the nature and extent of surface disturbances resulting from a proposed decision as well as the environmental impacts on resources and lands outside the area of operations); *National Wildlife Federation*, 140 IBLA 85, 101 (1997) (holding that BLM failed to properly balance competing resource values to ensure the future health of the public lands). On this basis as well as other bases detailed herein, BLM’s proposed Plan Amendment violates FLPMA and is unlawful. 43 U.S.C. §§ 1701(a)(8), 1732(b), 1732(d)(2)(a); 43 C.F.R. §8342.2.

The inadequacies in the environmental review required by NEPA for the plan amendments include, but are not limited, to the following: failure to consider a reasonable range of alternatives that would avoid or lessen impacts including an ACEC alternative; failure to adequately account for the status of the desert tortoise and its habitat along with direct, indirect and cumulative impacts to the species and its ability to survive and recover; and ignoring newer data and scientific information in considering the proposal.

CONCLUSION

As detailed above in this protest and in the comments submitted by the Council to the BLM during the process for the Rough Hat Solar Project, the BLM's preferred alternative should not be adopted because the preferred alternative is inconsistent with FLPMA and other policies, laws, and regulations and the environmental review to date is inadequate and incomplete. Therefore, the Council protests the adoption of the decision for BLM's preferred alternative for the Rough Hat Solar Project.

Respectfully,

A handwritten signature in blue ink, appearing to read "E. LaRue, Jr.", is enclosed in a light blue rectangular box.

Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson