

**U.S. Department of the Interior  
Bureau of Land Management**

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**Determination of NEPA Adequacy  
Playa Solar Desert Tortoise Fence Extension  
DOI-BLM-NV-S010-2015-0115-DNA  
N-93306-03**

**PREPARING OFFICE**

U.S. Department of the Interior  
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# **Chapter 1. Introduction**

<b>BLM Office:</b>	Las Vegas Field Office	<b>Serial Number:</b>	N-93306-03
	4701 N. Torrey Pines Dr	<b>NEPA Number:</b>	DOI-BLM-NV-S010-2015-0115-DNA
	Las Vegas, Nevada 89130	<b>Tiered from EA Number:</b>	DOI-BLM-NV-S010-2014-0125-EA & DOI-BLM-NV-S010-2014-0126-EA

## 1.1. Introduction

### 1.1.1. Title and Type of Project

Playa Solar Desert Tortoise Fence Extension

### 1.1.2. Location of Proposed Action

Invenergy Fence: Section 33, in Township 17S, Range 63E MDM; Section 4, in Township 18S, Range 63E MDM; Section 3, in Township 18S, Range 63E MDM.

NV Energy Fence: Section 35 in Township 17S, Range 63E MDM.

### 1.1.3. Applicant Name

First Solar dba Playa Solar, LLC

### 1.1.4. Background

#### 1.1.4.1. Description of Project

Playa Solar, LLC (Playa Solar or Applicant), a wholly owned subsidiary of First Solar Development, LLC, submitted an SF-299 application on March 15, 2015 (Serial # N-93859) to the Bureau of Land Management (BLM) for a right-of-way (ROW) grant under the Federal Land Policy and Management Act (FLPMA) to construct, operate, maintain and decommission approximately 0.75-mile of desert tortoise exclusion fencing along Nevada State Highway 93 on federal land administered by the BLM. An Environmental Assessment (EA) (was submitted to the BLM to analyze potential impacts of this fence in March 2015 (Highway 93 Fence EA, March 2015). The Applicant has since amended SF-299 # N-93859 (submitted to BLM on July 21, 2015) to include two additional segments of desert tortoise fence (Proposed Action) as described below. These segments of fence were previously analyzed as part of the EAs for the Harry Allen Solar Energy Center Project (June 2015) and the Dry Lake Solar Energy Center Project (June 2015). The purpose of this Determination of NEPA Adequacy (DNA) is to address the additional segments of fence that were not addressed in the Highway 93 Fence EA but were included in the Harry Allen Solar Energy Project and Dry Lake Solar Energy Center Project EAs.

The desert tortoise fencing described below would be constructed by the Applicant in order to facilitate the construction of the Playa Solar Project in the Dry Lake Solar Energy Zone if either Invenergy or NV Energy elects not to construct these segments of desert tortoise fence prior to fall 2015. The fencing is needed to facilitate desert tortoise translocation as described in the Biological

Opinion for Four Solar Energy Projects in the Dry Lake Solar Energy Zone, Clark County, Nevada (File No. 84320-2015-F-Ui 39) (U.S. Fish and Wildlife Service [USFWS] June 2015).

**Invenergy Fence.** This segment of fence crosses approximately 0.73-mile of public land administered by the BLM. The northern end would connect to the Highway 93 desert tortoise fence segment identified in the Highway 93 Fence EA (March 2015) and the southern end would connect to the proposed Playa Solar Project desert tortoise fence in the Dry Lake Solar Energy Zone (see Playa Solar Desert Tortoise Exclusion Fence Project Plan of Development [POD], July 2015). This segment of desert tortoise fence was evaluated as part of the EA for the Harry Allen Solar Energy Center Project (June 2015) proposed by Invenergy. In addition, that Project went through Endangered Species Act (ESA) Section 7 consultation with the USFWS and the National Historic Preservation Act (NHPA) Section 106 consultation with the Nevada State Historic Preservation Officer.

**NV Energy Fence .** This fence consists of two short segments of desert tortoise fence (segment 1A approximately 135-feet in length and segment 1B approximately 535-feet in length). Section A connects the Playa Solar tortoise fence to the existing NV Energy Harry Allen Substation tortoise fence. Section B connects the substation tortoise fence to the existing NV Energy Harry Allen Generating Station tortoise fence. Both sections are located on public land administered by the BLM. Approval by Nevada Energy would be required for the two sections because of their connection to the substation fence. If Playa Solar cannot get approval from NV Energy, a 0.74-mile tortoise fence (Option 2) would be constructed around the substation. The southern end would connect to the proposed Playa Solar Project desert tortoise fence and the northern end would connect to the Harry Allen Generating Station tortoise fence. One or more tortoise guards may be required to maintain access along NV Energy's several transmission line service roads crossed by the fence (see Playa Solar Desert Tortoise Exclusion Fence Project Plan of Development [POD], July 2015). The NV Energy desert tortoise fencing was evaluated as part of the EA for the Dry Lake Solar Energy Center (June 2015) proposed by NV Energy. In addition, that Project went through ESA Section 7 consultation with the USFWS and the NHPA Section 106 consultation with the Nevada State Historic Preservation Officer.

#### **1.1.4.2. Applicable Mitigation Measures from Original NEPA Document**

The Applicant will adhere to all Terms/Conditions/Stipulations identified in the Playa Solar Project Decision Record (May 27, 2015) when constructing all desert tortoise fencing associated with the Playa Solar Project including the subject fence segments. The Terms/Conditions/Stipulations include the Solar Programmatic Environmental Impact Statement (PEIS) design features, Solar Regional Mitigation Strategy for the Dry Lake Solar Energy Zone, Project-specific Mitigation Measures, and Reasonable and Prudent Measures included in the Project-specific Biological Opinion.

## **1.2. Land Use Conformance**

Land Use Plan: Las Vegas Field Office Resource Management Plan	Date Approved: October 1998
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### 1.2.1. Land Use Conformance Summary

The Las Vegas RMP was amended through the Solar PEIS ROD in October 2012 to incorporate the designation of the Dry Lake Solar Energy Zone. This amendment identified the following as applicable to all new utility-scale solar energy projects on BLM administered lands:

- Priority areas for solar energy development that are well suited for utility-scale production of solar energy, including the 5,717-acre Dry Lake SEZ and the 8,479-acre Amargosa Valley SEZ (Solar PEIS ROD at Appendix A Table A-1, p. 32);
- 873,518 acres as potentially available for utility-scale solar energy development outside of the Dry Lake and Amargosa Valley SEZs (i.e., variance areas) (Solar PEIS ROD at Appendix A Table A-1, p. 32);
- 2,412,286 acres to be excluded from utility-scale solar energy development (i.e., exclusion areas) within the Las Vegas RMP area; and
- Required programmatic and SEZ-specific design features for solar energy development on public lands to ensure the most environmentally responsible development and delivery of solar energy (Solar PEIS ROD at Appendix A Table A-5, p. 139 et seq.).

The fence segments are located in a Solar Energy Zone and are associated with utility-scale solar energy development.

The principles of multiple-use management for the BLM are established through the Federal Land Policy and Management Act of 1976 (FLPMA). The current BLM Las Vegas RMP is consistent with FLPMA and guides the decisions for the BLM. The subject fence segments are in conformance with the following management objectives and directions of the 1998 BLM Las Vegas RMP/EIS, as amended (BLM/LVFO 1998):

- **Objective LD-2.** “All public lands within the planning area, unless otherwise classified, segregated or withdrawn, and with the exception of Areas of Critical Environmental Concern and Wilderness Study Areas, are available at the discretion of the agency, for land use leases and permits under Section 302 of Federal Land Policy and Management Act...” (BLM/LVFO 1998, p. 18)
- **Objective RW-1.** “Meet public demand and reduce impacts to sensitive resources by providing an orderly system of development of transportation, including legal access to private inholdings, communications, flood control, major utility transmission lines, and related facilities.” (BLM/LVFO 1998, p. 19)
- **Management Direction RW-1-h.** “All public land within the planning area, except as stated in RW-1-c through RW-1-g, are available at the discretion of the agency for rights-of-way under the authority of the FLPMA.” (BLM/LVFO 1998, p. 19)

### 1.3. NEPA Document(s)

Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar PEIS), BLM and U.S. Department of Energy; 2012.
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Environmental Assessment. DOI-BLM-NV-S010-2014-0125-EA, Harry Allen Solar Energy Center Project (Parcel 1); December 2014.
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Environmental Assessment, DOI-BLM-NV-S010-2014-0126-EA, Dry Lake Solar Energy Center Project (Parcels 5 and 5); December 2014.
Environmental Assessment, DOI-BLM-NV-S010-2014-0127-EA, Playa Solar Project (Parcels 2, 3 & 4); December 2014.
Environmental Assessment, DOI-BLM-NV-EA, U.S. Hwy 93 Tortoise Fencing at Dry Lake Solar Energy Zone; March 2015.

### 1.3.1. Other Relevant Documents

- Biological Opinion for Four Solar Energy Projects in the Dry Lake Solar Energy Zone, Clark County, Nevada (File No. 84320-2015-F-0163 and 84320-2015-F-0162); USFWS May 1, 2015.
- Solar Regional Mitigation Strategy (SRMS) for the Dry Lake Solar Energy Zone; BLM March 17, 2014.
- Class III Resource Inventory of the Dry Lake Solar Energy Zone, Clark County, Nevada. Prepared for the BLM by Sagebrush Consultants, Las Vegas District Report No 5-2708, March 2014.

### 1.3.2. NEPA Conformance Summary

The listed NEPA documents encompass the proposed action as it provided for the building of tortoise fencing around the perimeter of the entire Dry Lake Solar Energy Zone. Each applicant include their portion of the fence in their environmental documentation for the project.

## 1.4. NEPA Adequacy Criteria

### 1.4.1. Similar Action Analysis

Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

Yes. The subject desert tortoise fence segments are features of the Harry Allen Solar Energy Center Project (see section 2.2.5.5 of the Harry Allen Solar Energy Center Project EA) and the Dry Lake Solar Energy Center Project (see section 2.2.5.5 of the Dry Lake Solar Energy Center Project EA). The geographic areas and resources conditions addressed in the analysis for the Harry Allen Solar Energy Center Project and Dry Lake Solar Energy Center Project EAs fully cover the subject desert tortoise fence segments.

### 1.4.2. Range of Alternatives

Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, resource values and circumstances?

Yes. The Harry Allen Solar Energy Center Project and the Dry Lake Solar Energy Center Project EAs analyzed an appropriate range of alternatives for the subject desert tortoise fence segments given the purpose and need for those projects and their location within a BLM Solar Energy Zone.

### **1.4.3. Existing Analysis**

Is the existing analysis valid in light of any new information or circumstances (such as, rangeland health standards assessments, recent endangered species listings, and updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the proposed action?

Yes. The above proposed actions and potential impacts were previously analyzed under DOI-BLM-NV-S010-2014-0125-EA and DOI-BLM-NV-S010-2014-0126-EA, case file nos. N-93321 and N-93337, respectively. No new disturbance is proposed and no further analysis is needed at this time. Existing comments and measures from the previous analyses remain in effect and must be adhered to when carrying out any activities.

The section 7 consultation for this project is covered under *Project-level Formal Consultations for Four Solar Energy Projects in the Dry Lake Solar Energy Zone*, Biological Opinions 84320-2015-F-0163 and 84320-2015-F-0162, contingent on compliance with the terms and conditions. No new or additional terms and conditions are necessary. (Sec 7 Logs # NV-052-15-161)

### **1.4.4. Direct, Indirect, and Cumulative Effects**

Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

Yes. The Harry Allen Solar Energy Center Project and Dry Lake Solar Energy Center Project EAs fully analyzed all of the impacts associated with the subject desert tortoise fence including the construction, operation, maintenance, and decommissioning of solar energy projects in the Dry Lake Solar Energy Zone and the associated translocation of desert tortoise (see section 2.2.5.5 of the Harry Allen Solar Energy Center Project EA and section 2.2.5.5 of the Dry Lake Solar Energy Center Project EA).

### **1.4.5. Public Involvement**

Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

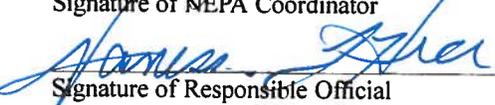
Yes. As part of the public involvement processes for the Harry Allen Solar Energy Center Project and Dry Lake Solar Energy Center Project EAs, it was disclosed to the public and agencies that the projects would include the construction of desert tortoise fencing to facilitate the translocation of desert tortoise. The change in the party to construct the subject segments of desert tortoise fence is being coordinated with the BLM and the USFWS, as well as the Nevada Department of Transportation, given the proximity to their existing Highway 93 right-of-way (consent is being sought), and the Nevada Public Utilities Commission regarding the Utility Environmental Protection Act permit.

### 1.5. Persons/Agencies/BLM Staff Consulted

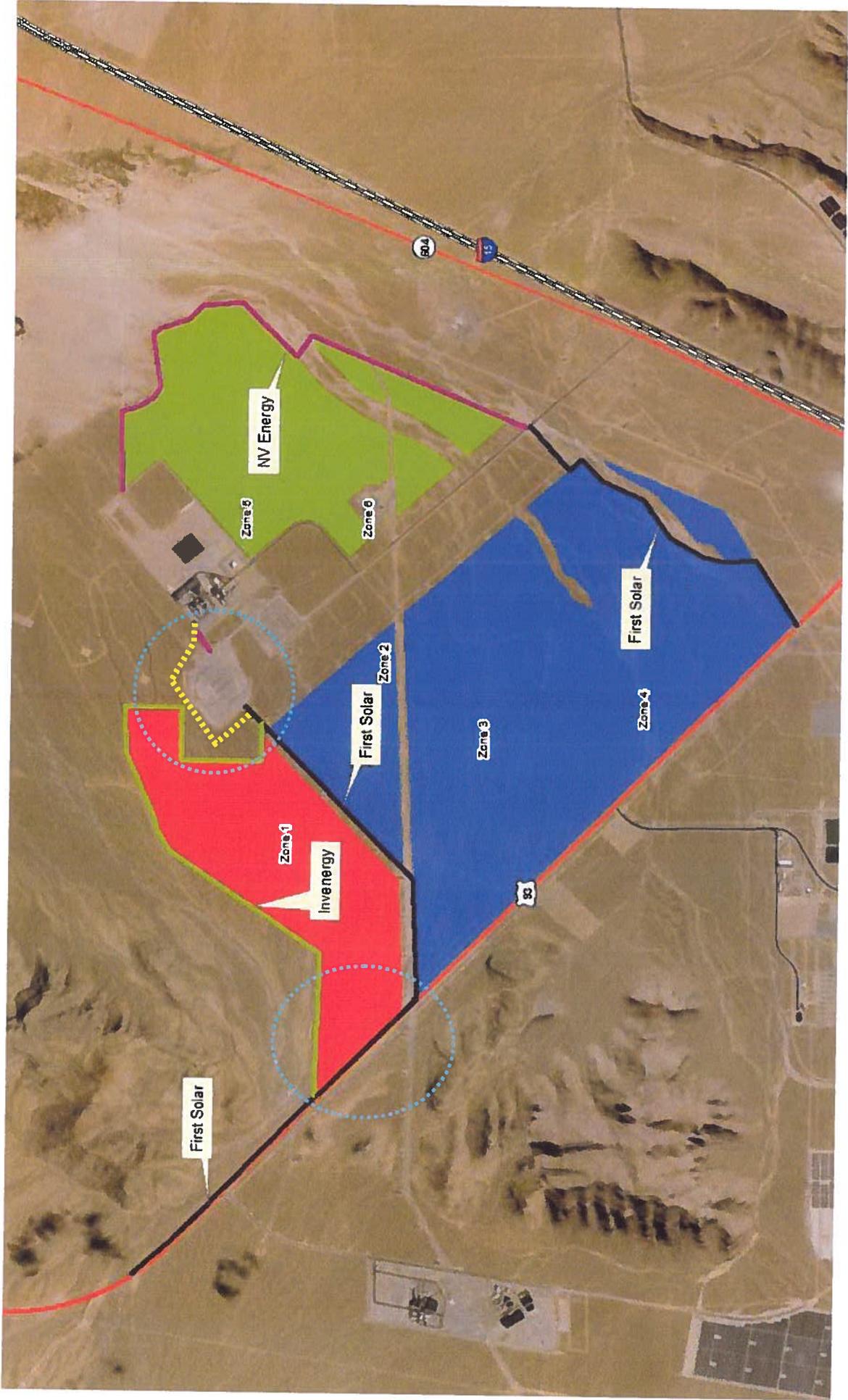
Name:	Title:
Gregory Helseth	BLM RECO Project Manager
Nicollee Gaddis	BLM Planning and Environmental Coordinator
Mark Slaughter	BLM Assistant Field Manager for Resources
Fred Edwards	BLM Botany, Forestry and Range Program Lead
Melanie Cota	BLM Wildlife Biologist
James Wilkinson	BLM Geologist

### 1.6. Conclusion

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitute BLM's compliance with the requirements of NEPA.

 Signature of Project Manager	
 Signature of NEPA Coordinator	
 Signature of Responsible Official Vanessa L. Hice, Assistant Field Manager Division of Lands	Date <u>8/04/15</u>

The signed Conclusion on this Worksheet is part of an interim step in the BLM's internal decision process and does not constitute an appealable decision process and does not constitute an appealable decision. However, the lease, permit, or other authorization based on this DNA is subject to protest or appeal under 43 CFR Part 4 and the program-specific regulations.



## Biological Opinion Mitigation Measures

To minimize adverse effects to the desert tortoise, the BLM will ensure the Applicant implements the following protective measures during all pre-construction, construction, operation, maintenance (O&M), and decommissioning activities.

1. The Applicant will employ authorized biologists and desert tortoise monitors to ensure compliance with protective measures for the desert tortoise. Use of authorized biologists and desert tortoise monitors will be in accordance with the most up-to-date Service guidance and will be required for monitoring of any pre-construction, construction, operation, or maintenance activities that may result in take of the desert tortoise. The current guidance is provided in Chapter 3 of the Desert Tortoise Field Manual (Service 2009a).
2. The Applicant will provide the qualifications of all individuals seeking approval as authorized biologists to the Service (Service 2009a). The Service will review these and determine if the individuals are qualified within 30 days.
3. The Applicant will designate a Field Contact Representative (FCR) who will oversee compliance with protective measures during pre-construction, construction, O&M, and decommissioning activities that may result in injury or mortality of desert tortoises. If the FCR, authorized biologist, or desert tortoise monitor identifies a violation of the desert tortoise measures, they will halt work in the relevant area until the violation is corrected.
4. The Applicant will develop and implement a Worker Education and Awareness Plan for all workers (pre-construction, construction, O&M, and decommissioning) that will address the following: a) types of construction activities that may affect the desert tortoise, b) the required desert tortoise protective measures, c) desert tortoise life history and threats, d) legal protections and penalties, and e) reporting requirements.
5. The Applicant will fence the boundaries of the project sites with desert tortoise fencing, and clear these areas of all desert tortoises prior to construction. Pre-construction activities such as geotechnical work or meteorological tower installation may occur before fence construction.
6. Noise reduction devices (e.g., mufflers) will be employed to minimize the impacts on listed species. Explosives will be used only within specified times and at specified distances from sensitive wildlife or surface waters as established by the BLM or other federal and state agencies. Operators will ensure that all equipment is adequately muffled and maintained in order to minimize disturbance to wildlife.
7. The applicants will develop and implement an Integrated Weed Management Plan consistent with applicable regulations and agency policies for the control of noxious weeds and invasive plant species. The plan will address monitoring; ROW vegetation management; use of certified weed-free seed and mulching; cleaning of vehicles to avoid introducing invasive weeds; and education of personnel on weed identification, the manner in which weeds spread, and methods for treating infestations. Principles of integrated pest management, including biological controls, will be used to prevent the spread of invasive species per the Final Programmatic Environmental Impact Statement, Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States (BLM 2007), and the 2008–2012 National Invasive Species Management Plan (National

Invasive Species Council 2008). The plan will cover periodic monitoring, reporting, and immediate eradication of noxious weed or invasive species occurring within all managed areas. A controlled inspection and cleaning area will be established to visually inspect construction equipment arriving at the project area and to remove and collect seeds that may be adhering to tires and other equipment surfaces. To prevent the spread of invasive species, project developers will work with the local BLM field office to determine whether a pre-activity survey is warranted and, if so, to conduct the survey. If invasive plant species are present, project developers will work with the local BLM field office to develop a control strategy. The plan will include a post-construction monitoring element that incorporates adaptive management protocols.

8. Only herbicides with low toxicity to wildlife and non-target native plant species will be used, as determined in consultation with the Service. The typical herbicide application rate rather than the maximum application rate will be used where this rate is effective.
9. A Spill Prevention and Emergency Response Plan will be developed that considers sensitive ecological resources. Spills of any toxic substances will be promptly addressed and cleaned up before they can enter aquatic or other sensitive habitats as a result of runoff or leaching.
10. A Fire Management Plan will be developed to implement measures that minimize the potential for a human-caused fire to affect ecological resources and that respond to natural fire situations.
11. Water needed for construction should be stored in tanks. If evaporation ponds are used, they will be fenced to prevent use by wildlife and treated in a manner approved by the BLM and Service to prevent drowning. Wildlife escape ramps will be installed and the liner will be textured sufficiently to ensure that all wildlife can escape if they enter the pond. The ponds and fence shall be inspected at least daily.
12. A Decommissioning and Site Reclamation Plan specific to the project will be developed in coordination with appropriate federal and state agencies, approved by the BLM, and implemented by the applicants. The plan will include, as applicable the 14 bulleted items on pages A-10 and A-11 of the Biological Assessment for the Playa Solar Project (BLM and Environmental Science Associates 2015).
13. Post-translocation tortoise monitoring will occur in accordance with the translocation plan (Appendix A) and long-term monitoring plan (Appendix B).
14. The applicants will implement the BLM Southern Nevada District Office Raven Management Plan to minimize effects of ravens on the desert tortoise (BLM 2014a).
15. Reports are required quarterly during the duration of construction and annually during O&M for the life of the facilities. The BLM may delegate this responsibility to the applicants. In addition, a final construction report will be submitted to the Service within 60 days of completion of construction of the project. All quarterly reports are due by the 10th of each of the following months (January, April, July, October), and annual reports

are due February 1 of each year. The Service anticipates the first annual report by February 1, 2016, if construction or project activities occur in 2015. Annual status updates shall be provided to the Service during O&M activities for the life of the facility.

Specifically, all reports must include information in the table below on any instances when desert tortoises were killed, injured, or handled; the circumstances of such incidents; and any actions undertaken to prevent similar incidents from reoccurring. Additionally, the reports should provide detailed information regarding each desert tortoise handled or observed and the names of all monitors involved in the project and the authorized desert tortoise biologist who supervised their actions. Information will include the following: location (GPS), date and time of observation, whether desert tortoise was handled, general health, and whether it voided its bladder, location desert tortoise was moved from and location moved to, unique physical characteristics of each tortoise, and effectiveness and compliance with the desert tortoise protection measures. Any incident occurring during project activities that was considered by the FCR, authorized desert tortoise biologist or biological monitor to be in non-compliance with this Biological Opinion will be documented immediately by the authorized desert tortoise biologist.

Desert tortoise actual incidental take reporting for project

Activity	Actual No. Mortality and Injury		Actual No. Captured		Actual Habitat Loss (ac)
	Adult <sup>1</sup>	Juvenile <sup>1</sup>	Adult <sup>1</sup>	Juvenile <sup>1</sup>	Non-critical
Pre-construction					
Construction					
Operation and Maintenance					
Predation					
<b>Minimization Measure Implemented</b>	<b>Effectiveness and Recommendations</b>				

<sup>1</sup>adults are 180 millimeters in length and larger; juveniles are less than 180 millimeters

16. In the event that unforeseen circumstances prevent translocation from occurring immediately following the issuance of this Biological Opinion, the applicants will be responsible for monitoring all translocated tortoises on their project site until the time of translocation. This effort will include monitoring tortoises twice a month during the active season and monthly monitoring during the less active season, as defined in the Translocation Plan. Transmitters will be repaired and replaced as needed. This monitoring will continue until all tortoises for the project are translocated or, in the event they are not translocated, until their transmitters are removed. Quarterly reporting (email) of the pre-translocation monitoring shall be provided to the BLM. All other protocols and guidance during this monitoring will adhere to the Translocation Plan.