

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

Decision Record

DOI-BLM-NV-S010-2010-0149-EA

August 25, 2010

Apex Solar Power — 69kV Gen-Tie Transmission Line Project

APPLICANT

Fotowatio Nevada Solar, LLC

BLM CASES FILE SERIAL NUMBER N-88313

PREPARING OFFICE

U.S. Department of the Interior
Bureau of Land Management
Southern Nevada District Office
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130
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**Decision Record : DOI-BLM-
NV-S010-2010-0149-EA**

Table of Contents

1. Decision Record DOI-BLM-NV-S010-2010-0149-EA	1
1.1. Compliance:	1
1.2. Selected Action:	1
1.3. Public Involvement:	1
1.4. Rationale:	1
1.5. Appeal or Protest Opportunities:	2
1.6. Authorizing Official:	2
1.7. Contact Person:	3

Chapter 1. *Decision Record*
DOI-BLM-NV-S010-2010-0149-EA
Apex Solar Power — 69kV Gen-Tie Transmission Line Project

1.1. Compliance:

I have determined that the proposed action is in conformance with the approved land use plan and is consistent with the application and plans and policies of county, state, tribal and Federal agencies. The proposed project is in compliance with the Federal Land Policy and Management Act (FLPMA) of 1976 and all Bureau of Land Management (BLM) land uses in the Southern Nevada District Office, the Las Vegas Resource Management Plan (LVRMP), the Endangered Species Act, and the Clean Water Act.

An EA was carried out in compliance with the National Environmental Policy Act (NEPA) to evaluate the proposed right-of-way for a 69kV Gen-tie transmission line and the connected action located on private lands within the Apex Solar Power Project.

The proposed project is in conformance with the LVRMP, EIS and Record of Decision approved October 5, 1998. Although not specifically provided for in the plan, the action is clearly consistent with the terms, conditions and decisions of the approved plan objective RW-1 and RW-1-h of the Right-of-Way Management section of the Land Use Plan decision.

1.2. Selected Action:

It is my decision to implement the proposed action with the mitigation measures identified in the EA and all other stipulations as shown at Exhibit A of this Decision Record and the proposed ROW grant. The proposed action is for the BLM to authorize Fotowatio's right-of-way and short-term right-of-way application to construct, operate, maintain, and terminate a new 69kV transmission line from their new 69kV project substation; to be constructed as part of the proposed Apex Solar power Project, to an existing 69kV transmission line owned by NV Energy. The ROW will tie into the NV Energy transmission line, located in T. 18 South, R. 63 East, Section 17, Lots 3,4,6, and 8. This action will not result in significant impacts to the environment. Therefore, an Environmental Impact Statement (EIS) is not required and a Finding of No Significant Impact (FONSI) has been approved.

1.3. Public Involvement:

The proposed project was reviewed and scoped by a team of BLM resource specialist in the Las Vegas Field Office, and the Renewable Energy Projects staff between April 3 and July 9, 2010. The Environmental Assessment (EA) and the unsigned Finding of No Significant Impact (FONSI) were made available for a public comment period of July 22, 2010 through August 11, 2010 on the BLM's Southern District web site and interested parties were notified of the opportunity to comment. The BLM received 3 comments during the scoping period and 1 comment outside of the scoping period. None of the comments identified any issues with the Environmental Analysis or the FONSI for the project. However, all comments were considered in making this decision on the 69kV Gen-tie transmission line project.

1.4. Rationale:

1. The proposed action is consistent with promoting the utilization of public lands in common with respect to engineering and technological compatibility and land use plans (43 CFR 2801.2(c)).

2. The proposed action supports coordination with State and local governments, interested individual and appropriate quasi-governmental entities (43 CFR 2801.2(d)).
3. The recommendation to authorize right-of-way grants on Federal lands meets the stated objective RW-1 and RW-1-h in the LVRMP approved October 5, 1998.

1.5. Appeal or Protest Opportunities:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at Title 43 Code of Federal Regulations (CFR), Part 4, and the information provided in BLM Form 1842-1.

If an appeal is taken, your notice of appeal must be filed in the Las Vegas Field Office, Bureau of Land Management, U.S. Department of the Interior, 4701 N. Torrey Pines Drive, Las Vegas, Nevada, 89130, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, pursuant to Title 43 of the Code of Federal Regulations, Part 4, Subpart E, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

1.6. Authorizing Official:

Name:

Date:

Beth Ransel

Acting Assistant Field Manager

Division of Lands

1.7. Contact Person:

For additional information concerning this Finding, contact.

Brenda Wilhight

Pahrump Field Office

4701 N. Torrey Pines, Drive

Las Vegas, Nevada 89130

Phone: 702-515-5172

Fax: 702-515-5155

Exhibit A
Stipulations N-88313 and N-88313/01

1.0 Bonding Stipulations

A Bond is required for this authorization. The amount of the bond shall be determined as follows: the Holder shall furnish a report within 90 days estimating all costs for the BLM to fulfill the terms and conditions of the grant in the event that the Holder was not able to do so. This estimate shall be prepared by an independent State certified engineer who is approved in advance by the BLM Authorized Officer, and shall include such information including but not limited to administrative costs and Davis Bacon wages potentially incurred by the BLM. The report shall detail the estimated costs and shall be accompanied by the engineer's seal. All costs of preparing and submitting this report shall be borne solely by the Holder. This report along with inflationary estimates shall be the basis of the bond, and shall remain in effect until such time that the Authorized Officer determines that conditions warrant a review of the bond. This bond may be periodically adjusted by the Authorized Officer in the method described above when, in his/her sole determination, conditions warrant a review of the bond. Surface disturbing activities shall not commence until the BLM Authorized Officer has accepted the bond and issued a Notice to Proceed.

2.0 Special Stipulations

- 2.1. No surface disturbance activities will be authorized until the Holder submits a letter demonstrating that NV Energy is in support of the inter-connection to their existing facilities. Upon receipt of the letter and acceptance of a bond the Notice to Proceed will be issued.
- 2.2. The Holder shall coordinate with Kern River Gas Transmission Company as indicated in their letter dated August 13, 2010, and received at BLM on August 18, 2010. A copy of the letter is contained in case file N-88313-88313/01.
- 2.3. The Holder must comply with all elements of the submitted Plan of Development as approved by BLM.
- 2.4. The Holder must submit to BLM a final Reclamation Plan within 30-days of the start of construction. The plan must be approved by BLM prior to completion of the construction.

3.0 General Stipulations

- 3.1. The right-of-way is issued subject to all valid existing rights.
- 3.2. No signs or advertising devices shall be placed on the premises or on adjacent public

Exhibit A
N-88313
Page 1 of 17

lands, except those posted by or at the direction of the Authorized Officer.

- 3.3. The right-of-way shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 3.4. Holder shall mark the exterior boundaries of the right-of-way with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 3.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this right-of-way within its authorized limits.
- 3.6. Holder shall maintain the right-of-way in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 3.7. Holder shall maintain a copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying the right-of-way encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any rights it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the Holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
- 3.8. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the right-of-way:

Acceptable data formats are:
Corrected Global Positioning System files with sub-meter accuracy or better,
in UTM NAD 83; Zone 11;

Exhibit A
N-88313
Page 2 of 17

ARCGIS export files on a CD ROM, shapefile, geodatabase.

Data may be submitted in any of the following formats:
ARCGIS interchange, shapefile or geodatabase format.
CD ROM in compressed or uncompressed format.

All data shall include metadata for each coverage and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact the GIS Department at (702) 515-5000.

4.0 Air Quality

- 4.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the right-of-way and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the right-of-way.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

Prior to relinquishment, abandonment, or termination of this right-of-way, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.

- 4.2. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

5.0 Cultural

- 5.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost

Exhibit A
N-88313
Page 3 of 17

of evaluation. Any decision regarding suitable mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

6.0 Hazardous Material/Pesticides/Liability

- 6.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the right-of-way area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by Federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.
- 6.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way area, potentially affecting the right-of-way area, of which the Holder is aware.
- 6.3. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of-way area.
- 6.4. The right-of-way area shall be maintained in a sanitary condition at all times; waste materials at the site shall be disposed of promptly at an approved waste disposal site. "Waste" as used in this paragraph shall mean all discarded matter of any kind.
- 6.5. Use of pesticides shall comply with the applicable Federal and state laws.

Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer.

The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year.

Pesticides shall not be permanently stored on public lands authorized for use under this right-of-way.

Exhibit A
N-88313
Page 4 of 17

- 6.6. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way), the United States against any liability arising from the Holder's use or occupancy of the right-of-way, regardless of whether the Holder has actually developed or caused development to occur on the right-of-way, from the time of the issuance of this right-of-way to the Holder, and during the term of this right-of-way. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the right-of-way.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of-way regardless of whether the Holder has actually developed or caused development to occur on the right-of-way from the time of the issuance of this right-of-way to the Holder and during the term of this right-of-way.

- 6.7. Mineral material generated, and not needed for the development of the proposed action within the right-of-way site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of in place excess mineral material. All mineral material needs to be used on site within the right-of-way or stockpiled on site for sale by the BLM.

7.0 **Visual Resources**

The Holder shall construct the project using non-specular conductors, restore the access road where feasible and match the color and spans of the adjacent existing transmission towers where feasible.

8.0 **Survey Monuments**

- 8.1. Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the Holder shall secure the services of a Professional Land Surveyor or BLM cadastral surveyor

Exhibit A
N-88313
Page 5 of 17

to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The Holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the BLM cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the Holder shall be responsible for the survey cost.

9.0 **Vegetation/Noxious Weeds/Land Surface Treatment/Soil/Water/Riparian/Forestry**

- 9.1. All cactus and yucca within the right-of-way may be salvaged, replanted, and maintained in temporary impact areas or undisturbed portions of the project area. Alternatively, cactus and yucca may be transported to a BLM stockpile for later use by BLM, sold to the public, or another alternative may be developed in coordination with the Forestry Program Lead.
- 9.2. The Holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods within limits imposed in the right-of-way stipulations.
- 9.3. The Holder is responsible for examining all vehicles and personnel travelling to/from the sites to ensure all are free and cleaned of any vegetation or soil.
- 9.4. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and contoured evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.
- 9.5. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction will be salvaged and transplanted out of harm's way but still within the right of way. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 9.6. Soil/Water/Riparian: If work is to occur in Ephemeral channels, need to consult with Army Corp of Engineers (ACOE) and Nevada Department of Environmental Protection (NDEP). If drilling boreholes, Holder needs to follow Nevada Administrative Code (NAC) protocols for drilling.

10.0 **Migratory Birds**

- 10.1. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral

Exhibit A
N-88313
Page 6 of 17

washes containing upland species, the season generally occurs between March 15th - July 30th.

If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation.

If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

11.0 Threatened and Endangered Wildlife and Plant Species Stipulations

- 11.1. The Holder shall direct construction personnel to collect and contain all waste and litter.
- 11.2. The Holder will comply with the terms and conditions of the **Biological Opinion for this project** on file at the Bureau of Land Management, Las Vegas Field Office and included below.

Case File #: N-88313
NEPA Project #: DOI-BLM-NV-S010-2010-0149-EA
Section 7 Log #: NV-052-10-160

Terms and Condition of Biological Opinion in Area B

File No. 1-5-97-F-251

In order to be exempt from the prohibitions of section 9 of the Act, the applicant must comply with the following terms and conditions, which implement the reasonable and prudent measures described below. These terms and conditions are non-discretionary.

Measures shall be taken to minimize take of desert tortoises due to project related activities.

- a. A qualified tortoise biologist, or designee of the Bureau, shall present a tortoise education program to all foremen, workers, and other employees working on the project. The program will include information on the life history of the desert tortoise, legal protection for desert tortoises, penalties for violations of Federal and State laws, general tortoise activity patterns, reporting requirements, measures to protect tortoises, terms and conditions of the biological opinion, and personal measures employees can take to promote the conservation of desert tortoises. The definition of "take" will also be explained. Workers will be encouraged to carpool to and from project sites. The program shall be approved by the Service prior to implementation. Specific and detailed instructions will be provided on the proper techniques to capture and move tortoises which appear onsite, in accordance with

Exhibit A
N-88313
Page 7 of 17

Service approved protocol. Currently, the Service approved protocol is Desert Tortoise Council 1994, revised 1999.

- b. A speed limit of 25 miles per hour shall be required for all vehicles on the project site and unposted dirt access roads.
- c. During construction activities, tortoise burrows should be avoided whenever possible. If a tortoise is found onsite during project activities which may result in take of the tortoise (e.g., in harm's way), such activities shall cease until the tortoise moves, or is moved, out of harm's way. The tortoise shall be moved by a qualified tortoise biologist, or individual trained in the proper technique of handling and moving desert tortoises. All workers will also be instructed to check underneath all vehicles before moving such vehicles. *Tortoises often take cover under vehicles.*
- d. **The project shall require a tortoise biologist onsite during construction activities.** Unless the area is fenced and cleared, the project will require an onsite biologist during construction of the project during the tortoise active period (March 1 through October 31), and a biologist on call during the tortoise inactive period (November 1 through February 28/29).
- e. The FWS must approve the selected consulting firm/biologist to be used by the applicant to implement the terms and conditions of the biological opinion or permit issued by the Bureau. Any biologist and/or firm not previously approved must submit a curriculum vitae and be approved by the FWS before authorized to represent the Bureau in meeting compliance with the terms and conditions of the biological opinion. Other personnel may assist with implementing mitigation measures, but must be under direct field supervision by the approved qualified biologist.

In accordance with *Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise* (Service 1992), a qualified desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Bureau. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service approved handling protocol (Desert Tortoise Council 1994, revised 1999) prior to conducting tasks in association with terms and conditions of the biological opinion. In addition, the biologist shall have the ability to recognize and accurately record survey results.

- f. **All project areas including construction sites, access routes, staging areas, and fencelines, will be cleared by a qualified biologist before the start of construction or ground disturbance.** The parcel shall be surveyed for desert tortoise using survey techniques which provide 100-percent coverage. During the tortoise active season, the pre-construction clearance shall be no more than 3 days before initiation of

Exhibit A
N-88313
Page 8 of 17

construction. During the tortoise inactive season, the pre-construction clearance shall be within 5 days before work begins.

****Pre-construction clearance shall be conducted on both the transmission line and the connected action on private lands.**

- g.** Desert tortoises encountered experiencing heat stress will be placed in a tub by a qualified tortoise biologist with one inch of water in an environment with a temperature between 76 degrees F and 95 degrees F for several hours, until heat stress symptoms are no longer evident.
- h.** Tortoises and nests found shall be relocated by a qualified tortoise biologist in accordance with Service approved protocol (Desert Tortoise Council 1994, revised 1999). Burrows containing tortoises or nests will be excavated by hand, with hand tools, to allow removal of the tortoise or eggs.
- i.** Tortoises that are moved offsite and released into undisturbed habitat on public land, must be placed in the shade of a shrub, in a natural unoccupied burrow similar to the hibernaculum in which it was found, or in an artificially constructed burrow in accordance with Desert Tortoise Council (1994, revised 1999).
- j.** Desert tortoises moved during the tortoise inactive season or those in hibernation, regardless of date, must be placed into an adequate burrow. If one is not available, one will be constructed in accordance with Desert Tortoise Council (1994, revised 1999). During mild temperature periods in the spring and early fall, tortoises removed from the site will not necessarily be placed in a burrow.
- k.** *The project will require desert tortoise exclusion fencing.* Fences will tie in to any existing fencing adjacent to the project area. The fence may be permanent or temporary, as determined on a case by case basis. Fenced areas will require an initial tortoise clearance of the fenceline prior to fence construction, and a tortoise clearance following fence construction. Project sites to be fenced with permanent tortoise proof fencing must be fenced prior to the commencement of surface disturbance activities within the project site. Fencing will consist of 1-inch horizontal by 2-inch vertical mesh. The mesh will extend at least 18 inches above ground and, where feasible, 6 inches below ground. In situations where it is not feasible to bury the fence, the lower 6-12 inches of the fence shall be bent at a 90-degree angle towards the potential direction of encounter with tortoise and covered with cobble or other suitable material to ensure that tortoise or other animals cannot dig underneath, thus creating gaps through which tortoises may traverse. The height of tortoise proof fencing will be a minimum of 18 inches above ground. The fence shall be inspected, and zero clearance maintained between the bottom of the fence and the ground.

****Fencing will be required for the connected action on private lands.**

Exhibit A
N-88313
Page 9 of 17

- l.** If fence construction occurs during the tortoise active season, a qualified tortoise biologist shall be onsite during construction of the tortoise proof fence to ensure that no tortoises are harmed. If the fence is constructed during the tortoise inactive season, a biologist will thoroughly examine the proposed fenceline and burrows for the presence of tortoises no more than 5 days before construction. Any desert tortoises or eggs found in the fenceline will be relocated offsite by a qualified tortoise biologist in accordance with approved protocol. Tortoise burrows that occur immediately outside of the fence alignment that can be avoided by fence construction activities shall be clearly marked to prevent crushing.

Following Fence Construction: Prior to the commencement of project activities, all desert tortoises shall be removed from the site. A qualified biologist shall oversee the survey for and removal of tortoises using techniques providing 100-percent coverage of all areas. Two complete passes of 100-percent coverage will be accomplished. All desert tortoise burrows, and other species burrows which may be used by tortoises, will be examined to determine occupancy of each burrow by desert tortoises. Tortoise burrows shall be cleared of tortoises and eggs, and collapsed. Any desert tortoises or eggs found in the fenced area will be removed under the supervision of a qualified tortoise biologist in accordance with Service protocol.

- m.** After a project has been fenced and a tortoise clearance completed, if the operator encounters a desert tortoise in imminent danger, the operator shall move the tortoise out of harm's way and on to adjacent Bureau land. If the tortoise cannot be avoided or moved out of harm's way onto Bureau land, it shall be placed in a cardboard box or other suitable container and held in a shaded area until the Clark County pickup service or Bureau personnel can retrieve the tortoise.
- n.** On phased development projects, the operator may have the option with concurrence of the Bureau of initially fencing less than the total project acreage. The fenced area will be enlarged as the disturbance expands. To ensure that no tortoises are harmed, each new segment of fence will be constructed under the provision described in Terms and Conditions **1.k.** and **1.l.** above. Payment of the mitigation fee identified in Term and Condition **3.d.** below will be required prior to surface disturbance of each phase.
- o.** The operator shall inspect the fencing at least on a quarterly basis, to insure that it is in compliance with the standards described in Term and Condition **1.k** and **1.l.** above, and shall perform maintenance when needed including removing trash, sediment accumulation, and other debris. Temporary fencing shall be removed at the end of the construction activity. Permanent fencing may be removed upon termination and reclamation of the project, or when it is determined by the Bureau and Service that the fence is no longer necessary. Monitoring and maintenance shall include regular removal of trash and sediment accumulation and restoration of zero ground clearance between the ground and the bottom of the fence, including re-covering the bent portion of the fence if not buried.

Exhibit A
N-88313
Page 10 of 17

- p.** Where the Bureau allows or requires the installation of a temporary tortoise proof fence, the fence shall include as much of the proposed construction site as feasible. This may in some cases require the installation of temporary fencing along access routes. Typical fence design should consist of 1-inch mesh or 1-inch horizontal by 2-inch vertical mesh (hardware cloth or plastic) and be installed flush with ground and extend at least 18 inches above ground. Temporary tortoise proof fencing should not be buried.

Measures shall be taken to minimize predation on tortoises by ravens drawn to the project area.

This will involve a litter-control program. This program will include the use of covered, raven proof trash receptacles, removal of trash from the construction site to the trash receptacles following the close of each work day, and proper disposal of trash in a designated solid waste disposal facility. Vehicles hauling trash to the landfill and leaving the landfill must be secured to prevent litter from blowing out along the road.

Measures shall be taken to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation, due to project related activities.

- a.** If possible, overnight parking and storage of equipment and materials, including stockpiling, shall be within previously disturbed areas or areas to be disturbed which have been cleared by a tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the tortoise biologist who will minimize habitat disturbance.
- b.** All vehicle traffic will be restricted to existing access roads. New access roads will be created only when absolutely necessary and only when approved by the Bureau. Routes for new access roads will be flagged by the tortoise biologist prior to surface disturbance.
- c.** Project activity areas will be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. Blading of vegetation will occur only to the extent necessary and shall be limited to areas designated for that purpose by the Bureau or tortoise biologist.
- d.** Remuneration fees apply to future disturbance in tortoise habitat. Past disturbance or disturbance on land not considered to be tortoise habitat by a tortoise biologist, and approved by the Bureau, are not assessed a tortoise remuneration fee. Remuneration fees will be used to fund management actions which are expected to benefit the desert tortoise. Actions may involve: Habitat acquisition; population or habitat enhancement or protection; research that increases our knowledge of desert tortoise biology, habitat requirements, or factors affecting habitat attributes; reducing loss of individual animals, documenting the species' current status and trend, and preserving

Exhibit A
N-88313
Page 11 of 17

distinct population attributes or any other action described in the Management Oversight Group's report titled *Compensation for the Desert Tortoise* (Hastey, et al. 1991) or Recovery Plan.

- e. Payment of a remuneration fee, currently set at **\$774.00 per acre on BLM administered lands** and **\$550.00 per acre on private lands**, will be required for all projects *prior* to issuance of the lease, permit, notice to proceed, or other Bureau authorization, with the following exceptions:
- (1) Because many mining plans of operation are phased in over a number of years, remuneration fees may be collected prior to the beginning of each phase.
 - (2) Mineral material sales and leases will be charged a fee of 25 cents per cubic yard up to the equivalent of \$774.00 per acre of disturbance, or will be assessed \$774.00 per acre for each phase of disturbance, at the discretion of the Bureau.

The current rate of \$774.00 per acre will be indexed for inflation as described in Term and Condition **3.g.** below.

- f. **For Community Sand And Gravel Sales:** Fees will be assessed on the basis of cubic yards of material removed from project site. A fee of 25 cents per cubic yard will be applied until such time as the fees collected are equal to \$774.00 per acre for each acre of surface disturbance, or the equivalent rate as indexed for inflation. The fee shall be paid directly to the Bureau while purchasing mineral materials at the Las Vegas District Office. The fee shall be deposited directly into the Bureau's 5320 account.
- g. This rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31 of each year, beginning January 31, 1998. Fees assessed or collected for projects covered under this biological opinion after January 31st of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at: <http://stats.bls.gov/news.release/cpi.nr0.htm>.

The total fee for this project is \$86,658.22 (\$774.00 x 2.53 acres + \$550.00 x 154 acres).

- **\$1,958.22 (Section 7 fee)**
- **\$84,700.00 (Section 10 fee)**

The Section 7 fee will be paid directly to the Bureau of Land Management, Information Access Center. These funds are independent of any other fees collected by BLM for desert tortoise conservation planning.

Exhibit A
N-88313
Page 12 of 17

The payment shall be accompanied by the **Section 7 Fee Payment Form**, (Attachment) and completed by the payee. Payment shall be by certified check or money order payable to **Bureau of Land Management**. Checks may be delivered in person at the BLM Information Access Center (IAC). For private parcel services, such as Fed-Ex or UPS, use the physical address. For US Postal Service, use the PO Box. Note that the zip codes are different for physical vs. PO Box.

Physical Address: Bureau of Land Management
Attn: Information Access Ctr
1340 Financial Blvd.
Reno, NV 89502

PO Box: Bureau of Land Management
Attn: Information Access Ctr
PO Box 1200
Reno, NV 89520-0006

Desert tortoise habitat on non-Federal lands would be compensated at \$550.00 per acre and paid into the Clark County MSHCP account. The MSHCP fees are not currently indexed for inflation.

- h.** Projects resulting in residual impacts will require the submission of a Bureau approved reclamation plan, unless determined by the Bureau and Service that reclamation rehabilitation is not necessary. The reclamation plan will describe objectives and methods to be used, species of plants and/or seed mixture to be used, time of planting, success standards, and follow-up monitoring. Depending upon the size and location of the project, reclamation could simply involve re-contouring, if needed, and rehabilitation and restriction of access points or could involve reclamation over the entire area of surface disturbance. Reclamation will be addressed on a case-by-case basis.

Measures shall be taken to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and consultation re-initiation requirements contained in the biological opinion.

- a.** The project applicant shall notify the Bureau at least 10 days before initiation of the project. Notification shall be made to the Bureau's wildlife staff at (702) 515-5000.
- b.** The Bureau wildlife staff (702/515-5000) and Service (702/515-5230) must be notified of any desert tortoise death or injury due to the project implementation by close of business on the following work day.
- c.** All appropriate NDOW permits or letters of authorization shall be acquired prior to handling desert tortoises and their parts, and prior to initiation of any activity that may require handling tortoise.

Exhibit A
N-88313
Page 13 of 17

- d. The project proponent must submit a document to the Bureau within 30 days of completion of the project showing the number of acres disturbed; remuneration fees paid; and number of tortoises taken, which includes capture and displacement, killed, injured, and harassed by other means, during implementation of programmatic actions.
- e. For tortoise removals in Clark County, the applicant shall make prior arrangements with Clark County's tortoise pickup service (702/593-9027) at least 10 days prior to the commencement of tortoise collection. Outside Clark County, initial notification shall be made to the Bureau as stated in Term and Condition **4.a.** above.

Attachment A
SECTION 7 LAND DISTURBANCE FEE PAYMENT FORM

Biological Opinion File Number: 1-5-97-F-251
Biological Opinion Issued By: Nevada Fish and Wildlife Office, Las Vegas, Nevada
Species: Desert Tortoise (*Gopherus agassizii*) (Mojave population)
Project Name: Apex Solar Power – 69 kV Gen-Tie Transmission Line Project
Project Proponent: Fotowatio Nevada Solar, LLC
Phone Number: (415) 229-8867, Michael Lichtenfeld, Senior Manager, Development

Payment Calculations:	Clark County		_____ County		_____ County	
	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat
# acres anticipated to be disturbed on federal land		2.53				
Fee rate (per acre)		774				
Total cost/habitat type (per county)	\$ -	\$1,958.22	\$ -	\$ -	\$ -	\$ -
Total cost per county	\$1,958.22		\$ -		\$ -	

Total payment required (all counties): \$ _____

Amount paid: _____ **Date:** _____ **Check/Money Order #:** _____

Authorizing agencies: Bureau of Land Management, _____ Las Vegas, _____ Nevada

Make check payable to: Bureau of Land Management

Deliver check to:

<u>Physical Address</u>	<u>PO Box</u>
Bureau of Land Management	Bureau of Land Management
Attn: Information Access Ctr	Attn: Information Access Ctr
1340 Financial Blvd.	PO Box 12000
Reno, NV 89502	Reno, NV 89520-0006

For BLM Public Room

Process check to:
 Contributed Funds- All Other
 WBS: LVTFF1000800
 7122 FLPMA
 All other Res. Dev. Project and Management
 Remarks: LLNV9300000 L71220000.JP0000 LVTFF1000800 Desert Tortoise Conservation Program

Please provide a copy of this completed payment form and the payment receipt to NV-930, Attn: T&E Program Lead
 **T&E Program Lead will provide a copy to the appropriate District Office(s)

DESERT TORTOISE SECTION 7 COMPLIANCE FORM

Entire form is to be completed by the project proponent and delivered to the Bureau of Land Management within 30 days of project completion

Biological Opinion File Number: 1-5-97-F-251
Species: desert tortoise (Gopherus agassizii)

Project Name Apex Solar Power – 69 kV Gen-Tie Transmission Line Project
Acreage of Disturbance Authorized: 2.53 (BLM administered); 154 (Private)
Acreage Actually Disturbed: _____
Fees Assessed: \$1,958.22 – BLM; \$84,700 - Private Rate: \$774/acre; \$550/acre

In accordance with this biological opinion, applicants or project proponents must avoid or remove tortoises from lands to be disturbed within the project area.

- Area B mandatory desert tortoise clearance survey
- Area C mandatory desert tortoise clearance survey
- Area C voluntary desert tortoise clearance survey conducted
- Area C voluntary desert tortoise clearance survey not conducted

Date(s) clearance survey(s) conducted: _____
Number of desert tortoises observed: _____
Number of desert tortoise burrows observed: _____
Number of desert tortoises injured: _____
Number of desert tortoises killed: _____
Number of desert tortoises removed from the project site: _____

(Provide a report detailing all tortoise encounters and what happened to the animals. This report will include age class, gender, and health of each animal, maps showing where each tortoise was captured and later relocated, and the air temperature during the relocation.)

Company and persons who conducted the survey and removal¹:

Company: _____
Name: _____
Address: _____
Phone: _____
State Permit #: _____

If desert tortoises were encountered, attach a summary of each action. This summary shall include: date encountered; whether the animal was avoided, injured, killed, or moved out of harm's way; and if the animal was handled, please identify where the animal was relocated to.

Deliver this completed form and required supplemental information to:

Exhibit A
N-88313
Page 16 of 17

Bureau of Land Management
Division of Renewable Resources
4701 N. Torrey Pines Drive
Las Vegas, NV 89130
(702) 515-5000

If you have questions, call the BLM's Wildlife staff at (702) 515-5000.

¹BLM approval of biological monitors/surveyors required. Submit resumes for review/approval 15 days prior to construction

Exhibit A
N-88313
Page 17 of 17

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

Finding of No Significant Impact

FONSI

August 25, 2010

Apex Solar Power — 69kV Gen-Tie Transmission Line Project

APPLICANT

Fotowatio Nevada Solar, LLC

GENERAL LOCATION

Near Apex, Nevada, north of I-15 and west of U.S. Highway 93

BLM CASE FILE SERIAL NUMBER N-88313

PREPARING OFFICE

U.S. Department of the Interior
Bureau of Land Management
Southern Nevada District Office
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada
702-515-5172 Office
702-515-5010 Fax



**Finding of No Significant
Impact: FONSI: DOI-BLM-
NV-S010-2010-0149**

Table of Contents

1. Finding of No Significant Impact	1
1.1. Apex Solar Power — 69kV Gen-Tie Transmission Line Project	1
1.2. Context:	1
1.3. Intensity:	1
1.4. Approval:	3

Chapter 1. Finding of No Significant Impact

1.1. Apex Solar Power — 69kV Gen-Tie Transmission Line Project

DOI-BLM-NV-S010-2010-0149-EA; Case File N-88313

I have reviewed Environmental Assessment (EA) DOI-BLM-NV-S010-2010-0149-EA dated July 2010. After consideration of the environmental effects as described in the EA, and incorporated herein, I have determined that the proposed action identified in the EA will not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is not required to be prepared.

I have determined that the proposed action is in conformance with the approved Las Vegas Resource Management Plan and Record of Decision, signed October 1998. The proposed action is consistent with applicable plans and policies of county, state, tribal and Federal agencies. This finding and conclusion is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

1.2. Context:

The lands proposed for the Fotowatio Nevada Solar, LLC (Fotowatio), Apex Solar Power 69kV Gen-Tie Transmission Line Project are located in an area known as Apex, which is located within the boundaries of the City of North Las Vegas. Fotowatio submitted a right-of-way (ROW) application on April 1, 2010 for a transmission line to interconnect with their proposed Apex Solar Power project. The transmission line ROW request is located on public lands administered by BLM at Mount Diablo Meridian, Clark County Nevada, Township 18 South, Range 63 East, Section 17, Lots 3, 4, 6, and 8.

The requested permanent ROW width is 60 feet (30 feet each side of the center—line of the proposed transmission line) x 1,100 feet (1.25 Acres). The short-term ROW (STROW) is 40 feet (20 feet on each side of the long-term ROW) x 1,100 feet ROW (1.01 acres) would be required during the construction phase. The proposed transmission line would take approximately 2 to 3 months to construct. The transmission line would be operational for at least 30 years. The ROW application request is for 30 years, with a right to renew.

The proposed project has a connected action, the Apex Solar Power project, which is located on private lands within the jurisdiction of the City of North Las Vegas, Nevada. This is a non-federal action interconnected to the federal action, the transmission line. The Apex Solar Power Project is a proposed 20 MWac (24.9 MWdc) photovoltaic solar power facility located entirely on private land within the Apex Industrial Park in the City of North Las Vegas, Nevada.

1.3. Intensity:

1. Impacts that may be both beneficial and adverse.

The proposed project is expected to generate about 54,670 kWh/year of clean electricity that could power over 5,000 homes annually, while helping Nevada comply with its progressive renewable portfolio. The clean electricity will off-set approximately 32, 841 tons of CO₂per year as well as 0.55 tons of methane and 0.23 tons of nitrous oxide. Approving the 69kV

gen-tie transmission line on Federal lands to connect to the proposed Apex Solar Power Project on non-federal lands will further renewable energy development and lower green house gases and fossil fuel dependency, thus resulting in an overall beneficial environmental impact.

The proposed project would result in the permanent loss of 1.52 acres and the temporary loss of 1.01 acres of desert tortoise and wildlife habitat. The resulting impacts will be minimized through compliance with the terms and conditions of the USFWS approved Programmatic Biological Opinion for Multiple Use Activities (1-5-97-F-251).

2. The degree to which the proposed action affects public health or safety.

The proposed action to authorize a ROW to construct, operate, maintain and terminate a 69kV transmission line on Federal lands does not directly affect the public health and safety. The issuance of a ROW is an administrative action and has no direct affect on the environment.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

A cultural survey was completed on May 3, 2010 and there are no cultural resources located in this proposed project area or the connected action area. The proposed project and the interconnect transmission line are west of the BLM Coyote Springs ACEC. There are no park lands, prime farmlands, wetlands, wild or scenic rivers located in the proposed project area.

4. The degree to which the effects on the quality of the human environment are likely to be controversial.

The proposed project, the transmission line, is located in a BLM designated utility corridor N-52787. The connected action is located on non-federal lands administered by the City of North Las Vegas and is zoned for industrial development. Both actions are consistent with the designated land uses and do not affect the quality of the human environment.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The granting of a transmission line ROW for interconnection purposes is a routine action. The proposed project, the transmission line does not involve any unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The proposed project, the transmission line, is located in a BLM designated utility corridor N-52787. Apex is an industrial park bordered on the west side by this BLM designated utility corridor; it is therefore reasonable to foresee other ROW applicants using the corridor as a interconnection point from the non-federal lands.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

The proposed project, the transmission line, is a connected action involving the Apex Solar Power Project. This connected action is located on private lands administered by the City of North Las Vegas. It will use approximately 154 acres of lands zoned as industrial.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources.

A cultural resources inventory was conducted on the requested ROW lands and the lands associated with the connected action. There were no cultural resources identified.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.

The proposed project will have an effect on endangered or threatened species. A biological survey was conducted of the proposed site for wildlife and plants. The BLM has identified mitigation measures to reduce the effect of the identified endangered or threatened species.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The proposed project would not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment. The proposed project is in conformance with 43 Code of Federal Regulations. The proposed project would not violate the Migratory Bird Treaty Act or Endangered Species Act.

Section 7 Consultation for the proposed project and the associated connected solar facility is covered under the Programmatic Biological Opinion for Multiple Use Activities (1-5-97-F-251). All practicable means to avoid or minimize environmental harm and unnecessary or undue degradation of the public land are inherent to the proposed action.

1.4. Approval:

Name:	Signature:	Date:
Beth Ransel Acting Assistant Field Manager, Lands Division, Las Vegas Field Office		