

WILD HORSES AND BURROS

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SUMMARY OF CONCLUSIONS

U.S. Bureau of Land Management (BLM) and Energy Commission staff (hereafter jointly referred to as staff) have analyzed the potential impact of the proposed Ivanpah Solar Electric Generating System (ISEGS) project on wild horses and burros at the proposed project site. Staff concludes that the proposed project would have no significant impact, as defined either by the California Environmental Quality Act (CEQA) or by National Environmental Policy Act (NEPA), on wild horses and burros at the proposed project location. The proposed project location was formerly included within a Herd Management Area (HMA) established by the California Desert Conservation Area Management Plan (CDCA Plan). Although no wild horses are present in this area, burros are present. In the NEMO Plan Amendments, the Appropriate Management Level (AML) for burros in the Clark Mountain HMA was reduced from 44 to 0, and approximately 100 burros were removed from the area in January 2007.

Although burros are known to still exist in the area, BLM plans to remove the remaining individuals. Until that gather is accomplished, the remaining individuals are to be protected from harassment or injury by the provisions of the Wild and Free-Roaming Horses and Burros Act. Increased traffic associated with construction and operation of the proposed project could potentially cause injury or death to individual burros through vehicle strikes. Speed limits of 10 miles per hour (mph) on unpaved roads and 25 mph on stabilized roads imposed for fugitive dust control as would be required under **Air Quality Conditions of Certification AC-SC3 and AQ-SC7** are expected to be effective in protecting the remaining burros from vehicle strike. Individual burros could also be injured or killed if they were to fall into excavations associated with project construction activities. Fencing of project construction areas and of permanent facilities used during operations would also be required as a component of the Construction and Operation Site Security Plans as would be specified under **Hazardous Materials Conditions of Certification HAZ-4 and HAZ-5** respectively. Project construction and operations workers shall be notified of the protection requirements of the Wild and Free-Roaming Horses and Burros Act through training and/or the placement of signs as would be required under the Worker Environmental Awareness Program specified in **Biological Resources Condition of Certification BIO-6**. Staff believes these recommended mitigation measures would ensure protection of the remaining burro individuals until they are completely removed by BLM.

Selection of the No Action Alternative would have no effect on wild horses and burros.

Cumulative impacts on burros may result from the combination of this proposed project with other current and reasonably foreseeable future land uses, including other solar energy projects. These impacts would result from the reduction of area of the HMAs in which they are managed, as well as potential hazards due to increased traffic. Under NEPA, the cumulative impact would be considered minor because the Northern and Eastern Mojave Desert Management Plan (NEMO Plan) Amendments have established the AML in the vicinity of the proposed project area at zero, meaning BLM is actively

involved in removing all burros within the HMA and the area within this project site is a minor forage producing area relative to other locations elsewhere within the HMA. Conditions of Certification referred to herein serve the purpose of both the Energy Commission's Conditions of Certification for purposes of the California Environmental Quality Act (CEQA) and BLM's Mitigation Measures for purposes of the National Environmental Policy Act (NEPA).

INTRODUCTION

The purpose of the **Wild Horses and Burros** section of this Final Staff Assessment/Draft Environmental Impact Assessment (FSA/DEIS) is to determine if the proposed ISEGS could potentially cause significant impacts to wild horses or burros. This section provides the staff's analysis of the impact of the proposed project and alternatives on wild horses and burros. Wild horses and burros are protected by the Wild and Free-Roaming Horse and Burro Act of 1971 (P.L. 92-195), as amended by the FLPMA and the Public Rangelands Improvement Act of 1978 (P.L. 95-514), that declares these animals an integral part of the public land resources. Through the Act, Congress declared that: "It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands" and are to be managed "in a thriving natural ecological balance." Proper management is required to achieve and maintain population levels to ensure healthy herds and animals and to maintain a thriving natural ecological balance through reduction or eliminating of conflicts now creating severe adverse impacts on other highly valued natural resources, especially wildlife. BLM regulations pertaining to wild horses and burros are specified in 43 CFR Part 4700, and the 4700 BLM Manual Series prescribes the authorities, objectives, and policies that guide the protection, management, control, and disposition of wild horses and burros.

The CDCA Plan included a Wild Horse and Burro Element which contained the following goals:

- provide year-long food requirements of wild horses and burros;,
- provide adequate cover for wild horses and burros;
- provide adequate living space for wild horses and burros; and
- protect wild horses and burros on public lands.

The CDCA Plan established 17 Herd Management Areas (HMAs) where populations of wild horses and burros would be managed and protected. Components of some of the HMAs, including boundaries and Appropriate Management Levels (AMLs) were revised through the NEMO Plan amendments to the CDCA Plan.

This section evaluates the proposed project and alternatives with respect to the definitions of significance provided in NEPA implementing regulations found in 40 CFR 1508.27.

LAWS, ORDINANCES, REGULATION, AND STANDARDS

The following federal laws and policies apply to the administration of wild horses and burros. Staff's analysis examines the project's compliance with these requirements.

WILD HORSES AND BURROS Table 1
Laws, Ordinances, Regulations, and Standards (LORS)

Applicable Law	Description
Federal	
Wild and Free-Roaming Horse and Burro Act (1971)	Requires the inventorying of populations to establish Appropriate Management Levels (AMLs), and defines procedures to be used for the management and adoption of individuals in order to maintain AMLs. Prohibits harassment or injury to individuals.
Federal Land Policy and Management Act (FLPMA)	Modifies the Wild and Free-Roaming Horse and Burro Act to allow the use of helicopters in herd management.
Public Rangelands Improvement Act (PRIA)	Modifies the Wild and Free-Roaming Horse and Burros Act by defining "excess animals", and by modifying inventory procedures and adoption standards.
California Desert Conservation Area (CDCA) Management Plan	Establishes 17 Herd Management Areas (HMAs), including the Clark Mountain HMA in the proposed project area.
Northern and Eastern Mojave Desert Management Plan (NEMO)	The NEMO Plan amends the CDCA Plan by reducing the Appropriate Management Level (AML) for burros in this area from 44 to 0.

SETTING

Wild burros inhabiting the United States are descendents of the Nubian and Somali wild ass (*Equus asinus*) of northeastern Africa. The burro was domesticated over 5,000 years ago in Africa and used as a beast of burden. Spanish explorers introduced the burro as a domesticated animal to North America in the 16th century. Wild burro populations became established in the arid southwest as a result of domestic escapees and from burros being intentionally turned loose when they were no longer needed.

The CDCA Plan established 17 HMAs, including the Clark Mountain HMA, which includes the proposed project location. The Clark Mountain HMA, which encompasses 233,407 acres in the northern and eastern portions of the Clark Mountain Range, is managed by the BLM, and is covered under BLM's East Mojave Herd Management Area Plan. No wild horses have been documented in the Clark Mountain HMA, but burros have been observed near the proposed project location as recently as May 2008.

Historically, BLM management of this herd has included the removal of burros to maintain population levels at the established AML of 44 burros. There was a burro gather conducted in April 2001, where 79 burros were removed from the east side of Clark Mountain. The gathered burros were placed in the BLM's National Wild Horse and Burro Adoption Program.

A component of the NEMO Plan Amendment is the reduction of the AML for burros in this area of the HMA from 44 to 0. The purpose of this amendment was to reduce grazing and therefore assist the recovery of desert tortoise. In implementation of the NEMO Plan Amendment, nearly 100 burros were removed by BLM in January 2007. Burros are still known to exist in this area, with burros observed a few miles to the west in Wheaton Wash in May 2008. Although BLM plans to remove the remaining burros, the remaining burros are still protected by the provisions of the Wild and Free-Roaming Horses and Burros Act.

ASSESSMENT OF IMPACTS AND DISCUSSION OF MITIGATION

METHOD AND THRESHOLD FOR DETERMINING SIGNIFICANCE

The impact of the proposed project and alternatives on wild horses and burros would be considered significant under NEPA if they would involve changes in the existing environment which, due to their nature or location, could result in interference with BLM's management of HMAs. The staff's evaluation of the significance of the impact of the proposed project on wild horses and burros includes an assessment of the context and intensity of the impacts, as defined in the NEPA implementing regulations 40 CFR Part 1508.27. The impact of the proposed project and alternatives on wild horses and burros would be considered significant under CEQA if the result of the ISEGS' displacement of wild horses and burros were to cause a significant impact on the environment.

DIRECT/INDIRECT IMPACTS AND MITIGATION

Proposed Project

The proposed project location is included within the Clark Mountain HMA, which has historically been managed to protect burro populations. No wild horses have been documented in the Clark Mountain HMA. Although burros are still known to be present in the area, the AML for burros in this area of the HMA was reduced from 44 to 0 through the NEMO Plan Amendment, and BLM implemented burro removal in 2007. All remaining burros are expected to be removed.

The proposed project would include the removal of vegetation and installation of fencing of the entire 3,712-acre project area comprising those facilities that would cause permanent disturbance including Ivanpah 1, 2 and 3 power plants, Ivanpah substation, the administration area and some features of linear facilities. The proposed project would make the project area inaccessible for grazing of individual burros.

Construction and operation of the proposed project is expected to involve increased traffic use of the existing roads from the Yates Well Road exit on Interstate 15 to the proposed project location. Increased traffic levels could impact burros by causing vehicle strikes. Additionally, burros could be injured or killed by falling into trenches or stormwater management systems during construction of the proposed project.

Following construction, fencing is expected to keep burros outside of the proposed project location.

With respect to NEPA, the proposed project would have a direct, adverse impact on 3,712 acres of land area that is currently used for grazing by existing burro populations.

Because the AML for burros in the HMA is zero, and BLM has been actively removing burros from the HMA, the impact of the proposed project on burros would not be considered to be significant under NEPA. The impact on the existing burros would not affect public health or safety, would not impact land with unique characteristics (such as HMAs), and is not likely to have uncertain risks associated with it. With respect to CEQA, there would not be a significant adverse impact because removing burros from the ISEGS site would not result in damage to the desert environment including the burros.

Mitigation

Staff believes that this project would pose no significant risk to wild horses and burros, if recommended mitigation measures are implemented. Prior to commencement of proposed project activity, project personnel shall be briefed regarding the potential presence of burros within the project area as would be included in the Worker Environmental Awareness Program specified in **Biological Resources Condition of Certification BIO-6**. Speed limits of 10 mph on unpaved roads and 25 mph on stabilized roads established for fugitive dust control during construction and operations in accordance with **Air Quality Conditions of Certification AC-SC3 and AQ-SC7** are expected to be sufficient to reduce risk of injury or death to burros by vehicle strike. In order to protect burros against other construction-related injury, all project construction areas should be fenced to eliminate access by burros to any excavations developed during construction. Fencing is a component of the Construction and Operation Site Security Plans specified in **Hazardous Materials Conditions of Certification HAZ-4 and HAZ-5** respectively. These conditions would also protect burros in portions of the project area where maintenance is taking place outside of fenced boundaries during project operations.

Project Closure and Decommissioning

Upon project closure and decommissioning, the land that comprises the project footprint would be rehabilitated to reestablish plant communities originally occurring on the site before the original grant was issued. Following the achievement of the objectives for rehabilitation, as outlined in the rehabilitation plan, the ROW grant would then be cancelled adding 3,712 acres of reclaimed land back to the land base of Clark Mountain Allotment and the HMA that may very well be free of burros.

No Project/No Action Alternative

The No Action alternative would not affect BLM's current plans with respect to management of the remaining burros.

CUMULATIVE IMPACTS AND MITIGATION

The cumulative impact analysis area for burros is their range within the Clark Mountain HMA boundary. The time frame for the analysis is long term. In addition to the proposed ISEGS facility, there are many other past, present, or reasonably foreseeable future actions that contribute to impacts to burros on the Clark Mountain HMA, or on

other HMAs within the Mojave Desert as listed in the **Cumulative Scenario** section of the FSA/DEIS. Examples of recent and future development and land use changes in the Ivanpah area that may impact burros include:

- Authorized and unauthorized vehicle use.
- Maintenance and construction of utility rights of way.
- Mineral exploration and production.
- Other solar projects, including the proposed FirstSolar facility that would also be located within the Clark Mountain Allotment.
- The proposed Desert Xpress rail line.
- The proposed Southern Nevada Supplemental Airport facility at Jean, Nevada.

Regionally, impacts to burros in the CDCA planning area have been occurring for 100 years or more. Authorized and unauthorized vehicle use and maintenance and construction of utility rights-of-way can have a slight impact to burros by removal of vegetation utilized for forage, and there is always a danger of vehicles colliding with burros. The impact of the proposed and probable development projects (mineral production, solar projects, rail lines, and airports) would cumulatively remove and isolate potential grazing sites for burros. However, with implementation of the mitigation measures identified by staff and noted above, the ISEGS contribution to cumulative impacts would not be considered significant.

COMPLIANCE WITH LORS

In general, the Federal LORS related to grazing have to do with the establishment of HMAs, definition of the AMLs within each HMA, and the administrative procedures for removing excess animals. Because AML for the Clark Mountain HMA is zero, impacts of the proposed project on burros would not be out of compliance with any of the federal LORS associated with wild horses and burros. Therefore, approval of the proposed project would comply with the grazing and rangeland components of these regulations and plans.

NOTEWORTHY PUBLIC BENEFITS

Approval of the proposed project would not have any effects on burros which could be considered to provide a public benefit. The loss of marginal quality forage base associated with the project footprint should not impact burros as other areas within Clark Mountain Allotment provide more abundant and better quality forage for burros when in the Clark Mountain HMA. Full performance from the project may not be realized until after burros have been removed in accordance with the NEMO Plan Amendment.

PUBLIC AND AGENCY COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT (PSA)

Wild Horses and Burros was not included as a section within the PSA.

CONCLUSIONS

The issue of burros is directly applicable to the proposed project because the public lands associated with the proposed project coincides with a designated HMA, and because burros are known to exist in the vicinity of the proposed project location. Because the proposed project would involve removal of vegetation and fencing of the entire 3,712 acre property that would be permanently disturbed, approval of the proposed project would eliminate a small portion of the land area available for the existing burros. In addition, increased traffic associated with construction and operation of the proposed project could potentially cause injury or death to individual burros through vehicle strikes. Individual burros could also be injured or killed if they were to fall into excavations associated with project construction activities or fed and watered by humans in the immediate vicinity of the project footprint.

These impacts are not significant under NEPA, as the impact to burrows will be minor. The NEMO Plan Amendments have established the AML in the vicinity of the proposed project area at zero, meaning BLM is actively involved in removing all burros within the area. In addition, the proposed mitigation measures would avoid injury to burros while they may still be present in the project area or vicinity. With respect to CEQA, there would not be a significant adverse impact because removing burros from the ISEGS site would not result in damage to the desert environment including the burros.

The No Action Alternative would not have any impact on the characteristics or administration of the burros.

The proposed project would contribute incrementally to the long-term reduction of public lands available for burros in the California Desert due to the cumulative effects of development. The effect of development on burros within the local area (Clark Mountain Allotment and Ivanpah Valley area) may become pronounced due to the proximity of the area to Las Vegas, easy public access by the use of Interstate 15, increasing tourist and recreational use of the area, and planned development projects (FirstSolar, Desert Xpress, and the Southern Nevada Supplemental Airport). However, it is already the policy of BLM, under the NEMO Plan Amendments, to remove all burros from the proposed project area. Therefore, the cumulative effect of these development projects is not expected to be significant.

MITIGATION MEASURES/PROPOSED CONDITIONS OF CERTIFICATION

No additional Conditions of Certification are necessary to address protection of wild horses and burros as those determined necessary by staff are already included in other sections of the FSA/DEIS as summarized in this **Wild Horses and Burros** section under **Mitigation**.

REFERENCES

BSE2007a – Bright Source Energy/ Solar Partners I, LLC/ J. Woolard (tn: 42174). Application for Certification, Volumes I and II, for the Ivanpah Solar Electric Generating System. Submitted to CEC/Docket Unit on 8/31/2007.