Record of Decision (ROD)

Final Environmental Impact Statement

for the

Eagle Shadow Mountain Solar Project

U.S. Department of the Interior
Bureau of Indian Affairs
Western Regional Office
Phoenix, Arizona

U.S. Department of the Interior
Bureau of Land Management
Southern Nevada District
Las Vegas, Nevada

February 2020

DEPARTMENT OF THE INTERIOR

Record of Decision (ROD) for an up to 2,200-acre, long term lease for the development of a 300 megawatt (MW) Photovoltaic (PV) solar generation facility and approximately 2.4 acres of associated rights-of-way (ROW) for a transmission line on the Moapa River Indian Reservation (Reservation) and approximately 283 acres of ROW for a transmission line and access road on tribal lands within a designated utility corridor and on federal lands managed by the Bureau of Land Management (BLM) in Clark County, Nevada.

AGENCY: Bureau of Indian Affairs and Bureau of Land Management

ACTION: Record of Decision

SUMMARY: This document constitutes the United States Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM) ROD for the Eagle Shadow Mountain Solar Project (Project). This ROD represents BIA's approval of the Moapa Band of Paiute Indians (Band) solar energy ground lease with 325MK 8me LLC (Applicant) for the generation facility and associated ROW agreements for up to 40 years on the Reservation for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar generation facility and associated infrastructure. This ROD also approves BLM's issuance of a ROW grant for a 230 kilovolt (kV) transmission line and associated maintenance road located within a designated utility corridor located on the Reservation but managed by BLM, a part of the transmission line located on federal lands managed by BLM, and for the use of an existing access road also located both within the utility corridor and on BLM-managed federal lands. The Project is analyzed in the Final Environmental Impact Statement (FEIS) (BIA 2019). The Environmental Protection Agency (EPA) published a Notice of Availability (NOA) for the FEIS in the *Federal Register* on December 20, 2019. The BIA also published an NOA for the FEIS in the *Federal Register* on December 20, 2019. Cooperating agencies for development of the FEIS included the BLM, Band, Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and Nevada Department of Wildlife (NDOW).

ADDITIONAL COPIES: Copies of the FEIS and ROD are available at the project web site www.esmsolareis.com/ as well as via links on the BIA and BLM websites. Additionally, copies will be available in the following locations: BIA Western Regional Office, 2600 North Central Avenue, 12th Floor, Suite 210, Phoenix, Arizona; U.S. Bureau of Land Management, 4701 N. Torrey Pines Drive Las Vegas, NV 89130; BIA Southern Paiute Agency, 180 North 200 East, Suite 111, St. George, Utah; and Moapa River Indian Reservation Tribal Hall, One Lincoln Street, Moapa, NV 89025-0340. A Federal Register notice regarding the availability of the FEIS was issued on December 20, 2019. Notices were also published in the Moapa Review and Las Vegas Review Journal newspapers.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Lewis, BIA Western Regional Office, Branch of Environmental Quality Services, 2600 North Central Avenue, Phoenix, Arizona 85004–3008, telephone (602) 379–6782; or Mr. Garry Cantley at (602) 379–6750.

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Attachments

1. INTRODUCTION

This document constitutes the United States Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM) Record of Decision (ROD) for the Eagle Shadow Mountain Solar Project (Project). This ROD represents BIA's approval of the Moapa Band of Paiute Indians (Band) solar energy ground lease with 325MK 8me LLC (Applicant) for the generation facility and associated ROW agreements for up to 40 years on the Moapa River Indian Reservation (Reservation) for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar generation facility and associated infrastructure. The ROD also approves the BLM's issuance of a ROW grant for a 230 kilovolt (kV) transmission line and use of an existing access road located on tribal lands within a designated utility corridor and federal lands managed by the BLM.

This ROD provides background on the solar project, summarizes the decisions being made, summarizes the alternatives evaluated, discusses the mitigation measures to be implemented, and summarizes the public participation process all used in the rationale to reach a decision.

1.1 Background

325MK 8me LLC (Applicant) is proposing to construct a 300 megawatt (MW) solar Photovoltaic (PV) generation facility and associated infrastructure on the Reservation in Clark County, Nevada. The Project infrastructure would include an approximately 12.5-mile 230 kV electric transmission line (gen-tie line) that would connect the Project to the regional electric grid. The proposed Project would be located approximately 30 miles northeast of Las Vegas in Clark County, Nevada with the solar field (and ancillary facilities) on up to 2,200 leased acres within the Reservation. These lands are currently vacant with nearby roads, pipelines, and transmission line ROWs and tribal wells and an aggregate mine.

The gen-tie line would be located on the Reservation, tribal lands within a designated utility corridor that is managed by the BLM, federal lands managed by the BLM, and private lands (owned by NV Energy) that would connect to the Reid Gardner Substation.

The locations of the Project on the Reservation and federal lands managed by the BLM are described below (all locations are in Mount Diablo Meridian):

- Reservation
    - Solar Lease Area - Township 16 South, Range 64 East, Sections 9, 10, 11, 12, 14, 15, 16, 21, and 22
    - Gen-Tie Line - Section 14 of Township 16 South Range 64 East

- Tribal Lands within a designated utility corridor managed by the BLM
    - Gen-Tie Line and associated maintenance road – Sections 12, 13, and 14 of Township 16 South Range 64 East; Sections 5, 6, and 7 of Township 16 South Range 65 East; Sections 12, 13, 14, 22, 23, 27, 28, 32, and 33 of Township 15 South Range 65 East
    - Existing Access Road – Sections 14, 22, 23, 27, 28, 33 of Township 16 South Range 64 East
- Federal Lands managed by the BLM
    - Gen-Tie Line and associated maintenance road - Section 7 of Township 16 South and Range 66 East
    - Existing Access Road – Sections 10 and 15 of Township 17 South Range 64 East

The BIA's mission is to "enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives". The Project would create an economic development opportunity for the Band by providing a long-term economically viable revenue source (lease income) and creating new jobs and employment opportunities for Band members; and develop clean renewable electricity generation from the Band's solar resources that can be efficiently connected to the regional grid to assist the Federal Government, the State of Nevada, and neighboring states and companies to meet their renewable energy goals. The proposed Project would also help meet the goals of the Federal Government to eliminate or reduce greenhouse gas (GHG) emissions and promote the deployment of renewable energy technologies.

The Band identified the proposed Project as a viable opportunity to meet its economic development goals because the lease would provide much needed revenue to the Band while occupying a small portion of the Reservation. Construction and operation of the Project would also afford employment opportunity to Band members. The proposed Project would also be consistent with the Band's tradition of respect for the land and would fulfill the purposes for which the 70,000 acres were restored to the Band by the Federal Government in 1980 (Moapa Paiutes, n.d.).

The Project would also assist in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) and Secretarial Order 3285A1 (March 11, 2009) that established the development of environmentally responsible renewable energy as a priority for the DOI.

The Project is analyzed in the Final Environmental Impact Statement (FEIS) (BIA 2019). The Environmental Protection Agency (EPA published a Notice of Availability for the FEIS in the *Federal Register* on December 20, 2019. The BIA also published a Notice of Availability for the FEIS in the *Federal Register* on December 20, 2019. Cooperating agencies for development of the FEIS included the BLM, EPA, Nevada Department of Wildlife (NDOW), U.S. Fish and Wildlife Service (USFWS), and the Band.

1.2 Decisions Being Made

1.2.1 BIA

The BIA has a trust responsibility to protect and preserve the Band's land, assets, and resources while promoting tribal self-governance. The BIA, pursuant to 25 United States Code (U.S.C.) § 415, has decided to approve the solar energy ground lease for the generation facility and associated ROW agreements between the Band and Applicant for a short portion of the gen-tie line on the Reservation.

1.2.2 BLM

The BLM has decided to issue a ROW grant to the Applicant under Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. § 1761(a)) for the construction, operation and maintenance, and decommissioning of the portion of the proposed gen-tie line and use of the existing access road that is on tribal lands within a designated utility corridor and federal lands managed by the BLM. The casefile number for the gen-tie ROW is N-97443. This ROW would be in compliance with FLPMA, BLM ROW regulations (43 Code of Federal Register (CFR) § 2800), and other applicable Federal laws and policies.

2. ALTERNATIVES

2.1 Considered and Carried Forward for Detailed Analysis

2.1.1 Proposed Project (BIA's Proposed Action/Selected Alternative)

Under the Selected Alternative, also identified as the environmentally preferable alternative (40 CFR 1505.2(b)), the Applicant will lease up to 2,200 acres for up to 40 years for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar energy facility on the Reservation located in Clark County, Nevada. Major on-site facilities include the solar field (blocks of photovoltaic panels mounted on fixed tilt or tracking systems and associated equipment), a battery energy storage system, a project substation, and operation and maintenance (O&M) facilities. The off-site facilities include a 230 kV gen-tie line located on the Reservation, tribal lands within a designated utility corridor that is managed by the BLM, federal lands managed by the BLM, and private lands owned by NV Energy. Additional offsite facilities include use of an existing access road.

The Project and related facilities will disturb an approximate total area of 2,203 acres on the Reservation. The solar arrays, battery energy storage, substation, and operations building and parking will disturb up to approximately 2,200 acres within a 4,770-acre lease study area on the Reservation. The 230 kV transmission ROW (up to 200-foot wide) connecting the solar facility to the Reid Gardner Substation will cover approximately 272 acres and will be approximately

12.5 miles in length (about 0.1 miles on the Reservation, 10.8 miles on tribal lands within a designated utility corridor managed by the BLM, 0.3 miles on federal lands managed by the BLM, and 1.3 miles on private land owned by NV Energy). Project site access will be provided by a ROW grant issued by the BLM on an existing access road on tribal lands within the designated utility corridor (4.2 miles / 12.1 aces) and federal lands managed by the BLM (0.8 miles / 2.2 acres).

The Project site was identified as the best location for the Project for a number of reasons: it was identified by the Band as a viable solar site, it is close to transmission interconnection points at/near the Reid Gardner Substation (which offer near-term interconnection opportunities), it has existing road access, and it has limited anticipated impacts to jurisdictional waters.

A more detailed description of the selected alternative can be found in Chapter 2 of the FEIS.

2.1.2 Alternative Gen-Tie Route

The BIA analyzed an alternative gen-tie transmission line route in the FEIS that would originate on tribal lands at a solar project substation location and would follow a similar but different path. The alternative route for the gen-tie would locate the approximately 12.5-mile line parallel to and northwest of the proposed gen-tie location at the northwestern edge of the Designated Utility Corridor. This alternative gen-tie route would cross similar distances of land within the corridor and across BLM-administered lands and NV Energy–owned private lands before terminating at the Reid Gardner Substation. Once on private land, this alternative would follow the same route as the proposed Project to the Reid Gardner Substation. Under this alternative, all the onsite and temporary facilities would be the same as discussed in the proposed Project.

2.1.3 No Action Alternative

The No Action Alternative assumes that the lease agreement is not executed, the BLM utility ROWs would not be issued, and the Project would not be built. Under the No Action Alternative, the purpose and need would not be met. The Band would not benefit economically from the energy production that would be obtained from their prime solar resources and the development of sustainable renewable resources would not occur. The Federal government, Nevada, and neighboring states would not be assisted in their efforts to meet their renewable energy goals. The No Action Alternative forms the baseline against which the potential impacts of the Proposed Action and Alternatives are compared.

2.2 Alternatives Considered but Eliminated from Detailed Analysis

The National Environmental Policy Act (NEPA) requires federal officials to rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss the reasons for

eliminating any alternatives that were not developed in detail. 40 CFR § 1502.14. Specific alternatives that were eliminated from detailed analysis are discussed below, along with the rationale for their elimination.

2.2.1 Alternative Reservation Locations

Other sites on the Reservation were considered for potential solar development. This evaluation considered a variety of factors including up to 2,200 contiguous developable acres, favorable topography, drainage, potential impacts to sensitive resources (including special status species and cultural resources), and proximity to existing infrastructure, transmission interconnection points and access.

This process was designed to identify areas with the greatest potential for development while minimizing potential adverse impacts or permitting issues. This included making use of existing infrastructure to minimize disturbance and impacts associated with the access roads and gen-tie lines. Large portions of the Reservation were eliminated from further consideration by applying these criteria.

The other solar sites on the Reservation including the K Road Moapa Solar Project site, the approved Moapa Solar Energy Center site, the approved Aiya Solar site, and other sites on the Reservation previously studied and eliminated by the K Road Moapa Solar Facility EIS (BIA 2012) were also eliminated. In addition, the 6,000-acre desert tortoise relocation areas associated with the K Road Moapa Project are not available for development.

2.2.2 Alternative Off-Reservation Locations

The project is, by the terms of its purpose, limited to locations on the Reservation and held in trust by the BIA for the Band. Accordingly, BIA did not consider off-reservation alternatives.

2.2.3 Alternative Interconnection Options

Alternatives were considered that would interconnect the Project into the nearby Crystal Substation. The Applicant’s transmission team considered factors including but not limited to available transmission capacity, interconnection costs, and existing projects in NV Energy’s transmission queue. Based on the transmission and economic analysis, the Applicant determined that interconnecting at the Reid Gardner Substation was a superior option for being awarded a Power Purchase Agreement in an extremely competitive marketplace. The Applicant has an executed Interconnection Agreement with NV Energy for the Proposed Project for interconnection to the Reid Gardner Substation, an executed Power Purchase Agreement, and no flexibility for a different point of interconnection to result in a viable project.

2.2.4 Concentrated Photovoltaic (CPV) Technology

CPV technology uses layers of wafers to absorb different wavelengths of sunlight and provide more power conversion efficiency than typical PV panels. This technology requires dual tracking technology to provide critical alignment with the direct sunlight in order to be efficient. CPV is generally mounted on taller structures than traditional PV (as high as 40 feet above the surface). Because this technology is relatively new, there are risks for long-term performance reliability and manufacturing capacity to supply large-scale utility projects has not been proven to date. Therefore, this alternative has not been carried forward for detailed analysis.

2.2.5 Distributed Solar Generation

The concept of distributed solar generation locates smaller projects near the demand for electricity. Generally, these projects would generate power using PV panels (similar to all PV technologies). The PV panels could be installed on private or publicly owned residential, commercial, or industrial building rooftops or in other disturbed areas such as parking lots or disturbed areas adjacent to existing structures such as substations. To be a viable alternative to the proposed Project, there would need to be sufficient locations where new distributed solar generation could be installed to cumulatively generate 300 MW of capacity and sufficient local demand for this electricity. In order to meet the Project's purpose, generation would need to be located on the Reservation and there are insufficient rooftops or other disturbed areas on the Reservation to make this option viable. Also, a true distributed generation project could not meet one of the fundamental objectives of the proposed utility-scale solar project: to provide renewable energy to utility off-takers. Rooftop systems that lack transmission only generate power for on-site consumption and the limited on-reservation uses create only a fraction of the demand that this Project seeks to serve. Distributed generation projects cannot fill the same energy needs as utility scale projects and one is not a feasible alternative for the other so this alternative was eliminated from detailed analysis.

2.2.6 Wind Generation

Wind carries kinetic energy that can be utilized to spin the blades of wind turbine rotors and electrical generators, which then feed alternating current (AC) into the utility grid. Most state-of-the-art wind turbines operating today convert 35 to 40 percent of the wind's kinetic energy into electricity. The technology is well developed and can be used to generate significant amounts of power. Wind energy was eliminated from detailed discussion because this area has not been identified to have a sufficient wind resource and so would not be technically or economically feasible to implement.

3. PERMITS AND APPROVALS

See Attachment A. This attachment provides a synopsis of the permits and approvals that the Proponent has obtained or will need to obtain prior to beginning construction activities.

4. CORRECTIONS TO THE FINAL EIS

Comments on the FEIS were received from three state agencies (NDOW, Nevada Division of Water Resources, and Nevada Bureau of Safe Drinking Water) through the Nevada State Clearinghouse, EPA Region 9, and the Southern Nevada Water Authority. None of the comments received identified significant new circumstances or information relevant to environmental concerns that would require a change in the FEIS. Additionally, no grammatical errors or corrections were provided. Therefore, none of the comments require a response and no revisions or clarifications have been made to the FEIS.

5. MITIGATION MEASURES

As required by the Council on Environmental Quality (CEQ) NEPA regulations, 40 CFR § 1505.2(c), BIA and the BLM have identified and adopted all practicable mitigation measures to avoid or minimize environmental harm from the Selected Alternative (Proposed Action Alternative) according to federal laws, regulations, and policies. The construction of the Project will also incorporate adaptive management principals to mitigate unforeseen impacts. Adaptive management is a structured, iterative process of optimal decision making in the face of uncertainty with an aim to reducing uncertainty over time via system monitoring.

The mitigation measures in **Attachment B** to this ROD, as analyzed in the FEIS and required by this decision, represent best management practices (BMPs) and technologies, and the most current regulatory guidance to reduce adverse impacts to environmental resources such that the overall Project will pose minimal significant impact. The complete language of the mitigation measures, as well as design modifications and terms and conditions, are provided in the FEIS.

5.1 Mitigations Measures Not Adopted

All mitigation measures analyzed in the FEIS and recommended by state and federal agencies and the cooperating agencies were adopted for this Project.

5.2 Mitigation Compliance Monitoring and Reporting

All mitigation measures and plans discussed in the FEIS will be implemented by the Applicant and monitored by a third party as detailed in BLM's IM 2014-112. Third party monitors will report to the proper agencies as outlined in the plans, specifically, or directly to the BIA and BLM as

determined by the lease and ROW agreements. Reporting procedures will be determined prior to onset of construction activities.

6. PUBLIC INVOLVEMENT

6.1 Public Scoping Period

The BIA published a Notice of Intent (NOI) to prepare an EIS for the proposed Project in the Federal Register on February 4, 2019. In addition, over 70 scoping letters were sent by the BIA to other various non-governmental organizations and other interested stakeholders. A legal notice/public notice announcing the public scoping meetings was published in two local newspapers on February 7, 20, 24, and 27, 2019. The BIA hosted two public information and scoping meetings - one on the Reservation on March 5, 2019 and the other located in Las Vegas, Nevada on March 6, 2019.

During the scoping period, the BIA identified issues to be addressed in the EIS. The scoping report, found in Appendix B of the Eagle Shadow Mountain Solar Project FEIS, summarizes the scoping process and comments received. The table below provides a summary of key issues identified by the comments provided during scoping for the Project.

KEY ISSUES IDENTIFIED DURING SCOPING	
ISSUE TOPIC	**ISSUE/COMMENT**
Water Resources	Need to comply with relevant floodplain and stormwater requirements to minimize erosion and sediment production
	Avoid development within major washes
	Describe the source of the water to be used during construction and operation
Soils	Should include measures to minimize soil disturbance to the extent possible
Vegetation	Should include measures to minimize vegetation clearing to the extent possible
	Should include measures to control weeds to the extent possible
Cultural Resources	Configure the project layout to avoid or minimize potentials effects to significant cultural sites in the lease study area
	Determine whether the project could impact the Old Spanish National Historic Trail
Land / Resource Use	Need to evaluate the potential impact of development of the Project and associated linear facilities on other existing and planned transmission and pipeline facilities within the designated utility corridor
	Consider the impact of precluding other uses by the Band and its members on these lands for the duration of the Project

KEY ISSUES IDENTIFIED DURING SCOPING	
ISSUE TOPIC	**ISSUE/COMMENT**
Socioeconomics	Describe the economic development opportunity for the Band
	Describe the jobs for tribal members and others in the region that would be created
Wildlife	Describe the potential impacts to threatened and endangered species (including the desert tortoise) and other sensitive wildlife species
	Consider measures that minimize impacts to desert tortoise habitat and connectivity
	Describe the potential impacts to avian species from construction and operation of the project
Visual Resources	Evaluate the impact the project could have on views of the landscape
Air Quality/Public Health	Measures should be implemented to control and minimize fugitive dust and to prevent worker exposure to Coccidioides spores, if present
Cumulative Impacts	Identify impacts from other solar projects and other developments in the general area
	Discuss trends of and cumulative impacts to key resources including desert tortoise and desert washes

6.2 DEIS Preparation and Distribution

The BIA published an NOA announcing the publication of the Draft Environmental Impact Statement (DEIS) for the Proposed Project in the *Federal Register* on August 9, 2019. In addition, notices were placed in local newspapers and two public meetings were held to receive comments on the DEIS - one on the Reservation on September 3, 2019 and the other at the BLM offices located in Las Vegas, Nevada on September 4, 2019.

The DEIS was available on the project website (www.esmsolareis.com/), via link on the BIA and BLM websites and hard copies were available for review at the BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, AZ 85004–3008, BIA Southern Paiute Agency in St. George, UT and the BLM Southern Nevada District office in Las Vegas, NV. In addition, a notice was sent, at their request, to any party who wished to provide comments to the DEIS and/or requested that they be added to the mailing list.

6.3 FEIS Preparation and Distribution

On December 20, 2019 the BIA published the NOA for the Eagle Shadow Mountain Solar Project FEIS in the *Federal Register*, Vol. 84 No. 245. The EPA NOA was published in the

Federal Register (Vol. 84 No. 245) on December 20, 2019. The EPA NOA announced the public availability of the FEIS, which initiated the 30-day notice.

The FEIS was made available on the project website (www.esmsolareis.com/), via links on the BIA and BLM websites and hard copies at the BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, AZ 85004–3008, BIA Southern Paiute Agency in St. George, UT and the BLM Southern Nevada District office in Las Vegas, NV. In addition, a notice was sent, at their request, to any party who provided comments on the DEIS and/or requested that they be added to the mailing list. Also, BIA acknowledged that the FEIS was publicly available in the Federal Register and within local papers. The FEIS took into account and addressed all public comment received from the DEIS.

7. DECISION RATIONALE

The BIA and BLM have identified the proposed Project as the Selected Alternative. Overall, the Selected Alternative will accomplish the purpose and need for the federal action, and help in fulfilling BIA and the BLM statutory missions and responsibilities, given consideration to economic, environmental, and technical factors. The Project location and the use of PV technology will minimize adverse environmental impacts. The chosen PV panels would have minimal visibility from a distance. The PV technology also minimizes the use of water resources – up to 200 acre-feet (AF) during an approximate 18-month construction period. PV consumes no water in operations and uses insignificant amounts of water for panel washing, dust control, and potable uses (up to 20 AF/year). The PV technology does not create noticeable noise. PV also is considered a "proven technology," and represents a less expensive technology when compared to other solar technologies.

The Project also will assist in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) and Secretarial Order 3285A1 (March 11, 2009) that established the development of environmentally responsible renewable energy as a priority for the Department of the Interior.

7.1 BLM Directive

The BLM, after careful consideration of the potential effects of the proposed Project, has decided to authorize the Applicant's request for a ROW grant for a 230 kV transmission line and use of an existing access road, as described in the Proposed Action of the FEIS. For most of its length, the transmission line would be located on tribal lands within an existing designated utility corridor reserved to the BLM under Public Law 96-491(Dec. 2, 1980) with a portion of the line also on federal lands managed by the BLM. The existing access road is also located both within the utility corridor and on federal lands managed by BLM. The mitigation measures and BMPs

identified in the FEIS and described in this ROD will be incorporated into the ROW grant, as well as BLM's standard ROW stipulations.

The authorization of the transmission line meets the BLM's identified purpose and need for federal action to reply to Applicant's ROW application for a transmission line and use of the existing access road and to determine whether to approve, approve with modification, or deny the issuance of a ROW grant taking into consideration the provisions of the Energy Policy Act of 2005 and other applicable Federal laws, regulations, and policies.

7.2 BIA Directive

The BIA has determined that the lease and associated agreements are in the best interest of the Band. The Project will create an economic development opportunity for the Band, provide lease income as a revenue source for the Band, create new jobs and employment opportunities for Band members, develop sustainable renewable resources, and provide other benefits by using the Band's solar resources.

The Project also will assist large power users in meeting their renewable energy goals and mandates by providing clean renewable electricity generated from the solar resources that may be efficiently connected to existing transmission lines in a manner that minimizes adverse site impacts.

The Project will assist the Federal Government, the State of Nevada, and neighboring states meet their renewable energy goals. The proposed Project would also help meet the goals of the Federal Government to eliminate or reduce GHG emissions and promote the deployment of renewable energy technologies. The Project's scale, technology, and location have been selected to provide substantial amounts of renewable energy to regional utility customers that reside in areas that are not suitable for solar development. The Project is designed to provide solar power at a price that is competitive with other renewable sources of power.

The Project location allows efficient connection of the energy from solar resources to existing transmission infrastructure. The selected site is well positioned to minimize impacts associated with interconnection into the existing transmission infrastructure as it is located very close to the existing Reid Gardner Substation with access to the regional transmission system and available capacity to carry the Project's output to market.

The solar facility is not within the FEMA 100 or 500 year flood zones and impacts to jurisdictional waters of the United States would be limited. Existing roads provide access to Interstate 15. The Project area has been documented as having limited cultural resource issues and moderate wildlife issues.

The Project does not interfere with day-to-day tribal life and does not interfere with the Band's plans for other economic development initiatives. The economic benefits would accrue to the Band once the Project is completed.

7.2.1 Analysis of Required Factors

The BIA has chosen the Selected Alternative (Proposed Action Alternative) due to minimal short-term and long-term adverse impacts, beneficial long-term impacts for the Band, and the fact that no significant unmitigated impacts would occur. Adequate consideration has been given to the five approval criteria under 25 U.S.C. § 415(a), as follows:

1. The relationship between the use of the leased premises and the use of the neighboring lands. The BIA and the Band chose the Selected Alternative (Proposed Action Alternative) after considering alternative sites on the Reservation as well as alternative technologies. Alternative sites and technologies were eliminated from further consideration based on human and natural resource factors as discussed in the FEIS.
2. The height, quality, and safety of any structures or other facilities to be constructed on the leased premises. The chosen PV technology will have a low overall height and will have a low fire risk due to the lack of flammable materials. A fire protection system will be provided for the solar facility.
3. The availability of police and fire protection, utilities, and other essential community services. The FEIS shows that there will be no significant impact on utilities and other community services. In addition to on-site fire protection systems, Clark County is responsible for providing firefighting capability on the Reservation and law enforcement will be managed by the Moapa Tribal Police Department.
4. The availability of judicial forums for all criminal and civil matters arising on the leased premises. The lease specifically provides for arbitration or adjudication in the appropriate federal court. The lease provides that any claims/actions under the lease will be adjudicated in district court in Nevada.
5. The effect on the environment of the proposed land use. All relevant environmental impacts have been fully addressed in the FEIS.

8. FINAL AGENCY ACTION

8.1 Bureau of Indian Affairs

I hereby approve the decision to execute the Band's Solar Energy Ground Lease with 325MK 8me LLC for the up to 300 MW solar facility and associated ROW agreements, for up to 40 years on the Reservation, as described in the DEIS and FEIS. This decision includes the authorization of a gen-tie interconnection ROW on the Reservation totaling approximately three acres. This decision is subject to associated mitigation measures adopted by this ROD and as may be contained in Volume II of the FEIS.

This decision does not authorize construction to begin and does not apply to any BLM, State, or private lands, which may be involved in the Project and does not create any right or easement, nor establish eminent domain, across such lands.

8.1.1 Protest and Appeal Opportunities

Any person who may be adversely affected by this decision may appeal the decision to the Interior Board of Indian Appeals (IBIA) at 801 North Quincy Street, #300, Arlington, Virginia, 22203, in accordance with the regulations set forth at 25 CFR Part 2. The notice of appeal must be signed and postmarked within thirty days of the date of this decision. The notice will clearly identify the decision being appealed, and a copy of the decision will be attached to the notice of appeal. Copies of the notice must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and to all other interested parties known to the person appealing the decision. The notice of appeal to the IBIA must also certify that the appealing party sent copies to each of these parties. The IBIA will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior.

Approved By:

Bryan Bowker
Director
Bureau of Indian Affairs-Western Region

2/10/20
Date

8.2 Bureau of Land Management

I hereby approve the decision to grant a ROW only, for the construction, operation, maintenance, and decommissioning of the approximate 12.5 mile gen-tie line, associated maintenance road, and access road as described in the Project DEIS and FEIS. This decision is subject to the accepted BLM Plan of Development and associated mitigation measures adopted by this ROD and as may be contained in the Volume II of the FEIS. This decision includes the authorization of a ROW totaling approximately 260 acres within a federally designated utility corridor on the Reservation that is administered by the BLM Las Vegas Field Office and an additional 10 acres of BLM managed federal lands.

This authorization will be contingent upon approval of other state and federal agency authorization and implementation of mitigation measures. This decision does not authorize construction to begin and does not apply to any State or private lands, which may be involved in the Project and does not create any right or easement, nor establish eminent domain, across such lands.

8.3 Protest and Appeal Opportunities

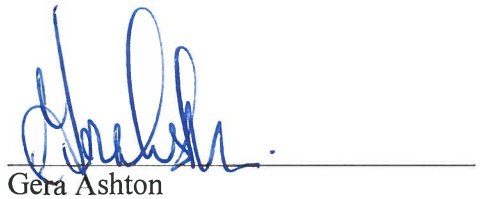
The decision of the Authorized Officer may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in (43 CFR Part 4 and Form 1842-1). If an appeal is taken, your notice of appeal must be filed in this office within 30 days from your receipt 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 [pursuant to regulation (43 CFR 2801.10)] for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, 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. A copy of the notice of appeal and petition for a stay also must be submitted to each party named in this decision and 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 [43 CFR 4.21(b)]

Except as otherwise provided by law or by other pertinent regulation, 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.

Approved By:



2/10/2020

Gera Ashton
Acting District Manager
Bureau of Land Management-Southern Nevada District Office

Date

ATTACHMENT A

ANTICIPATED PERMITS / APPROVALS FOR THE PROPOSED PROJECT		
Land Ownership / Jurisdiction	**Project Components**	
	Solar Field	**Transmission Line**
Moapa River Indian Reservation / BIA	Lease approval, Right-of-way Grant (BIA)	Right-of-way Grant (BIA)
	Section 401 Water Quality Certification (EPA)	Section 401 Water Quality Certification (EPA)
	NPDES 402 Construction Stormwater Permit (EPA)	NPDES 402 Construction Stormwater Permit (EPA)
	Section 7 Consultation (USFWS)	Section 7 Consultation (USFWS)
	Section 106 Consultation (SHPO)	Section 106 Consultation (SHPO)
	Compliance with Tribal Environmental Policy Ordinance	Compliance with Tribal Environmental Policy Ordinance
	Section 404 Permit (USACE)	Section 404 Permit (USACE)
BLM	N/A	Section 404 Permit (USACE)
	N/A	Right-of-way Grant (BLM)
	N/A	Section 7 Consultation (USFWS)
	N/A	NPDES 402 Construction Stormwater Permit (NDEP)
	N/A	401 Water Quality Certification (NDEP)*
	N/A	Section 106 Consultation (SHPO)
	N/A	Clark County Dust Control Permit
	N/A	Clark County Special Use Permit
	N/A	Utility Environmental Protection Act (UEPA) Permit

ANTICIPATED PERMITS / APPROVALS FOR THE PROPOSED PROJECT		
Land Ownership / Jurisdiction	**Project Components**	
	Solar Field	**Transmission Line**
	N/A	Encroachment / Crossing Permit with Railroad (UPRR)
	N/A	Special Purpose Permit (NDOW) (Desert Tortoise Relocation)
Private Land (NV Energy)	N/A	Clark County Special Use Permit
	N/A	Utility Environmental Protection Act (UEPA) Permit (PUCN)
	N/A	Interconnection Agreement, Easement (NVE)

ATTACHMENT B

MITIGATION MEASURES
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT
SOILS / EROSION
Grading on the solar site would be minimized to only those areas where necessary to meet the construction and operational requirements of the Project.
Construction and operational activities will be conducted in compliance with a stormwater pollution prevention plan (SWPPP) that would include BMPs and other erosion-control measures designed to minimize soil erosion and limit sheet flow and downstream sedimentation. The SWPPP would also incorporate adaptive management actions if erosion and sedimentation control measures are found to be insufficient to control surface water at the site.
To minimize wind erosion, all construction activities shall comply with the Fugitive Dust Control Plan that would be developed and implemented for the Proposed Project.
A Site Restoration Plan would be implemented as needed to limit impacts to temporary disturbance areas as much as practicable.
HYDROLOGY / WATER QUALITY
The drainage plan will be designed to maintain existing drainage patterns and control the rate and amount of surface water runoff.
Final grading and drainage plans will be completed and submitted for approval prior to construction and would demonstrate that downstream flows would not be adversely impacted as a result of proposed changes to natural washes from proposed grading, drainage management measures or the addition of retention ponds.
The paths for all stormwater flows would be identified and modeled as part of the final grading and drainage plan.
The number of drainage crossings would be minimized to the extent possible and each would be designed to accommodate adequate flow.
Post-storm monitoring of erosion and sedimentation would be conducted during construction. If localized gullies were to develop or result in increased rates of erosion and sedimentation, repairs would be made and erosion and sedimentation control measures would be updated.
All large ancillary facilities (e.g., project substation) will be located outside of drainages. Some PV supports could be placed within ungraded drainages where technically feasible.
A Spill Prevention, Control, and Countermeasure (SPCC) plan would be developed and implemented during construction and the operations phase of the Proposed Project. Adequately-sized secondary spill containment would be incorporated around the transformers at the on-site substation to ensure proper capture and control measures for potential spills. The Plan would also provide for hazardous material spill prevention and clean-up measures, were a spill to occur.
AIR QUALITY
The Project would obtain a dust control permit from Clark County for construction activities outside tribal land including any required supplements.
The area of grading and vegetation removal would be limited to only that area required for Project construction and operation.
Ground disturbing activities would be undertaken on both tribal and non-tribal lands in accordance with the applicable dust control plan(s) to minimize fugitive dust emissions.
Vehicular speeds on non-paved roads would be limited 25 miles per hour.
Grading operations would be phased where appropriate to limit the amount of disturbance at any one time, and water would be used for stabilization of disturbed surfaces under windy conditions.
Water would be applied to disturbed areas to control dust and facilitate soil compaction, where necessary. Water will be applied using water trucks and application rates would be monitored to prevent runoff and ponding. Approved palliatives would be used to control dust as required.
Exposed stockpiled material areas would be covered and excavation and grading would be suspended during windy conditions (forecast or actual wind conditions of approximately 25 miles per hour or greater).
Open storage piles and disturbed areas would be stabilized by covering and/or applying water to stockpile to form a crust or organic dust palliative where appropriate at the completion of activity.
All trucks hauling soil and other loose material would be covered or at least 2 feet of freeboard would be maintained.
All paved roads would be kept clean of objectionable amounts of mud, dirt, or debris, as necessary. Gravel or other similar material would be used where non-paved access roads intersect paved roadways to prevent mud and dirt track-out.
A traffic and parking management plan would be finalized to minimize traffic interference and maintain traffic flow.

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT
Unnecessary idling of equipment would be limited.
BIOLOGICAL RESOURCES
Prior to construction, a Weed Management Plan will be developed that includes measures designed to reduce the propagation and spread of designated noxious weeds, undesirable plants, and invasive plant species, or as determined by the agencies (BIA, BLM, etc.) in coordination with the Band.
The Applicant will implement controls at entry locations to facilitate weed management and invasive species control in order to minimize infestation to the project site from an outside source. Trucks and other large equipment will be checked before entering the site for any invasive species debris or seed.
To minimize activities that attract prey and predators during construction and operations, garbage will be placed in approved containers with lids and removed promptly when full to avoid creating attractive nuisances for wildlife. Open containers that may collect rainwater will also be removed or stored in a secure or covered location to not attract birds.
All work area boundaries will be conspicuously staked, flagged, or otherwise marked to minimize surface disturbance activities. All workers, equipment, vehicles, and construction materials shall remain within the ROW, existing roads, and designated areas. Staging areas will be located in previously disturbed areas whenever possible.
All transmission towers and poles will be designed to be avian-safe in accordance with the *Suggested Practices for Avian Protection on Power Lines: the State of the Art in 2006* (Avian Power Line Interaction Committee [APLIC] 2006) and the Avian Power Line Interaction Committee (APLIC 2006) and *Reducing Avian Collisions with Power Lines* by the U.S. Fish and Wildlife Service and the APLIC (APLIC 2012).
If construction activities are scheduled to commence during the breeding season for western burrowing owls (February 1 through August 31), a qualified biologist will conduct pre-construction surveys within 30 days prior to construction for Western Burrowing Owls within suitable habitat. All areas within 250 feet of ground disturbing activities will be surveyed, per USFWS 2007 Burrowing Owl guidance.
Lighting would be designed to provide the minimum illumination needed to achieve O&M objectives and not emit excessive light to the night sky by installing light absorbing shields on top of all light fixtures and focusing desired light in a downward direction.
A Facility Decommissioning Plan would be finalized and provided to the Band, BIA, and BLM addressing the Project facilities under their respective management. This plan would be submitted for approval at least six months prior to commencement of site closure activities.
Potential closure activities could include re-grading and restoration of original site contours and re-vegetation of areas disturbed by closure activities in accordance with the Site Reclamation Plan. Revegetation seed mixes will be composed of native plant species.
Worker environmental awareness training will be required for all maintenance and operation staff for the duration of the project. In addition to an overview of minimization measures for all biological resources, the training will include specific best management practices designed to reduce effects to the desert tortoise.
Prior to construction, temporary tortoise-proof fencing will be installed around the boundary of the solar facility. Biological monitors or biologists approved to handle and relocate tortoises will be present during fence installation to relocate all tortoises in harm's way to outside the permitted ROW.
Fence specifications will be agreed to in consultation with USFWS. Tortoise guards will be placed at all road access points where desert tortoise-proof fencing is interrupted to exclude desert tortoises from the project footprint. Gates or tortoise exclusion guards will be installed with minimal ground clearance and shall deter ingress by desert tortoises. Monitoring and maintenance will include regular removal of trash and sediment accumulation and restoration of minimal ground clearance between the ground and the bottom of the fence, including re-covering the subsurface portion of the fence if exposed.
The temporary desert tortoise fencing will be inspected monthly during periods of high tortoise activity (April 1 – May 31 and September 1 – October 31).
The Applicant will implement the Raven Management Plan (BLM 2014) to be provided by the BLM for portions of the Proposed Project on BLM-administered lands. The Applicant will inspect transmission structures annually for nesting ravens and other predatory birds and report observations of nests to the Service, BLM, and BIA.
No overnight hazards to desert tortoises (e.g., auger holes, trenches, pits, or other steep-sided depressions) will be left unfenced or uncovered; such hazards will be eliminated each day prior to the work crew and monitoring biologists leaving the site. All excavations will be inspected for trapped desert tortoises at the beginning, middle,

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT
and end of the workday, at a minimum, but will also be continuously monitored by a biological monitor or authorized biologist.
CULTURAL RESOURCES
A Memorandum of Agreement (MOA) between the Band, BIA, BLM, and SHPO will be required to define the steps that shall be taken to lessen, resolve, and/or mitigate the effects to cultural resources that may be adversely affected by the project.
Archaeological and Tribal monitors will be employed during construction in the vicinity of cultural resource sites to ensure that cultural resources are not directly affected by the project.
Fencing or other protective barriers will be placed to protect historic properties during construction as needed.
Should any unrecorded and unanticipated cultural resources be discovered during construction, all activities within the immediate area of discovery shall cease. Any unanticipated discoveries of cultural resources or changes to the Project APE would be managed in accordance with an *Unanticipated Discoveries Plan* that would be developed in consultation with the Tribe, BIA, BLM, and SHPO.
Should any unrecorded cultural resources be discovered during construction, all activities within the immediate area of discovery would cease. The Chairman of the Moapa Tribal Council, or his or her designated representative, and the BIA Regional Archeologist shall be notified immediately and, consulting with BLM and SHPO as appropriate, would make arrangements to assess the nature of discovered cultural resources and, if feasible, avoid the resources to the fullest extent practicable. If avoidance is not possible, the Applicant would minimize and mitigate any damages to any unanticipated discoveries before construction would be allowed resume in the immediate vicinity of the find/discovery.
TRANSPORTATION
A Traffic Management Plan would be finalized and approved by the Tribe and BIA that identifies BMPs to minimize construction-related traffic impacts.
Deliveries of materials would be scheduled for off-peak hours, when practical, to reduce effects during periods of peak traffic.
Truck traffic would be phased throughout construction, as much as practical.
Carpooling or mass transportation options for construction workers would be encouraged.
Before construction, the Applicant and agency representatives will document the pre-construction condition of the access route, noting any existing damage. After construction, any damage to public roads will be repaired to the road's pre-construction condition, as determined by the agency representatives.
PUBLIC HEALTH AND SAFETY
The Project would be designed in accordance with all applicable federal and industrial standards including the American Society of Mechanical Engineers (ASME), National Electrical Safety Code (NESC), International Energy Conservation Code (IECC), International Building Code (IBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), the National Fire Protection Association (NFPA) standards, and OSHA regulations.
All employees and contractors would be required to adhere to appropriate health and safety plans and emergency response plans. All contractors would be required to maintain and carry health and safety materials including the MSDS of hazardous materials used on site.
An Emergency Response Plan would be developed and implemented based on the results of a comprehensive facility hazard analysis.
A Hazardous Waste Storage Plan would describe the storage, transportation, and handling of wastes and emphasize the recycling of construction wastes where possible.
The Project would coordinate with the holders of all existing ROWs that would be crossed or paralleled by the Project ROWs (transmission lines and access roads) to minimize encroachment conflicts and possible effects to existing transmission lines and pipelines.

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT
BIOLOGICAL RESOURCES
The measures below to reduce effects on the desert tortoise during construction, operation, and maintenance have been included in the Biological Opinion (BO) for ESMSP and would be required to be implemented:

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

1. **Construction area flagging**. Work areas will be flagged prior to beginning construction activities, and disturbance will be confined to the work areas. A biological monitor will escort all survey crews onsite prior to construction. All survey crew vehicles will remain on existing roads and stay within the flagged areas to the maximum extent practicable. In cases where construction vehicles are required to go off existing roads, a biological monitor (on foot) will precede the vehicles.

2. **Desert tortoise fencing**. Temporary tortoise-proof fencing will be installed around the boundary of the solar facility. Biological monitors under supervision of an authorized biologist (approved by the Service) will be present during fence installation to relocate all tortoises in harm's way to outside the work area. Additional clearance surveys and activities will be conducted after completion of the tortoise fence to ensure that no tortoises remain inside the fenced construction boundaries.

   Fence specifications will be consistent with those approved by the Service (Service 2009b). Tortoise guards will be placed at all road access points where tortoise-proof fencing is interrupted to exclude desert tortoises from the Project footprint. Gates or tortoise exclusion guards will be installed with minimal ground clearance and shall deter ingress by desert tortoises. The temporary tortoise-proof fencing will be removed once the Project is commissioned, allowing tortoises to re-occupy the site during operations.

   During the tortoise active seasons, all new fences will be checked twice a day for the first two weeks after construction or the first two weeks after tortoises become active if fence construction occurs in the winter, including once each day immediately before temperatures reach lethal thresholds. After the first two weeks, all tortoise exclusion fencing will be inspected monthly during construction, quarterly for the life of the Project, and immediately following all major rainfall events. Any damage to the fence will be repaired within two days of observing the damage.

3. **Field Contact Representative.** The BIA and Applicant will designate a Field Contact Representative (FCR) who will be responsible for overseeing compliance of the minimization measures of the biological opinion. The FCR will be onsite during all active construction activities that could result in "take" of a desert tortoise. The FCR will have the authority to halt activities that are in violation of the desert tortoise protective measures until the situation is remedied.

4. **Authorized desert tortoise biologist.** All authorized desert tortoise biologists (and monitors) are agents of BIA and the Service and will report directly to BIA, the Service, BLM, and the Applicant concurrently regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. Authorized desert tortoise biologists, monitors, and the FCR will be responsible for ensuring compliance with all conservation measures for the Project as described in the biological opinion. Prior to starting construction, authorized biologist(s) will submit documentation of authorization from the Service and approval from NDOW. Potential authorized desert tortoise biologists will submit their statement of qualifications to Service.

   An authorized desert tortoise biologist will record each observation of a desert tortoise handled in the tortoise monitoring reports. This information will be provided directly to BIA, the Service, and BLM.

   Potential authorized desert tortoise biologists must submit their statement of qualifications to the Service's Southern Nevada Fish and Wildlife Office in Las Vegas for approval, allowing a minimum of 30 days for Service response. The statement form is available in Chapter 3 of the Desert Tortoise Field Manual on the internet at: *https://www.fws.gov/nevada/desert_tortoise/dt/dt_manuals_forms.html*

   Authorized desert tortoise biologist requests in southern Nevada should be e-mailed to: ADTB_request@fws.gov

5. **Biological monitoring.** Under supervision of an authorized biologist, biological monitors will be present at all active construction locations (not including inside the solar field after it has been fenced with desert tortoise

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

fencing and clearance surveys have been completed). Desert tortoise monitors will provide oversight to ensure proper implementation of protective measures, record and report desert tortoises and tortoise sign observations in accordance with approved protocol, and report incidents of noncompliance in accordance with the biological opinion and other relevant permits. The biological monitor(s) will survey the construction area to ensure that no tortoises are in harm's way. If a tortoise is observed entering the construction zone, work in the immediate vicinity will cease until the tortoise moves out of the area. Tortoises found aboveground during construction activities will be moved offsite by an authorized biologist following the protocols described in the Desert Tortoise Translocation Plan.

6. **Desert tortoise clearance surveys and translocation.** After installation of tortoise fencing around the perimeter of the solar facility and prior to surface-disturbing activities, biological monitors and the authorized desert tortoise biologists who supervise them will conduct a clearance survey to locate and remove all desert tortoises from harm's way including those areas to be disturbed, using techniques that provide full coverage of construction zones (Service 2009b).

   No surface-disturbing activities shall begin until two consecutive surveys find no live tortoises. In sectors or zones where a live tortoise is found, surveys will be repeated until the two-pass standard is met.

   An authorized biologist will excavate burrows potentially containing desert tortoises located in the area to be disturbed with the goal of locating and removing all desert tortoises and desert tortoise eggs. Typical tortoise burrows have a characteristic shape with a flat bottom and arched top similar to a capital letter 'D' with the flat side down. Clearance will include evaluation of caliche caves and dens, as tortoises are known to shelter there. Caliche is a naturally occurring hardened cemented soil composed of calcium carbonate, gravel, sand, and silt. The practice of excavating every obvious tortoise burrow will not be done as it has shown to be ineffective and inefficient in locating tortoises; instead, all obvious tortoise burrows will be scoped for presence and possible extraction. During clearance surveys, all handling of desert tortoises and their eggs and excavation of burrows shall be conducted solely by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance (Service 2009b). If any active tortoise nests are encountered, the Service must be contacted immediately prior to removal of any tortoises or eggs from those burrows to determine the most appropriate course of action. Unoccupied burrows will remain in place to allow for tortoise use during operations. Outside construction work areas, all potential desert tortoise burrows and pallets within 50 feet of the edge of the construction work area will be flagged. If a desert tortoise occupies a burrow during the less-active season, the tortoise may be temporarily penned or will be translocated following Service approval, contingent upon weather conditions and health assessment results. No stakes or flagging will be placed on the berm or in the opening of a desert tortoise burrow. Desert tortoise burrows will not be marked in a manner that facilitates poaching. Avoidance flagging will be designed to be easily distinguished from access route or other flagging and will be designed in consultation with experienced construction personnel and authorized biologists. This flagging will be removed following construction completion.

   An authorized desert tortoise biologist or biological monitor will inspect areas to be backfilled immediately prior to backfilling. Burrows with the potential to be occupied by tortoises within the construction area will be searched for presence. In some cases, a fiber optic scope will be used to determine presence or absence within a deep burrow.

   A translocation plan following the 2018 guidance will be approved by the Service prior to the start of construction (Service 2018b). The plan identifies potentially suitable recipient locations, control site options, post-translocation densities, procedures for pre-disturbance clearance surveys and tortoise handling, as well as disease testing and post-translocation monitoring and reporting requirements. Tortoises found within 500 meters of the project boundary (fenceline) will be relocated outside of the nearest fence to a location that contains suitable habitat; tortoises found within the interior of the project site (>500 meters from a boundary fence) will be translocated to somewhere within the 4,070-acre lease area that contains suitable habitat.

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

BIA and the Applicant will have an authorized biologist relocate tortoises following the Service- approved protocol (Service 2009b) and according to the approved translocation plan. If the Service releases a revised protocol for handling desert tortoises before initiation of Project activities, the revised protocol will be implemented.

Tortoises found within the project area will be relocated outside of the ROW to an area of suitable habitat as directed by the Service. Translocation will follow installation of exclusionary tortoise fence, as determined in coordination with the agencies. Translocation events will occur to specific locations outlined in the approved project-specific translocation review package (TRP) and disposition plan, based on construction and translocation timing considerations for each tortoise. The project will employ two strategies for translocating tortoises, depending on the initial capture location of each animal:

a. **Short-distance Translocations:** Tortoises found within 500 meters of the solar site fenceline or within the gen-tie construction area will be relocated to areas immediately outside of the project's temporary exclusion fencing or outside of harm's way in the vicinity of the gen-tie ROW. All short-distance translocation tortoises will have health assessments, have blood samples drawn, and be marked. Following the completion of construction, the exclusion fencing will be removed, the permanent site fencing will be permeable to desert tortoises, and the existing vegetation on the project site is expected to be left relatively intact during construction and operation of the project. Therefore, the short-distance translocation strategy is designed to allow tortoises to freely re-occupy the site following construction.

b. Long-distance Translocation: Tortoises found in the interior of the solar site fenceline (>500 meters from the exclusion fence) will be translocated to recipient sites identified within the 1,870-acre area identified for the project but not proposed for project development. The following actions will occur:

- An authorized biologist will perform health assessments and draw blood samples for each tortoise relocated. Blood testing will determine whether any desert tortoise suffers from upper respiratory tract disease (URTD).
- Tortoises will be temporarily tagged with combination global positioning system (GPS)/radio-transmitter tags, so if the results of blood work indicate that a tortoise is infected with URTD, the tortoise can be retrieved and handled as directed by the Service.
- When determining a release location for an individual tortoise, release site preference will be to find a like-for-like shelter resource. Every attempt will be made to find similar cover sites and habitat to that at the location of each individual found on the Project site, otherwise all translocatees shall be released at the most appropriate and available unoccupied shelter sites (e.g., soil burrows, caliche caves, rock caves, etc.) or under the shade of a shrub. Because of the impermanent nature of soil burrows and cave availability, prior to submitting the final Disposition Plan and determining exact areas of release, potential release sites will be re-investigated for existing burrows and caliche or rock caves that can be used for shelter sites. Known active and inactive tortoise burrows discovered during the surveys will be re-investigated for this purpose. If insufficient shelter sites exist in an area to be used for translocation, the Applicant shall coordinate with the agencies to determine the most appropriate course of action, such as reviewing an alternate release site, modifying/improving existing burrows and partial burrows, or artificially creating burrows per Service protocols prior to translocation. The number of artificial burrows per translocated tortoise will be included in the TRP/Disposition Plan, as feasible, and may include more than one burrow per tortoise to increase translocation success (i.e. tortoises remaining within their release locations). The disposition of relocated tortoises will be evaluated and reported on following the reporting requirements of the biological opinion.
- If a tortoise voids its bladder while being handled, it will be given the opportunity to rehydrate before release. Tortoises will be offered fluids by soaking in a shallow bath or an authorized desert tortoise biologist will administer nasal-oral fluid or injectable epicoelomic fluids. Any tortoise hydration support beyond offering water or shallow soaking will only be provided by an authorized biologist who has received advanced training in health assessments and been specifically approved by the Service for these procedures.

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

7. **Integrated Weed Management Plan**. Prior to construction, an Integrated Weed Management Plan will be developed that includes measures designed to reduce the propagation and spread of designated noxious weeds, undesirable plants, and invasive plant species, or as determined by the cooperating or reviewing agencies (BIA, BLM, NDOW, etc.). Measures in the plan will include but are not limited to the following:

    - Areas with current weeds will be mapped. Topsoil with the presence of weeds will not be salvaged and reused elsewhere in the Project. The topsoil from such areas will be disposed of properly.
    - Inspect heavy equipment for weed seeds before they enter the Project area. Require that such equipment be cleaned first to remove weed seeds before being allowed entry. Clean equipment that has been used in weed infested areas before moving it to another area.
    - Any straw or hay wattles are used for erosion control must be certified weed free.

8. **WEAP.** A WEAP will be presented to all personnel onsite during construction. This program will contain information concerning the biology and distribution of the desert tortoise, desert tortoise activity patterns, and its legal status and occurrence in the proposed Project area. The program will also discuss the definition of "take" and its associated penalties, measures designed to minimize the effects of construction activities, the means by which employees limit impacts, and reporting requirements to be implemented when tortoises are encountered. Personnel will be instructed to check under vehicles before moving them as tortoises often seek shelter under parked vehicles. Personnel will also be instructed on the required procedures if a desert tortoise is encountered within the proposed Project area. WEAP training will be mandatory, as such, workers will be required to sign in and wear a sticker on their hardhat to signify that they have received the training and agree to comply.

9. **Access roads.** Construction access will be limited to the Project area and established access roads.

10. **Speed limits and signage.** Until the desert tortoise fence has been constructed, a speed limit of 15 miles per hour will be maintained during the periods of highest tortoise activity (March 1 through November 1) and a limit of 25 mph during periods of lower tortoise activity. This will reduce dust and allow for observation of tortoises in the road. Speed limit and caution signs will be installed along access roads and service roads. After the tortoise-proof fence is installed and the tortoise clearance surveys are complete, speed limits within the fenced and cleared areas will be established by the construction contractor based on surface conditions and safety considerations and remain with limits established by the Service in the biological opinion.

11. **Trash and litter control.** Trash and food items will be disposed properly in predator proof containers with resealing lids. Trash will be emptied and removed from the Project site on a periodic basis as they become full. Trash removal reduces the attractiveness of the area to opportunistic predators such as ravens, coyotes, and foxes.

12. **Raptor control.** The applicant will inspect structures annually for nesting ravens and other predatory birds and report observations of nests to the Service and BIA as stated in the Raven Management Plan. Transmission line support structures and other facility structures will be designed to discourage their use by raptors for perching or nesting (e.g., by use of anti-perching devices) in accordance with the most current APLIC guidelines. In addition to increasing desert tortoise protection, following these guidelines during transmission line construction will reduce the possibility of avian electrocution and other hazards.

13. **Overnight hazards.** No overnight hazards to desert tortoises (e.g., auger holes, trenches, pits, or other steep-sided depressions) will be left unfenced or uncovered; such hazards will be eliminated each day prior to the work crew and monitoring biologists leaving the site. All excavations will be inspected for trapped desert tortoises at the beginning, middle, and end of the workday, at a minimum, but will also be continuously monitored by a biological monitor or authorized biologist. Should a tortoise become entrapped, the authorized biologist will remove it immediately.

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

When outside of the fenced areas of the Project site, Project personnel will not move construction pipes greater than 3 inches in diameter if they are stored less than 8 inches above the ground until they have inspected the pipes to determine the presence or absence of desert tortoises. As an alternative, the Applicant may cap all such structures before storing them outside of the fenced area.

14. **Blasting.** If blasting is required in desert tortoise habitat, detonation will only occur after the area has been surveyed and cleared by an authorized desert tortoise biologist no more than 24 hours prior. A minimum 200-foot buffered area around the blasting site will be surveyed. A larger area will be surveyed depending on the anticipated size of the explosion as determined by the authorized desert tortoise biologist. All desert tortoises above ground within the surveyed area will be moved 500 feet from the blasting site to a shaded location or placed in an unoccupied burrow. Desert tortoises that are moved will be monitored or penned to prevent returning to the buffered survey area. Tortoises located outside of the immediate blast zone and that are within burrows will be left in their burrows. All potential desert tortoise burrows, regardless of occupied status, will be stuffed with newspapers, flagged, and location recorded using a global positioning system (GPS) unit. Immediately after blasting, newspaper and flagging will be removed. If a burrow or cover site has collapsed that could be occupied, it will be excavated to ensure that no tortoises have been buried and are in danger of suffocation. Tortoises removed from the blast zone will be returned to their burrow if it is intact or placed in a similar unoccupied or constructed burrow.

15. **Penning.** Tortoises may be held *in-* or *ex-situ* (e.g., if temperatures do not allow for translocation or if tortoises do not pass the health assessment) for a maximum of 12 months. Previously constructed and approved enclosure pens are present adjacent to the Project site and will be used if any quarantine is necessary. Quarantine is not the preferred option for tortoises to be translocated and will only be used as necessary in coordination with the Service. This penning is not the same as the temporary penning described in the blasting measure.

16. **Stormwater Pollution Prevention Plan.** The applicant will oversee the establishment and functionality of sediment control devices as outlined in the stormwater pollution prevention plan.

17. **Tortoise Encounters During Construction.** If a tortoise is injured as a direct or indirect result of Project construction activities, it shall be immediately transported to a veterinarian or wildlife rehabilitation facility and reported within 24 hours or the next workday to the Service. Any Project construction-related activity that may endanger a desert tortoise shall cease in the immediate vicinity of a desert tortoise if encountered on the Project site. Project construction activities may resume after an Authorized Biologist removes the desert tortoise from danger or after the desert tortoise has moved to a safe area.

Operations and Maintenance Minimization Measures

The following minimization measures will be implemented during O&M of the Proposed Action to reduce effects on the desert tortoise and other species:

18. **WEAP Training.** WEAP training will be required for all O&M staff for the duration of the Project. In addition to an overview of minimization measures, the training will include specific BMPs designed to reduce effects to the desert tortoise. All Project personnel will check under vehicles or equipment before moving them. If Project personnel encounter a desert tortoise, they will avoid the tortoise. The desert tortoise will be allowed to move a safe distance away prior to moving the vehicle.

19. **Biological Monitoring.** A biological monitor(s) will be present during ground-disturbing and/or off-road O&M activities outside of the fenced solar facility to ensure that no tortoises are in harm's way. Tortoises found aboveground during O&M activities will be avoided or moved by an authorized biologist if necessary. Pre-maintenance clearance surveys followed by temporary exclusionary fencing also will be required if the maintenance action requires ground or vegetation disturbance. A biological monitor will flag the boundaries of

Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

areas where activities will need to be restricted to protect tortoises and their habitat. Restricted areas will be monitored to ensure their protection during construction.

20. **Speed Limits.** Speed limits within the project area, along transmission line routes, and access roads will be restricted to less than 25 mph during O&M. Speed limits in the solar facility will be restricted to 15 mph during O&M.

21. **Trash and Litter Control and other Predator Deterrents.** Trash and food items will be disposed properly in predator proof containers with resealing lids. Trash will be emptied and removed from the Project site on a periodic basis as they become full. Trash removal reduces the attractiveness of the area to opportunistic predators such as ravens, coyotes, and foxes. To reduce attractants for birds, open containers that may collect rainwater will be removed or stored in a secure or covered location.

Decommissioning Minimization Measures

The same minimization measures used for construction will be used for decommissioning.

Compensatory Mitigation

The applicant will pay the following required compensatory mitigation:

22. **Habitat Compensation.** Prior to surface disturbance activities within desert tortoise habitat, the Project proponent will pay a one-time remuneration fee (per acre of proposed disturbance). The compensation for habitat loss under Section 7 of the Endangered Species Act (ESA) is an annually adjusted rate, currently $902/acre (subject to change annually on March 1). Fees are based on the current $902/acre fee for all permanently disturbed acres. For all project acres that will be temporarily disturbed and leave vegetation in place, fees will be assessed at 50% of the current rate. All assessed fees will be applied toward a habitat use study and tortoise monitoring for the Project.

23. **Habitat Use Study.** The Project proponent will work with the University of Nevada, Las Vegas (UNLV), U.S. Geological Survey (USGS), or other agency to design and implement a 2-3-year study to compare onsite and off-site desert vegetation and climate (e.g., annual and perennial plant growth and cover, ambient temperature) to address metrics of habitat change, including how desert tortoises use the vegetation onsite for forage and cover. Results from tortoise monitoring as approved in the Project's Desert Tortoise Translocation Plan will also inform the tortoise use portion of this study.

PUBLIC HEALTH AND SAFETY

The Project needs to incorporate the following measures to reduce potential worker exposure to the *Coccidioides immitis* fungus that can cause Valley Fever:

- Include training for workers and supervisors on the potential presence of Valley Fever spores, methods to minimize exposure, and how to recognize symptoms
- Limit workers' exposure to outdoor dust in disease-endemic areas by (1) providing air-conditioned cabs for vehicles that generate dust and making sure workers keep windows and vents closed, (2) suspending work during heavy winds, and (3) directing them to remove dusty clothing after fieldwork and store in closed plastic bags until washed.
- When exposure to dust is unavoidable, provide approved respiratory protection to filter particles.

ATTACHMENT C

FINAL MEMORANDUM OF AGREEMENT
EAGLE SHADOW MOUNTAIN SOLAR PROJECT

MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE
EAGLE SHADOW MOUNTAIN SOLAR PROJECT ON THE MOAPA RIVER INDIAN RESERVATION

Bureau of Indian Affairs, Western Regional Office
January 24, 2020

MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE
EAGLE SHADOW MOUNTAIN SOLAR PROJECT ON THE MOAPA RIVER INDIAN RESERVATION

WHEREAS, the Regional Director of the Bureau of Indian Affairs, Western Regional Office (BIA/WRO), is responsible as the Agency Official for Western Region compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and codified in Subpart B of Code of Federal Regulations Title 36, Part 800 (36 CFR 800), and BIA/WRO shall serve as lead federal agency for the proposed undertaking; and

WHEREAS, the undertaking before BIA/WRO is approval of a lease and rights-of-way for the Eagle Shadow Mountain Solar Project, a 300 megawatt solar photovoltaic electricity generation facility that will encumber up to 2,300 acres on the Moapa River Indian Reservation and an additional 500 acres for transmission lines and access roads requiring rights-of-way approval from the Bureau of Land Management Southern Nevada District Office (BLM) (hereinafter referred to as the undertaking); and

WHEREAS, the Moapa Band of Paiute Indians (Tribe) is a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which exercises general governmental jurisdiction over all lands of the Moapa River Indian Reservation; for purposes of this consultation is an Indian tribe as described at 36 CFR 800.2(c)(2)(i)(B); and as contemplated in the referenced regulation a Signatory to this Memorandum of Agreement (Agreement); and

WHEREAS, the BLM will grant an easement for right-of-way for an associated transmission line and access road for the undertaking that will encumber up to approximately 500 additional acres and is an Invited Signatory to this Agreement; and

WHEREAS, BLM has designated BIA/WRO as the lead federal agency for the purpose of Section 106 consultation pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, 325MK 8ME, LLC as the project proponent, intends to construct, operate, and maintain the undertaking under lease terms extending up to a maximum period of fifty (50) years and is an Invited Signatory to this Agreement; and

WHEREAS, the Nevada State Historic Preservation Officer (SHPO) is authorized to enter into this Agreement as a Signatory in order to fulfill its role of advising and assisting federal agencies in carrying out their historic preservation responsibilities and to cooperate with these agencies under the following federal statutes: Sections 101 and 106 of the NHPA, 54 U.S.C. 306108, 36 CFR 800.2(c)(1)(i) and 800.6(b), and BIA/WRO has consulted with the SHPO pursuant to 36 CFR 800.6 in the development of this Agreement); and

WHEREAS, BIA/WRO has consulted with the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Fort Mojave Indian Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, and the Paiute Indian Tribe of Utah in accordance with 36 CFR 800.3(f)(2); and

WHEREAS, BIA/WRO has consulted with the National Park Service National Trails System-Intermountain Region, which has joint management responsibilities with BLM for the nearby congressionally-designated Old Spanish National Historic Trail, and is invited to concur with this Agreement; and

WHEREAS, BIA/WRO has notified the Advisory Council on Historic Preservation (ACHP) of this determination of adverse effect pursuant to 36 CFR 800.6(a)(1) and the ACHP has notified BIA/WRO by letter dated January 24, 2020 that it has declined to participate in this Agreement; and

WHEREAS, BIA/WRO is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the undertaking and has used the public notification process embodied in NEPA to seek public input and notify the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800; and

WHEREAS, the Signatories, Invited Signatories, and Concurring Party will hereinafter be referred to as the consulting parties; and

WHEREAS, BIA/WRO, in consultation with the consulting parties, has determined that the undertaking will cause adverse effects to the historic properties identified as 26CK10722, 26CK10724, 26CK10725, and 26CK10726, lithic scatters eligible under Criterion D and the unevaluated segments of 256CK4429/26CK5685; and

WHEREAS, no provision of this Agreement shall be construed by any of the consulting parties as abridging or debilitating any sovereign powers of the Tribe; affecting the trust relationship between the Secretary of the Interior and the Tribe; or interfering with the government-to-government relationship between the United States and the Tribe; and

NOW, THEREFORE, BIA/WRO, Tribe, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS.

BIA/WRO shall ensure that the following stipulations are implemented.

I. HISTORIC PROPERTIES TREATMENT PLAN.

A. BIA/WRO, in consultation with the consulting parties, shall ensure that 325MK 8ME, LLC, through its qualified consultant meeting the Secretary of the Interior's Professional Qualifications standards appropriate to the historic property, develops and implements the fieldwork portion of a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to historic properties within the area of potential effects (APE) before 325MK 8ME LLC initiates any ground disturbance associated with the undertaking. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44737).

B. The HPTP will include, but not be limited to:

1. A description of the historic properties, or portions of historic properties, where treatment is to be carried out;
2. The results of previous research relevant to the undertaking and the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
3. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
4. The methods to be used in data management and dissemination of data to the professional community and the public;
5. A proposed schedule for cultural resource tasks, and a schedule for the submission of draft and final reports to the consulting parties;
6. The proposed disposition and curation of recovered materials and records in accordance with 25 CFR 262;
7. Procedures for monitoring, evaluating, and mitigating any unexpected effects to historic properties during construction of the undertaking, including consultation with consulting parties;
8. A Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action for the treatment of human remains, in the event that such remains are discovered. The NAGPRA Plan of Action shall describe methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony;
9. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed;
10. Preparation of a Preliminary Report of Findings and review process, as well as proposed timelines;

11. Preparation of a Data Recovery Report and review process, as well as proposed timelines.

C. Review and Comment on the HPTP.

1. 325MK 8ME, LLC, through its qualified consultant, shall submit a draft HPTP to BIA/WRO.
2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments within thirty (30) calendar days to 325MK 8ME, LLC.
3. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates within thirty (30) calendar days to BIA/WRO.
4. BIA/WRO shall submit the draft HPTP document concurrently to all consulting parties for review. All consulting parties shall have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO. If a consulting party does not respond to the submission within the review period, BIA/WRO may finalize the HPTP.
5. BIA/WRO shall ensure that any timely written comments received from the consulting parties are addressed during the preparation of the final draft HPTP.
6. BIA/WRO shall submit the final draft HPTP to all consulting parties. The consulting parties shall have thirty (30) calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to BIA/WRO. If a consulting party fails to respond, BIA/WRO may finalize the HPTP.
7. BIA/WRO shall ensure that 325MK 8ME, LLS will address any timely written comments from the consulting parties on the final draft document during the preparation of the final HPTP.
8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to 325MK 8ME, LLC once consultation on the HPTP is complete and prior to construction. Fieldwork authorization will be contingent upon obtaining the necessary permits.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all consulting parties.

II. PRELIMINARY REPORT OF FINDINGS.

A. 325MK 8ME, LLC, through its qualified consultant responsible for the work, will prepare and submit a brief Preliminary Report of Findings to BIA/WRO within fourteen (14) calendar days after the completion of all fieldwork. At a minimum, this report shall contain, but not be limited to:

1. A discussion of the methods and treatments applied to each historic property or unevaluated resource, with an assessment of the degree to

which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and
2. Topographic site plans for the historic properties and unevaluated resource depicting all features and treatment areas; and
3. General description of recovered artifacts and other data classes, including features excavated or sampled; and
4. Discussion of further analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP.
5. Draft images, as appropriate, of the unevaluated resource produced in accord with the terms of the HPTP.

B. Review of the Preliminary Report of Findings.

1. Upon receipt of the draft Preliminary Report of Findings, BIA/WRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
3. BIA/WRO will distribute the revised draft Preliminary Report of Findings to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If a consulting party fails to respond to the request for review, BIA/WRO will finalize the document.
4. BIA/WRO will address any comments received from the consulting parties.
5. If BIA/WRO revises the draft Preliminary Report of Findings, BIA/WRO will distribute the revised document to all consulting parties. All consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO.
6. BIA/WRO shall ensure that any written comments received are addressed during the preparation of the final document.
7. Once BIA/WRO finalizes the Preliminary Report of Findings, BIA/WRO will notify 325MK 8ME, LLC, BLM and the Tribe that construction for the undertaking may commence.

III. MITIGATION REPORT

A. BIA/WRO shall ensure that within one (1) year of the completion of the Preliminary Report of Findings, 325MK 8ME, LLC, through its contracted qualified archaeologist, prepares a draft comprehensive Mitigation Report.

1. Upon receipt of the draft Mitigation Report, BIA/WRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.

3. BIA/WRO will distribute the draft Mitigation Report to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If a consulting party fails to respond to a request for review and comment, BIA/WRO will finalize the document.
4. If BIA/WRO makes revisions to the Mitigation Report, all consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO.
5. BIA/WRO shall ensure that any written comments received are addressed during the preparation of the final document.
6. BIA/WRO shall ensure that copies of the final mitigation report are provided to all consulting parties.

IV. CONTINUATION OF CONSULTATION WITH NATIVE AMERICAN TRIBES

BIA/WRO shall ensure that consultation with the Native American Tribes that may attach religious or cultural importance to affected properties will continue throughout the life of the undertaking.

V. STANDARDS FOR MONITORING, TESTING, AND DATA RECOVERY

All cultural resources work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) and under the terms of the permits issued for the archaeological investigations.

VI. CUSTODY OF ARCHAEOLOGICAL RESOURCES AND RECORDS

With the exception of human remains or objects that fall under NAGPRA and for the unevaluated resource not located on Tribal land, the disposition of recovered archeological resources shall follow the regulations at 25 CFR 262.8, whereby all such resources are property of the Tribe. BIA/WRO shall deliver all notes, photos, reports, and other records related to the undertaking to the Tribe upon completion of the final Data Recovery Report and the data are the property of the Tribe.

Subject to the terms and provisions of the Freedom of Information Act (FOIA), all archaeological and ethnographic reports generated by BIA/WRO efforts to comply with NHPA are to be considered confidential and privileged and shall be withheld from the public, pursuant to Section 304 of NHPA (36 CFR 800.11(c)) and Section 9 of the Archeological Resources Protection Act.

VII. DISCOVERIES IN THE APE

If cultural resources or human remains are discovered within the APE after construction begins, the 325MK 8ME, LLC Solar Construction Supervisor shall require construction to immediately cease within the area of the discovery, protect the discovery, and promptly report the discovery to the Tribe and BIA/WRO.

A. If the discovery involves human remains or objects that fall under NAGPRA, Project Manager shall immediately secure the discovery and notify Tribal representatives identified in the NAGPRA Plan of Action in the HPTP provided for in Stipulation I of this Agreement.

B. If human remains are not involved, the BIA/WRO, in consultation with the SHPO, shall determine if the approved HPTP provided for in Stipulation I of this Agreement is appropriate to the nature of the discovery. If appropriate, the HPTP shall be implemented by BIA/WRO. If the HPTP is not appropriate to address the discovery, BIA/WRO shall ensure that an alternative plan for the mitigation of adverse effects is developed and provided to the consulting parties for review and comment.

C. The BIA/WRO shall immediately notify the Tribe and the SHPO of all discoveries.

VIII. CHANGES IN THE APE

BIA/WRO may amend the APE as needed, or as requested by any Signatory, without amending the Agreement proper. If this should occur, all consulting parties will receive a formal notification of proposed amended APE. Within thirty (30) calendar days of their receipt of the proposed amendment, any Signatory may request that the Agreement be amended in accord with the process outlined in Stipulation X. Following BIA/WRO receipt of the request, the Signatories shall prepare an amendment document.

IX. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure, or its manner of implementation, be raised by a member of the public, BIA/WRO shall take the objection into account and consult as needed with the objecting party and the consulting parties to this Agreement to resolve the objection.

X. AMENDMENT

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is necessary, that party shall immediately consult with the other Signatories to develop an amendment to this Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatories is filed with the ACHP.

XI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this Agreement object to any action(s) or plan(s) pursuant to this Agreement, BIA/WRO shall consult with the objecting party within thirty (30) days to resolve the objection. The objection must be identified specifically and the reasons for objection documented in writing. If the objection cannot be resolved, BIA/WRO shall notify the consulting parties to this Agreement of the objection and shall:

A. Forward all documentation relevant to the dispute, including BIA/WRO's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide BIA/WRO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision regarding the dispute, BIA/WRO shall prepare a written response that takes into account any timely advice or comment provided by the ACHP, and all comments from the Signatories or Invited Signatories to this Agreement, and provide them with a copy of this written response. BIA/WRO will then proceed according to its final decision.

B. If the ACHP does not provide any comments regarding the dispute within thirty (30) days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute and proceed accordingly. Prior to reaching its decision, BIA/WRO shall prepare a written response that will take into account all written comments regarding the dispute from the consulting parties and provide them and the ACHP with a copy of such a written response.

C. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

XII. DURATION AND TERMINATION

This Agreement will expire if its stipulations are not carried out within ten (10) years from execution of the last Signatory signature on the Agreement or until BIA/WRO, in consultation with the consulting parties, determines that all of its terms have been satisfactorily fulfilled whichever comes first.

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X, above. If an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories. Within thirty (30) days following termination, the BIA/WRO shall notify the parties if it will initiate consultation to execute an Agreement with the Signatories and Invited Signatory under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

XIII. EXECUTION OF THIS AGREEMENT

Execution and implementation of this Agreement evidences that the BIA/WRO has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking and its effects.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIA/WRO will distribute copies of all signed pages to the consulting parties once the Agreement is executed in full.

[Remainder of page intentionally blank]

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By:_____ Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: Laura Watters Date 1-31-2020
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By:_____ Date_____
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT, LAS VEGAS FIELD OFFICE

By:_____ Date_____
Field Office Manager

APPROVED: 325MK 8ME, LLC

By:_____ Date_____
Senior Associate, Clean Energy Infrastructure

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By:_____ Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By:_____ Date_____
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By: Rebecca Palmer Date 01/27/20
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT, LAS VEGAS FIELD OFFICE

By:_____ Date 2-4-2020
~~Field Office Manager~~
ACTING DISTRICT MANAGER

APPROVED: 325MK 8ME, LLC

By:_____ Date_____
Senior Associate, Clean Energy Infrastructure

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By:_____ Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By:_____ Date_____
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By:_____ Date_____
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT, LAS VEGAS FIELD OFFICE

By:_____ Date_____
Field Office Manager

APPROVED: 325MK 8ME, LLC

By:_____ Date 1/29/2020
Authorized Signatory

By:_____ Date 1/29/2020
Authorized Signatory

CONCURRING PARTY:

APPROVED: NATIONAL PARK SERVICE, NATIONAL TRAILS

By:_____ Date_____
Superintendent