

May 2, 2016

Via electronic mail: blm_ca_drecp@blm.gov

Vicki Campbell, DRECP Program Manager
Bureau of Land Management
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

Re: Comments on Areas of Critical Environmental Concern in the Desert Renewable Energy
Conservation Plan Proposed Land Use Plan Amendment, California

Dear Ms. Campbell:

We are writing to express our concern over the Bureau of Land Management’s (BLM) proposed management of five proposed Areas of Critical Environmental Concern (ACECs) located within the boundary of the Bishop Resource Management Plan (RMP) in the Proposed Desert Renewable Energy Conservation Plan (DRECP). The five ACECs we are concerned about include the Symmes Creek Wilderness Study Area (WSA), Independence Creek WSA, Crater Mountain WSA, Cerro Gordo WSA and the Southern Inyo Mountains WSA. As described in Appendix L of the Proposed DRECP Land Use Plan Amendment (LUPA), these five are subject to weaker management as compared to the other 129 ACECs included in the Proposed LUPA by exempting certain allowable activities from the caps on surface disturbance. In addition, these exempted activities are described very broadly, increasing the risk of harm to the values that these ACECs are proposed to protect. Unfortunately, this information was not presented in the Draft LUPA and was difficult to identify in Appendix L to the Proposed DRECP LUPA, so we are highlighting this concern for the agency at this time.

While we are pleased that BLM decided to institute stronger disturbance mitigation standards for all ACECs given individual unit resource needs, sensitivity to impacts, and current landscape conditions, we are disappointed that BLM has made considerable exceptions for these five ACECs in the Bishop RMP area. The management prescriptions for these five areas are not only inconsistent with BLM’s statutory obligations, but they also threaten the important resources identified in each ACEC unit and undermine the DRECP’s ACEC conservation delivery mechanism - disturbance caps.

We believe the management prescriptions for these five ACECs should be corrected to ensure they are managed consistently with the other proposed ACECs so all allowable land use activities are subject to an overlapping disturbance cap. We offer the following recommendations to correct this inconsistency and strengthen the value of the ACEC designations within the Bishop Field Office management area.

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ACECs under the Federal Land Policy and Management Act

The Federal Land Policy and Management Act (FLPMA) obligates BLM to “give priority to the designation and protection of areas of critical environmental concern [ACECs].” 43 U.S.C. § 1712(c)(3). ACECs are considered unique areas where special, individualized management is necessary “to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” 43 U.S.C. § 1702(a). As a result, in order to meet its obligations under FLPMA, BLM must prioritize the management prescriptions for designated ACECs.

BLM has proactively identified and designated 134 ACECs under the DRECP. These areas exhibit a wide range of relevant and important historic, cultural or scenic values, fish and wildlife resources, and other natural systems and processes found in the desert; and, in designating them as ACECs, BLM is acknowledging that these areas require special management. As a result, BLM is required to provide “fully developed” special management prescriptions to protect these ACECs and their associated resources and values. *See*, Manual 1613, Sections .1 (Characteristics of ACECs), .22 (Develop Management Prescriptions for Potential ACECs), 43 C.F.R. § 8200.

Under the DRECP LUPA, the BLM is not only prescribing management actions for each designated ACEC, but it is also applying a “disturbance cap” for each unit area.

ACEC Disturbance Caps

Under the DRECP LUPA, disturbance caps are a conservation delivery mechanism intended to limit ground-disturbing activities. Since disturbance is measured as a percentage of the total BLM-managed ACEC acreage, it is essential that BLM consider all disturbances when assessing whether the cap has been reached. The BLM’s Proposed LUPA individualizes the disturbance caps for each ACEC and any sensitive sub-areas within them. This is an improvement from the Draft DRECP, which relied on a more generalized approach to disturbance cap allocations by assigning most areas with a blanket 0.5-1% disturbance cap. We are pleased that BLM’s disturbance caps in the Proposed LUPA better reflect each area’s resource needs, sensitivity to impacts, and current landscape conditions. By adopting stronger disturbance standards for each ACEC, BLM is helping to ensure harmful impacts are addressed, development in sensitive areas is avoided, and the integrity of the resources and values within each ACEC is maintained.

Unfortunately and inexplicably, the BLM’s management prescriptions for the five referenced ACECs in the Bishop RMP area are inconsistent with the purpose of the ACEC disturbance caps and pose a threat to the protected resources within those designated areas. The analysis in the FEIS failed to adequately call out the fact that only in these five ACECs are select ground-disturbing activities exempted from being used to calculate an ACEC’s disturbance level over the life of the DRECP LUPA. In effect, this would permit impactful activities to continue without changing the BLM calculation of the ACEC’s current level of disturbance. Similar activities in the other 129 ACECs, however, would be included in the area’s disturbance calculation. *See*, Appendix L. This difference in management is not explained, let alone justified, and appears arbitrary.

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To preserve the integrity of the ACEC designations across the DRECP planning area, and ensure compliance with the requirements of FLPMA, we recommend that management prescriptions for these five ACECs prioritize the protection and restoration of their natural and cultural values by applying the proposed 0.25% disturbance cap for all activities. While activities intended to improve an area's natural condition or protect cultural resources may be necessary, the impacts to the landscape generated by these activities should not be excluded in calculating an area's level of disturbance. While they may provide a net benefit in the long term, all associated short term impacts must be accounted for to ensure ACEC values are protected.

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Unfortunately, the BLM Bishop Field Office has determined that certain allowable activities permitted in the five individual ACECs should not be subject to the same protections as other ACECs, namely the disturbance cap. As illustrated below, these areas are rich in natural resources and cultural history, and like the 129 other ACECs in the proposed DRECP LUPA, all allowable uses in these ACECs and their impacts should be subject to the disturbance caps and included in disturbance calculations.

ACEC Values and Management Concerns

Each of the five ACECs, the specific activities that would not be subject to any disturbance cap and the concerns with this management approach are described below.

1. **Symmes Creek WSA.** The Symmes Creek WSA is comprised of 8,372 acres of public land located on the eastern slope of the Sierra Nevada and includes Shepherd Creek and a portion of Symmes Creek. Its wilderness characteristics include naturalness and outstanding opportunities for solitude and primitive and unconfined recreation. Upper elevations of the unit provide critical winter range for the Goodale mule deer herd, and overall it provides habitat and habitat connectivity for other wildlife species in the Sierra Nevada and Owens Valley. Mid to upper elevation lands will become more valuable in sustaining species vulnerable to increasing temperatures associated with global climate change, thus making this unit more ecologically valuable over time. The aquatic and riparian components of Shepherd Creek and Symmes Creek add to the unit's ecological and biological diversity, supporting Neotropical migratory birds and native species of macroinvertebrates and vertebrates, and having the potential for supporting endemic aquatic species such as spring-snails and salamanders. A recent site visit (generating the attached photo) has confirmed that Western Water Birch riparian lines both Symmes Creek and Shepherd Creek and also indicated that there are likely additional values present, such as rare plants that have not been identified previously. Accordingly, in developing appropriate management, we recommend BLM should also update its inventory of the values of the WSA and ACEC.

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The existing use in the unit is livestock grazing associated with the Alabama Hills allotment. The proposed management activities include treatments to maintain or improve native vegetation communities and special status species habitats; selective removal of riparian vegetation and/or in-stream debris on Shepherd Creek to protect Manzanar National Historic Site from flooding.

Management Concerns. The BLM’s proposed management activities would be exempt from compliance with the disturbance cap of 0.25% and the yearlong protection of riparian habitat. Motorized or off-road vehicle use would be allowed on existing roads and trails, which would also be maintained with mechanized equipment. The proposed activities including vegetation treatments, habitat improvement projects, and the alteration of Shepherd Creek to provide flood protection for the Manzanar National Historic Site (NHS) by removal of riparian vegetation and in-stream debris have the potential to adversely impact the natural and biological values of the unit.

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2. Independence Creek WSA. This 6,840 acre unit is located on the eastern slope of the Sierra Nevada and includes George Creek. It has wilderness characteristics related to naturalness and outstanding opportunities for solitude and primitive and unconfined recreation. The upper elevations of the unit provide critical winter range for the Goodale mule deer herd, and generally provides habitat and habitat connectivity for other wildlife species in the Owens Valley and Sierra Nevada. Mid to upper elevation lands will become more valuable in sustaining species vulnerable to increasing temperatures associated with global climate change, thus making this unit more ecologically valuable over time. The aquatic and riparian components of George Creek add to the unit’s ecological and biological diversity, supporting Neotropical migratory birds and native species of macroinvertebrates and vertebrates, and having the potential for supporting endemic aquatic species such as spring-snails and salamanders.

The existing use in the unit is livestock grazing associated with the Alabama Hills allotment. The proposed management activities include projects to maintain or improve fish and wildlife habitats and natural vegetation communities. Motorized or off-road vehicle use is allowed on existing roads, routes and trails, which may be maintained with mechanized equipment. The proposed habitat disturbance cap is 0.25%.

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Management Concerns. The BLM’s proposed activities intended to maintain and improve fish and wildlife habitat and natural vegetation communities would be exempt from compliance with the disturbance cap of 0.25%. The effects of livestock grazing on soil, vegetation and aquatic habitat associated with George Creek is a concern given the arid environment of the Owens Valley. Motorized or off-road vehicle use would be allowed on all existing roads and trails, which would also be maintained with mechanized equipment. The proposed allowable uses have the potential to adversely impact the natural and biological values of the unit.

3. Crater Mountain WSA. The proposed Crater Mountain WSA ACEC is 954 acres, which is a portion of the much larger WSA comprised of 6,597 acres. The WSA portion located outside the DRECP boundary is 5,735 acres and not subject to the proposed LUPA management requirements, although it has been an ACEC since 1993. The Crater Mountain unit’s wilderness characteristics are naturalness and outstanding opportunities for solitude and primitive and unconfined recreation. The unit also supports important scenic and cultural values. The unit includes winter range for the Goodale mule deer herd as well as habitat for tule elk and other native species. Like the other units, it contributes connectivity habitat for animals and plants in the Owens Valley. Mid to upper elevation lands in the Crater Mountain WSA will become more valuable in sustaining species

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vulnerable to increasing temperatures associated with global climate change, thus making this unit more ecologically valuable over time.

Livestock grazing is an existing use in the unit on both the West and East Crater Mountain allotments. Motorized or off-road vehicle use is allowed on existing roads, routes and trails, which may be maintained by mechanized equipment. Other proposed allowable activities include maintaining and improving native vegetation communities to support special status species, and other native species of fish and wildlife. The proposed habitat disturbance cap is 0.25%.

Management Concerns. The BLM's proposed activities intended to maintain and improve fish and wildlife habitat and natural vegetation communities would be exempt from compliance with the disturbance cap of 0.25%. Motorized or off-road vehicle use would be allowed on all existing roads and trails, which would also be maintained with mechanized equipment. Livestock grazing and associated grazing use projects have the potential to contribute to habitat loss. The proposed allowable uses have the potential to adversely impact the natural and biological values of the unit.

4. **Cerro Gordo WSA.** The proposed Cerro Gordo WSA ACEC is a 626 acre remnant of the Cerro Gordo Wilderness Study Area (CA-010-055) described in the California Statewide Wilderness Study Report (1990). The majority of the original unit (13,500 acres) was included in the Inyo Mountains Wilderness established by Congress in the California Desert Protection Act of 1994. It has wilderness characteristics due to naturalness and outstanding opportunities for solitude and primitive and unconfined recreation in the southwest Inyo Mountains, and is adjacent to the Inyo Mountains Wilderness and the primary access road to the historic mining town of Cerro Gordo. The unit contributes to the historic scenery associated with the historic mining town of Cerro Gordo as observed from both the town site and its primary access road. It also contributes to habitat connectivity for desert wildlife species in the Inyo Mountains. Management activities proposed by BLM include treatments to maintain or improve native vegetation communities and special status species habitats, and projects intended to maintain and improve wildlife habitats. The proposed disturbance cap is 0.25%, and BLM's proposed vegetation and habitat improvement projects would be exempt from the disturbance cap. Motorized or off-road vehicle use would be allowed on existing roads, routes and trails, which may be maintained by mechanized equipment.

Management Concerns. The BLM's proposed activities intended to maintain and improve fish and wildlife habitat and natural vegetation communities would be exempt from compliance with the disturbance cap of 0.25%. Motorized or off-road vehicle use would be allowed on all existing roads and trails, which would also be maintained with mechanized equipment. The proposed allowable uses have the potential to adversely impact the natural and biological values of the unit.

5. **Southern Inyo WSA.** The 2,930 acre Southern Inyo WSA is comprised of five separate remnants on the west slope of the Inyo Mountains which were not included in the Inyo Mountains Wilderness established through the California Desert Protection Act of 1994. It contributes to habitat connectivity for desert wildlife species in the Owens Valley and Inyo Mountains. One of the five units includes Long John Canyon and includes Long John Spring, a significant spring complex

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that supports numerous species including the Inyo Mountains salamander, songbirds, quail and desert bighorn sheep.

Management activities proposed by BLM include designing and implementing treatments to maintain and improve native vegetation communities and special status species habitats, and projects intended to maintain and improve fish and wildlife habitats. Motorized or off-road vehicle use would be allowed on existing roads, routes and trails, which may be maintained by mechanized equipment. The proposed habitat disturbance cap is 0.25%. Treatments and projects intended to maintain and improve natural vegetation communities and wildlife habitat would be exempt from the disturbance cap.

Management Concerns. The BLM's proposed activities intended to maintain and improve fish and wildlife habitat and natural vegetation communities would be exempt from compliance with the disturbance cap of 0.25%. Motorized or off-road vehicle use would be allowed on all existing roads and trails, which would also be maintained with mechanized equipment. The proposed allowable uses have the potential to adversely impact the natural and biological values of the unit.

Recommendations

Within all of the ACECs discussed above, we recommend that all proposed allowable activities, including projects to facilitate livestock grazing and habitat lost due to motorized vehicle roads, routes and trails, be subject to the 0.25% disturbance cap so that the special values of the ACECs, and the existing WSAs, are adequately protected. Further, prior to approving such actions, BLM should detail the manner in which they would specifically lead to habitat protection and enhancement information, in order to be consistent with the management goals for the ACECs.

In addition, for the Symmes Creek WSA ACEC, BLM's proposed management activities and projects to maintain and improve natural vegetation communities, fish and wildlife habitat, and provide flood protection for the Manzanar NHS should be subject to the disturbance cap. Alternative means to provide flood protection for the Manzanar NHS as opposed to removal of native riparian vegetation and naturally occurring stream channel debris should be specified.

While some proposed management actions designed to maintain and restore natural communities may benefit native species and habitats in the long-term, this does not excuse the need to account for their short-term impacts when assessing whether the affected ACEC and WSA can sustain more disturbance. Disturbance caps will not necessarily prohibit activities. Rather, each allowable activity and proposed management action should be subject to a site-specific analysis under the National Environmental Policy Act (NEPA) in order to determine to what extent it would contribute to habitat loss or create impacts to the natural qualities of the unit, identify alternatives to proposed activities and identify effective impact mitigation measures. Although some activities to maintain and restore natural communities for the benefit of native species may be beneficial and not contribute to habitat loss, others may not, such as large-scale treatments using prescribed fire or creating artificial fuel breaks with mechanized equipment. This assessment must still occur but, regardless of their intended purpose and need, all allowable activities should be subject to the habitat disturbance cap.

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We hope to see this inconsistent and unsupportable management approach corrected in the DRECP LUPA. Thank you for your attention to this important issue.

Sincerely,

Defenders of Wildlife

Jeff Aardahl California Representative
46600 Old State Highway, Unit 13
Gualala, CA 95445
jaardahl@defenders.org

The Wilderness Society

Nada Culver, Senior Counsel and Director
BLM Action Center
1660 Wynkoop, #850
Denver, CO 80202
Nada_culver@tw.s.org

CalWild (California Wilderness Coalition)

Ryan Henson
Senior Policy Director
rhenson@calwild.org

Conservation Lands Foundation

Sam Goldman
California Program Director
San Francisco, CA
sam@conservationlands.org

Sierra Club

Barbara Boyle, Senior Representative
Beyond Coal Campaign
909 12th Street
Sacramento, CA 95814
barbara.boyle@sierraclub.org

California Native Plant Society

Greg Suba
Conservation Program Director
2707 K Street, Suite 1
Sacramento CA 95816
gsuba@cnps.org

California Native Plant Society, Bristlecone Chapter

Julie Anne Hopkins, Conservation Chair
Julianne@cruzio.com

Center for Biological Diversity

Ileene Anderson
Senior Scientist/Public Lands Deserts Director
IAnderson@biologicaldiversity.org

Friends of the Inyo

Jora Fogg
Preservation Manager
819 N Barlow Lane
Bishop, CA 93514
jora@friendsoftheinyo.org

Natural Resources Defense Council

Helen O'Shea
Director, Western Renewable Energy Project
hoshea@nrdc.org

Audubon California

Garry George, Renewable Energy Director
ggeorge@audubon.org

cc: Jerome Perez, State Director (jperez@blm.gov)



On Tue, May 3, 2016 at 12:35 PM, Edward Waldheim <edwaldheim@aol.com> wrote:

Dear Mr. Perez. Not having Vicki e mail. I want to Echo what Mark Algazy has written and support his comments 100%. As one who has been at this planning effort since CDCA was created and have had plan after plan brought up and voted on and adopted only to keep going over the same land same trails year in and year out, I feel we have been completely rolled over by Government at what ever level you want to pick.

To ask me to make comments now on documents without trails or maps, is like asking me to move into a house and there is no house.

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DRECP is just do that, a document that completely is void of our trails. Something WEMO was supposed to have and adopted into DRECP, But someone felt it best to invite folks into the house DRECP and actually not even have a house.

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It was the biggest Bate and switch by Government I have ever seen. Anyway I hope on day to meet you here at Jawbone and show you how BLM and Friends partner to make a change, No I only wish. Washington DC, and perhaps now that you are in charge of Sacramento we can get some sanity into the process.

Thanks.

Ed Waldheim, President, Friends of Jawbone and Friends of El Mirage.

Sent from my iPad



California Four Wheel Drive Association, Inc.

Over 55 years advocating for recreation

May 4, 2016

Vicki Campbell,
DRECP Program Manager,
2800 Cottage Way, Suite W-1623,
Sacramento, CA 95825

email blm_ca_drecp@blm.gov

Planning Team:

These comments are submitted on behalf of the California Four Wheel Drive Association and its membership. Cal4Wheel represents clubs and individuals within the State of California that are part of the community of four-wheel drive enthusiasts. These comments are directed to the *Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California* filed by Land Management Bureau in the Federal Register on 03/11/2016. This document shall not supplant the rights of other Cal4Wheel agents and organizational or individual members from submitting their own comments and the agency should consider and appropriately respond to all comments received to this request for comments.

Cal4Wheel filed timely comments on the draft Desert Renewable Energy Conservation Plan (DRECP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS). In addition, Cal4Wheel filed timely comments on the West Mojave Route Network Project (WMRNP) and Draft Supplemental Environmental Impact Statement (SEIS). At the time, these were two separate planning processes. *(NOTE: Previous comments bear the organization name of California Association of 4 Wheel Drive Clubs.)*

While the main focus of Cal4Wheel is to protect, promote, and provide for motorized recreation opportunities on public and private lands, many of our members participate in multiple forms of recreation; including but not limited to hunting, fishing, camping, hiking, horseback riding, bicycle riding, and gem and mineral collection.

We recognize the positive health and social benefits that can be achieved through outdoor activities. We also recognize that motorized recreation provides the small business owners in the local communities a significant financial stimulus. And, our members are directly affected by management decisions concerning public land use.

8120 36th Avenue
Sacramento, CA 95824
Office@cal4wheel.com

www.cal4wheel.com

(800) 4X4-FUNN
(916) 381-8300
Fax (916) 381-8726

Our members subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) condition and safety of the environment; and 3) sharing our natural heritage. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal safety. They desire wildlife available for viewing and scenic vistas to enjoy. They also want to feel safe while enjoying these natural wonders. Lastly, the public desires to share the natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence?

Cal4Wheel supports the concept of managed recreation and believes it is prudent and appropriate management to identify areas where off-highway vehicle use is appropriate. Such use must be consistent with the public lands management plans, the Plan Standards, and all other requirements found in the Plans, as well as state and federal regulations. Recreation, especially recreation off of paved or gravel roads, is the leading growth in visitors to public lands. Improvements in the planning processes help minimize conflicts and potential resource damage while providing for recreation access to public lands.

The proposed DRECP would establish the structure to integrate renewable energy development and biological resource conservation across the Mojave and Colorado Desert regions encompassing portions of three state: California, Nevada and Arizona.

Pursuant to the National Environmental Protection Act at 42 United States Code section 4371 et. seq. ("NEPA") and its implementing regulations, including 40 Code of Federal Regulations section 1501.7 and 1508.25, this letter is submitted for consideration to determine the range of actions, alternatives, and impacts that require in-depth analysis in the Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). The comments are extensive, but the complexity and importance of the *Desert Renewable Energy Conservation Plan EIR/EIS* compel a thorough review of the potential environmental consequences associated with implementation of the project as proposed.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) announced availability of the Proposed Land Use Plan Amendment (LUPA) and Final Environmental Impact Statement (EIS) for the Desert Renewable Energy Conservation Plan (DRECP) with a Notice of Availability published in the Federal Register on November 13, 2015 (80 FR 70254). The Proposed LUPA would amend the California Desert Conservation Area (CDCA) Plan and the Bakersfield and Bishop Resource Management Plans (RMPs). The Proposed DRECP LUPA/Final EIS considers designation of 134 Areas of Critical Environmental Concern (ACECs). In order to comply with Federal Regulations at 43 CFR 1610.7-2(b), the BLM provided subsequent notice in announcing a 60-day public comment period on those 134 ACECs. The 134 ACECs are those identified in the alternatives found within the Proposed DRECP LUPA/Final EIS addressed by the publication of the Federal Notice of Availability on November 13, 2015. The scope of this 60-day comment period is limited to these 134 ACEC designations.

While the focus of the *Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California* filed by Land Management Bureau in the Federal Register on 03/11/2016 is limited to the 134 ACECs there are pertinent topics that have a direct nexus and will be noted within the below discussion. This nexus is evident within the layered designation of ACECs, NLCS, and SRMA identified lands and attendant restrictive management prescriptions assigned.

Discussion:

On September 25, 2015, the BLM reopened the comment period on the West Mojave Route Network Project (WMRNP) and Draft Supplemental Environmental Impact Statement (SEIS), which originally closed in June. In that announcement, an illegal nexus was created between the proposed Desert Renewable Energy Conservation Project (DRECP) and the WMRNP.

After reviewing the documents, Cal4Wheel has determined that it is unclear how the LUPA will impact OHV activity in the WMRNP project area. Specifically, the designation of the ACECs have encumbered reasonable land management options with impractical limitations. As stated in the Cal4Wheel protest letter concerning the DRECP decision, Cal4Wheel believes the agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions – **both inside and outside the WMRNP project area** - to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

In other words, the assignment of multiple layers of land use designations has created an impractical layer of management options that enforce a singular decision; an action that is outside the scope of a “programmatic” document. It is an action where site-specific review and analysis is required to develop a reasonable, and manageable, decision that address the site-specific issues.

As such, the current notice still fails to disclose site-specific effects or impacts. In previous scoping comments, Cal4Wheel noted:

CA4WDC acknowledges that the public lands within the Mojave and Colorado Desert regions are classified as multiple use lands within applicable land management plans and open to study for conversion to exclusive use or other legislated purposes. However, it should be noted that within the approximately 25 million acre California Desert Conservation Area encompassing the Mojave Desert region, over 50% of the lands are classified through the planning process or legislation for reserved uses; public lands off-limits to public access.

Forest Service and Bureau of Land Management user surveys note an increasing trend for motorized recreation activities such as driving for pleasure and dispersed camping on public lands. The Mojave and Colorado Desert regions of the proposed project area offers excellent opportunities for addressing this growing trend in recreation desires by the public.

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CA4WDC recommends that due consideration be afforded continued motorized access to the Mojave and Colorado Desert regions of the proposed project area. The region is a popular destination spot for multiple forms of recreation; including but not limited to, four wheel drive touring/driving for pleasure, rockhounding, photography, and wildlife viewing. These are activities that cannot be enjoyed, or replicated, in that diversity in other regions.

In reviewing the Proposed Action, CA4WDC finds it deficient in its acknowledgement of the importance of recreation to the Mojave and Colorado Desert regions. Specifically, the proposed Proposed Action fails to acknowledge that various recreational activities exist in the proposed project region.

CA4WDC believes that the loss of access to the Mojave and Colorado Desert regions for recreation opportunity is a direct loss. There are also indirect impacts that would result should this Proposed Action be approved and implemented causing displacement of recreational activities. Those cost include, but are not limited to: (1) the increased enforcement required at other sites when displaced recreational users seek out other areas that may be poorly identified as wildlife preserves or other resource-rich areas; (2) the loss of biological resources or habitat at other sites that displaced recreational users may utilize ; (3) the loss of nature education, (4) the loss of outdoor recreation opportunities, (5) the loss of outdoor access and experiences for children in the community; (6) the loss of familial traditions, custom, and culture of recreational and nature-oriented activities in the region; and (7) the loss of the region's history and traditions, specifically with respect to mining and recreational activities.

The Proposed Action should continue to authorize, maintain, and enhance the recreational use of the land included in the Mojave and Colorado Desert regions covered, including motorized recreation, hiking, camping, mountain biking, sightseeing, and horseback riding, as long as such recreational use is consistent with applicable law and existing land use planning documents.

Continued motorized and mechanized access along routes within the Mojave and Colorado Desert regions covered by the Proposed Action must be deemed a valid use of the public lands. The Proposed Action should exercise all applicable authority to maintain and make these routes available to continued public access, and any administrative decisions regulating access along these routes shall not have the effect of prohibiting or unduly restricting travel by any presently-authorized vehicle type.

There are competing pressures for use of public lands. The Proposed Action is one of several that cumulatively have a negative impact on the public's ability to partake in recreational opportunities on public lands. The Proposed Action must adequately evaluate and mitigate the cumulative losses of land for recreational opportunities, including but not limited to cumulative closures or limitations on desert lands managed by BLM and on forest lands managed by the U.S. Forest Service. Actions that must be evaluated include, but are not limited to, proposed military base expansion, proposed renewable energy development sites, existing and proposed wilderness areas, existing and proposed critical habitat designations, and other existing and proposed land use designations that encompass restrictions to access, including but not limited to National Landscape Conservation System, National Conservation Areas, National Park, and Areas of Critical Environmental Concern.

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CA4WDC's position at this point is to continue our strong opposition to the entire proposed project as the loss of recreation opportunity is a significant social and economic impact.

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The Proposed Action will serve as a multiple-species Habitat Conservation Plan for California Energy Commission in its application for an incidental take permit under Section 10(a)(1)(B) of the Federal ESA of 1973, as amended (16 U.S.C. 1531 et seq.). The Proposed Action will also serve as a Natural Community Conservation Plan (NCCP) under Section 2800 et seq. of the California Fish and Game Code. The proposed HCP would cover non-Federal lands in the project area, the proposed NCCP would cover both Federal (to the extent permitted by law) and non-Federal lands, and the possible CDCA Plan amendment would cover BLM-administered lands.

The Proposed Action is intended to advance State and Federal conservation goals in these desert regions while also facilitating the timely permitting of renewable energy projects, and to provide durable and reliable regulatory assurances, as appropriate, under the NCCP and the ESA for renewable energy development on non-Federal land in the Mojave and Colorado Deserts regions. The Proposed Action would help provide for effective protection and conservation of desert ecosystems while allowing the appropriate development of renewable energy projects.

As the proposed project covers non-federal (state and private) and federal lands and would be a stepping stone to application for permits, CA4WDC is concerned about the data that will be incorporated into the analysis of the Proposed Action.

CA4WDC recommends that to preserve data integrity and ensure data quality, all data developed and incorporated into the proposed analysis be collected by State and Federal agencies and maintained within State and Federal databases. Such data must be based on "peer-reviewed" science and reflect current on-the-ground conditions. Data developed as a "computer-model" with the intent to project on-the-ground conditions should not be included as "peer-reviewed" scientific data to be used for recommendations and decision making. Data provided by non-government organizations should not be used to base recommendations and decisions potentially affecting expenditures of public monies.

C3-3

CA4WDC recommends that impacts on threatened and endangered species and adherence to species mitigation as required for Desert Tortoise recovery and raven predation control be subject to rigorous scientific study and review.

Specifically, the Proposed Action must adequately study the various activities which pose significant threats to the ESA listed species Mojave Desert Tortoise and how the proposed action will adversely impact the Desert Tortoise and other listed species. Such claims of impact and their level of significance must be based on reliable scientific data that are current and supported by standard rules of scientific analysis. That is, studies must: (1) not be biased in their methodology, (2) not draw conclusions based on inadequate sample size, (3) be conducted with sufficient "control" groups, (4) be verified or repeated, and/or (5) not limited to small or localized populations that do not support area-wide or population-wide extrapolations.

C3-4

The aspects of social, economic, and public health and safety are very important and must be given adequate discussion and analysis. The Proposed Action must contain complete disclosure and analysis of the cumulative loss of recreational access, impacts to public health and safety, and economic impacts of the project on the local and regional communities.

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In addition to the economic impacts on the local and regional communities, the Proposed Action must analyze and disclose the cost of the proposed action, including the ongoing, perpetual costs of the proposed renewable energy projects.

C3-6

Numerous Special Recreation Management Areas (SRMA) have been designated for use by OHV recreation. The SRMAs, like the designated OHV Areas, have been reviewed in past management plans and a management prescription has been developed so that intensive recreation can co-exist with resource concerns. Displacing recreation from these areas in favor of energy development would be counter to the efforts to conserve sensitive resources.

C3-7

The DRECP does make decisions across a wide swath of BLM managed public lands by assigning land use designation and applying stipulations to those designations that fail to account for site-specific issues with broad management prescriptions or caps assigned to the various "zones" (e.g. SRMA/ERMA/NLCS/ACEC/Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the "programmatic" scope of the document at a programmatic level.

C3-8

In other words, the assignment of multiple layers of land use designations has created an impractical layer of management options that enforce a singular decision; an action that is outside the scope of a "programmatic" document. It is an action where site-specific review and analysis is required to develop a reasonable, and manageable, decision that address the site-specific issues.

The addition of new (or expansion of existing) ACECs within the DRECP does not analyze and review the specific issues for the specific area.

As Cal4Wheel previously commented:

CA4WDC recommends that due consideration be afforded continued motorized access to the Mojave and Colorado Desert regions of the proposed project area. The region is a popular destination spot for multiple forms of recreation; including but not limited to, four wheel drive touring/driving for pleasure, rockhounding, photography, and wildlife viewing. These are activities that cannot be enjoyed, or replicated, in that diversity in other regions.

C3-9

In reviewing the Proposed Action, CA4WDC finds it deficient in its acknowledgement of the importance of recreation to the Mojave and Colorado Desert regions. Specifically, the proposed Proposed Action fails to acknowledge that various recreational activities exist in the proposed project region.

Within this context, a review of the maps provided notes that the boundaries of the current designated OHV area have new ACECs adjacent to them. Additionally, those areas are also notes as Special Recreation Management Areas (SRMA). The core issue that create a

C3-10

predetermined decision with the “programmatic” document is the SRMAs are overlaid with ACECs and the text within the document stipulated that in case of multiple land use designation, the more restrictive management prescription will apply.

C3-10
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Cal4Wheel supports the exclusion of Off-Highway Vehicle Areas and Special Recreation Management Areas from Geothermal, Solar or Wind Energy proposals.

Cal4Wheel supports the creation and designation of new SMRAs (as appropriate) with the condition that DRECP include a comprehensive Trails and Travel Management Section to cover all management of routes in the California Desert Region as encompassed by the DRECP boundaries.

C3-10.1

Cal4Wheel commented: “DRECP is advertised to be a long-term framework utility-scale renewable energy and conservation plan. It should not provide or allow for site-specific or project-specific approval. However, there is language in the programmatic framework that is site/project specific and does make mandated decisions.

Identifying National Conservation Land (NCL) lands or Areas of Critical Environmental Concern (ACEC) or other land/habitat designation, within a programmatic (framework) structure is problematic. Those actions are site/project specific and should be subject to appropriate scoping and public review under the National Environmental Policy Act (NEPA) to determine disclose and analyze the proposed project impact on the natural environment.

CA4WDC is concerned that the final changes in the programmatic (framework) documents will dictate and force a change in the land use management plan that the public has not had the opportunity to adequately review and comment on. For example, final language concerning the ACECs, Conservation Focus Zones and Development Focus Zones may introduce sideboards affecting current designated routes for travel and hamper future OHV route designation/management efforts. This is an decision action under the auspices of the LUPA concerning land use management concepts and must be properly disclosed and analyzed with public involvement as required by NEPA.” (Comments E30-7 through E30-9)

C3-11

The Agency response was: “The DRECP does not make decisions to approve or deny specific projects. It does make decision on land use allocations, allowable uses, and management actions, which are appropriate at a programmatic level.”

The Agencies rely on programmatic or broad-scale analyses to focus the scope of alternatives, environmental effects analysis, and mitigation in subsequent tiered levels of documentation. (“Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 38.”)

The Agency acknowledges that the DRECP is a “programmatic” document. Such documents are regional in scope; often crossing political boundaries and covering numerous ecosystems, typically defining a set of policies and maps of possible future uses, the specifics of which are not yet known; range of alternatives includes future land use scenarios, often with differing objectives with an impact focus of cumulative effect of multiple future activities with generic mitigation focus.

Guidance defines three analysis Options: 1) Keep it very general; 2) Make analytical assumptions about a maximum level of activity; and 3) Make analytical assumptions about typical activities.

The result is to develop broad environmental policies, programs, or plans that would apply to many future projects, the details and location of which are not yet known.

Cal4Wheel believes the Agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions to approve or deny specific projects based on the management prescriptions assigned to the various “zones”. That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

The critical point is the assignment of ACEC lands designations that are ill-defined as to purpose and need. This creates a situation where the analysis in focus on a result rather than general guidance. This creates a situation where the maximum level of activity is limited. This creates a situation where “typical” activities are excluded. In short, it defines a pre-determined conclusion precluding future analysis options rather than guidance for future site/project specific decisions.

As the Agency noted in comment responses, *“However, you are correct that the land use allocation decisions in the DRECP would affect future transportation planning, which is appropriate for this programmatic, landscape scale planning document.”*

Cal4Wheel believes the land use allocation decisions are appropriate at the site/project level and exceed the guidance for a “programmatic” document as outlined in *“Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 38.*

Cal4Wheel believes it would be appropriate for the “programmatic” document to define potential Energy Development Zones where broad guidelines are established that would identify lands based on general requirements for development of proposed energy projects. Such future project would then be evaluated used on the defined area that meets site/project specific requirements.

Cal4Wheel believes it would be appropriate of the “programmatic” document to define potential Conservation Zones where broad guidelines are established that would identify lands for future review and analysis to determine the appropriate management prescription based on site-specific review and analysis.

The collective “Conservation” Zones (non-development zones) should be defined with broad guidelines and subjected to future evaluation for their appropriate classification as an ACEC, NLCS, or other class based on salient characteristics through site/project level analysis.

The DRECP defines SRMA/ERMA lands along with ACECs and NLCS lands. The designation of these lands within the “programmatic” document does have a negative impact on recreation access to the desert areas. Again, the layered lands designations with the stipulations that the



C3-11
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most restrictive management prescription shall apply created a singular predetermination that precludes site-specific future decisions.

This actions is a definitive “project specific” decision that is not appropriate within a “programmatic” document.

To compound the issue, the numerous (collective) conservation zones have ground disturbance levels defined. This is another example where the “programmatic” document creates stipulations that are a pre-determined management prescription that is properly handled at the site/project level analysis.

Cal4Wheel also believes that the highly restrictive “ground disturbance caps” are regressive in nature as they exceed the “*Impact focus is cumulative effect of multiple future activities with mitigation generic*” guidance of a programmatic document.

As an example, the ACECs and NLCS lands are vaguely described with no indication of existing “ground disturbance”. However, caps are arbitrarily applied without an analysis of the existing on-the-ground conditions. This is a site/project specific decision that exceeds the “*Impact focus is cumulative effect of multiple future activities with mitigation generic*” guidance of a programmatic document.

As such, during future site/project level analysis, if it were determined that “ground disturbances” exceeded the arbitrary caps, routes would be closed without appropriate analysis to determine their potential to provide for multiple use tenets of the BLM managed public lands.

Cal4Wheel believes the DRECP, as modified from previous versions, is regressive and limits public participation in future site-specific/project level analysis opportunities. Cal4Wheel objects to the “ground disturbance” caps which are applied in an arbitrary manner. Such specific criteria is not appropriate for a “programmatic” document as they apply limitations that confine future projects in scope. The agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions – both inside and outside the WMRNP project area - to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/ Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

Cal4Wheel acknowledges that the public lands within the Mojave and Colorado Desert regions are classified as multiple use lands within applicable land management plans and open to study for conversion to exclusive use or other legislated purposes. However, it should be noted that within the approximately 25 million acre California Desert Conservation Area encompassing the Mojave Desert region, over 50% of the lands are classified through the planning process or legislation for reserved uses; public lands off-limits to public access.

Forest Service and Bureau of Land Management user surveys note an increasing trend for motorized recreation activities such as driving for pleasure and disbursed camping on public lands. The Mojave and Colorado Desert regions of the proposed project area offers excellent opportunities for addressing this growing trend in recreation desires by the public.

C3-11
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C3-11.1

C3-11.2

C3-11.3

The region covered by the DRECP is a popular destination spot for multiple forms of recreation; including but not limited to, four wheel drive touring/driving for pleasure, rockhounding, photography, and wildlife viewing. These are activities that cannot be enjoyed, or replicated, in that diversity in other regions.

OHV recreation has been the fastest growing form of recreation in recent years. More members of the public are seeking a recreation opportunity and public lands is a destination for that opportunity. Cal4Wheel is concerned with the scope and magnitude of the DRECP and its potential to restrict public access to public lands. The document does not address the issue of ACECs in a manner that accounts for regional variation and site-specific issues.

Designation of ACECs DO preclude future management options and pre-determine the result of future review and analysis efforts.

Cal4Wheel appreciates the opportunity to comment on these important plans. Cal4Wheel is eager to assist land managers to formulate balanced and enforceable land use plans and we hope these comments have been helpful. We understand comments such as these are not as clear or concise as they could be. Please do not hesitate to contact John Stewart, (619) 508-8840 if you have any questions or require clarification.

Thank-you,



John Stewart
Natural Resources Consultant
California Four Wheel Drive Association

↑
C3-11.3
Cont.

┌ C3-12

└ C3-13



May 5, 2016

Vicki Campbell,
DRECP Program Manager
2800 Cottage Way, Suite W-1623,
Sacramento, CA 95825
Email: blm_ca_drecp@blm.gov

Dear Planning Team,

Please accept these formal comments filed on behalf of the BlueRibbon Coalition (BRC) in regards to the March 11, 2016, Federal Register Notice of Areas of Critical Environmental Concern (ACEC) proposed within the Desert Renewable Energy Plan (DRECP) area.

BRC filed timely comments on February 23, 2015 on the draft Desert Renewable Energy Conservation Plan (DRECP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS). In addition, BRC filed timely comments on June 4, 2015 on the West Mojave Route Network Project (WMRNP) and Draft Supplemental Environmental Impact Statement (SEIS). At the time, these were two separate planning processes.

In addition, BRC filed a PROTEST on December 11, 2015 in regards to the Proposed Land Use Amendment (LUPA) and Final Environmental Impact Statement (FEIS) for the Desert Renewable Energy Conservation Plan (DRECP).

Again, BRC believes the agency has exceeded the guidance for a programmatic document in developing ACECs within the DRECP. The DRECP does make decisions – both inside and outside the WMRNP project area - to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

The designation of ACECs does not present any meaningful site-specific analysis sufficient to even rationally support a decision to restrict uses on the sites impacted by these "zoning" designations. Where a “zone” precludes a certain use, such as motorized use, it is unlikely the agency will consider designating uses that do not conform to the programmatic plan.

C4-1

NEPA represents “our basic national charter for protection of the environment.” NEPA’s protections of the “environment” refer to the “human environment” which “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” the agency’s duty to analyze impacts does not end with impacts to the physical environment, because when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, then the EIS will discuss all of these effects on the human environment. Among its numerous purposes, NEPA procedures are designed to foster informed agency decision making based upon informed public participation.

REQUESTED REMEDY

BRC requests the following remedy: Suspension of further action on the designation of ACECs and issuance of a supplemental NEPA document to correct the identified NEPA programmatic vs. project-level deficiencies.

C4-2

Respectfully submitted,

Don

Don Amador
Western Representative
BlueRibbon Coalition, Inc.
555 Honey Lane
Oakley, CA 94561
Office: 925.625.6287
Email: brdon@sharetrails.org



May 6, 2016

By email blm_ca_drecp@blm.gov

Ms. Vicki Campbell
DRECP Program Manager
2800 Cottage Way, Suite W-1623
Sacramento, Calif. 95825

**Re: Notice of Areas of Critical Environmental Concern in the Desert
Renewable Energy Conservation Plan Proposed Land Use
Amendment, California (Published in the Federal Register
On March 11, 2016) (the “NOA”)**

Dear Ms. Campbell:

This letter is submitted on behalf of Alliance for Desert Preservation (“ADP”), its board, staff, and members. ADP is a nonprofit mutual-benefit corporation formed to protect the environmental and economic well-being of the High Mojave Desert (which area includes much of the DFAs, ACECs, SRMAs, ERMAs, Unallocated Lands and other land and use designations addressed in the FEIS) and to support a sustainable future, while safeguarding against activities that may harm the High Mojave Desert. ADP has been and continues to be an active participant in the public process at the federal, state and county level regarding the siting of utility-scale renewable energy projects and transmission facilities projects in the California desert.

In its December 11, 2015 Protest letter (at pages 2 and 3 thereof), ADP established that: (1) ADP and its members would be directly and adversely affected by the DRECP FEIS; and (2) ADP has participated in previous proceedings involving the DRECP and submitted oral and written comments regarding the DRECP. ADP incorporates its December 11, 2015 Protest letter by this reference as if it were fully set forth in this letter.

This letter sets forth our comments, for purposes of the 60-day public comment period opened by the NOA, with respect to the 134 ACECs listed in the NOA and with respect to the associated resource use limitations considered in the Proposed LUPA and Final EIS

Ms. Vicki Campbell
DRECP Program Manager
May 6, 2016
Page 2

(collectively, the “FEIS”).¹ While this comment letter will primarily focus on four of those ACECs – the Granite Mountain Wildlife Linkage ACEC, the Juniper Flats Cultural Area ACEC, the Bendire’s Thrasher ACEC and the Northern Lucerne Wildlife Linkage ACEC – many of the comments in this letter will be germane to other ACECs that either overlap or are in the vicinity of recognized desert habitat linkages.

According to the NOA, the BLM has elected to re-open the public comment period because the 134 ACECs in the FEIS were not individually listed in the Federal Register, as required by CFR 1610.7-2(b). Given that this 60-day comment period was instituted to remedy that significant omission – an omission which directly impeded the public’s ability to review and comment on the ACECs – thorough and meaningful consideration must be accorded to each of the comments submitted to the BLM through this process.

For the reasons stated below, we strongly believe that the amount of acreage within each of the four above-referenced ACECs should be increased, and that their boundaries should be significantly expanded.

1. The NOA’s Descriptions of the Granite Mountain Wildlife Linkage ACEC, the Juniper Flats Cultural Area ACEC, the Bendire’s Thrasher ACEC and the Northern Lucerne Wildlife Linkage ACEC.

According to the NOA, the above-referenced ACECs, as designated in the Proposed LUPA, would have the following characteristics:

-- the Granite Mountain Wildlife Linkage ACEC would consist of 39,300 acres, and its “relevant and important values” would include “[w]ildlife resources, plant assemblages;”

-- the Juniper Flats Cultural Area ACEC would consist of 2,400 acres, and its “relevant and important values” would include “[c]ultural values; wildlife resources;”

-- the Bendire’s Thrasher ACEC would consist of 9,800 acres, and its “relevant and important values” would include “[w]ildlife resources;” and

¹ The NOA states that the “134 listed in this notice include all the ACECs identified within the range of alternatives analyzed in the Final EIS. Based on comments received on the Draft DRECP, the Proposed LUPA would designate 130 ACECs . . . and includes CMAs and resource use limitations to manage those ACECs.”

-- the Northern Lucerne Wildlife Linkage ACEC would consist of 21,900 acres, and its “relevant and important values” would include “[w]ildlife resources, plant assemblages.”

2. **The Four Referenced ACECs Are Intended to Form an Inter-Dependent and Functional Wildlife Linkage Network.**

The Granite Mountain Wildlife Linkage ACEC provides vital habitat linkage from the San Bernardino Mountains northward to the Granite Mountains², where that ACEC connects with the Bendire’s Thrasher ACEC, which in turn connects with its immediate neighbor to the north, the Northern Lucerne Wildlife Linkage ACEC.

The Northern Lucerne Wildlife Linkage ACEC provides connectivity to the vast Ord – Rodman DWMA to the east and to the Brisbane Valley Monkey Flower ACEC to the west. The Ord – Rodman DWMA and the Brisbane Valley Monkey Flower ACEC, in turn, link up with a network of desert lands with various conservation designations faceted throughout the south-central Mojave Desert and beyond.

Thus maintaining a biologically intact and functioning north – south, inter-mountain habitat linkage system – between the San Bernardino Mountains and the Granite Mountains – is especially critical. Unfortunately, for the reasons specified below, the Granite Mountain Wildlife Linkage ACEC would, as presently proposed, represent a very weak link in that chain.

3. **The Granite Mountain Wildlife Linkage ACEC Is Unworkable.**

A. **The ACEC as Mapped Is Too Narrow According to Published (Penrod) Connectivity Studies and Comments on the DRECP.**

The comments stated below concerning the Granite Mountain Wildlife Linkage ACEC are based on published findings, as to which Kristeen Penrod was the primary author, concerning habitat connectivity in the California desert, which the FEIS acknowledges and incorporates, as well as on critiques which she has submitted of ACECs as designated in the Draft DRECP.

To start with, the FEIS has acknowledged the value of Ms. Penrod’s work in a discussion in Appendix Q of Wildlife Linkages and Corridors (App. Q, Sections 3.4.1 and 3.4.2). Said

² The Juniper Flats Cultural Area ACEC is situated, for the most part, within the boundaries of the Granite Wildlife Linkage ACEC, and is located in the Ord Mountains region near the north slope of the San Bernardino Mountains.

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C5-1

discussion states: “The California Desert Connectivity Project (Penrod et al. 2012) provides a comprehensive and detailed habitat connectivity analysis for the California deserts.” The discussion appears to concede – more implicitly than explicitly – that the Connectivity Project headed up by Ms. Penrod yields results regarding the interconnections between individuals of a species and between species, with a focus on how they subsist, migrate, and procreate, which knits the DRECP area together as a living, breathing biome. The Connectivity Project, which gave rise to the Desert Linkage Network, reflects “boots on the ground” studies of each of the linkages and corridors and of the species using them. It provides, as it were, a four-dimensional model of the actual environmental baseline for the Plan Area (the fourth dimension being what happens over time), and as such it can be much more useful as a baseline metric than static studies (or even worse, extrapolations or guesses) of a particular species in a particular location at a particular moment.

The BLM also acknowledges (FEIS, Appendix C-1) just how important “Landscape and Habitat Connectivity” are to achieving the BLM’s Biological Resources and Goals and Objectives (“BGOs”). In that regard, the FEIS’s “Goal 1” states that “[a]s part of a desert-wide landscape design, on BLM land provide a mosaic of vegetative types with habitat linkages that is adaptive to changing conditions and includes temperature and precipitation gradients, elevation gradients, and a diversity of geological facets that provide for movement and gene flow and accommodate range shifts and expansions in response to climate change.” In Section III.7.8, the FEIS describes in great detail the nature and purpose of “Landscape Habitat Linkages and Wildlife Movement Corridors.”

However, having identified Ms. Penrod’s research as an excellent source of baseline information, and having acknowledged in its BGOs the importance of maintaining habitat linkages, the FEIS, in delineating the Granite Mountain Wildlife Linkage ACEC, established a narrow and unworkable wildlife corridor in a region where adequate linkage would be critical to species survival.

Ms. Penrod, the main author of the Connectivity Project, pointed this out in a detailed critique of the Draft DRECP (the “Penrod Comment Letter”), and filed it as a comment to the Draft DRECP (said critique can be found in the FEIS in its Appendix AA (Sub-Appendix E58 (part 3)) to ADP’s February 20, 2015 comment on the Draft DRECP (Appendix AA (Sub-Appendix E58 (part 1))).

The Penrod Comment Letter concluded that (E58-145) it was “feasible and desirable to design linkage for the Granite Mountain Wildlife Linkage ACEC [as mapped by the Draft DRECP] more than 1.2 miles wide with revisions to the Apple Valley and Lucerne Valley DFAs.” (As proposed, the Granite Mountain Wildlife Linkage ACEC is reduced to about 1.2



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miles wide for much of its length south of State Route 18 and more closely follows the linkage design for the San Bernardino-Granite Connection (Penrod et al. 2005), which did not include land facet analyses. Several land facets corridors were delineated between these ranges (see Figures 18 and 19 in Penrod et al. 2012) that are designed to support species movements during periods of climate instability.

The FEIS readily concedes that it followed exactly the same analytical process employed by the Draft DRECP, notwithstanding Ms. Penrod's pointed criticism thereof, but the FEIS does not include any discussion as to why it felt justified in nevertheless using that same analytical process. In that regard, the FEIS states (Appendix C-1) only that "[t]he process for drafting the Plan-wide BGOs presented in the Draft DRECP remains valid and applicable, and is herein incorporated by reference. The BLM LUPA biological resources goals and objectives are an updated subset of the BGO's from the Draft, but for BLM managed land only."

The Penrod Comment Letter also noted (E58-148) that: (1) the Draft DRECP reflects that "[v]irtually all of the proposed Apple Valley, Lucerne Valley and Johnson Valley DFAs [which are adjacent to the Granite Mountain Wildlife Linkage ACEC] scored Moderately High to Very High [in terms of "Conservation Values"] with very few pixels scoring Moderately Low and no pixels scoring Low or Very Low;" (2) Section II.3-347 thereof states that the Pinto Lucerne Valley and Eastern Slopes Subareas are "some of the most diverse and threatened habitats in the California desert;" (3) the Pinto Lucerne Valley and Eastern Slopes Subarea "'spans diverse landscapes of the south-central Mojave Desert and the San Bernardino Mountains, from 1,000 feet to over 6,000 feet in elevation;" and (4) that the "northern slopes and foothills of the San Bernardino Mountains contain many" riparian systems that "will be especially important to allow species to respond and adapt to climate change because they provide connectivity between habitats and across elevation zones."

The Penrod Comment Letter stated, based thereon, the following: "[t]hus, linkages must be sufficiently wide to cover an ecologically meaningful range of elevations as well as a diversity of microhabitats that allow species to colonize new areas." She concluded (E58-144) that, "[a]s currently proposed, [the San Bernardino Mountain to Granite Mountain corridor] is not sufficiently wide to provide live-in and move-through habitat for the target species or support range shifts in response to climate change." (Emphasis added.)

Ms. Penrod lent further impetus to her call for an expanded Granite Mountain Wildlife Linkage ACEC with the following observations (E58 – 148 and 149):

(1) "The hydrology of the northern slopes of the San Bernardino Mountains is not just an essential resource for the flora and fauna. It is also extremely important to recharging



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groundwater basins in Apple, Lucerne and Johnson Valleys. Massive renewable energy projects use enormous amounts of water both in construction and maintenance, which could further exacerbate already severely distressed overdraft conditions in these groundwater basins;” and

(2) “The essential ecoregional connection between the south-central Mojave Desert and the San Bernardino Mountains (i.e., connectivity to areas outside the plan area) warrants the same consideration, especially since this linkage serves to connect vast areas with conservation designations (e.g., NLCS, ACEC and USFS). It is feasible and desirable to conserve functional landscape-level connectivity here.”

Notwithstanding Ms. Penrod’s call for wide, workable wildlife corridors, the FEIS maintained the same boundaries for the Granite Mountain Wildlife Linkage ACEC that are found in the Draft DRECP.

The FEIS provides no data or analytical discussion as to why the BLM believes that it was justified in declining to increase the breadth of the ACECs – including the Granite Mountain Wildlife Linkage ACEC that runs through a particularly biologically-crucial region – as to why the BLM believes it appropriate to constrain that ACEC by positioning a series of DFAs around its borders (which will be discussed in the following subsection of this letter) or as to why the presence of the referenced perennial streams would not automatically disqualify the surrounding areas from being designated as DFAs and/or remaining unallocated. No discussion is presented in the FEIS as to whether this would prevent or impede the achievement of its “connectivity” BGO, or of its “ecological processes” BGO.³

B. The Granite Mountain Wildlife Linkage ACEC Is Constrained By ACECs Positioned Around Its Borders, All of Which Further Renders it Unworkable.

The Penrod Comment Letter decried constraining the Granite Mountain Wildlife Linkage ACEC by putting DFAs on both sides of it along the north face of the San Bernardino Mountains (E58-153). While the surrounding DFAs in the FEIS (including the ones to the east and west of the neck of the ACEC that runs north from the north slope of the San Bernardino Mountains to the Granite Mountains) are, by necessity, smaller than as mapped in the Draft DRECP (because

³ Objective 2.2 of this BGO emphasizes the importance of maintaining “hydrogeomorphic process that create habitat diversity . . . [p]rotect streams and washes, wetlands, and seasonal wetlands in all watersheds in the planning area.”



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C5-2

the DFAs in the FEIS are confined to federal lands in that document), the reduced DFAs continue to be arrayed along the sensitive borders of that ACEC.

In fact, that is one of the most emphatic criticisms levelled in the Penrod Comment Letter. At E58-144 and 145, she states that: “NO DFAs should be sited within the Desert Linkage Network [which, again, were created by a 2012 study of which Ms. Penrod was a primary author], desert tortoise linkages, bighorn sheep intermountain habitat and Mohave ground squirrel linkages,” and that “all these species-specific linkages and landscape linkages should automatically be included in the Reserve Design” as ACEC, NLCS lands and the like, and that all “Unallocated Lands within those linkages” should be automatically included in the Reserve Design (see also E58-168).

The FEIS nevertheless, and without any explication of its reasons for refusing to accept Ms. Penrod’s counsel, situates DFAs around the Granite Mountain Wildlife Linkage ACEC, and calls for DFAs scattered throughout the Desert Linkage Network and the other referenced linkages and declines to include the entirety of these linkages in the Reserve Design. The FEIS also scatters portions of its over 800,000 acres of “Unallocated Lands” – where utility-scale renewable energy facilities are also permitted – throughout the Desert Linkage Network.⁴

Finally, as reflected in maps found in the DRECP databasin, such as the one entitled “United States Bureau of Land Management Unallocated Lands, DRECP Proposed LUPA and Final EIS, Preferred Alternative,” the FEIS’s above-referenced DFAs, and the Unallocated Lands situated along the north-facing slope of the San Bernardino Mountains, sit directly astride many important perennial streams shown on the map entitled “The National Hydrography by Dataset (NHD), Medium Resolution Flowlines, DRECP.”

⁴ The FEIS depicts those DFAs in Figure II.3-6 (p. II.3-79), and in the more detailed corresponding maps found in the DRECP databasin for the “Proposed LUPA and Final EIS, Preferred Alternative.” Ms. Penrod’s Desert Linkage Network is depicted in Figure III.7-33 of the FEIS (other linkage designs, such as the “Joshua Tree – Twentynine Palms Connection” (III.7-230) are referenced in the FEIS). A comparison of those two figures, and of the more detailed databasin maps of ACECs, DFAs and Unallocated Lands for the “Proposed LUPA and Final EIS, Preferred Alternative” - confirms that DFAs and Unallocated Lands are indeed located within the Desert Linkage Network.



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C. The Granite Mountain Wildlife Linkage ACEC Traverses Privately-Owned Lands That Are Outside of the BLM's Control

The BLM's silence on this score renders the FEIS particularly lacking, especially given that some of the designated wildlife corridors, such as the critical "San Bernardino – Granite Connection," are wholly dependent on extensions across a vast patchwork of *privately-owned, locally-administered* lands that are neither owned nor controlled by the BLM.

Nowhere in the FEIS does the BLM provide any explanation as to what processes, costs or time-frames would be involved in acquiring and assembling those private lands into wildlife corridors (or in seeking the necessary approvals of local government bodies, such as San Bernardino County and Apple Valley), nor does the FEIS address whether or to what extent it would be fiscally or politically feasible to do so in the first place.⁵ Thus the wildlife corridors – indeed, the entire Reserve Design in the FEIS – appear illusory at best and, at worst, misleading to decision-makers and the public. This calls into grave question whether the "grand bargain" underlying the FEIS – i.e., that desert habitats will be sacrificed to utility-scale renewables and transmission but, in return, those portions needed to maintain the region's biological integrity and productivity will be protected – entirely unravels, and whether the FEIS is positioned to achieve its own stated "purpose and need."

The FEIS is inadequate as a matter of law because it utterly fails to address any of these critical questions.

4. Each of the Four ACECs discussed in this Letter – Indeed, All ACECs Vital to Habitat Connectivity – Must Be Reconfigured So That Vital Habitat Connectivity is Preserved.

The Granite Mountain Wildlife Linkage ACEC, and the other three ACECs discussed in this letter, are anemic shadows of the wide and robust wildlife linkage corridor depicted in the DRECP Desert Linkage Network map, which wraps around the western shoulder of the San Bernardino Mountains, takes in most of their northern slope and then heads northwesterly in a broad swath of land extending all the way to the northern Ord Mountains (which are not to be confused with the identically-named region in the San Bernardino Mountains in which the Juniper Flats Cultural Area ACEC is located).

⁵ This is the same BLM that, elsewhere in the FEIS, claims entitlement to dismiss the Distributed Generation alternative because rooftops on which it is installed are not on BLM lands.

C5-3

C5-4

In a Supplemental or Amended FEIS, the BLM should conduct a thorough study of the wildlife corridors, including use of complete and up-to-date data, information and mapping, and redesign the four ACECs discussed in this letter, and all other ACECs critical to habitat connectivity (including ones constrained by nearby DFAs that are incompatible with their values), so as to protect the Desert Linkage Network.

Only in that way would the FEIS would be able to assess whether or to what extent the above-quoted BGO "Goal 1" would be compromised by deviation from the Desert Linkage Network in the framing of its ACECs, or by the BLM's siting of DFAs and unallocated lands within that linkage network⁶, and the FEIS provides no basis whatsoever upon which the reader can determine the degree to which any such assessments were correct.

In order to provide the BLM with the opportunity to take a fresh look at the wildlife corridors and ACECs, and for the other and further reasons set forth below in Section 6 of this letter, the BLM should postpone its official designation of the ACECs.

5. **The Circumstances Under Which the Soda Mountain Expansion ACEC Has Been Created Illustrate Defects in the BLM's Approach to Designating ACECs.**

As noted above, there is a "grand bargain" underlying the FEIS – i.e., that portions of desert habitats will be made available for utility-scale renewables and transmission but, in return, those portions needed to maintain the region's biological integrity and productivity will be protected through various Reserve Design designations, such as ACECs. But the manner in which the Soda Mountain Expansion ACEC came into being illustrates serious defects in this ACEC designation process. This threatens the integrity of that "grand bargain."⁷

ACEC designations are supposed to "highlight areas where special management attention is needed to protect, and prevent irreparable damage to important historical, cultural, and scenic

⁶ The BLM's re-drawing of those linkages has created gaps in the "linkage design." For example, the Joshua Tree to Twentynine Palms linkage is missing from the FEIS.

⁷ We are not by any means proposing that the Soda Mountain Expansion ACEC be eliminated. ACEC protection there is most appropriate; it simply isn't big enough. We are addressing that ACEC because the circumstances surrounding its creation provide a prime example of the apparently arbitrary way in which unallocated lands become Areas of Critical Environmental Concern.

C5-5

C5-6

values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards.” (BLM Manual 1613 – Areas of Critical Environmental Concern). BLM regulations set out a number of “relevance criteria” and “importance criteria” applicable to a consideration of whether a certain area should receive ACEC designation. 43 CFR 1610.7-2. If a particular location satisfies one or more of these criteria, then it merits the ACEC designation. Either the area qualifies for the designation or it does not. Not included in the criteria is any notion that an ACEC designation for one area is an acceptable bartering tool for sacrificing a nearby area to intense development.

What has happened with Soda Mountain Solar? The project, as originally proposed, was to occupy so-called “unallocated lands” on the north and south sides of Interstate 15. Now, according to the FEIS for that project, it will consist of three solar arrays on 2,222 acres (with 2,557 acres of total land disturbance) located solely on the south side of the highway. The Soda Mountain Expansion ACEC is to consist of 16,700 acres on the northern side of the highway directly across from the project site.

In short, the Soda Mountain Expansion ACEC is located in an area that the BLM had previously designated as “unallocated land,” which means that, in the BLM’s view, the area did not merit ACEC treatment. Nothing happened, so far as can be seen, to justify the BLM’s turnabout, other than a kind of internally-generated tradeoff.

But there is nothing in the regulatory superstructure for ACECs that would make ACECs good instruments to compensate for environmental disturbance caused by the approval of a project located next door (or, in this case, immediately across the freeway). Such considerations are not properly within the purview of an ACEC determination, which is to be based solely on an assessment of such criteria as habitat/connectivity, cultural and paleontological values of a particular area.

For the reasons specified above, the BLM needs to take a hard look at each one of the ACECs listed in the NOA in order to determine whether they are sufficient to provide the requisite conservation protection, and in order to examine whether they were the product of a flawed and arbitrary process. Further, the BLM must re-open the process entirely in order to examine whether ACECs should be designated in addition to the ones listed in the NOA. Only in this way can the BLM assure that the conservation goals declared in the DRECP are being met.



C5-6
Cont.

Ms. Vicki Campbell
DRECP Program Manager
May 6, 2016
Page 11

6. The BLM Should Postpone Its Official Designation of the ACECs.

The BLM should postpone the official designation of all ACECs, and give the ACECs, as proposed in the FEIS, pre-designation status as “place-holders” for management that is consistent with the conservation goals for which they were earmarked.

Such a postponement would have the following benefits:

(1) it would allow the BLM, in a Supplemental or Amended FEIS, to conduct a thorough study of the wildlife corridors, including use of complete and up-to-date data, information and mapping, and to redesign the ACECs, including the four ACECs specifically discussed in this letter;

(2) it would allow the public the opportunity to provide meaningful comments on the ACECs, which, due to defects in the way in which public notice has been given and the sheer amount of proposed ACECs (134), has been sorely lacking thus far; and

(3) it would allow the BLM the opportunity to re-think its plans for managing the ACECs, which should include revisiting the wisdom of proposing blanket disturbance caps on all of the ACECs; and

(4) it would allow the WEMO process to proceed to a Record of Decision, and produce an approved route inventory, before the ACECs are finalized. With that route inventory in hand, the public will be able to make informed comments, and the BLM can make informed decisions, about the nature, size and configuration of the ACECs.

We appreciate your careful consideration of this letter.

Very Truly Yours,

ALLIANCE FOR DESERT
PRESERVATION

Richard Ravana, President

C5-7



5/9/2016

via Email

Vicki Campbell
DRECP Program Manager
Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825
blm_ca_drecp@blm.gov

Re: Comments on Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California

Dear Ms. Campbell,

The Center for Biological Diversity (“Center”) submits these comments in response to the Notice regarding designation of ACECs in the proposed land use plan amendments for the DRECP. 81 Fed. Reg. 12938 (March 11, 2016). These comments supplement earlier comments submitted to the BLM regarding the proposed land use plan amendments for the DRECP and the protest submitted on December 14, 2015.

All ACECs Existing As Of 2009 Must Be Recognized as NCL Lands.

The Center remains concerned that existing Areas of Critical Environmental Concern (ACECs) in the West Mojave are proposed to be left out of the National Landscape Conservation System (NLCS) designation in the final DRECP and inadequately protected from activities that have and continue to degrade the conservation values in these areas. These ACEC’s were established by the West Mojave plan amendment to the California Desert Plan in 2006 for the conservation and recovery of the still declining federally threatened desert tortoise. Although we support retaining the existing ACEC designation in these areas, we are specifically concerned that major portions of the Superior-Cronese ACEC and the Fremont-Kramer ACEC that are left out of the NLCS designation and therefore will not be provided with the level of protection needed for the fragile and rare resources of these area.

Moreover, under the plain language of the NLCS statute these areas are *already* part of the national conservation lands system and that must be recognized by BLM. All of the lands within Arizona • California • Nevada • New Mexico • Alaska • Oregon • Washington • Illinois • Minnesota • Vermont • Washington, DC

C6-1





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the California Desert Conservation Area (“CDCA”) managed for conservation as of 2009 were already declared to be part of the NLCS by Congress along with wilderness, wilderness study areas, national monuments, national conservation areas, components of the wild and scenic rivers system, and national scenic or historic trails. The lands within the NLCS in the CDCA include (a) wilderness, wilderness study areas, national monuments, national conservation areas, components of the wild and scenic rivers system, and national scenic or historic trails (16 U.S.C. §§7202(b)(1)(A–F))¹; **and** (b) all “public land within the California Desert Conservation Area administered by the Bureau of Land Management for conservation purposes” (16 U.S.C. §7202(b)(2)(D)). These NLCS designations were made by statute and cannot be reduced or changed by the BLM through administrative action including plan amendments. Because the statute clearly mandates that the Superior-Cronese ACEC and the Fremont-Kramer ACEC be included in the NLCS system.

Furthermore, all other ACECs established for desert tortoise conservation and recovery in the West Mojave, Northern and Eastern Mojave and Northern and Eastern Colorado plan amendments, including the Ord-Rodman in the West Mojave and the Ivanpah, Fenner, Chemihuevi, Joshua Tree-Pinto Mountains and Chuckwalla ACECs are recognized as belonging to the NLCS, which we support. NLCS provides permanent protection for these critical conservation areas, which are also federally designated critical habitat for the desert tortoise.

In discussion with the you and the BLM’s DRECP team at the State Office, the BLM stated that the reason these areas are being treated differently is that the Superior-Cronese ACEC and the Fremont-Kramer ACEC contain large areas of “checkerboard” land ownership and therefore BLM assumed that management would be more difficult. However, in fact, the “checkerboard” in these two ACECs includes primarily state-managed lands many of which were acquired for conservation purposes for desert tortoise and/or Mojave ground squirrel. Some of the lands were direct conservation acquisitions while others were acquired as mitigation for impacts to tortoise and habitat in other areas of the Mojave. The Department of Defense (DOD) bought 250,000 acres in that area of the west Mojave as mitigation for the Fort Irwin Expansion, and these DOD mitigation lands are also part of the “checkerboard” lands primarily in the Superior-Cronese ACEC. In addition two sections in each township/range are State-owned school lands. Additionally, private non-profit land trusts also own or have conservation easements on many of the private lands within both ACECs and manage the lands for conservation of desert tortoise and other rare resources.

In sum, great effort and care in acquisitions and management has been focused in the Superior-Cronese and the Fremont-Kramer ACECs for decades in order to assemble a consolidated land base to implement cooperative conservation between federal, State and private

¹ Notably, wilderness, wilderness study areas, components of the wild and scenic rivers system, and national scenic or historic trails are identified in the draft DRECP as part of the Legally and Legislatively Protected Areas; however national monuments and national conservation areas are not.

entities to benefit desert tortoise and other rare species conservation in the western Mojave Recovery Unit, the Recovery Unit with some of the greatest declines in tortoise population over the past decades.

The BLM's excuses for not including these lands within the NCL designation in the DRECP and providing the needed protections do not hold water. Indeed, the proposal runs counter to BLM's prior commitments to conservation of these public lands for desert tortoise and other resources and is anathema to cooperative conservation efforts as well as the law. We urge the BLM to correct this in the final DRECP Record of Decision and acknowledge all existing ACECs as of 2009 are part of the NLCS.

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Conservation Management Actions in ACECs

While we agree with many of the Conservation Management Actions (CMAs) proposed for the Fremont-Kramer and Superior-Cronese ACECs including the 0.25-1.0% (Appendix L, West Desert and Eastern Slopes Subregion, Fremont-Kramer at pg. 1194) and 0.5% (Appendix L, Mojave and Silurian Subregion, Superior-Cronese at pg. 806) respectively disturbance caps proposed in the FEIS, others, including allowing ongoing grazing of domestic stock (at pg. 1196-1197 in the Fremont-Kramer) are not based on the most recent desert tortoise conservation science² and therefore unacceptable. The Superior-Cronese allotments were "bought out" by DOD as additional mitigation for the Fort Irwin Expansion and no livestock grazing is occurring on them at this time. It is therefore proper for grazing prohibition to be a part of the CMAs for the Superior Cronese area. That same grazing prohibition should be put in place for the allotments in the Fremont-Kramer for all of the benefits it provides desert tortoise recovery.

C6-2

Indeed recent science³ documents the only successful desert tortoise recovery strategies in the west Mojave and provides the necessary management prescriptions that the DRECP should include in the CMAs for all of the conservation lands that support desert tortoise and its critical habitat. We urge the BLM to adopt CMAs that will reverse the ongoing declines in the desert tortoise population in the West Mojave Recovery Unit.

2 Berry, K.H., Lyren, L.M., Mack, J.S., Brand, L.A., and Wood, D.A., 2016, Desert tortoise annotated bibliography, 1991–2015: U.S. Geological Survey Open-File Report 2016-1023, 312 p., <http://dx.doi.org/10.3133/ofr20161023>. See sections related to stock grazing.

3 Berry, K.H., et al. 2012. Final Report. A comparison of desert tortoise populations and habitat on three types of managed lands in the Western Mojave Desert in Spring 2011: the Rand Mountains/Fremont Valley, Desert Tortoise Research Natural Area, and private parcels. http://docketpublic.energy.ca.gov/PublicDocuments/Regulatory/11-AFC-2%20Hidden%20Hills/2013/FEB/TN%2069406%2002-04-13%20Intervenor%20Center%20for%20Biological%20Diversity's%20Testimony.%20Exhibit%20List%20and%20Exhibits/Exhibit%20509.%20BERRY%20et%20al%202012._Rand%20Mtns%20Fremont%20Valley%20DTRNA%20Final%20Rept%20Sep%202012%20BLM.pdf

Removal of Any ACEC Lands from Protection Is Unacceptable

C6-3

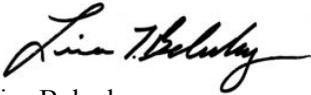
The proposed removal of over tens of thousands of acres from existing ACECs in the CDCA is unacceptable both because of the impacts to conservation and because those areas must be protected as part of the NLCS. The overlay of existing and proposed ACEC with Development Focus Areas and Variance Lands is also conflicting land use designations and unacceptable. Please refer to our Protest submitted on December 14, 2015.

We hope to see improvements in management approach, acknowledgement of all ACEC lands managed for conservation prior to 2009 in the CDCA as part of the NLCS, retention of all ACEC lands in conservation, and improved CMAs for the ACECs based on the best available science to aid in recovery of the Mojave desert tortoise and other resources in the DRECP LUPA. Thank you for your attention to these important issues.

Sincerely



Heene Anderson
Senior Scientist/Public Lands Desert Director
Center for Biological Diversity



Lisa Belenky
Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
ofc (415) 632-5307 fax (510) 844-7150
cell (415) 385-5694
lbelenky@biologicaldiversity.org
www.BiologicalDiversity.org

cc:

Jerome Perez, BLM State Director, Jperez@blm.gov
Kevin Hunting, CDFW, Kevin.Hunting@wildlife.ca.gov

**WELBORN SULLIVAN
MECK & TOOLEY, P.C.**
ATTORNEYS AT LAW

1125 17th Street, Suite 2200
Denver, CO 80202
MAIN: 303/830-2500
FAX: 303/832-2366

159 N. Wolcott, Suite 220
Casper, WY 82601
MAIN: 307/234-6907
FAX: 307/234-6908

May 9, 2016

Via email to blm_ca_drecp@blm.gov and Federal Express

Vicki Campbell, DRECP Program Manager
Bureau of Land Management, California
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

Re: **Eagle Crest Energy Company** Comments on Desert Renewable Energy
Conservation Plan Areas of Critical Environmental Concern Designations,
81 *Fed. Reg.* 12, 938 (March 11, 2016)

Dear Ms. Campbell:

This firm represents Eagle Crest Energy Company (“Eagle Crest”), a company headquartered in Santa Monica, CA. Eagle Crest is the developer of an energy storage project in Riverside County, California that is impacted by proposed planning designations in the “Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment and Final Environmental Impact Statement,” (October, 2015) (“DRECP LUPA/FEIS”). In February, 2015, Eagle Crest filed comments with the Bureau of Land Management (“BLM”) on the Draft DRECP docketed at 09-RENEW EO-1, TN # 74709 (February, 20, 2015). On December 14, 2015, Eagle Crest filed a protest of the BLM’s DRECP LUPA/FEIS. This protest is pending. Attached (includes Eagle Crest February comment letter) (**Att. 1**). Today, Eagle Crest files comments on the BLM, “Desert Renewable Energy Conservation Plan, Areas of Critical Environmental Concern,” 81 *Fed. Reg.* 12,938 (March 11, 2016).¹

Summary of Eagle Crest Comments on DRECP Chuckwalla ACEC

As described in more detail in the Eagle Crest February 2015 comments (**Att. 1**, comments at 2-3), Eagle Crest is the developer of a 1300 MW energy storage project (“Project”) near Desert Center, California on fee and federal lands. As explained below, pursuant to the Federal Power Act, the federal lands in the Project site, including certain linear rights-of-way for transmission and a water pipeline, are withdrawn from operation of the public land laws.² On June 19, 2014, the Federal Energy Regulatory Commission (“FERC”) issued the Project license to Eagle Crest.³ Portions of the Project right-of-way for the electrical interconnect line (gen-tie

¹ BLM, “Areas of Critical Environmental Concern” Manual, 1613 (“ACEC Manual”) at 1613.23.B. (1988), “The public may comment on any aspect of the ACEC analysis including the relevance and importance evaluation, the projected need for special management attention, and the analysis of impacts of allowable resource uses on the values of proposed ACEC’s as well as the impact of ACEC management prescriptions or limitations on other resource uses.”

² Federal Power Act Section 24, 16 U.S.C. § 818.

³ Eagle Crest Energy Company, 147 FERC ¶ 61,220 (June 19, 2014), <http://www.ferc.gov/whats-new/commmeet/2014/061914/H-7.pdf>.

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Vicki Campbell, DRECP Program Manager
May 9, 2016
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line) and a water pipeline will traverse federal land designated in the DRECP as an Area of Critical Environmental Concern (“ACEC”), the Chuckwalla ACEC.⁴ *See* Figure 2. The Chuckwalla ACEC, 514,372 acres, is located in southeastern Riverside County and northeastern Imperial County and includes the Orocopia, Chuckwalla, Little Chuckwalla, and Palo Verde Mountains.⁵ It is located in the Colorado Desert sub-region of the DRECP planning area. DRECP LUPA/FEIS, Chapter II.3.3.3.5 and App. L at 239.

Eagle Crest is filing these comments today to make two key points:

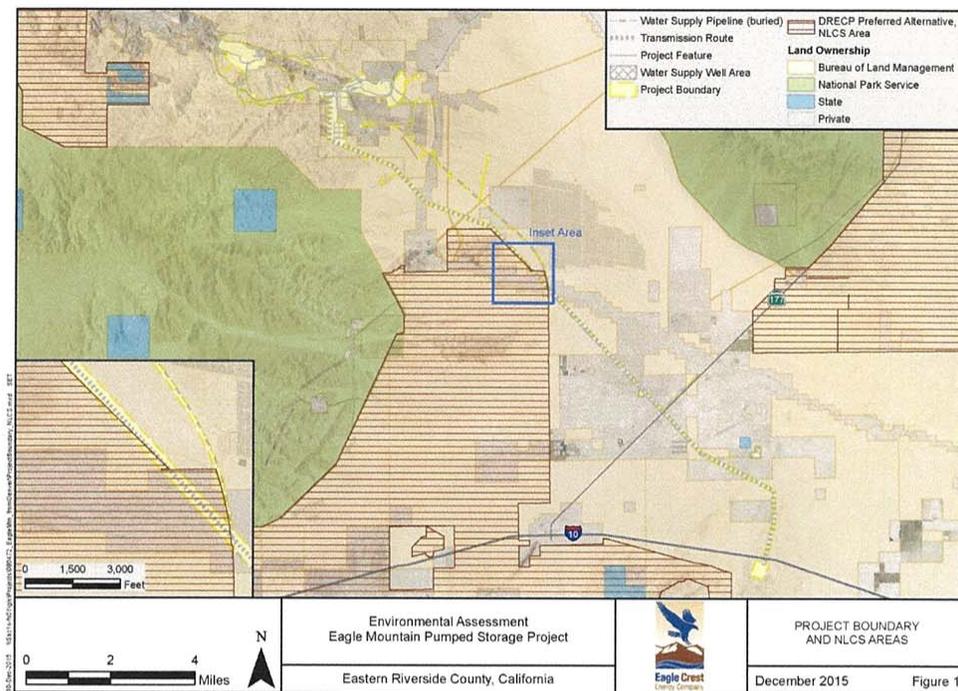
- 1) the FERC license is a “valid existing right” that must be respected by BLM in the DRECP land use planning decisions, including the BLM’s designation of ACECs. Federal Land Policy and Management Act (“FLPMA”) (“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.”);⁶ and
- 2) the existing disturbance and permitted uses, including the BLM-designated energy corridors and the Project right-of-way, within the proposed Chuckwalla ACEC make this portion of the proposed ACEC unsuitable for designation. 43 C.F.R. § 1610.7-2.

⁴ In addition, a National Landscape Conservation System (“NLCS”) designation is proposed for another portion of the Project gen-tie line (*see* Figure 1). We believe this designation was mapped in error since it includes largely fee lands over which BLM exercises no management authority. We understand that BLM intends to correct this mapping error to exclude the fee land and the small portion of federal land through which the Project ROW passes.

⁵ DRECP LUPA/FEIS, App. L at 237 and map at 247.

⁶ FLPMA Section 701(h) of Pub. L. 94-570 (1976).

Figure 1. Eagle Mountain Pumped Storage Project boundary and the proposed NLCS lands in the Chuckwalla Valley.



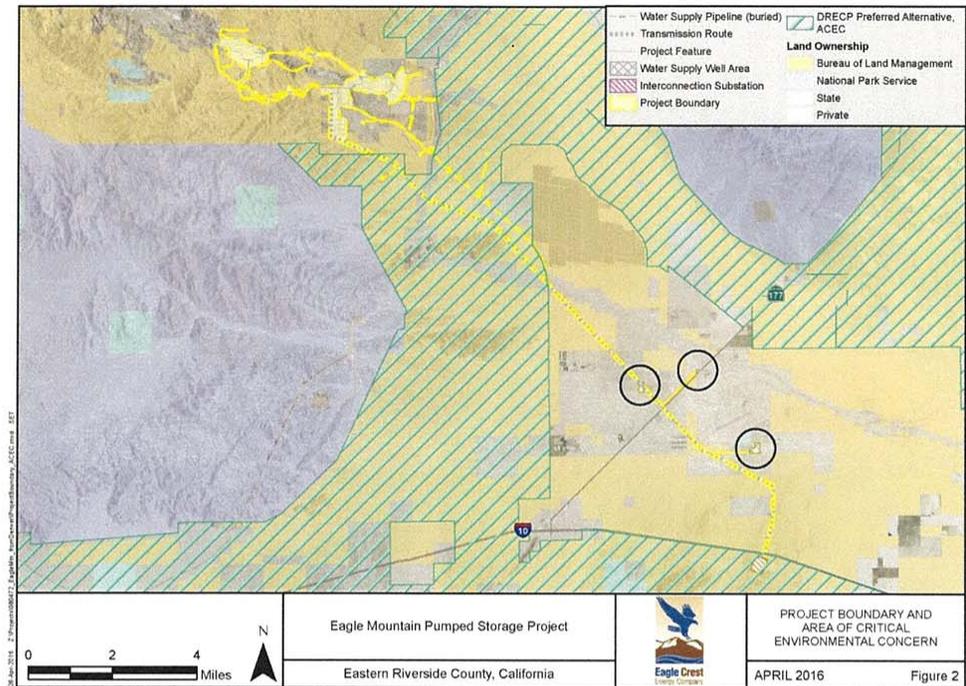
The Project is a Valid Existing Right to which the DRECP ACEC is Subject

The Federal Project Lands were Withdrawn and a FERC License Issued

The FERC permitting process for the Project began when Eagle Crest submitted an application for, and was granted, a preliminary permit by FERC in 1991 to construct a pumped-hydro storage facility. The Eagle Crest Project will be constructed on a brownfield site, the former Kaiser iron ore mine, consisting of fee lands and Federal Power Act withdrawn federal land. This site was selected because two of the four existing mine pits can be used as reservoirs to store and release energy. The Project will assist in the successful integration of renewable energy in California by using excess renewable energy to pump water from the lower reservoir to the upper reservoir and then at peak demand will release the water from the upper reservoir to the lower reservoir through a turbine to generate electricity. The water will be delivered to the Project via a pipeline from three wells located on private property that would in part traverse federal land. See Figure 2.

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Figure 2. Location of Eagle Mountain Pumped Storage Project and proposed Chuckwalla Area of Critical Environmental Concern.

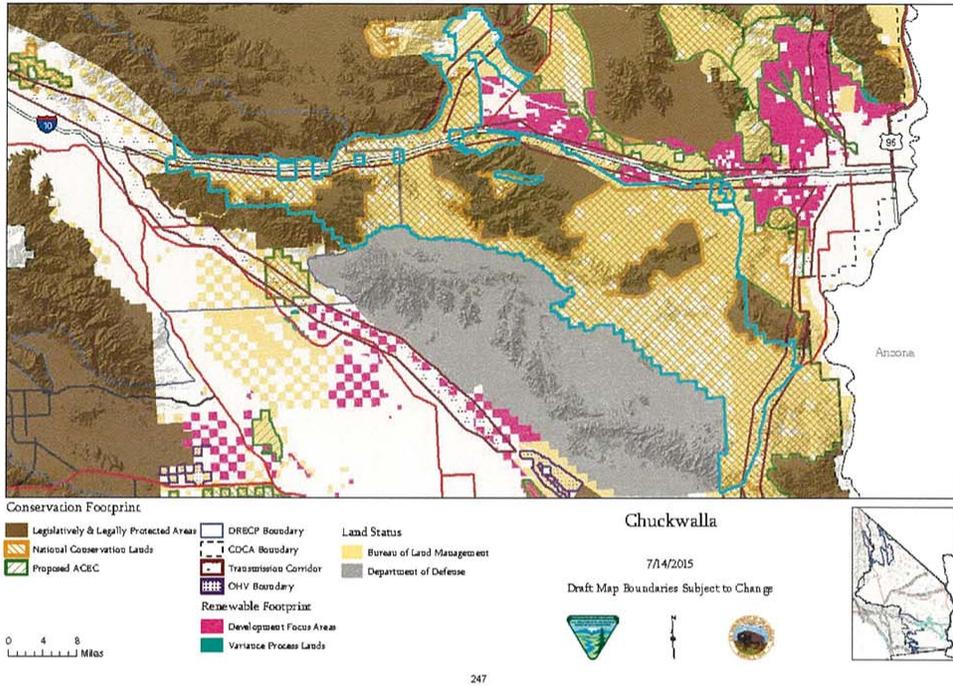


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The electricity generated by the Project will be delivered to the grid via the gen-tie line from the Project to the Southern California Edison's Red Bluff interconnection substation. *See* Figure 2. Also within the area proposed for the Chuckwalla ACEC is a BLM, California Desert Conservation Plan (1980) ("CDCA") designated utility corridor.⁷ *See* Figure 3.

⁷ *See* DRECP LUPA/FEIS, Executive Summary at 23 ("The proposed BLM LUPA would not modify existing energy corridors, including 'corridors of concern' defined in the Section 368 Energy Corridors Settlement agreement . . .").

Figure 3. Chuckwalla ACEC and designated transmission corridors. Source: BLM DRECP Final EIS.



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The gen-tie line, which is generally collocated with the water pipeline falls partially within the BLM-designated utility corridor with a portion of the right-of-way outside the CDCA designated utility corridor. Under the terms of the Federal Power Act Section 24, the federal land necessary for the Project was automatically “withdrawn” from operation of the public land laws upon the filing of the preliminary permit application by Eagle Crest, for power project development. Federal lands included in an application are “from the date of filing of application . . . reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by [FERC] or by Congress.” 16 U.S.C. § 818.

In 2009, Eagle Crest submitted the application to FERC that led to the issuance of the FERC license in June 2014.⁸ Also in 2009, Eagle Crest Energy submitted an SF-299 application to BLM for a right-of-way grant under FLPMA Title V. Eagle Crest applied for a right-of-way

⁸ 43 C.F.R. § 2320.1. Over the years that followed the initial 1991 submission, Eagle Crest has filed and FERC granted a total of four preliminary permits. Through the various filings and FERC approvals, Eagle Crest Project withdrawals of federal land have remained in effect during the Project licensing process that resulted in the 2009 application and FERC license issuance in June, 2014.

(ROW) grant to construct, operate, maintain and decommission a 500 kilovolt (kV) generation gen-tie line and a water pipeline. In addition, the ROW would include portions of the central Project area. See Figure 2. This Project SF-299 application has been modified several times, at the request of BLM.

In November, 2015, BLM began scoping for the Project ROW and a necessary land use plan amendment (for the portion of the gen-tie outside the CDCA utility corridor). “Notice of Intent to Amend the Resource Management Plan for the California Desert Conservation Area and the Eagle Crest Pumped Storage Project, California,” 80 *Fed. Reg.* 73,815 (November 25, 2015). BLM expects to conclude the ROW process by the end of 2016. In the Project ROW process, BLM is analyzing a larger Project “construction envelope” area, as described in the most current SF-299, to allow for the engineering and geotechnical studies to be completed before construction and the issuance of a more site-specific Project ROW grant by BLM.⁹

FLPMA Planning Requirements for the Consideration of “Valid Existing Rights”

BLM land use planning must be done in conformity with FLPMA which requires that “all actions . . . under this Act shall be subject to valid existing rights.”¹⁰ BLM’s planning regulations repeat this statutory requirement. 43 C.F.R. § 1610.5-3 (plan conformance is “subject to valid existing rights”). BLM’s planning guidance provides explicit direction that “all decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights” (BLM, Land Use Planning Manual, section .06.G) and “plans will recognize valid existing rights.” BLM, Land Use Planning Handbook, H-1601-1 at 19.

Moreover, the BLM Land Use Planning Handbook makes clear that even in the case of ACECs, protection of ACEC values are “[s]ubject to valid existing rights.” *Id.* App. C. at 28. The BLM’s “Area of Critical Environmental Concern Manual 1613” (“ACEC Manual”) also directs BLM to consider the relationship of a proposed ACEC to “existing rights” and how “existing rights affect management of the resources. . .” ACEC Manual 1613.22.A.8.

In conformity with these well-understood FLPMA requirements, the BLM in the DRECP states, “existing authorized operations would be allowable within BLM designations and unpatented mining claims retain valid existing rights.” LUPA/FEIS, Executive Summary at 30. The BLM in the DRECP defines a “valid existing right” as:

A documented legal right or interest in the land that allows a person or entity to use said land for a specific purpose. Such rights include fee title ownership, mineral rights, rights-of-way, easements, permits, *licenses*, etc. Such rights may have been reserved, acquired, leased, granted, permitted, or otherwise authorized over time.

⁹ See Eagle Crest Company, SF-299, CACA 50946, BLM Serial Register Page, AR-2000, <https://rptapp.blm.gov/menu.cfm?appCd=2>.

¹⁰ *Supra* note 6.

C7-1
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DRECP LUPA/FEIS, Glossary of Terms at 17. Emphasis added.

For close to twenty years, BLM has repeatedly recognized the FERC withdrawal of the federal lands for the Project, including those lands proposed for the Chuckwalla ACEC, as a valid existing right authorized under the Federal Power Act. In 1999, in the land exchange for the proposed Kaiser landfill, BLM issued a patent and filed it in the Riverside County land records reserving “those lands which lie within the boundary of the license application filed by Eagle Crest Energy Company with [FERC] on April 29, 1994 . . . the right to itself, its permittees or its licensees to enter upon, occupy and use any part or all of said lands necessary . . .” In 2012, BLM identified a land use conflict between the Project and the Desert Harvest (CACA 49491) and Desert Sunlight (CACA 48649) solar projects that required BLM to obtain a “no injury” determination with the Federal Power Act purposes for the federal land. In August, 2014, BLM initiated a “Supplemental Environmental Impact Statement” to address certain issues in the BLM Kaiser land exchange. 79 *Fed. Reg.* 47,668 (August 14, 2014). The BLM in its scoping materials for this process recognized and discussed the Project as an existing “encumbrance” on a portion of the federal lands involved in the exchange.¹¹

In the DRECP LUPA/FEIS (October 2015) in response to the Eagle Crest comment, BLM acknowledged that “lands within a Federal Power Act (FPA) withdrawal are partially under FERC’s jurisdiction” and “that a Federal Power Act (FPA) withdrawal precludes BLM from conveying the public land without a determination by FERC that the value of the lands withdrawn for power purposes would not be injured for such purposes by the conveyance, as provided in section 24 of the FPA.” BLM, DRECP LUPA/FEIS, App. AA, Response to Comment Letter E59, at E59-11, response E59-2 and E59-13 (October 2015). In addition, the BLM recognized the FERC-licensed status of the Project in the DRECP cumulative impacts analysis. DRECP LUPA/FEIS, Chapter IV.25. BLM identified the Project in Table IV.25-4, “Other Large Projects within the DRECP Boundary” and described the Project status as follows: “FERC License issued June 2014. Final EIR released July 2013. SWRCB approved project in July 2013.” *Id.* at 9-10; 21 (FERC “has issued a license for this project.”). Finally, as previously mentioned, on November 25, 2016, the BLM published a “Notice of Intent,” that recognized FERC’s issuance of a license to Eagle Crest, to commence the Project-specific National Environmental Policy Act (“NEPA”) process. BLM, “Notice of Intent to Amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California,” 80 *Fed. Reg.* 73,815 (November 25, 2015).

The Project FERC withdrawal is a “documented legal right or interest in land,” as is the Project license, which, as a license, is specifically identified in the DRECP LUPA/FEIS Glossary definition of “valid existing rights.” For that reason, the DRECP is “subject to” these valid existing rights. DRECP LUPA/FEIS, Glossary of Terms at 17. Furthermore, the FERC-licensed Project is an “existing right” that BLM must consider in the context of an ACEC designation and the “special management” of those protected resources. ACEC Manual 1613.22.A.8. BLM

¹¹ See, BLM Eagle Mountain Land Exchange webpage, http://www.blm.gov/ca/st/en/fo/palmsprings/Eagle_Mountain_Land_Exchange.html.

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can't, through planning, put in place a DRECP designation or planning decision that would frustrate or conflict with the Federal Power Act purposes for these withdrawn federal lands. Such a BLM action would be unreasonable, not authorized by FLPMA and subject to challenge. *See* Administrative Procedures Act, 5 U.S.C. § 705(2)(A) (“hold unlawful . . . agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”). The DRECP planning process designating the Chuckwalla ACEC must recognize the Project as a valid existing right to which the Chuckwalla ACEC designation is subject.

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Cont.

The Chuckwalla ACEC Conflicts with the Project and Frustrates this Valid Existing Right

The BLM describes its “overarching goals” for the Chuckwalla ACEC as “[t]o protect and enhance habitat for sensitive animal and plant species and rare vegetative alliances within the ACEC while considering climate changes and reducing hazards to public safety and providing for compatible uses.” DRECP LUPA/FEIS, App. L at 239. The BLM highlights several wildlife species including the desert tortoise, desert bighorn sheep and several sensitive plant species. The BLM, in the designation of the Chuckwalla ACEC, proposes to put in place several “management actions” to provide special management for these resources.¹² Designation of the DRECP Chuckwalla ACEC and the application of the associated management actions and the general DRECP ACEC conservation management actions (“CMAs”) to the Project would, in several instances, unreasonably interfere with the development of the FERC-licensed Project.¹³

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First, there is simply no alternative route for either the Project gen-tie line or water pipeline except through the proposed Chuckwalla ACEC. The proposed ACEC is a designation “barrier” between the Red Bluff substation, the private water wells and the central Project. *See* Figure 2. The central Project area is in the Eagle Mountains, west of the Chuckwalla ACEC. The Red Bluff interconnection substation,¹⁴ which will connect the Project to the main transmission grid, is located east of the central Project area, in the existing Chuckwalla ACEC south of Interstate 10. *Id.* The water pipelines will lead from three wells located on private lands in the southern Chuckwalla Valley, east of the Chuckwalla ACEC, across the ACEC to the Project. *Id.*

Second, the location of the gen-tie was selected as the “environmentally preferred alternative” by FERC and the State Water Resources Control Board during the Project NEPA/CEQA review. During those environmental review processes, at least 4-5 alternate routes

¹² See 43 C.F.R. § 1601.0-5 (ACECs are “areas . . . where special management attention is required”); ACEC Manual 1613.12 (“To be designated as an ACEC, an area must require special management attention to protect the important and relevant values.”)

¹³ The DRECP contains LUPA-wide applicable CMAs, ACEC CMAs and, in this instance, Chuckwalla ACEC-specific management actions. Due to the focus of this comment on ACEC designations, Eagle Crest does not provide any comments on the LUPA-wide CMAs. This comment will focus on the DRECP Chuckwalla ACEC management actions that would appear to conflict with the Project. In addition, several general ACEC CMAs including ACEC-DIST-1 (disturbance caps); ACEC-DIST-2 (disturbance caps); and ACEC-Lands-1 (disallowance of renewable energy, but allowance for transmission) would also unreasonably interfere with the Project. *See infra* at note 19. Several other ACEC CMAs are satisfied by the FERC Project license requirements and are not discussed further. *See supra* note 3, Project license requirements.

¹⁴ The Red Bluff substation was built several years ago to support the development of solar projects in the area.

were field-surveyed to identify a route with the least environmental issues. The selected route has less impact to the federally-listed desert tortoise when compared to the other alternatives; it was outside the existing DWMA and the U.S. Fish and Wildlife Service-designated critical habitat.¹⁵ There were no cultural resource conflicts identified for the selected route during the transmission alternatives analysis.¹⁶ Furthermore, in considering the Chuckwalla ACEC sensitive wildlife and plant species discussed in the DRECP LUPA/FEIS, App. L at 239-245, there are none in the Project ROW area.

Third, the Project pipeline and gen-tie were collocated and sited to use an existing CDCA designated utility corridor. *See* Figure 3. We suggest that the designation of an ACEC in an area that already includes a CDCA designated utility corridor and a FERC withdrawal for a gen-tie line and water pipeline will make it difficult for BLM to meet its stated Chuckwalla ACEC goal of “providing for compatible uses.” These preexisting energy uses are not compatible with ACEC special management.

Chuckwalla ACEC “Actions” Unreasonably Conflict with FERC License, a Valid Existing Right

The proposed Chuckwalla ACEC includes several specific “management actions” to meet the ACEC’s “objectives.” DRECP LUPA/FEIS, App. L. at 239-245. Three management actions are of particular concern for the potential to unreasonably interfere with the Project, a valid existing right.

First, the Chuckwalla ACEC states that the DRECP will “[a]llow no activities that would create a water basin deficit/decline” in this ACEC. *Id.* at 240. Read literally, no action withdrawing even a gallon of water for one day in the basin could meet the “no basin decline” management action. This management action should be clarified; as written it is unreasonable and unenforceable. BLM explains that the management action directing “no basin deficit” requires that an activity’s groundwater extraction not contribute to exceeding the basin’s estimated perennial yield recharge over the long-term. BLM defines “long-term” as two years.

The Project will use groundwater from private wells that will be drilled on fee lands, outside of the Chuckwalla ACEC. *See* Figure 2. No BLM authorization is needed for the withdrawal of water from these private wells so this management action should not apply to the Project. Even if BLM were to assert that the ACEC management action should apply, the FERC EIS analysis and the analysis prepared for the State Water Resources Control Board EIR found that the Project, alone, would not use groundwater in excess of the basin’s estimated perennial yield of 12,700 acre-feet per year. However, in combination with all other proposed projects in the basin, the FERC FEIS analysis found that the Project could contribute to a cumulative, basin-wide withdrawal in excess of the perennial yield for three-four years during the initial fill of the reservoirs. For all following years of the Project’s life, the basin recovery and recharge would be

¹⁵ In 2012, the U.S. Fish and Wildlife Service prepared a Project Biological Opinion that provided an “incidental take statement” for desert tortoise for the selected route.

¹⁶ *Eagle Crest Energy Company*, FERC License FEIS, http://elibrary.ferc.gov/idmws/file_list.asp?document_id=13991881 (January 27, 2012).

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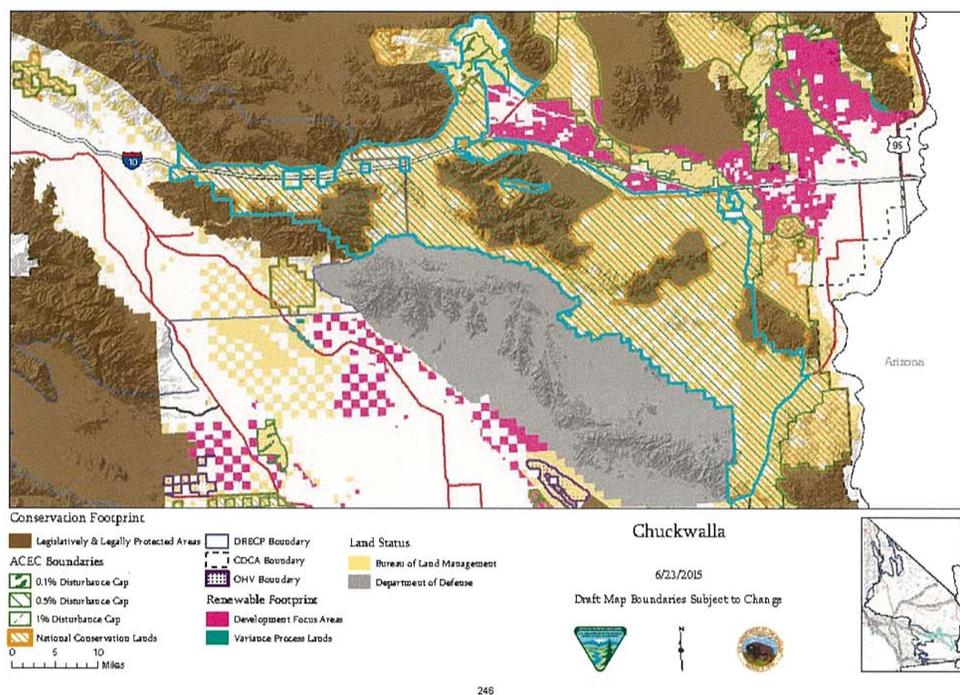
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in excess of extraction. The Project was authorized by FERC for a temporary drawdown in the basin. See Eagle Crest Company, "Order Issuing Original License," at Article 403 (June 19, 2014). Because this Chuckwalla ACEC management action would conflict with the FERC license and the Federal Power Act purposes for the federal land it can't be applied to frustrate this valid existing right.

Second, BLM describes a series of management action disturbance caps in various parts of the Chuckwalla ACEC, ranging from 1.0%, 0.5% and 0.1%. See Figure 4.

Figure 4. Chuckwalla ACEC disturbance caps.



Although the proposed Chuckwalla ACEC provides for BLM transmission line permitting, any such authorization must meet the relevant disturbance cap. DRECP LUPA/FEIS, App. L at 245, maps at 246-47. The Project linear features cross the Chuckwalla ACEC in an area with the most restrictive disturbance cap of 0.1%.¹⁷

¹⁷ As mentioned, the Project gen-tie is also partially located in a CDCA designated utility corridor that is included in the proposed Chuckwalla ACEC designation. See Figure 3.

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The attached aerial photographs¹⁸ make plain that the Chuckwalla ACEC disturbance in the area of the Project ROW is today in excess of 0.1%. *See* Figures 5 and 6 (arranged vertically, north to south to show entire area). For example, if the 0.1% is calculated across the entire Chuckwalla ACEC, the disturbance cap is only 514 acres. If the proposed disturbance cap is calculated only across the area designated as a 0.1% cap, the allowable disturbance is between 1-2 acres. The Project gen-tie and water pipeline ROW would use approximately seven hundred acres, or less, of federal land (much of which is in the CDCA designated utility corridor). If this management action was applied by BLM to exclude the Project gen-tie and water pipeline, as adding to existing disturbance in excess of the Chuckwalla ACEC disturbance cap of 0.1%, that would be an unreasonable interference with this valid existing right.

Third, the language in this management action is not clear as to whether a water pipeline would be allowed to use the utility corridor. “Within the designated utility corridor, the area is open for transmission ROW only (i.e. the integrity of the BLM utility corridor will be maintained.)” DRECP LUPA/FEIS, App. L at 245. Eagle Crest does not believe that the water pipeline is incompatible with the integrity of the BLM utility corridor, it was collocated with the gen-tie line in order to reduce disturbance at the direction of FERC. BLM has not raised any incompatibility with the utility corridor in its consideration of the collocated Project ROW. If this ambiguous language (or the 0.1% disturbance cap) would constrain BLM’s authorization of the Project ROW, it must give way for this Federal Power Act authorized valid existing right.¹⁹

Moreover, the federal and state environmental review processes for the FERC license process have been thorough in addressing many of the same issues addressed in BLM’s designation of the Chuckwalla ACEC. As noted, the Project was reviewed by FERC in a NEPA process including the preparation of a Draft and Final EIS. Eagle Crest was required by FERC to comply with the following laws designed and implemented by other federal and State agencies to protect numerous resources: the Fish and Wildlife Coordination Act (FWS); Section 18 of FPA (FWS fishway prescriptions); Section 4(c) of FPA (BLM land management conditions); Section 10(j) of FPA (CDFG); Clean Water Act Section 401 certification (CA State Water Resources Control Board); CEQA EIR (State Water Resources Control Board); Endangered Species Act Section 7 consultation (FWS); Coastal Zone Management Act consistency)(CA Coastal Commission); and National Historic Preservation Act (CA SHPO). *See* license, note 3, at 5-16.

Several environmental issues that are a focus of the Chuckwalla ACEC designation were specifically considered in the environmental review of the Eagle Crest Project. For example, the

¹⁸ In support of this comment, we are providing BLM with large-scale, high-resolution aerial photographs of the Chuckwalla ACEC in the Project area, printed at a 1:10,000 scale. This is the scale recommended in the DRECP LUPA/FEIS Section II.3.2.2.

¹⁹ It is not clear how the general ACEC CMAs (*see* note 13) would apply in combination with the Chuckwalla ACEC management actions, but they also raise conflicts. For example, if ACEC-Lands-1 is read to disallow the Project water pipeline in the Chuckwalla ACEC as an excluded land use authorization, that would be an unreasonable interference with the Project. In addition, ACEC-DIST-2 states that if an area is already in excess of the required disturbance cap or no mitigation opportunities exist within the “unit,” “ground disturbing activities will not be allowed” until disturbance mitigation in the unit becomes available. If that ACEC CMA were applied in the Chuckwalla ACEC to prevent the construction of the Project gen-tie or pipeline that would be an unreasonable interference with a valid existing right.

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FERC FEIS and license address in detail Project impacts to water resources, including the issues of groundwater levels and water budget considerations that are addressed in the Chuckwalla ACEC management action regarding basin deficits. *See, e.g.*, license, note 3, Section 3.3.2, “Water Resources,” at 74-78 (groundwater levels); 79-82, 96-115 (groundwater pumping and recharge); and the FERC response to DEIS Comments, license, Appendix A at A-29 to A-69 (*see* A-38 on why the U.S.G.S. Colorado River Accounting Surface does not apply in the case of the Project’s groundwater use). Similarly, the impacts of the Project on wildlife, particularly sensitive species and threatened and endangered species are addressed in detail. *See* license, Section 3.33, “Terrestrial Resources,” at 125-144; 152-171 (wildlife and sensitive species, including the Desert Bighorn Sheep); 171-189 (threatened and endangered species, including the Desert Tortoise); FERC response to DEIS Comments, license, Appendix A at A-72 to A-94. After these NEPA, CEQA and ESA analyses, FERC imposed a comprehensive series of required measures to mitigate identified environmental impacts and to require ongoing monitoring and reporting by Eagle Crest to FERC with advance review by several state and federal agencies including the BLM. *See id.* Section 5.2, “Comprehensive Development and Recommended Alternative” at 310-334.

Without water for the reservoirs, this pumped storage hydro project will not function and without the gen-tie any electricity stored by the Project can’t be transported to the grid and the ultimate power customers. The application of Chuckwalla ACEC management actions that would prevent the construction and use of either the Project gen-tie or the pipeline would be an unreasonable interference with the FERC-licensed Project – a valid existing right. Moreover, the very thorough FERC licensing process has addressed the same conservation issues addressed in the Chuckwalla ACEC through mandatory environmental license requirements. The Chuckwalla ACEC designation and, in particular, the above highlighted management actions are in fundamental conflict with the Federal Power Act purposes for this withdrawn land and FERC-licensed Project. The Chuckwalla ACEC must give way where it conflicts with the Project. FLPMA Section 1701; 43 C.F.R. § 1610.5-3; BLM Land Use Planning Handbook, H-1601-1 at 19 (“Plans will recognize valid existing rights”) and App. C. at 28 (ACEC values are “subject to valid existing rights”).

The Chuckwalla ACEC is Heavily Disturbed in the Project Area and Does Not Meet ACEC Criteria

Eagle Crest questions the suitability of the entire Chuckwalla ACEC to be designated for “special management” as an ACEC, particularly the area with which we are most familiar, the lands adjacent to the Project. *See* Figures 5 and 6. As we discuss below, this portion of the proposed Chuckwalla ACEC does not meet the FLPMA criteria for an ACEC.

The planning section of FLPMA directs the Secretary to “give priority to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c). The key concept behind an ACEC is the requirement for “special management,” different than the general FLPMA “multiple use and sustained yield” land management. 43 U.S.C. § 1712. By regulation, BLM has defined ACECs as “areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic

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values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.” 43 C.F.R. § 1601.0-5. Regulations further require that for an area to be considered for designation as an ACEC, it must meet two criteria:

- 1) *relevance* – “significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or a natural hazard”; and
- 2) *importance* – “The . . . value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. . .” 43 C.F.R. § 1610.7-2.²⁰

The BLM ACEC Manual 1613 explains in detail that the value or resource “must have substantial significance and values in order to satisfy the ‘importance’ criteria.” This generally means the value or resource is characterized by one or more of the following:

- 1) “more than locally significant qualities . . . ;”
- 2) “has qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change;”
- 3) “recognized as warranting protection in order to satisfy national priority concerns or to carry out the mandates of FLPMA;”
- 4) “qualities that warrant highlighting in order to satisfy public or management concerns about safety and public welfare;”
- 5) “poses a significant threat to human life or safety or to property.”

BLM, ACEC Manual, 1613.1.11. B. 1 through 5. The BLM also directs that, “To be designated as an ACEC, an area must require special management attention to protect the important and relevant values . . . ‘special management attention’ refers to management prescriptions [in an RMP] to protect the important and relevant values of an area from the potential effects of actions permitted by the RMP . . . These are management measures which would not be necessary and prescribed if the critical and important features were not present.” *Id.* 1613.12.²¹

As discussed above, the existing land disturbance in the Chuckwalla ACEC far exceeds the 0.1% disturbance cap for this portion of the ACEC. *See* Figures 4, 5 and 6. Just within the Project area alone, there is the Eagle Mountain railroad that serviced the Eagle Mountain mine, the Colorado River Aqueduct and the Eagle Mountain pumping plant, Kaiser Road, Eagle Mountain Road and several more unnamed roads, numerous power transmission lines, including the recently constructed gen-tie line for the Desert Sunlight Solar Project and the Southern California Edison line adjacent to the Eagle Mountain Pumped Storage Project gen-tie line. As mentioned above, even the recently built Red Bluff substation is located in the Chuckwalla ACEC. Moreover, the proposed Chuckwalla ACEC includes areas that are designated by the CDCA as utility corridors and by the Energy Policy Act of 2005 Section 368 West-wide

²⁰ *See also* BLM, ACEC Manual 1613 (1988).

²¹ 45 *Fed. Reg.* 57,318, 57,323 (August 27, 1980) (“[a]ctions or other measures considered necessary or appropriate to protect, enhance, or restore an important environmental resource within an ACEC.”).



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Corridor planning process. These include the designated transmission corridors in the Chuckwalla Valley and along the I-10 corridor. *See* Figure 3.

Finally, the entire Chuckwalla area was part of the World War II-era Desert Training Center, California Arizona Maneuver Area. The headquarters of the Desert Training Center, Camp Young, was the world's largest Army post at that time. The divisional camps in this area were massive tent cities, measuring up to three miles long and a mile wide and housed up to 15,000 soldiers at a time. Camps were laid out in grids, streets were bulldozed and rows of tents set up on either side of assembly areas.²² Ground disturbance from these military camps, tank training exercises and other activities are still visible on the ground today. We suspect the road grid visible on the aerial photo east of the central Project area (*see* Figure 5), as well as other scars in the area, date to the Desert Training Center era. Each of these existing uses and land disturbances must be considered by BLM when assessing the suitability of an area for "special management" as an ACEC.

The BLM ACEC Manual directs a "close" review of an ACEC boundary. "This review examines surrounding or adjacent public lands and considers likely management requirements and their feasibility. Appropriate adjustments are identified." ACEC Manual 1613.22.A.5. BLM's ACEC guidance also directs BLM to consider the relationship of the proposed ACEC to existing rights and answer the question of how "existing rights affect management of the resource or hazard?" *Id.* 1613.22.A.8. We encourage BLM to use this ACEC comment period to reconsider the appropriateness of this area for inclusion in the Chuckwalla ACEC. A heavily disturbed area, with a significant portion of the proposed area included in BLM-designated utility corridors and another portion withdrawn for use by FERC for the construction of a gen-tie and water pipeline for the FERC-licensed Eagle Crest Project is simply not suitable for an ACEC designation. These "existing rights" will "affect management" of the Chuckwalla ACEC resources and are not "compatible."

BLM must review the appropriateness of the proposed Chuckwalla ACEC boundary in light of the above-described existing uses and the proposed use for the Eagle Crest FERC-licensed Project. We encourage BLM to redraw the Chuckwalla ACEC to avoid conflicting uses by excluding the CDCA and Section 368 utility corridors and the Project lands described in the pending BLM ROW SF-299 application. *See supra* note 9.

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²² BLM, Desert Training Center, Discover the Desert, <http://www.blm.gov/ca/st/en/fo/cdd/DiscovertheDesert/areas/deserttraining.html>.

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May 9, 2016
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Sincerely,

WELBORN SULLIVAN MECK & TOOLEY, P.C.



Rebecca W. Watson
On behalf of Eagle Crest Energy Company

RWW:tj
Attachments

cc: J. Perez, BLM-CA State Director
K. Tanaka, DOI, Office of Regional Solicitor
G. Miller, BLM-CA Desert District, Project Manager

December 14, 2015

Via Federal Express and Email (Protest@blm.gov)

Neil Kornze, Director (210)
Bureau of Land Management
Attention: Protest Coordinator
20 M. Street SE, Room 2134 LM
Washington, D.C. 20003

**Re: EAGLE CREST ENERGY COMPANY PROTEST OF THE DESERT
RENEWABLE ENERGY CONSERVATION PLAN PROPOSED LAND
USE PLAN AMENDMENT AND FINAL ENVIRONMENTAL IMPACT
STATEMENT**

Dear Director Kornze:

This law firm represents Eagle Crest Energy Company (Eagle Crest) an energy company located at 3000 Ocean Park Boulevard, Suite 1020, Santa Monica, CA 90405, telephone (310) 450-9090, President, Steve Lowe. Eagle Crest participated in the Bureau of Land Management (BLM) Desert Renewable Energy Conservation Plan Land Use Plan Amendment and Final Environmental Impact Statement (DRECP) by filing written comments in Docket No. 09-RENEW EO-01, docketed TN # 74709, on February 20, 2015. *See* Attachment 1, Eagle Crest DRECP comments (**Att. 1**) and DRECP Appendix AA, Letter E59.

**Protest Issue: The DRECP Does Not Apply to the
Long-Standing Eagle Crest Project**

Eagle Crest is protesting any application of the DRECP land allocations to the Eagle Mountain Pumped Storage Hydroelectric Project (Project) licensed by the Federal Energy Regulatory Commission (FERC). The DRECP should be clarified in the Record of Decision (ROD) to state in text and map legends (DRECP II 3.3.3.5, App. L, Colorado Desert Subregion, Chuckwalla ACEC and maps beginning at 246) that the DRECP land allocations and conservation management actions do not apply to the Eagle Crest Project. As currently drafted, the DRECP is not clear on this point. Except for the Eagle Crest comment and BLM response to comment (App. AA, Letter E59 Response), the Eagle Crest Project is not discussed anywhere in the DRECP and the planning maps describing land allocations in the Project area do not depict or identify the land status of the Project lands as “withdrawn” and “encumbered” by operation of

the Federal Power Act (FPA). App. L, Chuckwalla ACEC maps beginning at 246. Application of the DRECP land allocations and conservation management actions to the Project would hinder the development of the FERC-licensed Project and violate the Federal Land Policy Management Act (FLPMA) and the BLM planning regulations that require coordination and consistency with the “purposes, policies and programs” of other federal agencies. The FERC, in response to an Eagle Crest application and pursuant to the FPA, 16 U.S.C. § 818, withdrew the subject federal land in 1991 from “entry, location, or other disposal.” On June 19, 2014, prior to issuance of the DRECP Draft EIS in September, 2014, and after a lengthy federal and state environmental review process in which BLM was a participant, FERC issued Eagle Crest a license to construct and operate the Project. By this protest, Eagle Crest seeks written clarification by BLM that the DRECP land allocations and conservation management actions were not intended to and do not apply to this FERC-licensed Project on federal lands withdrawn pursuant to the FPA prior to the commencement of the DRECP planning effort.

Summary of Factual Background

As described in more detail in the Eagle Crest comments (**Att. 1**, at 2-3), the Eagle Crest Project is designed to provide 1300 MW in hydroelectric storage to assist in the successful integration of intermittent renewable energy in California. The Project is located on disturbed land including the former Eagle Mountain iron ore mine. The FERC permitting process for the Project began in 1991 when Eagle Crest filed an application and was granted a preliminary permit by FERC. Pursuant to section 24 of the FPA, the filing of an application for a project on federal land results in an automatic withdrawal of the federal land from “entry, location, or other disposal under the laws of the United States until otherwise directed by [FERC] or by Congress.” 16 U.S.C. § 818; 43 C.F.R. § 2320.1. On June 22, 2009, Eagle Crest filed the application with FERC that resulted in the issuance of the FERC Project license on June 19, 2014. The FERC National Environmental Policy Act (NEPA) process began on January 11, 2010, a Draft Environmental Impact Statement (EIS) was issued on December 23, 2010 and the Final EIS was published January 30, 2012. *Id.* at 3. BLM was an active participant in the FERC license NEPA process. The FERC license requires the Project to meet numerous federal and state laws to address the same environmental issues discussed in the DRECP including groundwater resources, desert tortoise and other sensitive plant and wildlife (**Att. 1** at 5-6). For example, the Project has a Biological Opinion from the U.S. Fish and Wildlife Service addressing conservation of the desert tortoise and underwent a Clean Water Act Section 401 certification review by the California State Water Control Board to address Project impacts to groundwater. *Id.* at 6. The BLM plays a continuing role in FERC’s implementation of the Project in multiple mitigation and monitoring license requirements.

Moreover, Eagle Crest filed an SF-299 with the BLM Palm Springs Field Office in 2009 and has been in continuous contact with the Field Office, California Desert District Office and California BLM State Office concerning this right-of-way application. On November 25, 2015, BLM published a “Notice of Intent” to commence the Project-specific planning and right-of-way

NEPA process. BLM, “Notice of Intent to Amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California,” 80 Federal Register 73815 (November 25, 2015). In at least three federal actions, the BLM recognized the Project FPA withdrawal as an “encumbrance.” BLM described the withdrawn lands as “excepted and reserved” to the United States for purposes of the FPA (1999 Kaiser exchange), in 2012 BLM resolved a conflict with the FPA purposes for the land from two solar projects, Desert Sunlight and Desert Harvest, and in a 2014 Kaiser exchange-related NEPA process, the Project was described in text and maps as an existing “encumbrance” on the land. **Att. 1** at 4.

Discussion

Despite the BLM’s *direct* knowledge of the Eagle Crest Project over the last five years, the DRECP does not discuss or describe the Project in either the text or maps. BLM should address the Project in the ROD and make clear that the DRECP land use allocations and conservation management actions do not apply to this previously analyzed and permitted FPA Project.

BLM Failed to Coordinate and be Consistent with FERC’s FPA Project Withdrawal and License in Violation of FLPMA

A decision to apply DRECP land allocations and conservation management actions to a Project which has already completed a multi-year NEPA process and obtained a permit from another action agency violates BLM’s FLPMA planning obligations to coordinate land use planning with other federal agency programs. Moreover, it is inconsistent with BLM’s decision in the DRECP to exclude certain “existing applications” that are advanced in their permitting process from application of the DRECP.

In its response to the Eagle Crest DRECP comments, BLM has acknowledged that “lands within a Federal Power Act (FPA) withdrawal are partially under FERC’s jurisdiction” and “that a Federal Power Act (FPA) withdrawal precludes BLM from conveying the public land without a determination by FERC that the value of the lands withdrawn for power purposes would not be injured for such purposes by the conveyance, as provided in section 24 of the FPA.” BLM, App. AA, Response to Comment Letter E59, at E59-11, response E59-2 and E59-13 (October 2015). BLM references the 1992 amendment to FLPMA which made clear that BLM retains authority to grant rights-of-way in an FPA withdrawal “as long as they are consistent with the purpose(s) of the withdrawal.” *Id.*; 43 USC 1761(d). Although it is not clear in BLM’s response to comments, BLM seems to imply that it can use its land use planning authority *ex post facto* to make land allocations that can injure the value of the lands withdrawn for power purposes. BLM, App. AA, Response to Comment Letter E59, at E59-11, response E59-2 and E59-13. BLM’s

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legal position is not supported by FLPMA or the FPA and is inconsistent with the authorities that BLM cites in its response to the Eagle Crest comments.

**1996 Interior and Federal Power Commission Memorandum of Understanding
Directs Coordinated Actions Between the Agencies**

BLM references a 1966 Memorandum of Understanding (MOU) between the Department of the Interior and FERC's predecessor, the Federal Power Commission. The purpose of the MOU is to establish joint agency procedures for processing applications involving public lands which have been withdrawn by the FPA, § 24. The document describes shared authority between the two agencies with defined roles. The MOU "whereas" clauses make clear that FERC "has jurisdiction over the *power values* in the public lands which are classified, withdrawn, or reserved for power purposes by virtue of Section 24, of the Federal Power Act" and that "the Bureau of Land Management (BLM) has certain management jurisdiction of the surface and subsurface resources, *but not including the power values* therein . . ." Emphasis added. The agencies agreed that "the public interest will be served if these responsibilities are coordinated and efficiently executed." MOU at 1.

The MOU then addresses various BLM land authorizations that do or do not require notification and a "no injury" finding by FERC. *Inter alia*, BLM land use planning is not discussed. As to any authorizations on FPA withdrawn lands, BLM agreed to add a "powersite stipulation" to any lease or permit if any of the land was "on the date the lease or permit application or offer was filed" within a "powersite classification, reservation, or project on which an application for a license or preliminary permit is pending before the [FERC] or on which an effective license or preliminary permit had been issued. . ." The BLM powersite stipulation provides that "the United States, its permittees or licensees shall have the prior right to use such land for purposes of power development so applied for . . . and the operations shall be so conducted as to not interfere with the administration and use of the land for powersite purposes. . ." MOU, Appendix 3, Powersite Stipulation. In sum, BLM and FERC agreed to coordinate and cooperate so that their agency missions would not be in conflict. BLM was careful to condition any land authorizations with language that protected the "prior right to use such land for purposes of power development. . ." *Id.* The MOU does not discuss or recognize any BLM authority to do by planning what BLM has agreed not to do in land authorizations – interfere with the "use of the land for powersite purposes. . ." This is particularly the case where, like here, an FPA withdrawal has been in effect since 1991, a NEPA process for the Project has been concluded since 2012 and a Project license issued by FERC eighteen months before the DRECP LUPA/FEIS.

**1992 Energy Policy Act Amendments to FLPMA do not Authorize
BLM to Impose New Land Allocations on a
Previously Withdrawn and FERC Licensed Project**

BLM also cites in support of its response to Eagle Crest's comments the Energy Policy Act of 1992 amendment to FLPMA and the provision's legislative history. BLM, App. AA, Response to Comment Letter E59, at E59-11, response E59-2. Energy Policy Act of 1992, Pub. L. No. 102-486, tit. XXIV, § 2401, 106 Stat. 3096-97, *codified* 43 U.S.C. § 1761(d). The purpose of the FLPMA amendment was to clear up confusion resulting from a court decision over the roles of the land manager and FERC in permitting hydroelectric rights-of-way on federal land. The FLPMA amendment made clear that BLM could exercise shared authority under FLPMA Title V for rights-of-way on FPA withdrawn land. There is nothing in the FLPMA amendment or legislative history that indicates BLM can make land use planning decisions that would be inconsistent with the power purposes for the land *after* an FPA withdrawal and license issuance.

Indeed, the FLPMA amendment was a hard-fought legislative issue that began with a 1988 proposal that included several statutory sub-parts that would have required BLM to make a specific finding that the FPA use of the federal lands would "be consistent with applicable management plans" and "would not interfere with or be inconsistent with their protection" and would not result in "substantial degradation of natural or cultural resources, scenic or recreational values . . ." The draft language would have created a special public participation process and further defined the respective roles of the agencies in "analyzing the environmental effects" of proposed electrical facilities on federal lands. None of these requirements was included in the 1992 amendment. *Compare* 43 U.S.C. § 1761(d) to H.R. Rept. No. 102-744, pt. VLLL at 98 reprinted in 1992 U.S.C.C.A.N. at 2316; Conference Report H.R. 776, 138 Cong. Reg. H 11427-01, (October 5, 1992). Moreover, the Department of the Interior Solicitor distinguished this more narrow FLPMA authority with the agency's "conditioning" authority in FPA § 4(e). 16 U.S.C. § 797(e). "While this statute [FLPMA] reflects a congressional concern that BLM . . . has authority to protect the resources under its management from adverse effects from federally licensed hydropower projects, this authority over rights-of-way does not duplicate BLM's authority under Section 4(e) of the FPA . . . to protect reservations with mandatory conditions." U.S. Department of the Interior, Office of the Solicitor, M-37005, (January 19, 2001). There is no language in the 1992 amendment that addresses BLM's planning authority on FPA withdrawn lands and nothing that supports an *ex post facto* imposition of new planning requirements on a previously licensed project.

**FLPMA Coordination and Consistency Regulations Required BLM to
Consider the Project FERC Withdrawal and License and
Avoid Inconsistencies in the DRECP**

Indeed, FLPMA section 202(c)(9) mandates that BLM shall "coordinate" its land use planning with the planning and management programs of other federal departments and

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agencies. 43 U.S.C. § 1712(c)(9). BLM's planning regulations amplify this mandate by requiring "coordination" and "consistency" not only with agency resource plans but also other governmental programs and policies. 43 C.F.R. § 1610.3-1 and -2.

The coordination rule directs BLM to "keep apprised" and "consider[]" non-BLM plans "that are germane" in the development of BLM plans. BLM is directed to resolve "inconsistencies" and "collaborate" by inviting other federal agencies to participate as a "cooperating agency." 43 C.F.R. § 1610.3-1(a)(1, 2, 3 and 5) and (b). BLM is also required to provide other federal agencies with the "opportunity for review, advice and suggestion on issues and topics which may affect or influence other agency or other governmental programs." *Id.* at (c). The consistency regulation requires that BLM plans "shall be consistent with" officially approved and adopted "resource related policies and programs of other federal agencies." 43 C.F.R. § 1610.3-2(b).

Certainly, FERC's withdrawal and license for a hydroelectric pumped storage project is a resource related policy and program that BLM is required to consider in the DRECP. The FPA authorizes FERC to issue a license when it determines the applicant has a proposal best adapted to serve the public interest. 16 U.S.C. § 808(a)(2). The Act requires that FERC consider several enumerated factors in reaching that determination. *Id.* (a)(2)(A)-(G). In the Eagle Crest license, FERC addressed the public interest requirement by, *inter alia*, recognizing a hydroelectric project's "unique operational benefits to the electric utility system . . . including "stabiliz[ing] the variable output of nearby existing and proposed wind and solar projects." Eagle Crest Energy Company, "Order Issuing Original License" (June 19, 2014) at ¶ 167; see also ¶¶ 168-171. It is hard to think of another policy or program more closely related to the focus of BLM's DRECP and BLM's failure to follow its own "coordination" and "consistency" regulations violates FLPMA.

Here, there is no evidence of any coordination with FERC and the BLM's DRECP appears inconsistent with FERC's licensing decision for the Project. BLM does not identify FERC as a cooperating agency or as an agency with whom it consulted. DRECP at V-1, V-9 to V-15; DRECP App. A referencing Draft DRECP App. A. Although BLM is apparently aware of the FPA withdrawal authority (DRECP at 1.2-16), neither the Project nor the FPA withdrawal is mentioned anywhere in the DRECP. This failure to consider the Project in the DRECP is inexplicable when one considers that BLM has participated in the FERC NEPA process since 2010 and has had the Project SF-299 pending since 2009.

The lack of BLM consideration of the FERC withdrawal and Project license is evidenced in the proposed DRECP decisions. BLM has proposed the Chuckwalla Area of Critical Environmental Concern (ACEC) (DRECP App. L, Colorado Desert Subregion) directly in the path of the Project transmission line and water pipeline (**Att. 2**). FERC and the U.S. Fish and Wildlife Service carefully considered a variety of alternative routes from the Red Bluff substation to the Project and selected the route with the least environmental impact. As

illustrated by **Att. 2**, there is no route from the substation to the Project that would avoid the Chuckwalla ACEC. Although the Chuckwalla ACEC provides for transmission line permitting it puts in place a 0.1% disturbance cap for BLM authorizations in the ACEC. Chuckwalla ACEC, App. L at 239, 246-247. It is unknown if existing projects in the Chuckwalla ACEC, including an existing CDCA utility corridor and transmission lines to area solar projects, have already met or exceeded the approximate 500 acre disturbance cap for the Chuckwalla ACEC. The ACEC also does not clearly include utility lines like the licensed Project water pipeline as a permissible use in the utility corridor. "Within the designated utility corridor, the area is open for a transmission ROW only (i.e. the integrity of the BLM utility corridor will be maintained)." *Id.* at 245. The DRECP ACEC disturbance cap and limitation on use of the utility corridor would be inconsistent with the FERC license.

Moreover, the Chuckwalla ACEC states the DRECP will "[a]llow no activities that would create a water basin deficit/decline." Chuckwalla ACEC, App. L at 240. The FERC license, supported by the California State Water Control Board review process, has authorized the Project for a temporary drawdown and a recharge of the basin over a period of years. Eagle Crest Energy Company, "Order Issuing Original License" (June 19, 2014) at Article 403. The DRECP provision appears inconsistent with those decisions. The DRECP would also impose a National Landscape Conservation System (NLCS) area adjacent to and including a portion of the transmission line. **Att. 3**. Our analysis indicates that the land where the Project transmission line crosses the NLCS is private land possibly owned by the Metropolitan Water District. BLM should clarify that the NLCS does not include this fee land or the Project transmission line.

Finally, the DRECP would impose a series of "conservation management actions" (CMAs) described in the Preferred Alternative. DRECP Vol. II. There are a number of groundwater CMAs (DRECP at II.3-207 to II.3-214) and biological measures (DRECP at II.3-161 to II.3-189) that duplicate or conflict with FERC license requirements which address groundwater, biological and other resource issues in detail in a series of mandatory requirements. The Project license requirements include a "site investigation plan," "groundwater level monitoring plan," "groundwater quality monitoring plan," "aquifer testing and seepage management," species-by-species surveys, mitigation and monitoring measures and requirements for other resources including air and cultural resources. As part of the FERC licensing process, the U.S. Fish and Wildlife Service has prepared a biological opinion for the desert tortoise. Resource reports to FERC *after* pre-review and comments by BLM, National Park Service and the U.S. Fish and Wildlife Service are required annually in the license. Eagle Crest Energy Company, "Order Issuing Original License" (June 19, 2014) at Articles 401-425. The FERC Project license appropriately provides for coordination and consultation with BLM; BLM should comply with the 1966 MOU and FLPMA "coordination" and "consistency" requirements by recognizing that the Project withdrawal preceded the DRECP process and BLM should not apply DRECP land allocations and CMAs to the Project after the fact.

BLM Should Exercise its Planning Discretion in the Case of the Project and Provide in the ROD that the Project will not be Subject to the DRECP

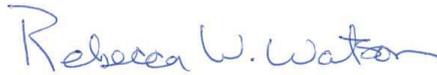
There is precedent in the DRECP for recognition that the DRECP will not apply to certain “existing applications” on BLM-administered lands. DRECP II.3.3.3.5. This provision focuses on wind and solar rights-of-way and, for the reasons cited above, did not consider FPA withdrawals and rights-of-way. Eagle Crest believes the status of the Project NEPA and licensing is analogous to those wind and solar projects that “will not be subject to the land use decisions of the DRECP” because those listed projects were so far along in their own NEPA process (DEIS by November 26, 2014) it is not appropriate to apply the DRECP allocations. Here, FERC has conducted a multi-year NEPA process in coordination with other state and federal agencies including a Draft EIS in 2010, the Final EIS in 2012 culminating in the issuance of the license in June 2014. Each of these actions was completed prior to the DRECP “cut-off” date of November 2014. The fact that the BLM NEPA process has just commenced scoping should not be determinative since that NEPA process will rely on the completed FERC NEPA process. The BLM scoping notice for the Project BLM right-of-way and a CDCA Plan Amendment states “[t]he environmental assessment *will tier to the 2014 [FEIS] prepared by [FERC] for the Eagle Crest Pump Storage Facility.*” Emphasis added. BLM CA-CDD News Release, “BLM Initiates Environmental Review of the Eagle Crest Pumped Storage Project in Riverside County, California,” (December 2, 2015). The Project is too far along to apply a new suite of planning requirements at the 11th hour. BLM should exercise its planning discretion (DRECP at II.3-126 citing BLM Land Use Planning Handbook) to exclude the Project from application of the DRECP.

Conclusion

BLM should specifically address the Project in the ROD and make clear that the DRECP land use allocations and conservation management actions do not apply to this previously analyzed and permitted FPA Project. To do otherwise violates the FLPMA planning provisions and the architecture of the shared right-of-way responsibilities under FPA and FLPMA.

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Sincerely,

A handwritten signature in blue ink that reads "Rebecca W. Watson". The signature is written in a cursive style with a large initial "R".

Rebecca W. Watson,
for Eagle Crest Energy Company

RWW/

cc: Neil Kornze, Director BLM
Linda Lance, Deputy Director BLM
Jim Lyons, Deputy Assistant Secretary, ASLM
Mike Connor, Deputy Secretary, Interior
Joe Stout, BLM California State Office
Teri Raml, BLM California Desert District Office
Greg Miller, BLM California Desert District Office

February 20, 2015

California Energy Commission
Docketing Office MS-4
1516 Ninth Street
Sacramento, CA 95814

Via email: docket@energy.ca.gov

Re: **Docket No. 09-RENEW EO-01**, Comments of **Eagle Crest Energy Company** on Draft
Desert Renewable Energy Conservation Plan

Dear Docketing Official:

This firm represents Eagle Crest Energy Company (“Eagle Crest”), an energy company headquartered in Santa Monica, California. On June 19, 2014, Eagle Crest was granted a license by the Federal Energy Regulatory Commission (“FERC”) to construct, operate and maintain the Eagle Mountain Pumped Storage Hydroelectric Project (“Eagle Crest Project” or “Project”) on certain fee and public lands in the area of the Desert Renewable Energy Conservation (“DRECP”) planning area for Riverside, County.¹ The Eagle Crest Project is a 1300MW closed-loop pumped storage project located on the site of the Eagle Mountain Mine, near the town of Desert Center, Riverside County, CA. We are filing this comment to make you aware that aspects of the DRECP proposed landuse allocations are in direct conflict with the FERC-issued license for the Eagle Crest Project and exceed the limited landuse planning authority that the Bureau of Land Management has over lands withdrawn for Federal Power Act purposes. 16 U.S.C. § 818. Those proposed landuse allocations should not go forward in the DRECP Record of Decision.

As we understand the DRECP it “would create a framework to streamline renewable energy permitting by planning for the long-term conservation of threatened and sensitive species and other resources on more than 22 million acres The Draft DRECP is a landscape-scale plan that uses science to inform the siting of renewable energy development projects and the conservation of species” DRECP, Executive Summary at 6. There are three planning components: a BLM Land Use Plan Amendment (“LUPA”); General Conservation Plan (“GCP”) for incidental take permits from California and the U.S. Fish and Wildlife Service (“FWS”); and a Conceptual Plan-wide Natural Community Conservation Plan (“NCCP”) that addresses wildlife and plant protections in the context of renewable energy and transmission projects across the entire area by the California Department of Fish and Wildlife (“CDFW”). DRECP, Executive Summary at 9.

¹ *Eagle Crest Energy Company*, 147 FERC ¶ 61,220 (June 19, 2014). <http://www.ferc.gov/whats-new/comm-meet/2014/061914/H-7.pdf>

In our review of this complex planning document, it appears that there are several proposed landuse designations that would conflict with the Eagle Crest Project. *See* Exhibit A., Map. Exhibit A. illustrates the location of the Eagle Crest Project and the rights-of-way for the water and transmission lines approved in the FERC license and long-pending before the BLM, Palm Springs Field Office and California Desert District Office. *See infra*. It appears that BLM intends in the DRECP Preferred Alternative to designate portions of the Project rights-of-way as Areas of Critical Environmental Concern (“ACECs”) and National Landscape Conservation Areas. Each of those designations provides for heightened protections of federal land and limit uses on lands so designated. In addition, *central* areas of the Eagle Crest Project are proposed for inclusion in DRECP Conservation Planning Areas.² These proposed landuse allocations conflict with the FERC-licensed Eagle Crest Project and exceed BLM’s legal authority and they should not be included in the Record of Decision.

Eagle Crest submits these comments to underscore that this Project is a separately permitted and authorized activity on lands that are withdrawn from federal land management and “reserved” for Federal Power Act purposes. Thus, BLM does not have the management authority to make decisions in the LUPA (*See e.g.* at DRECP, Executive Summary at 11) that would interfere with the Federal Power Act purposes of the Project. Moreover, the Project-specific federal and State permitting and environmental review processes have been thorough. In addition to the FERC-issued license, Final Environmental Impact Statement (“FEIS”), pursuant to the National Environmental Policy Act (“NEPA”), and associated FWS Biological Opinion and National Historic Preservation Act Section 106 consultation for the FERC action, the State of California has issued all necessary permits for the Project, including undertaking a Clean Water Act Section 401 certification process,³ a California Environmental Quality Act (“CEQA”) environmental information report (“EIR”) and the Bureau of Land Management, California Desert District and the Palm Springs South Coast Field Office (“BLM”) are in the process of reviewing two, discrete linear right-of-way requests that support the Project. In sum, the Federal Power Act has withdrawn this land from BLM management, FERC has issued the license to operate the pumped storage Project and federal and state agencies have analyzed and mitigated the environmental impacts of the Project pursuant to their authorities under State and federal law.

BACKGROUND

Eagle Crest Project

The Eagle Crest Project will provide California with 1300 MW in hydroelectric storage capacity enabling a critical component for the successful integration of intermittent renewable energy, in particular, the wind and solar resources that are a focus of the DRECP. By storing and then using surplus power that is generated at night, the Project will help with the integration of wind and solar resources. This will assist California in meeting two important goals – the 33% renewable energy portfolio standard by 2020 (and the 50% benchmark by 2030) and the AB

² The Exhibit A. Map also includes certain lands denoted in white that underlie the Project transmission and water lines. The color designation white is not included in the Map key. We are unclear what this designation might indicate, but again BLM lacks the authority to provide for landuse allocations that conflict with Federal Power Act purposes.

³ *Id.*

2514 directive to add 1.3 GW of storage by 2020. The Project's previously disturbed iron ore mine site with two existing reservoir sites at appropriate elevations presents a unique opportunity to create significant new storage capacity with minimal additional surface disturbance.

The Eagle Crest Project is licensed for a total of 2,527 acres of which 1827.9 acres are owned by Kaiser Eagle Mountain LLC and Mine Reclamation Corporation (*collectively* "Kaiser") and 699.2 acres are federal land managed by BLM. The Eagle Crest Project overlaps approximately 449 acres that were exchanged by BLM out of federal management to Kaiser in fee in 1999, but as a result of a legal challenge and the 2014 settlement of the litigation these lands are now back in federal management.⁴ The lands to be used for the Eagle Crest Project were at all times withdrawn by FERC pursuant to the Federal Power Act ("FPA") from BLM's federal land management authority and were "excepted" from the 1999 BLM/Kaiser land exchange. Two linear rights-of-way that support the Project will cross lands managed by the BLM. Eagle Crest filed an SF-299 application with BLM for a Federal Land Policy Management Act ("FLPMA") Title V right-of-way which has been pending during the entire DRECP process. 43 U.S.C. § 1706 *et seq.* See CACA 50946. With the June, 2014 issuance of the Project FERC license, BLM has begun its review of the Eagle Crest right-of-way application.⁵

Federal Power Act Withdrawal for Eagle Crest Project

The FERC permitting process for the Eagle Crest Project began when Eagle Crest filed an application for, and was granted, a preliminary permit for the Project in 1991. Pursuant to the provisions of Section 24 of the FPA⁶, the federal land, managed by BLM, was "withdrawn" for power project development.⁷ The FPA withdrawal provision provides that the federal lands included in an application are "from the date of filing of application . . . reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by [FERC] or by Congress."⁸ An application for a license under Section 24 of the FPA results in automatic withdrawal of the land from any use other than allowed under the FPA.⁹

BLM has repeatedly recognized the constraints of the FPA Project withdrawal on its management authority, so it is puzzling that the DRECP does not similarly recognize those limitations. As noted above, a portion of the federal lands subject to the Eagle Crest Project

⁴ *Charpied v. U.S. Department of the Interior* (Civ. No. ED. CV. 99-0454 RT) and *National Parks Conservation Association v. Bureau of Land Management* (Civ. No. ED. CV. 00-0041 RT), "Final Judgment and Order of Dismissal" (December 18, 2014).

⁵ See letter, J. Kalish, Manager, BLM Palm Springs FO to S. Lowe, Eagle Crest Energy Company (December 9, 2013) ("The BLM proposes to conduct the NEPA analysis for the proposed transmission line and water pipeline with an Environmental Assessment . . . [t]he National Historic Preservation Act Section 106 process is underway . . . similarly, the BLM will continue to consult with the U.S. Fish and Wildlife Service as required . . . The BLM will begin processing the application for a right-of-way for the transmission line and water pipeline when [Eagle Crest] is issued the FERC license.")

⁶ 16 U.S.C. § 818.

⁷ Over the years that followed this initial submission in 1991, Eagle Crest Energy has filed and FERC has granted a total of four preliminary permits. Through the various filings and FERC approvals, the Eagle Crest Project FERC withdrawals have remained in effect during the Project licensing process that culminated with the ECE 2009 Application and FERC's issuance of the license in June, 2014. See *supra* at n. 1.

⁸ 16 U.S.C. § 818.

⁹ 43 C.F.R. § 2320.1.

FERC withdrawal overlapped a portion of the BLM/ Kaiser 1999 exchange property. The FERC withdrawal blocked the BLM from taking any further action affecting this overlapping property. At BLM's request, on June 7, 1996, FERC made a "no injury determination" that it's FPA withdrawal would not be injured or destroyed for the purposes of power development if the lands were conveyed to Kaiser pursuant to the proposed Eagle Mountain Land Exchange.¹⁰ In the federal land patent granted by the United States to Kaiser as part of the 1999 Eagle Mountain land exchange, and filed in the Riverside County land records, the BLM "Excepted and Reserved" to the United States:

"As to those lands which lie within the boundary of the license application filed by Eagle Crest Energy Company with the Federal Energy Regulatory Commission on April 29, 1994, for Power Project No. 11080, . . . the right to itself, its permittees or its licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Federal Energy Regulatory Commission, for the purposes of Part 1 of the Federal Power Act"

In 2012, BLM identified a conflict with the FPA purposes for the Project in two of the solar projects under consideration by BLM in the same general area. Eagle Crest, FERC and BLM worked on a "no injury" determination for the Desert Sunlight, CACA 48649, and Desert Harvest, CACA 49491, solar projects. More recently, in August 2014, BLM initiated a "Supplemental Environmental Impact Statement" to address direction from the court in the above-described BLM/Kaiser land exchange litigation. 79 *Fed. Reg.* 47,668 (August 14 2014). In that proposed action, now since discontinued due to the settlement referenced above (*see* n. 4), BLM recognized and discussed the Eagle Crest Project as an existing encumbrance on the land.¹¹

FERC Licensing and Environmental Review of Eagle Crest Project

On June 22, 2009, Eagle Crest filed the application that resulted in the issuance of the FERC license for the Eagle Mountain Pumped Storage Hydroelectric Project. On January 11, 2010, FERC issued a public notice to commence its environmental review and licensing process for the Project. BLM has been a participant in the FERC NEPA process. A draft environmental impact statement ("DEIS") was issued by FERC on December 23, 2010. Public meetings in California were held and public comments accepted through February 28, 2011. On January 30, 2012, FERC issued the FEIS. The U.S. Department of the Interior on behalf of the National Park Service ("NPS") and BLM filed comments on the FEIS. On May 8, 2013, FERC staff met with BLM to address the Bureau's comments "and issues associated with land withdrawals under section 24 of the FPA." *See* License, n.1, at ¶8. On June 19, 2014, FERC approved the issuance

¹⁰ *See* letter from J. M. Robinson, Director of FERC Division of Project Compliance and Administration, to E. Hastey, State Director of BLM California State Office (June 7, 1996) ("the power value of any United States lands within the boundary of Project No. 11080, . . . will not be injured or destroyed for the purposes of power development by their conveyance to Kaiser Eagle Mountain, Inc., subject to the provisions of Section 24 of the Federal Power Act.")

¹¹ *See*, BLM Eagle Mountain Land Exchange webpage, http://www.blm.gov/ca/st/en/fo/palmsprings/Eagle_Mountain-Land_Exchange.html. "BLM Kaiser Land Exchange, Preliminary Scoping Information," map at p. 7 ("443 acres were encumbered by the power site withdrawal in sections 25 and 31 . . .") and "BLM Background Information Documents," Document 13 (maps of Eagle Crest Project).

of an original license to Eagle Crest to construct the Eagle Crest Project. *Id.* Requests for rehearing were filed by the U.S. Department of the Interior on behalf of NPS, Kaiser and the Desert Protection Society and are under consideration by FERC. *See* FERC, *Eagle Crest Energy*, “Order Granting Rehearing for Further Consideration” (August 20, 2014).

EAGLE CREST COMMENTS ON DRECP

BLM’s Proposed LUPA Decisions

BLM’s LUPA would amend the California Desert Conservation Plan to create Development Focus Areas (“DFAs”) for renewable energy and transmission, conservation designations, Special Recreation Management Areas and make other landuse allocations. DRECP, Executive Summary at 11. The four DRECP “action alternatives” (exclusive of the “no action alternative” that continues current management) largely differ on the configuration of DFAs and the balance between avoidance and mitigation. *Id.* at 39. The Preferred Alternative recommends the creation of a DFA in the general area of the Project, but inexplicably includes the Project rights-of-way in proposed ACECs and National Landscape Conservation Areas and portions of the central Project in a Conservation Planning Area. *See*, Exhibit A. As explained above, no matter which LUPA alternative is selected by BLM it will not change the operation of the FPA which withdrew the federal land from BLM’s management for the purposes of the Eagle Crest Project. BLM’s patent to Kaiser in the land exchange recognized this and “excepted and reserved” the lands described in the Eagle Crest Project application for purposes of the FPA. BLM lacks FLPMA management authority over these withdrawal lands and cannot create landuse allocations that conflict with the FERC-authorized Project. The balance of the Project site is located on fee land owned by Kaiser as noted above. Eagle Crest has been issued a license by FERC to proceed with construction. No action BLM takes in the DRECP can change that independent authorization.

Project Environmental Review

One of the stated goals of the DRECP is to expedite the permitting of renewable energy projects by “zoning” the projects into DFAs and adding certainty to the mitigation process through the conservation elements of the DRECP, the GCP and NCCP. In the case of the Eagle Crest Project, it is sited on a previously disturbed iron ore mine and industrial site. The use of previously disturbed areas to site renewable energy projects is strongly encouraged by federal and state governments. Their suitability as a site for a “Conservation Planning Area” is not obvious. Moreover, the federal and state environmental review processes for the FERC license process have been thorough in addressing many of the same issues that the DRECP considers. As noted *supra* the Project was reviewed by FERC in a NEPA process including the preparation of a Draft and Final EIS. Eagle Crest was required by FERC to comply with the following laws designed and implemented by other federal and State agencies to protect numerous resources: the Fish and Wildlife Coordination Act (FWS); Section 18 of FPA (FWS fishway prescriptions); Section 4(c) of FPA (BLM land management conditions); Section 10(j) of FPA (CDFG); Clean Water Act Section 401 certification (CA State Water Board); CEQA EIR (State Water Board); Endangered Species Act Section 7 consultation (FWS); Coastal Zone Management Act consistency)(CA Coastal Commission); and National Historic Preservation Act (CA SHPO). In

addition, FERC regulations and the NEPA and CEQA processes required ongoing consultation with numerous state and federal agencies and several opportunities for public comment. License, n. 1, at 5-16.

Several environmental issues that are a focus of the DRECP were carefully considered in the environmental review of the Eagle Crest Project. For example, the FERC FEIS and license address in detail Project impacts to water resources, including the issues of groundwater levels and water budget considerations that are addressed in the DRECP. *See e.g.* License, n.1, Section 3.3.2, “Water Resources,” at 74-78 (groundwater levels); 79-82, 96-115 (groundwater pumping and recharge); and the FERC response to DEIS Comments, License, Appendix A at A-29 to A-69 (*see* A-38 on why the U.S.G.S. Colorado River Accounting Surface does not apply in the case of the Project’s groundwater use.) Similarly, the impacts of the Project on wildlife, particularly sensitive species and threatened and endangered species and the FWS Biological Opinion are addressed in detail. *See* License, Section 3.33, “Terrestrial Resources,” at 125-144; 152-171 (wildlife and sensitive species, including the Desert Bighorn Sheep); 171-189 (threatened and endangered species, including the Desert Tortoise); FERC response to DEIS Comments, License, Appendix A at A-72 to A-94. After these NEPA, CEQA and ESA analyses, FERC imposed a comprehensive series of required measures to mitigate identified environmental impacts. *See id.* Section 5.2, “Comprehensive Development and Recommended Alternative” at 310-334.

Public Comments about Project in DRECP Process

Advocates for the NPS have presented comments during the DRECP planning process and made comments to the media that the Project should not be allowed to be sited adjacent to the Joshua Tree National Park (“JTNP”), the Project lands should be “returned” to the JTNP and that the DRECP should not approve the Project.¹² These arguments misunderstand the law governing the Project and the DRECP planning process and ignore the history of these lands and the formation of the Park. Moreover, these statements ignore the stated intention of Eagle Crest to continue negotiations with the NPS to mitigate impacts to JTNP and to convey lands not necessary for Project purposes to NPS.

First, we emphasize that, absent an Act of Congress (16 U.S.C. § 818), the BLM DRECP ROD can’t alter the FPA authorization for Eagle Crest to use the subject lands - private and public - for the development of a power project. The BLM in the DRECP has recognized that in making its planning decision, the Bureau must “[c]omply with all applicable federal laws . . .” DRECP Executive Summary, at 11. In this instance, the BLM must ensure that its DRECP planning decisions comply with the FPA withdrawal of these lands for power act purposes. There is no authority in the DRECP process for BLM, FWS or any other participating state agency to “deny” the Project or to enforce landuse allocations that interfere with Project purposes. That decision was for FERC to make and it has issued the Project license in 2014 after careful review of environmental impacts including impacts to the JTNP recreation mission. *See*

¹² Comments of David Lamborn, National Parks Conservation Association (“NPCA”), DRECP Comment letter (January 20, 2013), D. Lamborn, NPCA, oral comments at California Energy Commission DRECP hearing (October 29, 2014); and D. Lamborn comments to local and national media concerning the Project and DRECP (*see e.g. E&E News* September 24, 2014).

e.g. License, n.1, at 189-191 and FERC response to DEIS Comments, License, Appendix A at A-107.

Second, as to the history of the Eagle Crest Project lands, BLM has recently recognized that the area was removed from JTNP (then a National Monument) in 1950 to further the national objective of mining and development of the steel industry.” 79 *Fed. Reg.* 47,668 at 47,670 (August 14, 2014). Many of the lands in the Eagle Mountain Mine site bear the impacts of a century of mining and industrialization. Although some in the public argue that the legislation creating the Joshua Tree National Monument requires that the entire Eagle Mountain Mine site revert to the government when its mining use ends, that is not a correct statement of the legislation. The only reversionary provision applicable to the Mine site is contained in Private Law 790 (1952) and applies *only* to the 465 acre town site and a 200 foot linear right-of-way for the Mine’s railroad. The reversionary interest in the town site was conveyed by BLM to Kaiser and Kaiser conveyed the railroad right-of-way to BLM in the Eagle Mountain land exchange. In 2014, as part of the settlement of litigation, Kaiser re-conveyed the town site to BLM, but BLM retained the lands Kaiser had provided in exchange.

Moreover, shortly before this 1952 Private Law was enacted, Congress reduced the size of the Joshua Tree Monument by one-third to permit mining and mineral exploration in the lands chiefly valuable for those purposes. Pub. Law 81-837, 64 Stat. 1033 (September 25, 1950). *See also* License, n.1, at 232-233. At that time, the U.S. Department of the Interior and NPS supported the removal of 265,000 acres, including the 29,000 acres in the Eagle Mountain Area, from the Monument. Those excluded 29,000 acres include the Mine and Eagle Crest Project lands. The U.S. Department of the Interior reasoned the land remaining in the Monument “will be sufficient for the proper care and management of the objects requiring protection . . .” and the Senate Committee on Public Lands noted “[b]ecause of mining and the presence of considerable privately owned land in this section of the monument, it is now considered impractical to preserve the once unique scenery and scientific features of the area proposed for elimination to the degree required for National Monument purposes.” Senate Committee on Public Lands Report No. 2236 (June 13, 1950). Indeed, contrary to assertions made by some who support the return of all Kaiser lands to JTNP, this Act contained a provision to *add* additional lands to the Monument-land removal list should the lands be found more valuable for mining. Public Law 81-837, Section 4 (directing a survey of lands *within* the new boundaries of the Monument to determine “to what extent the said area is more valuable for minerals than for the National Monument purposes for which it was created.”)

In the 1994 law creating and enlarging the JTNP, Congress added “contiguous federal lands of essential and superlative natural, ecological, archeological, paleontological, cultural, historical and wilderness values . . . of national park caliber . . .,” which additional lands *did not* include the Kaiser or Eagle Crest Project lands previously eliminated in 1950. California Desert Protection Act, Public Law 103-433, Title IV section 402, 108.Stat.4488, 16 U.S.C. § 410aaa (October 31, 1994 at Section 401 (3)-(5)).

Third, Eagle Crest has taken a number of steps to address the concerns of JTNP including: night sky minimization measures; groundwater analysis, monitoring wells and seepage management plans; desert tortoise protection plans; predator control plan; avian

protection plan; special status plants protection plan; invasive species monitoring and control plan; air and water quality measures; and the development of an historic and cultural properties management plan. Moreover, Eagle Crest has stated previously and reiterates here that the Company is willing to work with NPS to assist in their conservation goals for the JTNP and negotiate the conveyance of lands *outside* the footprint of the Eagle Crest Project¹³ to the JTNP. In addition, Eagle Crest continues to work with NPS on additional mitigation and conservation measures that would support the conservation and management goals of the JTNP for groundwater, wildlife, inholdings and public education.

CONCLUSION

Eagle Crest Energy appreciates this opportunity to comment on the DRECP to make clear the unique position of the Project in this planning process. The proposed DRECP landuse allocations that conflict with the FPA purposes for the FERC-licensed Eagle Crest Energy Project must not be carried forward in the Record of Decision for the DRECP.

Sincerely,



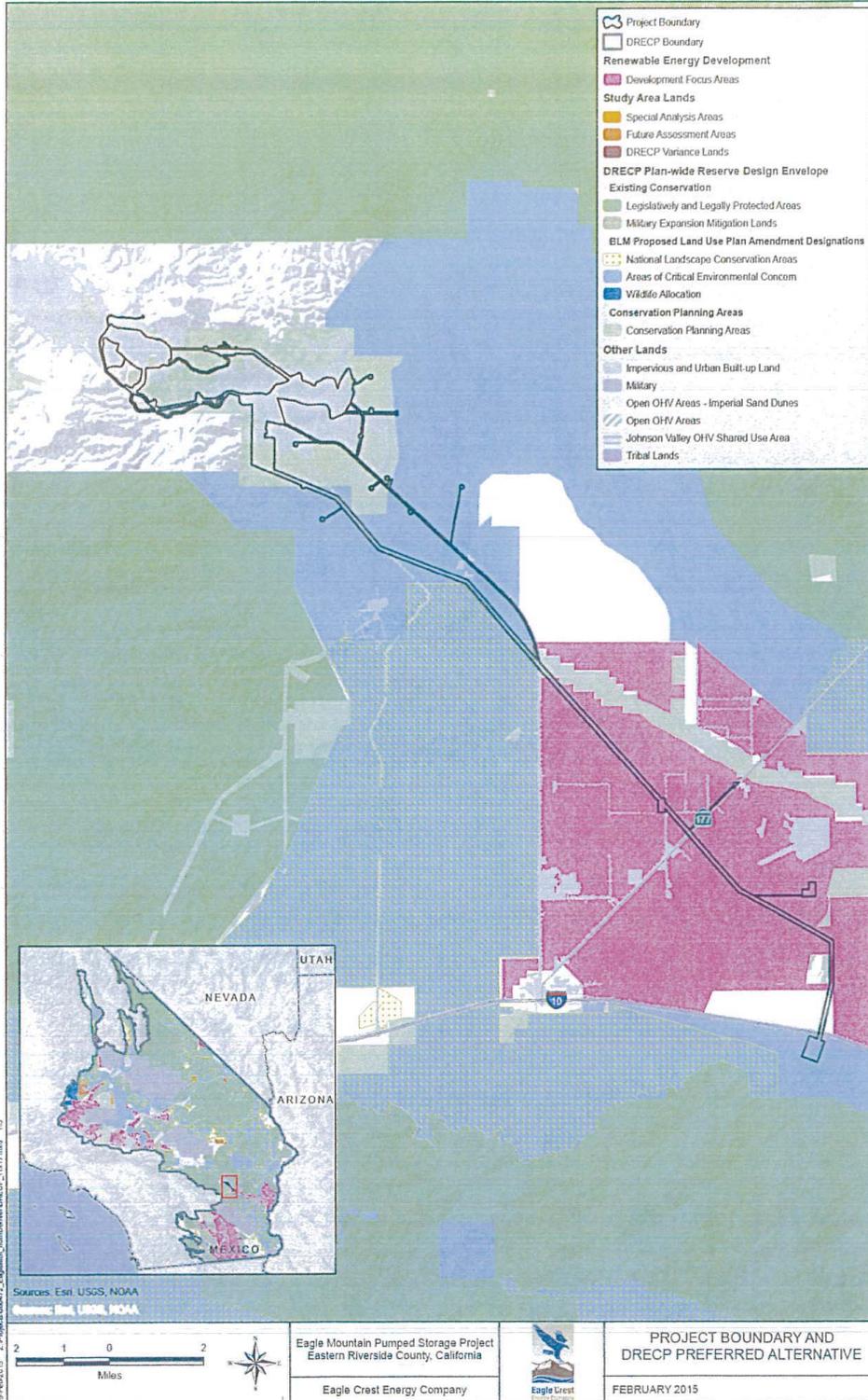
Rebecca W. Watson

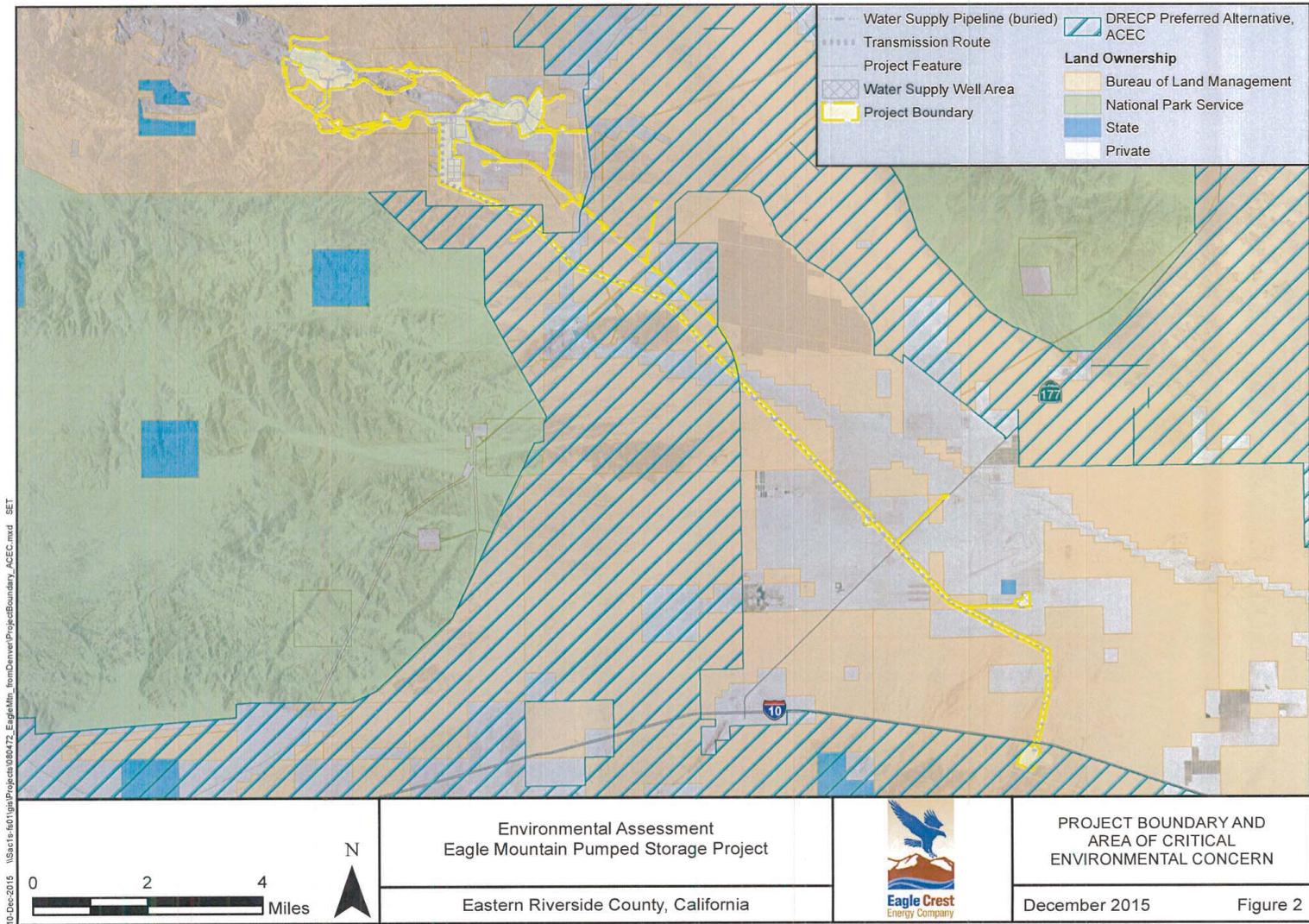
For Eagle Crest Energy Company

cc: *Via Email:*

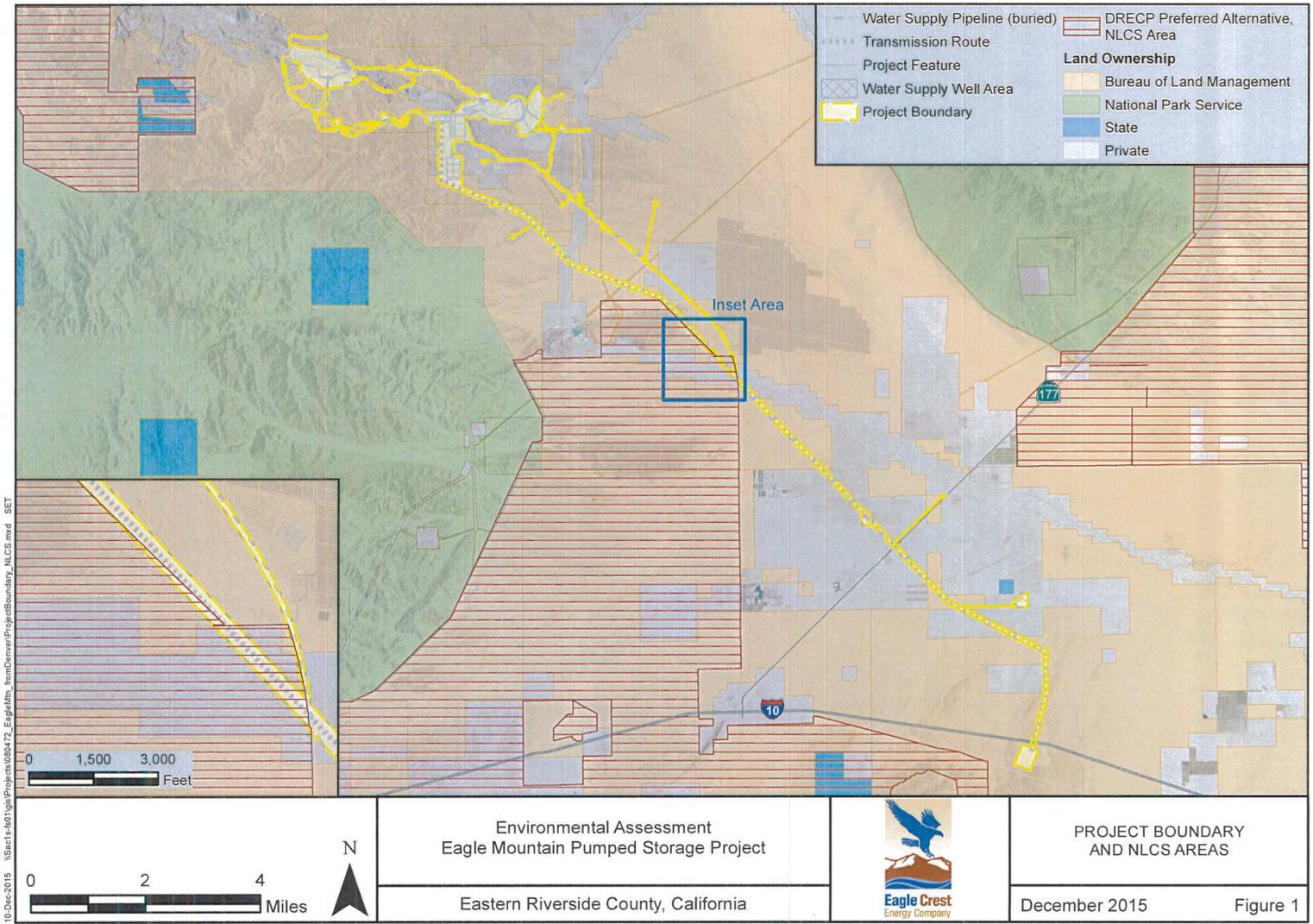
J. Kenna, BLM-CA
T. Raml, BLM-CA Desert Dist.
D. Smith, NPS, JTNP
C. Lehnertz, NPS-Pacific West Reg.
N. Kornze, BLM-WO
J. Jarvis, NPS-WO

¹³ The Kaiser Eagle Mountain site consists of 10,108 acres of which 8,636 are fee (including the 465 acre townsite now returned to BLM) and 1,472 acres are held as mining claims. If, in the future, Eagle Crest should acquire these lands from Kaiser, Eagle Crest is willing to consider a conservation purpose for any land not needed for the Project. At that time, Eagle Crest would work with NPS and BLM to reach an agreement to support conservation goals on lands outside the Project footprint.





Attachment 2



10-Dec-2015 I:\sect\6901\proj\Projects\080472_EagleMtn_fromDenver\ProjectBoundary_NLCS.mxd SET

Attachment 3

February 20, 2015

California Energy Commission
Docketing Office MS-4
1516 Ninth Street
Sacramento, CA 95814

Via email: docket@energy.ca.gov

Re: **Docket No. 09-RENEW EO-01**, Comments of **Eagle Crest Energy Company** on Draft
Desert Renewable Energy Conservation Plan

Dear Docketing Official:

This firm represents Eagle Crest Energy Company (“Eagle Crest”), an energy company headquartered in Santa Monica, California. On June 19, 2014, Eagle Crest was granted a license by the Federal Energy Regulatory Commission (“FERC”) to construct, operate and maintain the Eagle Mountain Pumped Storage Hydroelectric Project (“Eagle Crest Project” or “Project”) on certain fee and public lands in the area of the Desert Renewable Energy Conservation (“DRECP”) planning area for Riverside, County.¹ The Eagle Crest Project is a 1300MW closed-loop pumped storage project located on the site of the Eagle Mountain Mine, near the town of Desert Center, Riverside County, CA. We are filing this comment to make you aware that aspects of the DRECP proposed landuse allocations are in direct conflict with the FERC-issued license for the Eagle Crest Project and exceed the limited landuse planning authority that the Bureau of Land Management has over lands withdrawn for Federal Power Act purposes. 16 U.S.C. § 818. Those proposed landuse allocations should not go forward in the DRECP Record of Decision.

As we understand the DRECP it “would create a framework to streamline renewable energy permitting by planning for the long-term conservation of threatened and sensitive species and other resources on more than 22 million acres The Draft DRECP is a landscape-scale plan that uses science to inform the siting of renewable energy development projects and the conservation of species” DRECP, Executive Summary at 6. There are three planning components: a BLM Land Use Plan Amendment (“LUPA”); General Conservation Plan (“GCP”) for incidental take permits from California and the U.S. Fish and Wildlife Service (“FWS”); and a Conceptual Plan-wide Natural Community Conservation Plan (“NCCP”) that addresses wildlife and plant protections in the context of renewable energy and transmission projects across the entire area by the California Department of Fish and Wildlife (“CDFW”). DRECP, Executive Summary at 9.

¹ *Eagle Crest Energy Company*, 147 FERC ¶ 61,220 (June 19, 2014). <http://www.ferc.gov/whats-new/comm-meet/2014/061914/H-7.pdf>

In our review of this complex planning document, it appears that there are several proposed landuse designations that would conflict with the Eagle Crest Project. *See* Exhibit A., Map. Exhibit A. illustrates the location of the Eagle Crest Project and the rights-of-way for the water and transmission lines approved in the FERC license and long-pending before the BLM, Palm Springs Field Office and California Desert District Office. *See infra*. It appears that BLM intends in the DRECP Preferred Alternative to designate portions of the Project rights-of-way as Areas of Critical Environmental Concern (“ACECs”) and National Landscape Conservation Areas. Each of those designations provides for heightened protections of federal land and limit uses on lands so designated. In addition, *central* areas of the Eagle Crest Project are proposed for inclusion in DRECP Conservation Planning Areas.² These proposed landuse allocations conflict with the FERC-licensed Eagle Crest Project and exceed BLM’s legal authority and they should not be included in the Record of Decision.

Eagle Crest submits these comments to underscore that this Project is a separately permitted and authorized activity on lands that are withdrawn from federal land management and “reserved” for Federal Power Act purposes. Thus, BLM does not have the management authority to make decisions in the LUPA (*See e.g.* at DRECP, Executive Summary at 11) that would interfere with the Federal Power Act purposes of the Project. Moreover, the Project-specific federal and State permitting and environmental review processes have been thorough. In addition to the FERC-issued license, Final Environmental Impact Statement (“FEIS”), pursuant to the National Environmental Policy Act (“NEPA”), and associated FWS Biological Opinion and National Historic Preservation Act Section 106 consultation for the FERC action, the State of California has issued all necessary permits for the Project, including undertaking a Clean Water Act Section 401 certification process,³ a California Environmental Quality Act (“CEQA”) environmental information report (“EIR”) and the Bureau of Land Management, California Desert District and the Palm Springs South Coast Field Office (“BLM”) are in the process of reviewing two, discrete linear right-of-way requests that support the Project. In sum, the Federal Power Act has withdrawn this land from BLM management, FERC has issued the license to operate the pumped storage Project and federal and state agencies have analyzed and mitigated the environmental impacts of the Project pursuant to their authorities under State and federal law.

BACKGROUND

Eagle Crest Project

The Eagle Crest Project will provide California with 1300 MW in hydroelectric storage capacity enabling a critical component for the successful integration of intermittent renewable energy, in particular, the wind and solar resources that are a focus of the DRECP. By storing and then using surplus power that is generated at night, the Project will help with the integration of wind and solar resources. This will assist California in meeting two important goals – the 33% renewable energy portfolio standard by 2020 (and the 50% benchmark by 2030) and the AB

² The Exhibit A. Map also includes certain lands denoted in white that underlie the Project transmission and water lines. The color designation white is not included in the Map key. We are unclear what this designation might indicate, but again BLM lacks the authority to provide for landuse allocations that conflict with Federal Power Act purposes.

³ *Id.*

2514 directive to add 1.3 GW of storage by 2020. The Project's previously disturbed iron ore mine site with two existing reservoir sites at appropriate elevations presents a unique opportunity to create significant new storage capacity with minimal additional surface disturbance.

The Eagle Crest Project is licensed for a total of 2,527 acres of which 1827.9 acres are owned by Kaiser Eagle Mountain LLC and Mine Reclamation Corporation (*collectively* "Kaiser") and 699.2 acres are federal land managed by BLM. The Eagle Crest Project overlaps approximately 449 acres that were exchanged by BLM out of federal management to Kaiser in fee in 1999, but as a result of a legal challenge and the 2014 settlement of the litigation these lands are now back in federal management.⁴ The lands to be used for the Eagle Crest Project were at all times withdrawn by FERC pursuant to the Federal Power Act ("FPA") from BLM's federal land management authority and were "excepted" from the 1999 BLM/Kaiser land exchange. Two linear rights-of-way that support the Project will cross lands managed by the BLM. Eagle Crest filed an SF-299 application with BLM for a Federal Land Policy Management Act ("FLPMA") Title V right-of-way which has been pending during the entire DRECP process. 43 U.S.C. § 1706 *et seq.* See CACA 50946. With the June, 2014 issuance of the Project FERC license, BLM has begun its review of the Eagle Crest right-of-way application.⁵

Federal Power Act Withdrawal for Eagle Crest Project

The FERC permitting process for the Eagle Crest Project began when Eagle Crest filed an application for, and was granted, a preliminary permit for the Project in 1991. Pursuant to the provisions of Section 24 of the FPA⁶, the federal land, managed by BLM, was "withdrawn" for power project development.⁷ The FPA withdrawal provision provides that the federal lands included in an application are "from the date of filing of application . . . reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by [FERC] or by Congress."⁸ An application for a license under Section 24 of the FPA results in automatic withdrawal of the land from any use other than allowed under the FPA.⁹

BLM has repeatedly recognized the constraints of the FPA Project withdrawal on its management authority, so it is puzzling that the DRECP does not similarly recognize those limitations. As noted above, a portion of the federal lands subject to the Eagle Crest Project

⁴ *Charpied v. U.S. Department of the Interior* (Civ. No. ED. CV. 99-0454 RT) and *National Parks Conservation Association v. Bureau of Land Management* (Civ. No. ED. CV. 00-0041 RT), "Final Judgment and Order of Dismissal" (December 18, 2014).

⁵ See letter, J. Kalish, Manager, BLM Palm Springs FO to S. Lowe, Eagle Crest Energy Company (December 9, 2013) ("The BLM proposes to conduct the NEPA analysis for the proposed transmission line and water pipeline with an Environmental Assessment . . . [t]he National Historic Preservation Act Section 106 process is underway . . . similarly, the BLM will continue to consult with the U.S. Fish and Wildlife Service as required . . . The BLM will begin processing the application for a right-of-way for the transmission line and water pipeline when [Eagle Crest] is issued the FERC license.")

⁶ 16 U.S.C. § 818.

⁷ Over the years that followed this initial submission in 1991, Eagle Crest Energy has filed and FERC has granted a total of four preliminary permits. Through the various filings and FERC approvals, the Eagle Crest Project FERC withdrawals have remained in effect during the Project licensing process that culminated with the ECE 2009 Application and FERC's issuance of the license in June, 2014. See *supra* at n. 1.

⁸ 16 U.S.C. § 818.

⁹ 43 C.F.R. § 2320.1.

FERC withdrawal overlapped a portion of the BLM/ Kaiser 1999 exchange property. The FERC withdrawal blocked the BLM from taking any further action affecting this overlapping property. At BLM's request, on June 7, 1996, FERC made a "no injury determination" that its FPA withdrawal would not be injured or destroyed for the purposes of power development if the lands were conveyed to Kaiser pursuant to the proposed Eagle Mountain Land Exchange.¹⁰ In the federal land patent granted by the United States to Kaiser as part of the 1999 Eagle Mountain land exchange, and filed in the Riverside County land records, the BLM "Excepted and Reserved" to the United States:

"As to those lands which lie within the boundary of the license application filed by Eagle Crest Energy Company with the Federal Energy Regulatory Commission on April 29, 1994, for Power Project No. 11080, . . . the right to itself, its permittees or its licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Federal Energy Regulatory Commission, for the purposes of Part 1 of the Federal Power Act"

In 2012, BLM identified a conflict with the FPA purposes for the Project in two of the solar projects under consideration by BLM in the same general area. Eagle Crest, FERC and BLM worked on a "no injury" determination for the Desert Sunlight, CACA 48649, and Desert Harvest, CACA 49491, solar projects. More recently, in August 2014, BLM initiated a "Supplemental Environmental Impact Statement" to address direction from the court in the above-described BLM/Kaiser land exchange litigation. 79 *Fed. Reg.* 47,668 (August 14 2014). In that proposed action, now since discontinued due to the settlement referenced above (*see n. 4*), BLM recognized and discussed the Eagle Crest Project as an existing encumbrance on the land.¹¹

FERC Licensing and Environmental Review of Eagle Crest Project

On June 22, 2009, Eagle Crest filed the application that resulted in the issuance of the FERC license for the Eagle Mountain Pumped Storage Hydroelectric Project. On January 11, 2010, FERC issued a public notice to commence its environmental review and licensing process for the Project. BLM has been a participant in the FERC NEPA process. A draft environmental impact statement ("DEIS") was issued by FERC on December 23, 2010. Public meetings in California were held and public comments accepted through February 28, 2011. On January 30, 2012, FERC issued the FEIS. The U.S. Department of the Interior on behalf of the National Park Service ("NPS") and BLM filed comments on the FEIS. On May 8, 2013, FERC staff met with BLM to address the Bureau's comments "and issues associated with land withdrawals under section 24 of the FPA." *See* License, n.1, at ¶8. On June 19, 2014, FERC approved the issuance

¹⁰ *See* letter from J. M. Robinson, Director of FERC Division of Project Compliance and Administration, to E. Hastey, State Director of BLM California State Office (June 7, 1996) ("the power value of any United States lands within the boundary of Project No. 11080, . . . will not be injured or destroyed for the purposes of power development by their conveyance to Kaiser Eagle Mountain, Inc., subject to the provisions of Section 24 of the Federal Power Act.")

¹¹ *See*, BLM Eagle Mountain Land Exchange webpage, http://www.blm.gov/ca/st/en/fo/palmsprings/Eagle_Mountain-Land_Exchange.html. "BLM Kaiser Land Exchange, Preliminary Scoping Information," map at p. 7 ("443 acres were encumbered by the power site withdrawal in sections 25 and 31 . . .") and "BLM Background Information Documents," Document 13 (maps of Eagle Crest Project).

of an original license to Eagle Crest to construct the Eagle Crest Project. *Id.* Requests for rehearing were filed by the U.S. Department of the Interior on behalf of NPS, Kaiser and the Desert Protection Society and are under consideration by FERC. *See* FERC, *Eagle Crest Energy*, “Order Granting Rehearing for Further Consideration” (August 20, 2014).

EAGLE CREST COMMENTS ON DRECP

BLM’s Proposed LUPA Decisions

BLM’s LUPA would amend the California Desert Conservation Plan to create Development Focus Areas (“DFAs”) for renewable energy and transmission, conservation designations, Special Recreation Management Areas and make other landuse allocations. DRECP, Executive Summary at 11. The four DRECP “action alternatives” (exclusive of the “no action alternative” that continues current management) largely differ on the configuration of DFAs and the balance between avoidance and mitigation. *Id.* at 39. The Preferred Alternative recommends the creation of a DFA in the general area of the Project, but inexplicably includes the Project rights-of-way in proposed ACECs and National Landscape Conservation Areas and portions of the central Project in a Conservation Planning Area. *See*, Exhibit A. As explained above, no matter which LUPA alternative is selected by BLM it will not change the operation of the FPA which withdrew the federal land from BLM’s management for the purposes of the Eagle Crest Project. BLM’s patent to Kaiser in the land exchange recognized this and “excepted and reserved” the lands described in the Eagle Crest Project application for purposes of the FPA. BLM lacks FLPMA management authority over these withdrawal lands and cannot create landuse allocations that conflict with the FERC-authorized Project. The balance of the Project site is located on fee land owned by Kaiser as noted above. Eagle Crest has been issued a license by FERC to proceed with construction. No action BLM takes in the DRECP can change that independent authorization.

Project Environmental Review

One of the stated goals of the DRECP is to expedite the permitting of renewable energy projects by “zoning” the projects into DFAs and adding certainty to the mitigation process through the conservation elements of the DRECP, the GCP and NCCP. In the case of the Eagle Crest Project, it is sited on a previously disturbed iron ore mine and industrial site. The use of previously disturbed areas to site renewable energy projects is strongly encouraged by federal and state governments. Their suitability as a site for a “Conservation Planning Area” is not obvious. Moreover, the federal and state environmental review processes for the FERC license process have been thorough in addressing many of the same issues that the DRECP considers. As noted *supra* the Project was reviewed by FERC in a NEPA process including the preparation of a Draft and Final EIS. Eagle Crest was required by FERC to comply with the following laws designed and implemented by other federal and State agencies to protect numerous resources: the Fish and Wildlife Coordination Act (FWS); Section 18 of FPA (FWS fishway prescriptions); Section 4(c) of FPA (BLM land management conditions); Section 10(j) of FPA (CDFG); Clean Water Act Section 401 certification (CA State Water Board); CEQA EIR (State Water Board); Endangered Species Act Section 7 consultation (FWS); Coastal Zone Management Act consistency)(CA Coastal Commission); and National Historic Preservation Act (CA SHPO). In

addition, FERC regulations and the NEPA and CEQA processes required ongoing consultation with numerous state and federal agencies and several opportunities for public comment. License, n. 1, at 5-16.

Several environmental issues that are a focus of the DRECP were carefully considered in the environmental review of the Eagle Crest Project. For example, the FERC FEIS and license address in detail Project impacts to water resources, including the issues of groundwater levels and water budget considerations that are addressed in the DRECP. *See e.g.* License, n.1, Section 3.3.2, “Water Resources,” at 74-78 (groundwater levels); 79-82, 96-115 (groundwater pumping and recharge); and the FERC response to DEIS Comments, License, Appendix A at A-29 to A-69 (*see* A-38 on why the U.S.G.S. Colorado River Accounting Surface does not apply in the case of the Project’s groundwater use.) Similarly, the impacts of the Project on wildlife, particularly sensitive species and threatened and endangered species and the FWS Biological Opinion are addressed in detail. *See* License, Section 3.33, “Terrestrial Resources,” at 125-144; 152-171 (wildlife and sensitive species, including the Desert Bighorn Sheep); 171-189 (threatened and endangered species, including the Desert Tortoise); FERC response to DEIS Comments, License, Appendix A at A-72 to A-94. After these NEPA, CEQA and ESA analyses, FERC imposed a comprehensive series of required measures to mitigate identified environmental impacts. *See id.* Section 5.2, “Comprehensive Development and Recommended Alternative” at 310-334.

Public Comments about Project in DRECP Process

Advocates for the NPS have presented comments during the DRECP planning process and made comments to the media that the Project should not be allowed to be sited adjacent to the Joshua Tree National Park (“JTNP”), the Project lands should be “returned” to the JTNP and that the DRECP should not approve the Project.¹² These arguments misunderstand the law governing the Project and the DRECP planning process and ignore the history of these lands and the formation of the Park. Moreover, these statements ignore the stated intention of Eagle Crest to continue negotiations with the NPS to mitigate impacts to JTNP and to convey lands not necessary for Project purposes to NPS.

First, we emphasize that, absent an Act of Congress (16 U.S.C. § 818), the BLM DRECP ROD can’t alter the FPA authorization for Eagle Crest to use the subject lands - private and public - for the development of a power project. The BLM in the DRECP has recognized that in making its planning decision, the Bureau must “[c]omply with all applicable federal laws . . .” DRECP Executive Summary, at 11. In this instance, the BLM must ensure that its DRECP planning decisions comply with the FPA withdrawal of these lands for power act purposes. There is no authority in the DRECP process for BLM, FWS or any other participating state agency to “deny” the Project or to enforce landuse allocations that interfere with Project purposes. That decision was for FERC to make and it has issued the Project license in 2014 after careful review of environmental impacts including impacts to the JTNP recreation mission. *See*

¹² Comments of David Lamborn, National Parks Conservation Association (“NPCA”), DRECP Comment letter (January 20, 2013), D. Lamborn, NPCA, oral comments at California Energy Commission DRECP hearing (October 29, 2014); and D. Lamborn comments to local and national media concerning the Project and DRECP (*see e.g. E&E News* September 24, 2014).

e.g. License, n.1, at 189-191 and FERC response to DEIS Comments, License, Appendix A at A-107.

Second, as to the history of the Eagle Crest Project lands, BLM has recently recognized that the area was removed from JTNP (then a National Monument) in 1950 to further the national objective of mining and development of the steel industry.” 79 *Fed. Reg.* 47,668 at 47,670 (August 14, 2014). Many of the lands in the Eagle Mountain Mine site bear the impacts of a century of mining and industrialization. Although some in the public argue that the legislation creating the Joshua Tree National Monument requires that the entire Eagle Mountain Mine site revert to the government when its mining use ends, that is not a correct statement of the legislation. The only reversionary provision applicable to the Mine site is contained in Private Law 790 (1952) and applies *only* to the 465 acre town site and a 200 foot linear right-of-way for the Mine’s railroad. The reversionary interest in the town site was conveyed by BLM to Kaiser and Kaiser conveyed the railroad right-of-way to BLM in the Eagle Mountain land exchange. In 2014, as part of the settlement of litigation, Kaiser re-conveyed the town site to BLM, but BLM retained the lands Kaiser had provided in exchange.

Moreover, shortly before this 1952 Private Law was enacted, Congress reduced the size of the Joshua Tree Monument by one-third to permit mining and mineral exploration in the lands chiefly valuable for those purposes. Pub. Law 81-837, 64 Stat. 1033 (September 25, 1950). *See also* License, n.1, at 232-233. At that time, the U.S. Department of the Interior and NPS supported the removal of 265,000 acres, including the 29,000 acres in the Eagle Mountain Area, from the Monument. Those excluded 29,000 acres include the Mine and Eagle Crest Project lands. The U.S. Department of the Interior reasoned the land remaining in the Monument “will be sufficient for the proper care and management of the objects requiring protection . . .” and the Senate Committee on Public Lands noted “[b]ecause of mining and the presence of considerable privately owned land in this section of the monument, it is now considered impractical to preserve the once unique scenery and scientific features of the area proposed for elimination to the degree required for National Monument purposes.” Senate Committee on Public Lands Report No. 2236 (June 13, 1950). Indeed, contrary to assertions made by some who support the return of all Kaiser lands to JTNP, this Act contained a provision to *add* additional lands to the Monument-land removal list should the lands be found more valuable for mining. Public Law 81-837, Section 4 (directing a survey of lands *within* the new boundaries of the Monument to determine “to what extent the said area is more valuable for minerals than for the National Monument purposes for which it was created.”)

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CONCLUSION

Eagle Crest Energy appreciates this opportunity to comment on the DRECP to make clear the unique position of the Project in this planning process. The proposed DRECP landuse allocations that conflict with the FPA purposes for the FERC-licensed Eagle Crest Energy Project must not be carried forward in the Record of Decision for the DRECP.

Sincerely,



Rebecca W. Watson

For Eagle Crest Energy Company

cc: *Via Email:*

J. Kenna, BLM-CA
T. Raml, BLM-CA Desert Dist.
D. Smith, NPS, JTNP
C. Lehnertz, NPS-Pacific West Reg.
N. Kornze, BLM-WO
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Eastern Kern County
Resource Conservation District

300 S. Richmond Road, Ridgecrest, CA 93555
760.384.5477
FAX 760.384.5499

ekrcrd@iwvisp.com

May 9, 2016

Bureau of Land Management
DRECP Program Manager
2800 Cottage Way Suite W-1623
Sacramento, California 95825

Attn: Vicki Campbell

Email: blm_ca_drecp@blm.gov

Re: Notice of Areas of Environmental Concern on Public Lands under the DRECP

To Ms. Campbell:

Eastern Kern County Resource Conservation District (EKCRCD) has been in existence since 1953 and has been commenting on EIR's, EIS's and other Environmental Documents regarding air, water and soil issues. The Board represents a diversified group with knowledge of resource issues as well as multiple-use and sustainable-yield issues.

Regarding Standing: We provided a letter on February 22, 2015, and on December 14, 2015, which you acknowledge. Our Comment letter designation was C20.

GENERAL COMMENT, the FEIS changed significantly from the Desert Renewable Energy Conservation Plan, Proposed Land Use Plan Amendment and Final Environmental Impact Statement. This 18,000-page LUPA only addresses BLM Lands, many of which were changed in this Final compared to the document that included state and county implementation.

We asked for a SEIS and to include: impacts to threatened or endangered species, air and water quality reports with the different counties affected, including Ground Water Bulletin 118 and the Sustainable Groundwater Management Act passed in 2014, social and economic impacts to local communities including property values and a cost analysis of each alternative. This SEIS should also include why in the original document it alludes to WEMO being part of the plan and is now going to be implemented after the fact. It should also include implementation of the Least Environmentally Damaging Practicable Alternative (LEDPA) to comply with federal, state and local environmental laws that are ancillary to NEPA.

Instead, the majority of the ACEC's in the DRECP DEIS were dependent on the route network provided for in the 2000 WEMO FEIS. It alluded to the shapes and sizes of the ACEC's and the BLM kept implying they were safe. The BLM maintained that it would enforce the 2006 WEMO FEIS as consistent policy. Also, at this same time, the description in the worksheets that were

C8-1
C8-2
C8-2.1

provided, with much of the information as to why it was an ACEC, was vague and not specific and did not meet the requirements of ACEC Process.

↑ C8-2.1
Cont.

PROCESS COMMENT. The ACEC's were never properly noticed in the DRECP Process. The Statutory authority covering the designation of ACEC's can be found at 43 CFR 1610.7-2 subsection (b), The State Director to publish a notice in the Federal Register listing each ACEC proposed and specifying the resource limitations. The notice shall provide a 60-day period for public comment on the proposed ACEC designation. The single word designation is singular, indicating one Federal Register Notice per one ACEC.

C8-3

NEPA requires a threshold level of information to be provided to the public in order to comply with the legal requirements for meaningful public participation. Specifically 40 CFR1500 1 (b) provides that the information must be of high quality and that public scrutiny is essential to implementing NEPA. 40 CFR 100.2 and 1502.8 both call for the environmental analyses to be clear and written so the public can readily understand them. The California Desert Conservation Area Plan also seems to be left out of the Planning Process in regarding interface with the public.

C8-4

SPECIFIC COMMENTS,

Comment C20-8 acknowledges that DRECP does not repeal the Mining Law of May 10, 1872, or the Mining and Mineral Policy Act of 187030 U.S.C. 21). Mining laws should not be overridden. However, there are some overlapping designations and the disturbance cap requirements in DRECP pit mining versus recreational uses. There is a need to calculate the disturbance levels that already exist. An explanation and clarification should be made dealing with the 1 to 10,000 scale on satellite imagery compared with BLM aerial surveys. To what level do ministerial actions trigger disturbance cap action for assessment? We believe that there should be a definition of what the trigger is and what constitutes implementation of the trigger regarding changes in the disturbance cap. There has also been a significant change from the draft to the final DRECP regarding the increase in acres of unallocated lands.

C8-5

C8-5.1

Specifically, regarding comment C20-9 addressing OHV route designation, we believe that DRECP will be passed without any road/networks included in the plan. WEMO designations are proposed to be used. However, WEMO approval will be after DRECP approval and will be incorporated with no input having been done through the DRECP process. The public did not participate in the WEMO process with thought given that there might need to be choices made regarding the road/route network designations and actions that might be taken during the implementation of the DRECP Plan (especially mitigation actions implemented to deal with disturbance cap issues).

C8-6

Specifically, regarding comment C20-12, each Air Pollution Control District has its own rules and regulations that should be implemented. Response did indicate that reference to Valley Fever was added to the document, however, air quality and soils issues should not be limited only to Valley Fever but should also include and address the possibility of other micro-organisms that could impact "sensitive receptors."

C8-7

Regarding Comment C20-15, there is a dissemination issue relating to the Section 106 process. We believe that the Section 106 process documents were never distributed to the general public for review and comment. On April 21, 2016, a Section 106 Meeting was held at which time one

↓ C8-8

of our Board Members was present. The question was asked by M. Algazy whether 106 Planning efforts were made based on 2006 FEIS Route Inventory or the new SEIS inventory. The response was that all planning assumptions were made based on the SEIS Inventory.

↑ C8-8
Cont.

The documents referred to as Unit Management Plans are just lists of bullet points and require much expansion and clarification in order to be called actual Management Plans. The Appendix L documents do not contain consistent language regarding travel management for multiple uses (such as scientific monitoring, mining and grazing) as guaranteed under FLPMA 1976. Specifically the terms “open route,” “designated route” and “existing route” are used interchangeably and without specific identification and clarification. The term “new routes” is ambiguous and not defined at all. The BLM should work with the recreation community and representatives of multiple use groups to develop specific definitions for these terms. Their definitions should be included in the glossary.

C8-9

Regarding disturbance caps, the caps themselves are arbitrary and are inconsistent with the WEMO designated 2% (why not 1%, 3%, 5% or 1.9%?). BLM provides no data describing how it arrived at the various caps. The public needs to know the current baseline disturbance levels in order to comment on proposed disturbance caps outlined in the Unit Management Plans. Disturbance cap limitations should apply only to “future” disturbance in order to remove conflict with past planning assumptions and to return to the Bureau the flexibility to meet the adaptive management goals of the DRECP.

C8-10

OHV areas within ACECs (such as Jawbone and Dove Springs) should be excluded from disturbance caps. Designated route networks from approved BLM travel management plans such as WECO, NECO, NEMO and WEMO (per Decision Record/ CDCA Plan Amendment, Western Mojave Desert Off-Road Vehicle Designation Project June, 2003) should also be excluded from disturbance caps.

C8-11

C8-11.1

The BLM should not designate roadless ACEC’s that have not had the substantive public participation process required by NEPA. The BLM should postpone designation of any and all ACEC’s for which route networks were not provided in the DEIS of the DRECP. The postponement should remain in place until the WEMO route designation process has concluded. At that time the applicable route networks should be added to the individual ACEC’s, along with a summary that has been developed explaining the relationship of the route networks to the size and shape of the ACEC’s. Then a new public process should be started.

C8-12

C8-12.1

The BLM’s *Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California*, published on March 11, 2016, failed to list visual impacts among the resources and uses for which each proposed and existing ACEC would be evaluated to determine if special management was needed. Therefore, the public was not informed that the BLM would be undertaking Visual Resources Management (VRM) as described in Section II.3.4.1.12, nor was it informed that the BLM would be designating VRM Classes in the DRECP. As a result, we conclude that the BLM should revise and republish the notice, and reopen the 60-day comment period that is required under Federal Regulations at 43 CFR 1610.7-2(b).

C8-13

Thank you for the opportunity to comment on the ACEC component of the DRECP Final EIS. We appreciate your consideration of our concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don Joe McKernan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Don Joe McKernan, President
Eastern kern Co. Resource Conservation District

Cc: Congressman Kevin McCarthy, 22nd District
Congressman Paul, Cook, 8th District
Clerk of the Board, Kern County
Clerk of the Board, Inyo County



Vicki Campbell, DRECP Program Manager
Bureau of Land Management
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

May 9, 2016

Submitted via email to: blm_ca_drecp@blm.gov

RE: Areas of Critical Environmental Concern in the Desert Renewable Energy
Conservation Plan Proposed Land Use Plan Amendment

We would like to take the opportunity to comment on the Bishop Field Office’s five proposed ACECs within the DRECP (excluding Manzanar and Owens Lake). Friends of the Inyo is a locally-based nonprofit conservation organization dedicated to the stewardship, exploration and preservation of the Eastern Sierra’s public lands and wildlife. Over our 30 year history, Friends of the Inyo has become an active partner with the Bishop and Ridgecrest Field Offices, the National Park Service and other public lands agencies in the California Desert. Friends of the Inyo is actively engaged in renewable energy issues in the Eastern Sierra and submitted comments on both the Draft DRECP on Feb 16, 2015 and the Inyo County’s Renewable Energy General Plan Amendment on Jan 14, 2015. Friends of the Inyo’s comments represent a local and regional membership of over 700 and thousands of supporters and volunteers who care about the landscapes and values of the Eastern Sierra.

We met with the Bishop Field Office last week to discuss our concerns about the disturbance cap exemptions in five proposed ACECs: Symmes, Independence, Cerro Gordo, Crater Mountain and Southern Inyo. After our meeting with the Bishop FO we now understand the reasons for the exemptions but are still concerned with how the exempted activities are described. In order to ensure strong management protections for these ACECs, exempted allowable uses need to be described in more detail under the Objectives/Allowable Uses/Management Actions. Although generally “treatments to maintain or improve native vegetation communities and special status species habitats” should help protect the values of the ACECs, there are many ways to interpret this language since it is so broad.

Furthermore, “manage in accordance with current policy and RMP guidance” is acceptable within the framework of the current Bishop RMP, however with a plan

Friends of the Inyo | 819 N Barlow Ln | Bishop, CA 93514
friendsoftheinyo.org| 760.873.6500

Caring for the Eastern Sierra’s Public Lands

C9-1
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amendment or revision that will likely happen in the next few years under the new planning rule, management of these ACECs could change dramatically. By strengthening the language of the ACEC descriptions under vegetation, fish and wildlife and cultural resources, to include management prescriptions, the DRECP will help protect these ACECs from unacceptable impacts to the conservation values of these areas.

C9-1
Cont.

BLM is required to provide “fully developed” special management prescriptions to protect these ACECs and their associated values and resources. For example, in the case of Symmes Creek, an exemption from the 0.25% disturbance cap is likely needed to restore the burned upland with native plants and eradicate Red Brome, thus enhancing Goodale mule deer herd winter habitat, and protect the resources of Manzanar National Historic Site downstream of Shepard Creek from flood damage. Unfortunately the management prescription as it is currently written is not “fully developed”. In the other ACECs, the 0.25% disturbance cap should remain, unless reasonable management prescriptions are needed beyond 0.25% acres of the ACEC. The difference in management and the justification for doing so should be given for each ACEC.

C9-2

At this time without understanding the exact proposed management prescriptions, we can only support a disturbance cap exemption for the Symmes Creek ACEC. The disturbance cap exemption must also provide alternatives to removing native vegetation and debris from the stream and the broader picture of the role of Manzanar and LADWP in protecting the historical site. In other ACECs such as Independence Creek, with proper justification, the disturbance cap could be increased under a particular resource. This would limit the disturbance that could occur to other resources and associated values within the unit, such as the facilitation of livestock grazing and the mechanized maintenance of motorized routes that may or may not be needed.

The disturbance caps for Cerro Gordo and Southern Inyo should remain at 0.25% to protect the wilderness character, Joshua Tree and Bristlecone pine woodland of Cerro Gordo and the spring systems and rare associated species of Southern Inyo. If any management is needed, it can likely be done under the disturbance cap, thus avoiding the associated risk of a RMP amendment that could compromise the year round protection of riparian and spring resources as the RMP is currently written. With land management changing so quickly and often suddenly on BLM lands, Friends of the Inyo wants to make sure our local field office has the ability to manage their lands, but also ensure we are not taking unacceptable conservation risks to our irreplaceable and highly valued public lands.

C9-3

In conclusion, we hope by further refining the ACEC descriptions the DRECP conservation objectives will be strengthened overall, and the current inconsistency with other ACECs in the DRECP plan area will be addressed in a meaningful way. We thank the Bishop field office and the state office for their collaborative work to address management of these critical areas on the California desert. We look forward to meeting to further discuss this issue on May 19th, and reviewing a revised version of Appendix L.

Respectfully Submitted,

Jora Fogg
Preservation Manager
jora@friendsoftheinyo.org



May 9, 2016

Vicki Campbell
DRECP Program Manager
2800 Cottage Way
Suite W-1623
Sacramento, CA 95825

Submitted Via E-mail to blm_ca_drecp@blm.gov

Re: Comments of the Large-scale Solar Association on the Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California

The Large-scale Solar Association (LSA) submits the following comments regarding the Areas of Critical Environmental Concern (ACECs) and the Conservation and Management Actions (CMAs) proposed throughout the Desert Renewable Energy Conservation Plan (DRECP) Planning Area and documented in the Proposed Land Use Plan Amendment (LUPA) and Final Environmental Impact Statement (EIS).

LSA's member companies are responsible for the permitting and development of thousands of megawatts of solar generating capacity on federal lands in California, and have a deep understanding of the challenges involved in siting and permitting solar projects on public lands. LSA's members have worked closely and successfully with the Department over the past decade to fulfill ambitious state and federal renewable energy goals. As a result of these experiences, our members have a particular understanding of the unique constraints on renewable energy development, how projects could feasibly be improved, and common misconceptions about the industry that threaten its continued progress. The DRECP, as currently drafted, embodies several of these misconceptions and further fails to provide the tools necessary to facilitate the development of renewable energy projects, contrary to its stated purpose and need. LSA consequently is seriously concerned that the DRECP will not achieve the complementary renewable energy and climate policies articulated by the by the Obama Administration.

Chief among our concerns is the heavy emphasis on land conservation in the Plan at the expense of carefully sited development. Specifically, the Preferred Alternative proposed 6,077,000 acres of ACECs.¹ The comments that follow are related to the 134 ACECs in the Proposed LUPA insofar as the ACECs form a major component of the DRECP Planning area under the Preferred Alternative in the Final EIS, that, as proposed, will severely constrain utility-scale solar development and potentially interfere with

¹ [Federal Register Notice of 60-Day Comment Period on ACECs.](#)



construction in optimal, low-impact sites within the ACECs where impacts can be avoided, minimized, or mitigated.

Related to concerns about the locations of and limitations within ACECs, the solar industry also has a more general concern that insufficient acreage has been identified for development within the DRECP Planning Area, and the lands that have been identified for development, whether in Development Focus Areas (DFAs) or on a very limited scale in ACECs or on unallocated lands, are further constrained by onerous and unsubstantiated Conservation Management Actions (CMAs) that render development across the DRECP planning area uncompetitive and uneconomic. To address this dynamic, and to supplement more general CMA-related comments LSA filed on the Draft EIS, LSA has identified certain CMAs that should either be removed or revised to help offset the effects of an increase in the number and size of ACECs.

LSA is further concerned that incentives to develop within the DFAs are undefined with no timeline for their development.

On the whole, the DRECP appears to ensure only that the conservation lands will work for their intended purpose. LSA accordingly requests that the Department give additional attention in the Plan to meeting the renewable energy and climate goals of the State of California and the Obama Administration. In particular, we recommend that the DRECP be revised to provide increased acreage for potential renewable energy development, to reduce or modify CMAs, and to develop incentives to drive renewable energy development within the DRECP, rather than to further constrain its potential.

I. LSA Recommends Increased Flexibility for Renewable Energy Development within the DRECP Planning Area.

In order to ensure that suitable land is available for future development to meet the growing and changing needs of the State of California and of the nation, LSA seeks additional flexibility in a number of land designations with the shared intent of retaining the most ecologically sensitive lands for conservation.

A. DFAs should be expanded to include the larger DFA designations in Alternative 2.

Under Alternative 2, approximately 718,000 acres of DFAs and 29,000 acres of Variance Process Lands are proposed on BLM-administered lands.² The DFA acreage under this Alternative is nearly twice the allocation of acres for development under the Preferred Alternative (388,000 acres). Alternative 2 “includes a conservation strategy and a streamlined process for the permitting of renewable energy and transmission development (called “renewable energy activities”) on BLM-managed lands, while integrating other uses and resources.”³ The DFAs have already been examined under

C10-1
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² DRECP Proposed LUPA and Final EIS Chapter II.5. Alternative 2. II.5-1.

³ Ibid.



NEPA and would provide significantly more options for future renewable energy development, leaving priority conservation lands protected. LSA notes here that project-specific review will still be required; such reviews will provide significant and sufficient protection from environmental impacts of a full build-out of the DFAs.

Under this approach, LSA recommends that lands designated in the Preferred Alternative as National Conservation Lands (NCLs), other than those designated as DFAs under Alternative 2, should retain such designation. This will afford further protection of sensitive ecosystems from impacts.

To increase options for development with minimal sacrifice of conservation land, lands designated as “unallocated” in the Preferred Alternative should remain unallocated if they are not already in Alternative 2 DFAs. LSA’s further recommendation is that any lands designated in the Programmatic EIS for Solar in Six Southwestern States (PEIS) as variance lands and not designated as DFAs, unallocated land or NCL, should retain their designation as variance lands.

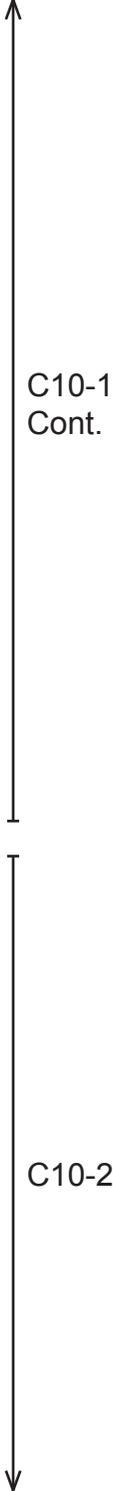
The intent behind this recommendation is not to expand *development* beyond the amount contemplated under the Preferred Alternative. LSA is not proposing that the Department commit to full build-out of the Alternative 2 DFAs. We simply propose that that these lands be available for development, subject to the same constraints (except as modified below) as under the Preferred Alternative. Significant direct and cumulative biological and/or cultural impacts should be avoided, minimized, or mitigated to a level of insignificance, and development authorizations should be denied where these conditions cannot be met.

B. ACECs should either be re-designated as multiple-use (Class L) or modified to increase development caps of each ACEC identified in the LUPA.

LSA encourages the BLM to refine ACEC designations by either recommending all non-critical habitat as multiple use Class L (Limited) lands, or by increasing disturbance caps within newly created ACECs to 10% (instead of the current .01% to 1%).

LSA first recommends re-designating all ACECs that are not critical habitat as multiple-use Class L (Limited), which will appropriately require BLM to take a hard look, through the NEPA review process, when considering whether to allow development in such areas. Projects should be allowed to advance to a review under NEPA in Class L areas where they can survive a “fatal flaws analysis” that would require: (1) evidence that conservation conflicts can be mitigated; (2) documentation that the proposed project can meet applicable programmatic design features adopted in the PEIS Record of Decision (ROD) (PEIS Appendix A, Section A.4.1); and (3) documentation that the proposed project will provide a climate change benefit.

To be clear, the fatal flaws analysis should only apply to projects that propose development in the existing and newly designated Class L lands. The analysis would not apply to variance lands, which should be processed in accordance with the procedures in





the PEIS. It furthermore would not apply to DFAs or unallocated lands, which should remain unallocated and evaluated only in accordance with NEPA, without additional threshold requirements.

A Class L (Limited Use) designation “protects sensitive, natural, scenic, ecological, and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished.”⁴ In other words, development that would significantly impact critical resources is not allowed in Class L areas. Limited development of solar projects has been permitted in specific areas where development would not significantly diminish sensitive values. This designation is accordingly precisely the kind of reasonable limitation that should be imposed in light of imperfect and/or incomplete information regarding whether specific tracts of land are suitable for development or appropriate for conservation.

C10-2
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The alternative recommendation for ACECs—increased disturbance caps—would require clarification through an express provision that solar development is not precluded on ACECs, provided that the project proponent is required to make a threshold showing that the project site can be developed without significant impacts to critical resources.

C10-2.1

Many of the new ACECs proposed as part of the DRECP are not supported by the rigorous analysis described above and required by law. The generic 1% development cap typically imposed in ACECs is not required by any law or policy, and is inappropriate in such areas. If the data do not fully support an ACEC’s designation, renewable energy developers should be allowed to explore the possibility of development that can avoid, minimize and mitigate impacts, especially in the limited areas within the DRECP where transmission is available.

C10-2.2

II. Limit the Application of Specific CMAs

In light of the sweeping protections afforded by the Proposed LUPA under the Preferred Alternative in the form of ACECs and NLCs, development in DFAs and in other less restricted areas is critical. For the areas where development could occur (i.e. DFAs, unallocated lands, variance lands, and portions of ACECs), the proposed CMAs will have the effect of significantly increasing permitting burdens and decreasing project viability compared to the status quo. The industry supports environmentally responsible development that protects local resources to the extent feasible. However, the intent of designating DFAs was to create incentives for development to occur in the least environmentally sensitive habitats. If the BLM is serious about executing the Administration’s direction to increase renewable energy on public lands, modifications to the CMAs are necessary.

C10-3

⁴ California Desert Conservation Area Plan at p. 13 (1980), http://www.blm.gov/style/medialib/blm/ca/pdf/cdd/cdcaplan.Par.15259.File.dat/CA_Desert_.pdf.



The attached table (Appendix A) describes the CMAs that should be eliminated or limited in their application. For the resources and concerns addressed by these CMAs, the existing PEIS design features coupled with project-specific measures provide sufficient resource protections. Many other CMAs would also still apply, although LSA has identified a group of CMAs, also described in the attached table, which would require modification and clarification. It is worth noting that while some, but not all of the CMAs listed in the appended tables threaten project viability when applied individually, the full suite of CMAs proposed LUPA-wide will have a cumulative effect on overall project viability within the DRECP Planning Area.

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C10-3
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A. Eliminate select CMAs

LSA proposes elimination of three LUPA-wide CMAs: TRANS-BIO-1, which requires undergrounding project transmission lines; DFA-VPL-CUL-2, which requires payment of a management fee for partial mitigation of cumulative effects on cultural resources; and LUPA-SW-32, which requires BLM and USFWS to review a groundwater supply assessment.

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C10-4

TRANS-BIO-1 requires that developers “[b]ury electrical collector lines along roads or other previously disturbed paths to minimize new surface disturbance, restrict perching opportunities for the Common Raven, and reduce collision risks, where feasible.” Appendix K defines “collector lines” as: “transmission lines that carry electricity from generation projects to the first substation off the project site. These lines are also called generation intertie, or gen-tie lines.” At a minimum, the definition of “collector lines” needs to *exclude* “transmission lines that carry electricity from generation projects to the first substation off the project site” (i.e., gen-tie lines) since it is economically infeasible to bury such lines and is not required of any other industry. In addition, the term “collector lines” is typically used to refer to the lines *within* a solar field leading to an onsite transformer. Burying such lines within the hundreds to thousands of acres making up a solar field (i.e., land covered in solar panels) can be equally cost-prohibitive without a corresponding environmental benefit.

DFA-VPL-CUL-2 excludes the Variance Process Lands from the DRECP Section 106 Programmatic Agreement and imposes instead an onerous “management fee, defined at a per acre rate and annual escalation provision for the life of the grant, [to] be paid to the BLM as partial mitigation for the cumulative effects on cultural resources across the DRECP Plan Area.” The DRECP fails to provide an amount or a nexus to impacts that might justify the fee. This CMA has no demonstrated environmental benefit and is either redundant of or inconsistent with the “Compensatory Mitigation Fee for Cumulative Effects required by the Programmatic Agreement executed by BLM, the California State

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Historic Preservation Office, the Advisory Council on Historic Preservation, and several federally recognized tribes in February, 2016. (See Section VI.C.)⁵

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Cont.

LUPA-SW-32 adopts the “Colorado River Accounting Surface Method” for purposes of determining if a project would be impacting Colorado River water. Adoption of this method by the Bureau of Reclamation “to address and eliminate the use of Colorado River water from the mainstream in the lower Colorado River basin (Lower Basin) without an entitlement” is the subject of a pending rulemaking proceeding.⁶ It is obviously a blatant violation of administrative law for the BLM to circumvent that rulemaking by incorporating the standards under consideration in that proceeding into a generally applicable land use plan amendment. BLM’s incorporation of this approach to groundwater use will furthermore trigger expensive groundwater-related mitigation for projects within DFAs anywhere near the Colorado River. As a consequence of this particular CMA, development in these areas could become completely infeasible. The degree to which this regulatory overreach is inappropriate is underlined by the fact that some projects were challenged in litigation for *not* incorporating the Accounting Surface Method, and courts have uniformly rejected such a claim.

C10-6

B. Limit application of or modify additional CMAs

LSA also recommends that BLM eliminate 24 additional CMAs (or simply not apply them to lands where development might occur, such as DFAs, unallocated and variance lands, and ACECs and/or Class L lands). An additional 52 CMAs require clarification or modifications for regulatory certainty and implementation purposes. These CMAs, and the reasons supporting their revision, are detailed in the appended tables.

C10-7

III. Improve streamlining in DFAs in order to encourage development in areas with the least potential for impact.

Finally, the DRECP should provide more specifics on how permitting will be streamlined in DFAs. This will concentrate development in the areas with minimal potential for environmental impact, thereby avoiding the need to seek development opportunities in more constrained ACECs and other less optimal lands for development. Permit streamlining can be accomplished by offering meaningful permitting procedures and timeframes in the decision document.

C10-8

To provide some streamlining, LSA suggests that BLM make commitments to expedited processing of applications within the DFAs. Specifically, we propose committing to 1 year for an EIS; 6 months for an EA. Both should be achievable since the DFAs limit the agency resources that will be dedicated elsewhere, and the CMAs, subject to above request, should eliminate controversy over specific permitting issues. In addition, BLM

⁵ http://drecp.org/section106/documents/DRECP_Final_Programmatic_Agreement_02-05-2016.pdf.

⁶ 73 Fed. Reg. 40,916 (July 16, 2008).



should commit to allowing for third-party staff assistance contracts for processing applications and environmental review.

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IV. Conclusion

LSA's intent is simply to ensure that the more restrictive and enduring development limitations contemplated in the DRECP are reserved for lands with demonstrated, significant and insurmountable resource conflicts, while encouraging renewable energy development to move forward in an environmentally responsible and commercially viable manner.

We thank you for your attention to the solar industry's significant concerns, and look forward to discussing these challenges in order to ensure a durable LUPA that retains its focus on renewable energy.



APPENDIX A

Solar Industry Concerns with DRECP LUPA Conservation and Management Actions

The Solar Industry is requesting that certain CMAs be either deleted or amended not because we believe that the issues the CMAs are intending to address are not important; rather, LSA believes that the Design Features contained in the existing Solar Programmatic EIS (which were subject to extensive negotiation between the BLM and the solar Industry) combined with project-specific conservation measures adopted pursuant to project-specific NEPA processes, have been, and will continue to be, sufficient to address those issues. The CMA’s that LSA has identified as problematic are generally more restrictive and/or prescriptive than the existing Design Features or the measures contained in recent solar project NEPA documents, and many would threaten project financing and viability.

While these CMAs may very well be appropriate for certain projects in certain circumstances, applying them as a matter of course to all projects is not justified. Given the amount of land that the DRECP will permanently place into conservation, LSA feels strongly that, within DFAs in particular, CMAs should be *less* (not more) restrictive than the existing PEIS Design Features.

CMAs that should be eliminated LUPA-wide	Rationale	Threat to project viability
TRANS-BIO-1	Economically infeasible, no environmental benefit	Yes
DFA-VPL-CUL-2	Redundant, economically burdensome, no environmental benefit	Yes
LUPA-SW-23	BLM authority, no environmental benefit	
CMAs that should not apply to DFAs or other areas where development may occur	Rationale	Threat to project viability
LUPA-BIO-12	Requires avoidance to the maximum extent practicable, commercially infeasible	Yes
LUPA-BIO-RIPWET-1	Requires avoidance to the maximum extent practicable, commercially infeasible	Yes
LUPA-BIO-RIPWET-3	Requires repeated surveys without regard to project-specific conditions	Possibly



LUPA-BIO-PLANT-2	Require resource avoidance, rather than mitigation, <i>after</i> project approval	Yes
LUPA-BIO-SVF-6	Requires avoidance to the maximum extent practicable, commercially infeasible	Yes
LUPA-BIO-VEG-1	Requires open ended mitigation; not responsive to known impacts of development	
LUPA-BIO-IFS-18	Technically infeasible	Yes
LUPA-BIO-IFS-24	Requires repeated surveys without regard to project-specific conditions	Yes
LUPA-BIO-IFS-25	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-BIO-COMP-2	Requires open ended mitigation; not responsive to known impacts of development	Yes
LUPA-CUL-3	Redundant: requires avoidance measures that should already be incorporated into the siting decisions	
LUPA-CUL-4	Redundant: requires avoidance measures that should already be incorporated into the siting decisions	
LUPA-CUL-9	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-CUL-10	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-CUL-11	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-SW-1	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-SW-2	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-SW-9	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-SW-13	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
LUPA-SW-20	Imposed without regard to whether project impacts to particular resources will be significant	
LUPA-SW-25	Imposed without regard to whether project impacts to particular resources will be significant	Yes
LUPA-SW-32	Supporting data is still being developed through rulemaking	



LUPA-UNA-4	Redundant: requires avoidance measures that should already be incorporated into the siting decisions	
ACEC-DIST-2	Vague due to undefined terms and/or potentially sweeping/unchecked application; not responsive to known <i>significant</i> impacts of development	
CMA's requiring minor edits	Purpose of suggested modification	Threat to viability?
LUPA-BIO-2	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-3	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-4	Clarify the scope of application	
LUPA-BIO-5	Remove redundant requirements	
LUPA-BIO-7	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-9	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	Yes
LUPA-BIO-13	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-14	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-15	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	Yes
LUPA-BIO-16	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	Yes Yes
LUPA-BIO-17	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	
LUPA-BIO-RIPWET-4	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-RIPWET-6	Clarify the role of compensatory mitigation for covered impacts	
LUPA-BIO-RIPWET-7	Clarify the scope of application	
LUPA-BIO-DUNE-1	Ensure CMA does not undermine the justification for imposing them (to facilitate a streamlined permitting process)	



LUPA-BIO-DUNE-2	Resolve conflicting CMAs	
LUPA-BIO-DUNE-3	Resolve conflicting CMAs	
LUPA-BIO-DUNE-4	Clarify the scope of application	
LUPA-BIO-DUNE-5	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	Yes
LUPA-BIO-BAT-1	Clarify the scope of application	
LUPA-BIO-BAT-2	Clarify the scope of application	
LUPA-BIO-PLANT-1	Clarify the scope of application	
LUPA-BIO-PLANT-3	Clarify the scope of application	
LUPA-BIO-SVF-2	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-SVF-3	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-SVF-5	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-SVF-7	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-IFS-1	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-BIO-IFS-2	Clarify the scope of application	
LUPA-BIO-IFS-4	Resolve conflicting CMAs	
LUPA-BIO-IFS-9	Clarify the scope of application	
LUPA-BIO-IFS-11	Clarify the scope of application	
LUPA-BIO-IFS-12	Clarify the scope of application	
LUPA-BIO-IFS-14	Clarify the scope of application	
LUPA-BIO-IFS-21	Remove requirements that are not technologically or commercially feasible, for which there are no known best management or state-of-the-art practices, or are not backed by sound science:	Yes
LUPA-BIO-IFS-26	Clarify the scope of application	
LUPA-BIO-IFS-31	Clarify the scope of application	
LUPA-BIO-IFS-33	Clarify the scope of application	
LUPA-BIO-IFS-34	Clarify the scope of application	
LUPA-BIO-IFS-36	Clarify the scope of application	
LUPA-BIO-IFS-39	Clarify the scope of application	
LUPA-BIO-COMP-1	Provide flexibility and alternative means to address site-specific or project-specific conditions	



LUPA-BIO-COMP-3	Clarify the scope of application	
LUPA-BIO-COMP-4	Clarify the scope of application	
LUPA-AIR-2	Resolve vagaries and irrelevant, extraneous or inapplicable conclusions	
LUPA-AIR-4	Resolve vagaries and irrelevant, extraneous or inapplicable conclusions	
LUPA-PALEO-4	Resolve vagaries and irrelevant, extraneous or inapplicable conclusions	
LUPA-SW-17	Clarify the scope of application	
LUPA-SW-22	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-SW-24	Provide flexibility and alternative means to address site-specific or project-specific conditions	
LUPA-SW-29	Resolve conflicting CMAs	
NCLS-LANDS-1	Resolve conflicting CMAs	



APPENDIX B

DRECP LUPA Conservation and Management Actions (CMAs) of Significant Concern to the Solar Industry

The Solar Industry is requesting that certain CMAs be either deleted or amended not because we believe that the issues the CMAs are intending to address are not important; rather, LSA believes that the Design Features contained in the existing Solar Programmatic EIS (which were subject to extensive negotiation between the BLM and the solar Industry) combined with project-specific conservation measures adopted pursuant to project-specific NEPA processes, have been, and will continue to be, sufficient to address those issues. The CMA’s that LSA has identified as problematic are generally more restrictive and/or prescriptive than the existing Design Features or the measures contained in recent solar project NEPA documents, and many would threaten project financing and viability.

While these CMAs may very well be appropriate for certain projects in certain circumstances, applying them as a matter of course to all projects is not justified. Given the amount of land that the DRECP will permanently place into conservation, LSA feels strongly that, within DFAs in particular, CMAs should be *less* (not more) restrictive than the existing PEIS Design Features.

CMAs that should be eliminated LUPA-wide			
Code	Text	Glossary Definitions (where relevant)	Solar Industry Concerns
TRANS-BIO-1	Bury electrical collector lines along roads or other previously disturbed paths to minimize new surface disturbance, restrict perching opportunities for the Common Raven, and reduce collision risks, where feasible.	Appendix K defines “collector lines” as: “transmission lines that carry electricity from generation projects to the first substation off the project site. These lines are also called generation intertie, or gen-tie lines.”	<u>This CMA should be eliminated LUPA-wide.</u> It is economically infeasible to bury gen-tie lines and is not required of any other industry. Imposing this requirement exclusively on renewable projects was an error. The term “collector lines” is typically used to refer to the lines within a solar field leading to an onsite transformer. Burying such lines within the hundreds to thousands of acres making up a solar field (i.e., land covered in solar panels) can be equally cost-prohibitive without a corresponding environmental benefit.



DFA-VPL-CUL-2	<p>For renewable energy activities and transmission, management fee, defined at a per acre rate and annual escalation provision for the life of the grant, will be paid to the BLM as partial mitigation for the cumulative effects on cultural resources across the DRECP Plan Area and may be used to develop regional research designs and other forms of off-site and compensatory mitigation.</p>		<p><u>This CMA should be eliminated LUPA-wide.</u> The issue of fees to address cumulative cultural resources impacts is adequately addressed in BLM's recently signed DRECP Section 106 Programmatic Agreement. The language regarding fees in the PA is more acceptable.</p>
LUPA-SW-23	<p>A Water (Groundwater) Supply Assessment shall be prepared prior to activity's certification or authorization. This assessment must be approved by the BLM in coordination with USFWS, CDFW, and other agencies, as appropriate, prior to the development, extraction, injection, or consumptive use of any water resource. The purpose of the Water Supply Assessment is to determine whether over-use or over-draft conditions exist within the project basin(s), and whether the project creates or exacerbates these conditions. The Assessment shall include an evaluation of existing extractions, water rights, and management plans for the water supply in the basin(s) (i.e., cumulative impacts), and whether these cumulative impacts (including the proposed project) can maintain existing land uses as well as existing aquatic, riparian, and other water-dependent resources within the basin(s). This assessment shall identify:</p> <ul style="list-style-type: none"> • All relevant groundwater basins or sub-basins and their relationships. • All known aquifers in the basin(s), including their dimensions, whether confined or unconfined, estimated hydraulic conductivity and transmissivity, groundwater surface elevations, and direction and movement of groundwater. • All surface water basin(s) related to water runoff, delivery, and supply, if different from the groundwater basin(s). • All sites of surface outflow (springs or seeps) contained within the basin(s), including historic sites. • All other surface water bodies in the basins(s), including rivers, streams, ephemeral washes/drainages, lakes, wetlands, playas, and floodplains. • The water requirements of the proposed project and the source(s) of that water. • An analysis demonstrating that water of sufficient quantity and quality is available from identified source(s) for the life of the project. • An analysis of potential project-related impacts on water quality and quantity needed for beneficial uses, reserved water rights, existing groundwater users, or habitat management within or down gradient of the groundwater basin 		<p><u>This CMA should be eliminated LUPA-wide.</u> Groundwater impacts are already adequately addressed via project-specific NEPA processes, as well as CEQA.</p>



	<p>within which the project would be constructed.</p> <ul style="list-style-type: none"> The above analyses shall be in the form of a numerical groundwater model. The model extent shall encompass the groundwater basin within which the project would be constructed, and any groundwater-dependent resources within or down gradient of that basin. <p>The primary product of the Water Supply Assessment shall be a baseline water budget, which shall be established based on the best-available data and hydrologic methods for the identified basin(s). This water budget shall classify and describe all water inflow and outflow to the identified basin(s) or system using best-available science and the following basic hydrologic formula or a derivation:</p> $P - R - E - T - G = \Delta S$ <p>where P is precipitation and all other water inflow or return flow, R is surface runoff or outflow, E is evaporation, T is transpiration, G is groundwater outflow (including consumptive component of existing pumping), and ΔS is the change in storage. The volumes in this calculation shall be in units of either acre-feet per year or gallons per year. The water budget shall quantify the existing perennial yield of the basin(s). Perennial yield is defined arithmetically as that amount such that</p> $P - R - E - T - G \geq 0$ <p>Water use by groundwater-dependent resources is implicitly included in the definition of perennial yield. For example, in many basins the transpiration component (T) includes water use by groundwater-dependent vegetation. Similarly, groundwater outflow (G) includes discharge to streams, springs, seeps, and wetlands. If one or more budget components is altered, then one or more of the remaining components must change for the hydrologic balance to be maintained. For example, an increase in the consumptive component of groundwater pumping can lower the water table and reduce transpiration by groundwater-dependent vegetation. The groundwater that had been utilized by the groundwater-dependent vegetation would then be considered “captured” by groundwater pumping. Similarly, increased groundwater consumption can capture groundwater that discharges to streams, springs, seeps, wetlands and playas. These changes can occur slowly over time, and may require years or decades before the budget components are fully adjusted. Accordingly, the water/groundwater supply assessment requires that the best-available data and hydrologic methods be employed to quantify these budgets, and that groundwater consumption effects on groundwater-dependent ecosystems be identified and addressed.</p>		
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	<p>The Water Supply Assessment shall also address:</p> <ul style="list-style-type: none"> • Estimates of the total cone of depression considering cumulative drawdown from all potential pumping in the basin(s), including the project, for the life of the project through the decommissioning phase • Potential to cause subsidence and loss of aquifer storage capacity due to groundwater pumping • Potential to cause injury to other water rights, water uses, and land owners • Changes in water quality and quantity that affect other beneficial uses • Effects on groundwater dependent vegetation and groundwater discharge to surface water resources such as streams, springs, seeps, wetlands, and playas that could impact biological resources, habitat, or are culturally important to Native Americans • Additional field work that may be required, such as an aquifer test, to evaluate site specific project pumping impacts and if necessary, establish trigger points that can be used for a Groundwater Water Monitoring and Mitigation Plan • The mitigation measures required, if there are significant or potentially significant impacts on water resources include but are not limited to, the use of specific technologies, management practices, retirement of active water rights, development of a recycled water supply, or water imports. 		
CMA's that should be eliminated or should not apply to DFAs or other areas where development may occur			
Code	Text	Glossary Definitions (where relevant)	Solar Industry Concerns
LUPA-BIO-12	<p>For activities that may impact focus or BLM Special-Status Species, implement the following LUPA CMA for noise:</p> <ul style="list-style-type: none"> ▪ To the maximum extent practicable commercially feasible, locate stationary noise sources that exceed background ambient noise levels away from known or likely locations of focus and BLM sensitive wildlife species and their suitable habitat. ▪ Implement engineering controls on stationary equipment, buildings, and work areas including sound-insulation and noise enclosures to reduce the average noise level, if the activity will contribute to noise levels above existing background ambient levels. ▪ Use noise controls on standard construction equipment including mufflers to 		<p><i><u>This CMA should not apply to DFAs or other areas where development may occur.</u></i> This requirement significantly expands the noise mitigation requirements currently applicable to development. The industry believes that compliance will be impracticable.</p> <p>At a minimum, the first bullet</p>



	reduce noise.		should be rewritten to state: “To the extent commercially feasible...”																												
LUPA-BIO-RIPWET-1	<p>The riparian and wetland vegetation types and other features listed in Table II.3-22 will be avoided to the maximum extent practicable (see “minor incursion” in the Glossary of Terms) with the specified setbacks.</p> <p>Riparian and Wetland Avoidance and Setbacks</p> <p>Riparian and Wetland Vegetation Types or Features</p> <table border="0"> <thead> <tr> <th></th> <th style="text-align: right;">Setback1</th> </tr> </thead> <tbody> <tr> <td><i>Riparian Vegetation Types</i>¹</td> <td></td> </tr> <tr> <td>Madrean Warm Semi-Desert Wash Woodland/Scrub</td> <td style="text-align: right;">200 feet</td> </tr> <tr> <td>Mojavean Semi-Desert Wash Scrub</td> <td style="text-align: right;">200 feet</td> </tr> <tr> <td>Sonoran-Coloradan Semi-Desert Wash Woodland/Scrub</td> <td style="text-align: right;">200 feet</td> </tr> <tr> <td>Southwestern North American Riparian Evergreen and Deciduous Woodland</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td>Southwestern North American Riparian/Wash Scrub</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td><i>Wetland Vegetation Types</i>¹</td> <td></td> </tr> <tr> <td>Arid west freshwater emergent marsh</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td>Californian Warm Temperate Marsh/Seep</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td><i>Other Riparian and Wetland Related Features</i></td> <td></td> </tr> <tr> <td>Managed Wetlands²</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td>Mojave River³</td> <td style="text-align: right;">0.25 mile</td> </tr> <tr> <td>Undifferentiated Riparian land cover⁴</td> <td style="text-align: right;">200 feet</td> </tr> </tbody> </table> <p>For minor incursion (see “minor incursion” in the Glossary of Terms) to the riparian vegetation types, wetland vegetation types, or encroachments on the setbacks listed in Table II.3-22, the hydrologic function of the avoided riparian or wetland communities will be maintained.</p> <ul style="list-style-type: none"> ▪ <u>Minor incursions in the riparian and wetland vegetation types or other features including the setbacks listed in Table II.3-22 will occur outside of the avian nesting season, which is from February 1 through August 31, if the minor incursion(s) is likely to result in impacts to nesting birds.</u> ▪ <u>Direct impacts and removal of riparian and wetland vegetation are allowed where preservation would result in islanding or severe edge effects.</u> ▪ <u>Direct impacts would be compensated for in conformance with other CMAs.</u> ▪ <u>Where compensation is possible, avoidance shall not be required.</u> 		Setback1	<i>Riparian Vegetation Types</i> ¹		Madrean Warm Semi-Desert Wash Woodland/Scrub	200 feet	Mojavean Semi-Desert Wash Scrub	200 feet	Sonoran-Coloradan Semi-Desert Wash Woodland/Scrub	200 feet	Southwestern North American Riparian Evergreen and Deciduous Woodland	0.25 mile	Southwestern North American Riparian/Wash Scrub	0.25 mile	<i>Wetland Vegetation Types</i> ¹		Arid west freshwater emergent marsh	0.25 mile	Californian Warm Temperate Marsh/Seep	0.25 mile	<i>Other Riparian and Wetland Related Features</i>		Managed Wetlands ²	0.25 mile	Mojave River ³	0.25 mile	Undifferentiated Riparian land cover ⁴	200 feet	<p>Minor incursion: Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.</p>	<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u></p> <p>Developers must avoid these resources “to the maximum extent practical” and are allowed only “minor incursions,” which include only small-scale allowable impacts designed “to prevent or minimize greater resource impacts from an alternative approach to the activity” These terms represent a significant departure from current permitting practices, which allow impacts to such features with the provision of sufficient mitigation.</p> <p>Furthermore, to mandate a prescriptive buffer distance when a performance standard might alternatively mitigate impacts is an unfortunate practice that fails to allow for ingenuity and best practices in construction. Buffer distances of 50 feet and less are sufficient to fully mitigate impacts on many riparian habitats with proper best management practices in place. Requiring an arbitrary 200 foot buffer discourages effective use of space, thereby creating needless</p>
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	<p>¹ Setbacks are measured from the edge of the mapped riparian or wetland vegetation or water feature per LUPA-BIO-3.</p> <p>² Setback is from managed wetlands including USFWS Refuges, state managed wetlands, and duck clubs in Imperial Valley. See specifications for the Salton Sea below.</p> <p>³ Setback is measured from the edge of mapped riparian or edge of FEMA 100-year floodplain of the Mojave River, whichever is further from the center line of the Mojave River channel.</p> <p>⁴ Undifferentiated “Riparian” land cover includes portions of major river courses (Mojave River and Colorado River) within the main channels where riparian vegetation groups were not mapped.</p>		<p>“sprawl.”</p> <p>At a minimum, this should be rewritten to allow for direct impacts to and removal of riparian and wetland vegetation that would be islanded or where edge effects would be dramatic. Direct impacts would be compensated for in conformance with other CMAs.</p>
<p>LUPA-BIO-RIPWET-3</p>	<p>For activities that occur within 0.25 mile a riparian or wetland vegetation type and may impact BLM Special-Status riparian and wetland birds species conduct a pre-construction/activity nesting bird survey for BLM Special-Status riparian and wetland birds according to agency-approved protocols.</p> <ul style="list-style-type: none"> ▪ Based on the results of the nesting bird survey above, setback activities, including but not limited to pre-construction, construction and decommissioning, 0.25 mile from active nests of BLM Special-Status riparian and wetland bird species during the breeding season (February 1 through August 31). For activities in these areas lasting longer than one week, nesting bird surveys may need to be repeated. No pre-activity nesting bird surveys are necessary for activities occurring outside of the breeding season. ▪ <u>A BLM biologist has discretion to offer variances to this setback.</u> 		<p><i><u>This CMA should not apply to DFAs or other areas where development may occur.</u></i> This CMA significantly extends the required buffer distance for BLM Special-Status riparian and wetland bird surveys during the nesting season (February through August) to 0.25 miles from construction activity and further suggests that such surveys will need to be repeated routinely throughout the construction process. Measures such as these threaten to substantially increase the costs of development within DFAs compared to current practices. In many cases, this will shut down construction in huge swaths of a site, increasing project costs with no added conservation value, as the wildlife agencies typically require only a 150-foot buffer for a majority of</p>



		<p>nesting bird species.</p> <p>A buffer of 0.25 miles is inappropriate in many cases (where there is significant intervening vegetation or topography).</p> <p>At a minimum, this CMA should allow for variances at the discretion of the BLM biologist.</p>
<p>LUPA-BIO-PLANT-2</p>	<p>Implement an avoidance setback of 0.25 mile or all plant Focus and BLM Special-Status Species occurrences. Setbacks will be placed strategically adjacent to occurrences to protect ecological processes necessary to support the plant Species (see Appendix Q, Baseline Biology Report).</p> <ul style="list-style-type: none"> • <u>Direct impacts</u> are allowed where preservation would result in islanding or severe edge effects. • <u>Transplantation or seed collection</u> is an option where avoidance is not feasible. 	<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u> This unnecessary requirement will render projects un-financeable.</p> <p>Under current conditions, projects are allowed to mitigate for impacts; avoidance is preferred but not absolutely required. In a best-case scenario, this CMA will minimize effective use of space and force sprawl. In a worst case, because special-status plants are not always detectable from year to year due to changes in climate and other factors, this requirement effectively forces projects to redesign for avoidance at the construction phase of a project if, in the eleventh hour, a special status plant were to surprise even the most qualified botanist. This represents a huge burden that is an unmitigated risk for projects.</p>



			<p>At a minimum, this should be rewritten to allow for direct impacts to the sensitive plant species if the avoidance strategy would result in islanding of habitat or would result in significant edge effects to the species being protected. It should clarify that transplantation or seed collection is an option where avoidance is not feasible.</p>
<p>LUPA-BIO-S\F-6</p>	<p>Microphyll woodland: impacts to microphyll woodland (see Glossary of Terms) will be avoided, except for minor incursions (see Glossary of Terms).</p> <ul style="list-style-type: none"> • <u>Direct impacts are allowed where preservation would result in islanding or severe edge effects.</u> • <u>Avoidance is not required where compensation is possible.</u> 	<p>Microphyll woodlands: Consist of drought-deciduous, small-leaved (microphyllus), mostly leguminous trees. Occurs in bajadas and washes where water availability is somewhat higher than the plains occupied by creosote bush and has been called the “riparian phase” of desert scrub (Webster and Bahre 2001). Composed of the following alliances: desert willow, mesquite, smoke tree, and the blue palo verde-</p>	<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u> See above (LUPA-BIO-RIPWET-1). In the draft DRECP, it was suggested that minor incursions/intrusions would be limited to necessary road or gentle crossings. The distribution of these small washes with vegetation is such that an absolute avoidance requirement will decimate the available acreage within DFAs.</p> <p>At a minimum, this should be rewritten to allow for direct impacts where preservation would result in islanding or severe edge effects.</p>



		ironwood. See minor incursion, above in LUPA-BIO-RIPWET-1	
LUPA-BIO-VEG-1	Management of cactus, yucca, and other succulents will adhere to current up-to-date BLM policy.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This is open-ended and allows for future unlimited costs to be imposed on projects for no identified benefit.
LUPA-BIO-IFS-18	In the range of the California condor, all equipment and work-related materials (including loose-wires, open containers or other supplies or materials) will be contained in closed containers either in the work area or placed inside vehicles.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA is very confusing. It is impossible to containerize all work related equipment. At a minimum, this should get much more specific to only those materials that are potentially hazardous to condors.
LUPA-BIO-IFS-24	Provide protection from loss and harassment of active nests through the following actions: <ul style="list-style-type: none"> Activities that may impact nesting golden eagles, will not be sited or constructed within 1-mile of any active or alternative golden eagle nest within an active golden eagle territory, as determined by BLM in coordination with USFWS as appropriate. 		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA goes well beyond a rational prohibition within a range of an active eagle nest, and could be interpreted to refer to just about any development activity located just about anywhere.
LUPA-BIO-IFS-25	Cumulative loss of foraging habitat <u>[define] of golden eagles</u> within a 1 to 4 mile radius around active or alternative eagle nests will be limited to less than 20%. See CONS-BIO-IFS-5 for the requirement in Conservation Lands.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> The text of this CMA should refer specifically to golden eagles. Furthermore, foraging habitat is not defined, making



			implementation of this CMA very difficult.
LUPA-BIO-COMP-2	<p>Birds and Bats - The compensation for the mortality impacts to bird and bat Focus and BLM Special-Status Species from activities would be determined based on monitoring of bird and bat mortality and a fee assessed every 5 years to fund compensatory mitigation. Initial compensation fee for bird and bat mortality impacts would be based on pre-project monitoring of bird use and estimated bird and bat species mortality from the activity. The approach to calculating the operational bird and bat compensation is based on the total replacement cost for a given resource, a Resource Equivalency Analysis. This involves measuring the relative loss to a population (debt) resulting from an activity and the productivity gain (credit) to a population from the implementation of compensatory mitigation actions. The measurement of these debts and gains (using the same “bird years” metric as described in Draft DRECP and EIR/EIS Appendix H) is used to estimate the necessary compensation fee.</p> <p>Each activity, as determined appropriate by BLM in coordination with FWS, and CDFW as applicable, will include a monitoring strategy to provide activity-specific information on mortality effects on birds and bats in order to determine the amount and type of compensation required to offset the effects of the activity, as described above and in detail in Appendix H. Compensation will be satisfied by restoring, protecting, or otherwise improving habitat such that the carrying capacity or productivity is increased to offset the impacts resulting from the activity. Compensation may also be satisfied by non-restoration actions that reduce mortality risks to birds and bats (e.g., increased predator control and protection of roosting sites from human disturbance).</p>		<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u> Unbounded compensation requirements make projects unfinanceable.</p> <p>This implies that mortality monitoring will be required for the life of the project (compared to the already onerous requirement for one to three years of monitoring). Both the unpredictable fee and the expansive monitoring requirements are incompatible with the static nature of the business of a solar energy generation facility. The DRECP is supposed to provide cost-efficient and certain opportunities for development. This CMA is not consistent with those objectives.</p>
LUPA-CUL-3	<p><u>Outside of DFAs, identify</u> places of traditional cultural and religious importance to federally recognized tribes and maintain access to these locations for traditional use.</p>		<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA should not apply to DFAs so as not to require access to project sites.</p>
LUPA-CUL-4	<p>Design activities to minimize impacts on cultural resources including places of traditional cultural and religious importance to federally recognized tribes.</p>		<p><u>This CMA should not apply to DFAs or other areas where development may occur.</u> This</p>



			CMA should only apply outside of DFAs or where feasible.
LUPA-CUL-9	Promote desert vegetation communities by compensatory mitigation, off-site mitigation, and other means for Native American vegetation collection.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA requires that projects promote “desert vegetation communities” (an undefined and otherwise unused term) by providing compensatory mitigation for Native American vegetation collection. It suggests that Tribes will be given authority to identify important vegetation <i>and</i> require that developers pay for the collection of such vegetation. If left unchecked, this could prove to be a very costly measure with broad application, as it is not limited to rare vegetation or any other criteria that might justify the need for its collection.
LUPA-CUL-10	Promote and protect desert fan palm oasis communities by compensatory mitigation, off-site mitigation, and other means for Native American cultural values.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA is too vague.
LUPA-CUL-11	Promote and protect desert microphyll woodland communities by compensatory mitigation, off-site mitigation, and other means for Native American cultural values.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This CMA is too vague.
LUPA-SW-1	Stipulations or conditions of approval for any activity will be imposed that provide appropriate protective measures to protect the quantity and quality of all water resources (including ephemeral, intermittent, and perennial water bodies) and any associated riparian habitat (see biological CMAs for specific riparian habitat CMAs). These water resources will be identified through the NEPA analysis.		<u>This CMA should not apply to DFAs or other areas where development may occur.</u> This is overly broad and vague.



LUPA-SW-2	Buffer zones, setbacks, and activity limitations directly associated with soil and water resources, not including the biological associated or dependent resources, identified as appropriate to a particular feature or resource, will be determined on a site-specific basis, and will be consistent with the plan decision to protect these resources as appropriate. These buffer zones and setbacks may be based, in part, on the results of the Water Supply Assessment defined below. In general, placement of long-term facilities within buffers or protected zones will be discouraged, but may be permitted if soil and water resource management objectives can be maintained.		<i><u>This CMA should not apply to DFAs or other areas where development may occur.</u></i> It is very unclear what is required.
LUPA-SW-9	The extent of desert pavement within the proposed boundary of an activity shall be mapped if it is anticipated that the activity may create erosional or ecologic impacts. Mapping will use the best available appropriate standards. Disturbance of desert pavement within the boundary of an activity shall be limited to the extent possible. If disturbance from an activity is likely to exceed 10% of the desert pavement mapped within the activity boundary, the BLM will determine whether the erosional and ecologic impacts of exceeding the 10% cap by the proposed amount would be insignificant and/or whether the activity should be redesigned to minimize desert pavement disturbance.		<i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> Should not be required to redesign a project to protect a resource that has no value in and of itself. “Best available standards” should be replaced with “appropriate standards”. It is not clear what resource is being protected.
LUPA-SW-13	All riparian areas will be maintained at, or brought to, proper functioning condition.		<i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> This is vague and confusing.
LUPA-SW-20	If possible, all unavoidable significant impacts on surface waters shall be mitigated to ensure no net-significant loss of function and value, as determined by the BLM, as the result of project implementation.		<i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> It’s very confusing.
LUPA-SW-25	Where groundwater extraction, in conjunction with other cumulative impacts in the basin, has potential to exceed have a significant impact on the basin’s perennial yield or to impact water resources, one or more “trigger points,” or specified groundwater elevations in specific wells or surface water bodies, shall be established by BLM. If the groundwater elevation at the designated monitoring wells falls below the trigger point(s) (or exceeds the trigger pumping rate), additional mitigation measures, potentially including cessation of pumping, would be imposed.		<i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> This provision would make a project unfinanceable because it essentially allows staff the discretion to cut off a project’s water supply mid-construction or mid-operation. This should be addressed in the planning phase



		and not during construction or operations.
LUPA-SW-32	<p>The Colorado River Accounting Surface Method, as defined in U.S. Geological Survey Scientific Investigations Report 2008-5113 (USGS 2009) and existing and future updates, and developed to implement a provision in the Consolidated Decree of the United States Supreme Court in <i>Arizona v. California</i>, 547 U.S. 150 (2006), shall be the accepted method of determining whether project-related pumping would result in the extracted water being replaced by water drawn from the Colorado River. If project-related groundwater pumping results in the static groundwater level at the well being near (within 1 foot), equal to, or below the Accounting Surface in a basin hydrologically connected to the Colorado River, that consumption shall be considered subject to the Law of the River (Colorado River Compact of 1922 and amendments, including the Consolidated Decree). In such cases, BLM shall require the applicant to offset or otherwise mitigate the volume of water causing drawdown below the accounting surface. Details of such mitigation measures and the right to the use of water shall be described in the Groundwater Water Monitoring and Mitigation Plan.</p>	<p><u>This CMA should not apply to DFAs or other areas where development may occur</u> It adopts the “Colorado River Accounting Surface Method” for purposes of determining if a project would be impacting Colorado River water. Adoption of this method by the Bureau of Reclamation “to address and eliminate the use of Colorado River water from the mainstream in the lower Colorado River basin (Lower Basin) without an entitlement” is the subject of a pending rulemaking proceeding.¹ It is obviously a blatant violation of administrative law for the BLM to circumvent that rulemaking by incorporating the standards under consideration in that proceeding into a generally applicable land use plan amendment.</p> <p>BLM’s incorporation of this approach to groundwater use will trigger expensive groundwater-related mitigation for projects within DFAs anywhere near the Colorado River. As a consequence of this particular CMA, development in these areas could become completely</p>

¹ 73 Fed. Reg. 40,916 (July 16, 2008).



			<p>infeasible. The degree to which this regulatory overreach is inappropriate is underlined by the fact that some projects were challenged in litigation for not incorporating the Accounting Surface Method, and courts have uniformly rejected such a claim.</p>
LUPA-UNA-4	<p>Renewable Energy Activities – A renewable energy activity that is not transmission aligned, as per the DRECP energy development design, is not allowed.</p>		<p><i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> The DFAs themselves are not transmission-aligned.</p> <p>Although somewhat vague, we assume that BLM intends to exclude development, lacking access to existing (or planned?) transmission. This interpretation requires clarification and an opportunity for the industry to comment on the potential impacts. To the extent that the DFAs themselves are not transmission aligned, the entire structure of the DRECP fails.</p>
ACEC-DIST-2	<p>Specifically, the disturbance caps would be implemented as a limitation and objective using the following process:</p> <ul style="list-style-type: none"> • Limitation: If the ground disturbance condition of the NCL and/or ACEC is below the designated disturbance cap (see calculation method), the disturbance cap is a limitation on ground-disturbing activities within the NCL and/or ACEC, and precludes approval of future ground disturbing activities (see exceptions below) above the cap. • Objective, triggering disturbance mitigation: If the ground disturbance condition of the NCL and/or ACEC is at or above its designated cap, the cap functions as an objective, triggering the specific disturbance mitigation requirement. Disturbance mitigation is unique to disturbance cap 		<p><i><u>This CMA should not apply to DFAs or other areas where development may occur</u></i> This CMA would cap development in National Conservation Lands (National Landscape Conservation System (NLCS) lands and Areas of Critical Environmental Concern (ACECs)) at 1% or less and require higher than normal (e.g.,</p>



	<p>implementation and a discrete form of compensatory mitigation, separate from other required mitigation in the DRECP (see Glossary of Terms). The disturbance mitigation requirement remains in effect for all (see exceptions below) activities until which time the NCL and/or ACEC drops below the cap, at which time the cap becomes a limitation and the disturbance mitigation is no longer a requirement. If disturbance mitigation opportunities do not exist in a unit, ground disturbing activities (see exceptions below) will not be allowed in that unit until which time opportunities for disturbance mitigation in the unit become available (see types and forms of disturbance mitigation below) or the unit recovers and drops below the cap.</p> <ul style="list-style-type: none"> • Actions necessary to control the immediate impacts of an emergency that are urgently needed to reduce the risk to life, property, or important natural, cultural, or historic resources, in accordance with 43 CFR 46.150, are an exception to the disturbance cap limitation, objective and disturbance mitigation requirements. Ground disturbance from emergency actions will count in the disturbance calculation for other activities, and also be available for disturbance mitigation opportunities and restoration, as appropriate. 		<p>3:1) mitigation ratio for disturbance above this cap. While these lands would be off-limits for the development of energy generation facilities, linear project infrastructure (gen-ties, roads, pipelines) frequently passes through these zones. Although NLCS-LANDS-1 (discussed below) threatens to change this, to the extent that linears are still allowed through National Conservation Lands, the costs of developing such facilities for projects in DFAs would be significantly more costly.</p>
CMAs requiring modification or clarification			
LUPA-BIO-2	<p>Designated-Qualified biologist(s) (see Glossary of Terms), will conduct <u>oversee</u> activity-specific required biological monitoring during pre-construction, construction, and decommissioning to ensure that avoidance and minimization measures are appropriately implemented and are effective. The appropriate required monitoring will be determined during the environmental analysis and BLM approval process, <u>and may include monitoring by drones or other technological means where appropriate.</u></p>	<p>Designated biologist. A biologist who is approved as qualified by BLM, and U.S. Fish and Wildlife Service (USFWS) and CDFW, as appropriate. A designated biologist is the person responsible for overseeing compliance with</p>	<p>“Designated biologists” should not be required for all monitoring activities. Qualified biologists would do most monitoring. The “designated biologist” should only be required to <i>oversee</i> the monitoring activities.</p> <p>This measure should allow for the use of monitoring by drones or other technological means where appropriate.</p>



		specific applicable DRECP BLM LUPA biological CMAs.	
LUPA-BIO-3	<p>Resource setbacks (see Glossary of Terms) have been identified to avoid and minimize the adverse effects to specific biological resources. Setbacks are not considered additive and are measured as specified in the applicable CMA. Generally, setbacks (which range in distances for different biological resources) for the appropriate resources are measured from:</p> <ul style="list-style-type: none"> ▪ <u>Setbacks from “suitable habitat” are not required if compensation is used as an alternative to avoidance of a resource.</u> ▪ The edge of each of the DRECP vegetation types, including but not limited to those in the riparian or wetland vegetation groups (as defined by alliances within the vegetation type descriptions and mapped based on the vegetation type habitat assessments described in LUPA-BIO-1). ▪ The edge of the mapped riparian vegetation or the Federal Emergency Management Agency (FEMA) 100-year floodplain, whichever is greater, for the Mojave River. ▪ The edge of the vegetation extent for specified focus and BLM sensitive plant species. ▪ The edge of suitable habitat or active nest substrates for the appropriate focus and BLM Special-Status Species. 	Setback. A defined distance, usually expressed in feet or miles, from a resource feature (such as the edge of a vegetation type or an occupied nest) within which an activity would not occur; otherwise often referred to as a buffer. The purpose of the setback is to maintain the function and value of the biological resource features identified in the DRECP BLM LUPA CMAs. See Section II.3.4.2.1 for a summary of setbacks incorporated in the CMAs.	Setbacks should not be required from “suitable habitat” if compensation is allowed instead of avoidance of a resource.
LUPA-BIO-4	<p>For activities that may impact focus and BLM Special-Status Species, implement all required species-specific seasonal restrictions on pre- construction, construction, operations, and decommissioning activities.</p> <p>Species-specific seasonal restriction dates are described in the applicable CMAs.</p> <p>Alternatively, to avoid a seasonal restriction associated with visual disturbance,</p>		This CMA does not state who would be “evaluating on a case-by-case basis” the visual screen. It should be the designated biologist.



	<p>installation of a visual barrier may be evaluated by a designated biologist on a case-by-case basis that will result in the breeding, nesting, lambing, fawning, or roosting species not being affected by visual disturbance from construction activities subject to seasonal restriction.</p>		
LUPA-BIO-5	<p>All activities, as determined appropriate on an activity-by-activity basis, will implement a worker education program that meets the approval of the BLM. The program will be carried out during all phases of the project (site mobilization, ground disturbance, grading, construction, operation, closure/decommissioning or project abandonment, and restoration/reclamation activities). The worker education program will provide interpretation for non-English speaking workers, and provide the same instruction for new workers prior to their working on site. At a minimum as appropriate, the program will contain information about:</p> <ul style="list-style-type: none"> ▪ Site-specific biological and nonbiological resources. ▪ Information on the legal protection for protected resources and penalties for violation of federal and state laws and administrative sanctions for failure to comply with LUPA CMA requirements intended to protect site-specific biological and nonbiological resources. ▪ The required LUPA and project-specific measures for avoiding and minimizing effects during all project phases, including but not limited to resource setbacks, trash, speed limits, etc. ▪ Reporting requirements and measures to follow if protected resources are encountered, including potential work stoppage and requirements for notification of the designated biologist. ▪ Measures that personnel can take to promote the conservation of biological and nonbiological resources, including looking for animals in open holes and trenches and closing them when not in use or draining evaporation ponds when not in use. 		<p>The final bullet is inappropriate here and is addressed in other CMAs. Delete the final phrase (after the comma) in the final bullet.</p>
LUPA-BIO-7	<p>Where vegetation types or focus or BLM Special-Status habitats may be affected by ground- disturbance and/or vegetation removal during pre-construction, construction, operations, and decommissioning related activities but are not converted by long-term (i.e., more than two years of disturbance) ground disturbance, restore these areas following the standards, approved by BLM authorized officer, following the most recent BLM policies and procedures for the vegetation community or species habitat disturbance as appropriate, summarized below:</p> <ul style="list-style-type: none"> ▪ Implement site-specific habitat restoration actions for the areas affected including specifying and using: <ul style="list-style-type: none"> ○ The appropriate seed (e.g., certified weed- free, native, and locally and 		<p>Sometimes “immediately following construction” is not the optimal time to restore the area. Sometimes, for weather-related reasons and for timing seeding and replanting with the best chance of success, it’s necessary to wait. This should be clarified.</p>



	<ul style="list-style-type: none"> genetically appropriate seed) <ul style="list-style-type: none"> ○ Appropriate soils (e.g., topsoil of the same original type on site or that was previously stored by soil type after being salvaged during excavation and construction activities) ○ Equipment ○ Timing (e.g., appropriate season, sufficient rainfall) ○ Location ○ Success criteria ○ Monitoring measures ○ Contingency measures, relevant for restoration, which includes seeding that follows BLM policy when on BLM administered lands (see Appendix H). ▪ Salvage and relocate cactus, nolina, and yucca from the site prior to disturbance using BLM protocols. To the maximum extent practicable for short-term disturbed areas, the cactus and yucca will be re-planted back to the original site. ▪ Restore and reclaim short-term disturbed areas, including pipelines, transmission projects, staging areas, and short-term construction-related roads immediately following completion of construction activities, <u>or during the most biologically appropriate season</u>, to reduce the amount of habitat converted at any one time and promote recovery to natural habitats and vegetation as well as climate refugia and ecosystem services such carbon storage. 		
LUPA-BIO-9	<p>Implement the following general LUPA CMA for water and wetland dependent resources:</p> <ul style="list-style-type: none"> ▪ Implement construction site standard practices to prevent toxic chemicals, hazardous materials, and other fluids from entering vegetation type streams, washes, and tributary networks through water runoff, erosion, and sediment transport by, at a minimum, implementing the following: <ul style="list-style-type: none"> ○ On project sites, vehicles and other equipment will be maintained in proper working condition and only stored in designated containment areas where runoff is collected or controlled and that are located outside of streams, washes, and distributary networks to minimize accidental fluids and hazardous materials spills. ○ Hazardous material leaks, spills, or releases will be immediately cleaned and equipment will be repaired upon identification. Removal and disposal of spill and related clean-up materials will occur at an approved off-site landfill. ○ Maintenance and operations vehicles will carry the appropriate equipment 		<p>This CMA requires that developers make evaporation ponds inaccessible to wildlife (either by enclosing them or using steep slope to discourage access) or otherwise camouflage the ponds to hide them from wildlife. While certain reasonable measures may effectively protect terrestrial wildlife, LSA’s member companies, all with significant experience developing in the California desert, are not aware of any measures employed at other facilities that can reliably and effectively shield evaporation</p>



	<p>and materials to isolate, clean up, and repair any hazardous material leaks, spills, or releases.</p> <ul style="list-style-type: none"> ▪ Activity-specific drainage, erosion, and sedimentation control actions, which meet the approval of BLM and the applicable regulatory agencies, will be carried out during all appropriate phases of the approved project. These actions, as needed, will address measures to ensure the proper protection of water quality, site-specific stormwater and sediment retention, and design of the project to minimize site disturbance, including the following: <ul style="list-style-type: none"> ○ Identify site-specific surface water runoff patterns and implement measures to prevent excessive and unnatural soil deposition and erosion. ○ Implement measures to maintain natural drainages and to maintain hydrologic function in the event drainages are disturbed. ○ Reduce the amount of area covered by impervious surfaces through use of permeable pavement or other pervious surfaces. Direct runoff from impervious surfaces into retention basins. ○ Stabilize disturbed areas following grading in the manner appropriate to the soil type so that wind or water erosion is minimized. ○ Minimize irrigation runoff by using low or no irrigation native vegetation landscaping for landscaped retention basins. ○ Conduct regular inspections and maintenance of long-term erosion control measures to ensure long-term effectiveness. ○ Project applicants for sites that may affect intermittent and perennial streams, springs, swales, ephemeral washes, wetland vegetation, other DRECP water land covers, or sites occupied by aquatic or riparian focus and BLM Special-Status Species due to groundwater or surface water extraction will conduct hydrologic studies during project planning to determine the potential effect of groundwater and surface water extraction on the hydrologic unit. These studies will include both watershed effects as well as effects on perched, alluvial, and regional aquifers. Projects that are likely to affect ground-water resources in a manner that would result in substantial loss of riparian or wetland communities or habitat for riparian or aquatic focus and BLM Special-Status Species are prohibited. ○ The use of evaporation ponds for water management will be avoided when the water could harm birds or other terrestrial wildlife due to constituents of concern present in the wastewater (e.g., selenium, hypersalinity, etc.). Evaporation ponds will be configured to minimize 		<p>ponds from birds without significantly impairing the function of an evaporation pond. Significant debate is ongoing regarding whether, for example, creating barriers using nets is necessary or beneficial to avian species. The DRECP should not impose supposed best management practices that are not backed by sound science.</p>
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	<p>attractiveness to shorebirds (e.g., maintain water depths over two feet; maintain steep slopes along edge; enclose evaporation ponds in long-term structures; or obscure evaporation ponds from view using materials that blend in with the natural surroundings).</p> <ul style="list-style-type: none"> ▪ Ramps that allow the egress of wildlife from ponds or other water management infrastructure will be installed. 		
LUPA-BIO-13	<p>Implement the following CMA for project siting and design</p> <ul style="list-style-type: none"> ▪ To the maximum extent practicable site and design projects to avoid impacts to <u>occupied habitat for BLM Special-Status Species, including</u> vegetation types; <u>and</u> unique plant assemblages, <u>and suitable habitat for BLM Special-Status Species in modeled</u> climate refugia as well as occupied habitat and suitable habitat for focus and BLM Special-Status Species (see “unavoidable impacts to resources” in Glossary of Terms). ▪ The siting of projects <u>within along the edges</u> of the biological linkages identified in Appendix H (Figures H-1 and H-2) will be configured (1) to maximize the retention of microphyll woodlands and their constituent vegetation type and inclusion of other physical and biological features conducive to focus and BLM Special-Status Species’ dispersal, and (2) informed by existing available information on modeled focus and BLM Special-Status Species habitat and element occurrence data, mapped delineations of vegetation types, and based on available empirical data, including radio telemetry, wildlife tracking sign, and road-kill information. Additionally, projects will be sited and designed (<u>including allowing habitat linkages through projects and designing projects with wildlife-permeable fences, where appropriate</u>) to maintain the function of focus and BLM Special-Status Species connectivity and their associated habitats in the following linkage and connectivity <u>areas [these need to be shown on a map or the map in appendix H to which these refer needs to be called out expressly]</u>: <ul style="list-style-type: none"> ○ Within a 5-mile-wide linkage across Interstate 10 centered on Wiley’s Well Road to connect the Mule and McCoy mountains. ○ Within a 3-mile-wide linkage across Interstate 10 to connect the Chuckwalla and Palen mountains. ○ Within a 1.5-mile-wide linkage across Interstate 10 to connect the Chuckwalla Mountains to the Chuckwalla Valley east of Desert Center. 	<p>Unavoidable impacts to resources. Small-scale impacts to sensitive resources, as allowed per specific CMAs, that may occur even after such impacts have been avoided to the maximum extent practicable (see definition). Unavoidable impacts are limited to minor incursions (see definition), such as a necessary road or pipeline extension across a sensitive resource required to serve an activity, <u>or installation of solar panels within an isolated or constrained portion of suitable or occupied habitat for</u></p>	<p>As written, the first bullet would seriously constrain or eliminate development in DFAs, and imposes unrestricted costs on projects. It says that “to the maximum extent practicable”... “avoid impacts to vegetation types”... “suitable habitat for focus and BLM Special-Status Species”. “Maximum extent practicable” requires no impacts unless there is no other choice consistent with the basic objectives of the activity. This suggests that the BLM should require avoidance of any natural vegetation or habitats at any cost to a project.</p> <p>This should be rewritten to clarify that avoidance should occur only for Focus and Special Status Species and their occupied habitats or predicted climate refugia, and that if avoidance cannot occur, minimization and compensation should occur consistent with the other CMAs.</p>



	<ul style="list-style-type: none"> ○ The confluence of Milpitas Wash and Colorado River floodplain within 2 miles of California State Route 78. ▪ Delineate the boundaries of areas to be disturbed using temporary construction fencing and flagging prior to construction and confine disturbances, project vehicles, and equipment to the delineated project areas to protect vegetation types and focus and BLM Special-Status Species. ▪ Long-term nighttime lighting on project features will be limited to the minimum necessary for project security, safety, and compliance with Federal Aviation Administration requirements and will avoid the use of constant-burn lighting. ▪ All long-term nighttime lighting will be directed away from riparian and wetland vegetation, occupied habitat, and suitable habitat areas for focus and BLM Special-Status Species. Long-term nighttime lighting will be directed and shielded downward to avoid interference with the navigation of night-migrating birds and to minimize the attraction of insects as well as insectivorous birds and bats to project infrastructure. ▪ To the maximum extent practicable, restrict construction activity to the use of existing roads, routes, and utility corridors to minimize the number and length/size of new roads, routes, disturbance, laydown, and borrow areas. ▪ To the maximum extent practicable, confine vehicular traffic to designated open routes of travel to and from the project site, and prohibit, within project boundaries, cross-country vehicle and equipment use outside of approved designated work areas to prevent unnecessary ground and vegetation disturbance. ▪ To the maximum extent practicable, construction of new roads and/or routes will be avoided within focus and BLM Special-Status Species suitable habitat within identified linkages for those focus and BLM Special-Status Species, unless the new road and/or route is beneficial to minimize net impacts to natural or ecological resources of concern. These areas will have a goal of “no net gain” of project roads and/or routes ▪ To the maximum extent practicable, any new road and/or route considered within focus and BLM Special-Status Species suitable habitat within identified linkages for those focus and BLM Special-Status Species will not be paved so as not to negatively affect the function of identified linkages. 	<p><u>BLM Special-Status Species.</u></p> <p>Avoidance to the maximum extent practicable (as referenced in DRECP LUPA CMAs). A standard identified in the DRECP LUPA CMAs and applied to implementation of activities. Under this standard, impacts to identified resources are not allowed unless there is no reasonable or practicable means of avoidance that is consistent with the basic objectives of the activity. Compensation for unavoidable impacts would be required as specified in the CMAs. The term “maximum extent practicable” as used here in the DRECP LUPA is applicable only to its use in the CMAs; it does not apply to the term as</p>	<p>The second bullet is unclear as to which “linkages” it refers and should be stricken. There are many vast areas shown as linkages in Appendix H. The linkages described in this CMA are not supported by the mapping in Appendix H.</p>
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	<p>Use nontoxic road sealants and soil stabilizing agents.</p>	<p>it is used in the Endangered Species Act of 1973. Avoidance to the maximum extent practicable (as referenced in DRECP LUPA CMAs). A standard identified in the DRECP LUPA CMAs and applied to implementation of activities. Under this standard, impacts to identified resources are not allowed unless there is no reasonable or practicable means of avoidance that is consistent with the basic objectives of the activity. Compensation for unavoidable impacts would be required as specified in the CMAs. The term “maximum extent practicable” as used here in the DRECP LUPA is applicable only to its use in the CMAs; it does not apply to the term as it is used in the</p>	
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		Endangered Species Act of 1973.	
LUPA-BIO-14	<p>Implement the following general standard practices to protect Focus and BLM Special-Status Species (i.e. vertebrate species and special-status invertebrates):</p> <ul style="list-style-type: none"> ▪ Feeding of wildlife, leaving of food or trash as an attractive nuisance to wildlife, collection of native plants, or harassing of wildlife on a site is prohibited. ▪ Any wildlife encountered during the course of an activity, including construction, operation, and decommissioning will be allowed to leave the area unharmed. <u>Active and passive relocation may be used where approved by BLM and the Wildlife Agencies.</u> ▪ Domestic pets are prohibited on sites. This prohibition does not apply to the use of domestic animals (e.g., dogs) that may be used to aid in official and approved monitoring procedures/protocols, or service animals (dogs) under Title II and Title III of the American with Disabilities Act. ▪ All construction materials will be visually checked for the presence of wildlife prior to their movement or use. Any wildlife encountered during the course of these inspections will be allowed to leave the construction area unharmed. ▪ All steep-walled trenches or excavations used during the project will be covered, except when being actively used, to prevent entrapment of wildlife. If trenches cannot be covered, they will be constructed with escape ramps, following up-to-date design standards to facilitate and allow wildlife to exit, or wildlife exclusion fencing will be installed around the trench(s) or excavation(s). Open trenches or other excavations will be inspected by a designated biologist immediately before backfilling, excavation, or other earthwork. ▪ Minimize natural vegetation removal through implementation of crush and drive or cut or mow vegetation rather than removing entirely. 		<p>The second bullet should be rewritten to clarify that active and passive relocation may be used where approved by BLM and the Wildlife Agencies. It should also be rewritten to clarify that it applies only to vertebrate species and special-status invertebrates.</p>
LUPA-BIO-15	<p>Use state-of-the-art construction and installation techniques that minimize new site disturbance, soil erosion and deposition, soil compaction, disturbance to topography, and removal of vegetation.</p>		<p>This requirement is vague, as opinions among solar companies vary widely as to what constitutes “state-of-the-art construction and installation techniques”. While some companies prefer to “mow [vegetation] and go,” others assert that removing vegetation and compacting the site improves</p>



			<p>worker safety and provides better dust control in the long run. This should be revised to delete the term “state-of-the-art.”</p>
<p>LUPA-BIO-16</p>	<p>For activities that may impact focus and BLM sensitive birds, protected by the ESA and/or Migratory Bird Treaty Act of 1918, and bat species, implement appropriate measures as per the most up-to-date BLM state and national policy and guidance, and data on birds and bats, including but not limited to activity specific plans and actions. The goal of the activity -specific bird and bat actions is to avoid and minimize direct mortality of birds and bats from the construction, operation, maintenance, and decommissioning of the specific activities.</p> <p>Activity-specific measures to avoid and minimize impacts may include, but are not limited to:</p> <ul style="list-style-type: none"> ▪ Siting and designing activities will avoid high bird and bat movement areas that separate birds and bats from their common nesting and roosting sites, feeding areas, or lakes and rivers. ▪ For activities that impact bird and bat Focus and BLM Special-Status Species, during project siting and design, conducting monitoring of bird and bat presence as well as bird and bat use of the project site using the most current survey methods and best procedures available at the time. ▪ Reusing or co-locating new transmission facilities and other ancillary facilities with existing facilities and disturbed areas to reduce habitat destruction and avoid additional collision risks. ▪ Reducing bird and bat collision hazards by utilizing techniques such as unguyed monopole towers or tubular towers. Where the use of guywires- are used is unavoidable, demarcate guywires using <u>effective</u> methods to minimize avian species strikes. ▪ When fencing is necessary, use bird and bat compatible design standards. ▪ Using lighting that does not attract birds and bats or their prey to project sites including using non-steady burning lights (red, dual red and white strobe, strobe- like flashing lights) to meet Federal Aviation Administration requirements, using motion or heat sensors and switches to reduce the time when lights are illuminated, using appropriate shielding to reduce horizontal or skyward illumination, and avoiding the use of high-intensity lights (e.g., sodium vapor, quartz, and halogen). <p>▪ Implementing a robust monitoring program to regularly check for wildlife</p>		<p>Use of the term “unavoidable” in the fourth bullet is vague and potentially sets a high bar for use of guywires when other, feasible mitigation measures might be used to accommodate such infrastructure.</p> <p>Carcass monitoring should not be codified in the DRECP for the next 25 years at this time, as it imposes high costs on projects for little or no conservation benefit, and the requirement is not based on clear, sound science. In addition, many other efforts are underway to determine whether and how solar projects could contribute to a population level impact on birds, and the USFWS is in the middle of a rulemaking regarding MBTA incidental take, which may result in a different set of bird-related requirements for solar projects.</p>



	<ul style="list-style-type: none"> ▪ carcasses, document the cause of mortality, and promptly remove the carcasses. ▪ Incorporating a bird and bat use and mortality monitoring program during operations using current protocols and best procedures available at time of monitoring. 		
LUPA-BIO-17	<p>For activities that may result in mortality to Focus and BLM Special-Status bird and bat species, a Bird and Bat Conservation Strategy (BBCS) will be prepared with the goal of assessing operational impacts to bird and bat species and incorporating methods to reduce documented population-level mortality. The BBCS actions for impacts to birds and bats during these activities will be determined by the activity-specific bird and bat operational actions. The strategy shall be approved by BLM in coordination with USFWS, and CDFW as appropriate, and may include, but is not limited to:</p> <ul style="list-style-type: none"> • Incorporating a bird and bat use and mortality monitoring program during operations using current protocols and best procedures available at time of monitoring. • Activity specific operational avoidance and minimization actions that reduce the level of mortality on the populations of bird and bat species, such as: <ul style="list-style-type: none"> ○ Use techniques that would minimize attraction of birds to hazardous situations that are mistaken to be or simulate natural habitats (e.g., bodies of water). ○ Implement operational management techniques that minimize impacts to migratory birds during diurnal and seasonal cycles (e.g., positioning of heliostats to decrease surface area exposed to avian species). ○ Evaluation and installation of the best available bird and bat detection and deterrent technologies available at the time of construction <p>Known important focus and BLM Special-Status bird areas are:</p> <ul style="list-style-type: none"> ▪ Dry lakes and playas of the north Mojave region, which include China Lake, Koehn Lake, Harper Lake, and Searles Lake (as shown in the Audubon Important Bird Areas on Figure III.7-15) ▪ Antelope Valley (as shown in the Audubon Important Bird Areas on Figure III.7-15) ▪ Lower Colorado River Valley (as shown in the Audubon Important Bird Areas on Figure III.7-15) ▪ The Salton Sea and bordering areas including agricultural land of the Imperial Valley (as shown in the Audubon Important Bird Areas on Figure III.7-15) 		<p>Mortality monitoring alone is incredibly expensive and of questionable value outside of a well-designed study that can use the data to draw scientifically valid conclusions about the causes of mortality and specific impacts of solar projects.</p> <p>Observing how live birds fly through and around the site would add, perhaps exponentially, to the burdens on solar projects in DFAs while providing little or no value to our understanding of avian interactions with solar facilities. While the industry remains committed to participating in use studies both before and after construction to provide for necessary scientific controls, robust monitoring at every solar facility is not an efficient use of substantial resources and furthermore is not required by any law or regulation, including the Migratory Bird Treaty Act (“MBTA”; 16 U.S.C. § 703).</p> <p>Furthermore, no evidence proves that solar projects have significant impacts on birds, and therefore the suggestion that deterrents</p>



	<ul style="list-style-type: none"> ▪ Documented avian movement corridors along the north slope of the San Gabriel and San Bernardino mountain ranges ▪ Other regionally important seasonal use areas and migratory corridors identified in future studies or otherwise documented in the scientific literature over the term of the LUPA <p>The following provides the vegetation type, and Focus and BLM Special-Status Species biological CMAs to be implemented throughout the LUPA Decision Area.</p> <p><u>Riparian Vegetation Types</u></p> <ul style="list-style-type: none"> ▪ Madrean Warm Semi-Desert Wash Woodland/Scrub ▪ Mojavean Semi-Desert Wash Scrub ▪ Sonoran-Coloradan Semi-Desert Wash Woodland/Scrub ▪ Southwestern North American Riparian Evergreen and Deciduous Woodland ▪ Southwestern North American Riparian/Wash Scrub <p><u>Wetland Vegetation Types</u></p> <ul style="list-style-type: none"> ▪ Arid west freshwater emergent marsh ▪ Californian Warm Temperate Marsh/Seep ▪ North American Warm Desert Alkaline Scrub and Herb Playa and Wet Flat ▪ Southwestern North American Salt Basin and High Marsh <p><u>Riparian and Wetland Bird Focus Species</u></p> <ul style="list-style-type: none"> ▪ Willow Flycatcher ▪ Southwestern Willow Flycatcher ▪ Least Bell’s Vireo ▪ Western Yellow-billed Cuckoo ▪ Yuma Clapper Rail ▪ California Black Rail ▪ Tricolored Blackbird <p><u>Fish Focus Species</u></p> <ul style="list-style-type: none"> ▪ Desert pupfish ▪ Mohave Tui Chub ▪ Owens Tui Chub ▪ Owens Pupfish <p><u>Other Riparian and Wetland Focus Species</u></p> <ul style="list-style-type: none"> ▪ Tehachapi Slender Salamander 		<p>(“operational avoidance and minimization actions...”) should be used is unwarranted and also overly prescriptive for a program-level planning document.</p> <p>At a minimum, references to mortality monitoring and deterrents (“operational avoidance and minimization”) should be deleted.</p>
LUPA-BIO-RIPWET-4	Setback pre-construction, construction, and decommissioning activities, and other activities that may impact federally listed fish species, 0.25 mile from the edge of existing or newly discovered occurrences of federally listed fish species.		See comments on LUPA-BIO-RIPWET-3.



	<ul style="list-style-type: none"> ▪ Demonstrate neutral or beneficial long-term hydrologic effects on federally listed fish species and the adjoining riparian and wetland habitat prior to seeking authorization for and commencing a minor incursion. ▪ <u>A BLM biologist has discretion to offer variances to these setbacks.</u> 		
LUPA-BIO-RIPWET-6	<p>Avoid pre-construction, construction, and decommissioning activities or other activities that may impact the Tehachapi slender salamander within 0.25 mile of existing or newly discovered occurrences of or suitable habitat for Tehachapi slender salamander, except for minor incursions.</p> <p><u>Compensation is allowed in instances where avoidance is not feasible within a DFA.</u></p>		Should be clarified to allow for compensation where avoidance cannot be achieved.
LUPA-BIO-RIPWET-7	<p>Construct culverts or other suitable below-grade crossings for new or improved roadways that bisect suitable habitat <u>for the Tehachapi Slender Salamander.</u></p> <ul style="list-style-type: none"> ▪ Construct barriers to reduce at-grade crossings along new or improved roadways that bisect suitable habitat. 		This should be rewritten to apply only to Tehachapi slender salamander. (Reference to the species only occurs in the subheading)
LUPA-BIO-DUNE-1	<p>For activities that potentially occur within or bordering sand dune vegetation types and Aeolian sand transport corridors, complete studies to verify the accuracy of the DRECP dunes and sand transport corridor resources mapping, as shown in Appendix H, and to determine:</p> <ul style="list-style-type: none"> ▪ Whether the proposed activity(s) would occur within a sand dune or an Aeolian sand transport corridor ▪ If the activity(s) is subject to dune/Aeolian sand transport corridor CMAs ▪ If the activity(s) needs to be reconfigured to satisfy applicable avoidance requirements 		<p>It places a significant, costly burden on developers and undermines the streamlined permitting process that is supposed to be afforded to projects in DFAs.</p> <p>This CMA appears to concede that the sand transport maps presented in Figures H-1 and H-3 are not supported by sufficient scientific data, as this CMA requires that proposed activities “within or bordering sand dune vegetation types and Aeolian sand transport corridors complete studies to verify the accuracy of the DRECP dunes and sand transport corridor resources mapping.”</p>
LUPA-BIO-DUNE-2	<p>Activities that potentially affect the amount of sand entering or transported within Aeolian sand transport corridors will be designed and operated to:</p> <ul style="list-style-type: none"> ▪ Maintain the quality and function of Aeolian transport corridors and sand 		This should be clarified that where this measure is inconsistent with requirements to install desert



	<p>deposition zones, unless related to maintenance of existing [at the time of the DRECP LUPA ROD] facilities/operations/activities</p> <ul style="list-style-type: none"> ▪ Avoid a reduction in sand-bearing sediments within the Aeolian system ▪ Minimize mortality to DUNE associated Focus and BLM Special-Status Species ▪ <u>In instances where this measure is inconsistent with requirements to install desert tortoise exclusion fence (LUPA-BIO-IFS-4), which serves as a sand transport barrier, an alternative solution will be considered, as appropriate.</u> 		<p>tortoise exclusion fence (LUPA-BIO-IFS-4), which serves as a sand transport barrier, an alternative solution will be considered, as appropriate.</p>
LUPA-BIO-DUNE-3	<p>Any facilities or activities that alter site hydrology (e.g., sediment barrier) will be designed to maintain continued sediment transport and deposition in the Aeolian corridor in a way that maintains the Aeolian sorting and transport to downwind deposition zones. Site designs for maintaining this transport function must be approved by BLM in coordination with USFWS and CDFW as appropriate. <u>In instances where this measure is inconsistent with requirements to install desert tortoise exclusion fence (LUPA-BIO-IFS-4), which serves as a sand transport barrier, an alternative solution will be considered.</u></p>		<p>This should be clarified that where this measure is inconsistent with requirements to install desert tortoise exclusion fence (LUPA-BIO-IFS-4), which serves as a sand transport barrier, an alternative solution will be considered, as appropriate.</p>
LUPA-BIO-DUNE-4:	<p>Dune formations and other sand accumulations (i.e., sand ramps, sand sheets) with suitable MFTL habitat characteristics (i.e., unconsolidated blow-sand) will be mapped according to mapping standards established by the BLM National Operations Center. For minor incursions (see “minor incursion” in the Glossary of Terms) into sand dunes and sand transport areas the activity will be sited in the mapped zone with the least impacts to sand dunes and sand transport and Mojave fringe-toed lizards.</p>	<p>Minor incursion. Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a LUPA amendment. Minor incursions may be allowed to prevent or minimize</p>	<p>This should be rewritten to clarify that this applies only to MFTL suitable habitat (the reference to MFTL only occurs in the subheading).</p>



		greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.	
LUPA-BIO-DUNE-5	If suitable habitat characteristics are identified during the habitat assessment, clearance surveys [add definition] for Mojave fringe-toed lizard will be performed according to established survey protocols in suitable habitat areas.		It is impossible to clear MFTL from an area because: 1) effective trapping methods are not available, and 2) effective exclusion methods are not available. In addition, the other DUNE CMAs effectively protect this non-listed species, and this measure is not warranted.
LUPA-BIO-BAT-1	Activities, except wind projects, will not be sited within 500 feet of any occupied maternity roost or presumed occupied maternity roost of the California leaf-nosed bat, pallid bat, or Townsend’s big-eared bat , as described below. Refer to CMA DFA-VPL-BIO-BAT-1 for distances within DFAs.		This should be rewritten to clarify that it refers to California leaf-nosed bat, pallid bat, Townsend’s big-eared bat (the reference is in the subheading only).
LUPA-BIO-BAT-2	Mines will be assumed to be occupied bat roosts (for the to California leaf-nosed bat, pallid bat, and Townsend’s big-eared bat) , unless appropriate surveys for bat use have been conducted during all seasons (including maternity, lekking or swarming, and winter use). Mines not considered potential bat roosts are only those that have no structure/workings (adits or shafts or crevices out of view).		This should be rewritten to clarify that it refers to California leaf-nosed bat, pallid bat, Townsend’s big-eared bat (the reference is in the subheading only).
LUPA-BIO-PLANT-1	Conduct properly timed protocol surveys in accordance with the BLM’s most current (at time of activity) survey protocols for plant Focus and BLM Special-Status Species. This refers to the following plants: <ul style="list-style-type: none"> ▪ Alkali mariposa-lily ▪ Bakersfield cactus ▪ Barstow woolly sunflower ▪ Desert cymopterus ▪ Little San Bernardino Mountains linanthus ▪ Mojave monkeyflower ▪ Mojave tarplant 		This should be edited to clarify that it refers to the plants listed in the subheading: <ul style="list-style-type: none"> ▪ Alkali mariposa-lily ▪ Bakersfield cactus ▪ Barstow woolly sunflower ▪ Desert cymopterus ▪ Little San Bernardino Mountains linanthus ▪ Mojave monkeyflower



	<ul style="list-style-type: none"> ▪ Owens Valley checkerbloom ▪ Parish's daisy <p>Triple-ribbed milk-vetch</p>		<ul style="list-style-type: none"> ▪ Mojave tarplant ▪ Owens Valley checkerbloom ▪ Parish's daisy ▪ Triple-ribbed milk-vetch
LUPA-BIO-PLANT-3	<p>Impacts to suitable-occupied habitat for plant Focus and BLM Special-Status Species should be avoided to the extent feasible and is limited [capped] to a maximum of 1% of their suitable habitat in the LUPA Decision Area.</p> <ul style="list-style-type: none"> • For those plants with Species Specific DFA Suitable Habitat Disturbance Caps listed in Table II.3-28, those caps apply in the DFAs. 		This should be rewritten to apply only to occupied habitat (as verified during years with suitable rainfall).
LUPA-BIO-SVF-2	<p>Yucca clones larger than 3 meters in diameter (longest diameter if the clone forms an ellipse rather than a circular ring) shall be avoided. Direct impacts are allowed if avoidance would result in significant islanding or edge effects on the protected SVF.</p>		This should be revised such that direct impacts are allowed if avoidance would result in significant islanding or edge effects on the protected SVF.
LUPA-BIO-SVF-3	<p>Creosote rings larger than 5 meters in diameter (longest diameter if the "ring" forms an ellipse rather than a circle) shall be avoided. Direct impacts are allowed if avoidance would result in significant islanding or edge effects on the protected SVF.</p>		This should be revised such that direct impacts are allowed if avoidance would result in significant islanding or edge effects on the protected SVF.
LUPA-BIO-SVF-5	<p>Joshua tree woodland (Yucca brevifolia Woodland Alliance): impacts to Joshua tree woodlands (see Glossary of Terms) will be avoided to the maximum extent practicable (see "unavoidable impacts to resources" in Glossary of Terms), except for minor incursions (see Glossary of Terms).</p> <p>Compensation for impacts to Joshua tree woodlands is allowed and may include:</p> <ol style="list-style-type: none"> 1. Planting new stands of Joshua trees in suitable protected habitat, or 2. Preserving climate refugia for stands of Joshua trees. 	<p>Joshua tree woodlands. Evenly distributed with Joshua trees at $\geq 1\%$ and Juniperus and/or Pinus spp $< 1\%$ absolute cover in the tree canopy (Thomas et al. 2004).</p> <p>Unavoidable impacts to resources. Small-scale impacts to sensitive resources, as allowed per specific CMAs, that</p>	This should be rewritten to allow for compensation by planting new stands of Joshua trees in suitable protected habitat, or by preserving climate refugia for stands of Joshua trees.



		may occur even after such impacts have been avoided to the maximum extent practicable (see definition). Unavoidable impacts are limited to minor incursions (see definition), such as a necessary road or pipeline extension across a sensitive resource required to serve an activity.	
LUPA-BIO-SVF-7	Crucifixion thorn stands: (Castela emoryi Shrubland Special Stands) Crucifixion thorn stands with greater than 100 individuals will be avoided. <u>Direct impacts are allowed where preservation would result in islanding or severe edge effects.</u>		This should be rewritten to allow for direct impacts where preservation would result in islanding or severe edge effects.
LUPA-BIO-IFS-1	Activities within desert tortoise linkages identified in Appendix H Figure H-5, that may have a negative impact on the linkage will require an evaluation of the effects on the maintenance of long- term viable desert tortoise populations within the affected linkage. <u>Site-specific impacts will be analyzed by a biological field evaluation.</u> The analysis will consider the amount of suitable habitat, including climate refugia, required to ensure long-term viability within each linkage given the linkage’s population density, long-term demographic and genetic needs, degree of existing habitat disturbance, mortality sources, and most up-to-date population viability modeling. Activities that would compromise the long-term viability of a linkage population or the function of the linkage, as determined by the BLM in coordination with the wildlife agencies, are prohibited and would require reconfiguration or re-siting.		Site-specific impacts should be verified by a biological field evaluation.
LUPA-BIO-IFS-2	Construction of new roads and/or routes will be avoided to the maximum extent practicable within desert tortoise habitat in tortoise conservation areas (TCAs) or tortoise linkages identified in <u>Appendix H Figure H-5</u> , unless the new road and/or route is beneficial to minimize net impacts to natural or ecological resources of concern for desert tortoise. TCAs and identified linkages should have the goal of “no net gain” of road density.		There is neither a “TCA map” nor “tortoise linkages map” in Appendix H. Figure H-1 shows a Desert Tortoise Linkage layer but not a TCA layer. “Desert tortoise habitat” is not defined. This CMA



	<p>Any new road considered within a TCA or identified linkage will not be paved and will be designed and sited in order to minimize the effect to the function of identified linkages or local desert tortoise populations and shall have a maximum speed limit of 25 miles per hour.</p> <p>Roads requiring the installation of long-term desert tortoise exclusion fencing for construction or operation will incorporate wildlife underpasses (e.g., culverts) to reduce population fragmentation.</p>		<p>should specifically reference Figure H-5.</p>
LUPA-BIO-IFS-4	<p>In areas where protocol and clearance surveys are required, prior to construction or commencement of any long-term activity that is likely to adversely affect desert tortoises, desert tortoise exclusion fencing shall be installed around the perimeter of the activity footprint (see Glossary of Terms) in accordance with the Desert Tortoise Field Manual (USFWS 2009) or most up-to-date USFWS protocol. Additionally, short-term desert tortoise exclusion fencing will be installed around short-term construction and/or activity areas (e.g., staging areas, storage yards, excavations, and linear facilities), as appropriate, per the Desert Tortoise Field Manual (USFWS 2009) or most up-to-date USFWS protocol.</p> <ul style="list-style-type: none"> ▪ Exemption from desert tortoise protocol survey requirements can be obtained from BLM, in coordination with USFWS, and CDFW as applicable, on a case-by-case basis if a designated biologist determines the activity site does not contain the elements of desert tortoise habitat, is unviable for occupancy, or if baseline studies inferred absence during the current or previous active season. ▪ Construction of desert tortoise exclusion fences will occur during the time of year when tortoise are less active in order to minimize impacts and to accommodate subsequent desert tortoise surveys. Any exemption or modification of desert tortoise exclusion fencing requirements will be based on the specifics of the activity and the site-specific population and habitat parameters. Sites with low population density and disturbed, fragmented, or poor habitat are likely to be candidates for fencing requirement exemptions or modifications. Substitute measures, such as on-site biological monitors in the place of the fencing requirement, may be required, as appropriate, <u>particularly to the extent that it may conflict with LUPA-BIO-DUNE-2</u>. ▪ After an area is fenced, and until desert tortoises are removed, the designated biologist is responsible for ensuring that desert tortoises are not being exposed to extreme temperatures or predators as a result of their pacing the fence. Remedies may include the use of shelter sites placed along the fence, immediate translocation, removal to a secure holding area, or other means determined by the BLM, USFWS, and CDFW, as applicable. 	<p>Activity footprint. The area of long- and short-term ground disturbance associated with the pre-construction, construction, operation, implementation, maintenance, and decommissioning of an activity, including associated linear and non-linear components, such as staging areas, access routes and roads, gen-ties, other utility lines, borrow pits, disposal areas, etc. May also be considered synonymous with project/activity site.</p> <p>Designated biologist. A biologist who is approved as qualified by BLM,</p>	<p>Second bullet should be rewritten to allow for flexibility in whether or not to use DT exclusion fencing when it would conflict with LUPA-BIO-DUNE-2.</p>



	<ul style="list-style-type: none"> ▪ Modification or elimination of the above requirement may also be approved if the activity design will allow retention of desert tortoise habitat within the footprint. If such a modification is approved, modified protective measures may be required to minimize impacts to desert tortoises that may reside within the activity area. ▪ Immediately prior to desert tortoise exclusion fence construction, a designated biologist (see Glossary of Terms) will conduct a clearance survey of the fence alignment to clear desert tortoises from the proposed fence line’s path. ▪ All desert tortoise exclusion fencing will incorporate desert tortoise proof gates or other approved barriers to prevent access of desert tortoises to work sites through access road entry points. ▪ Following installation, long-term desert tortoise exclusion fencing will be inspected for damage quarterly and within 48 hours of a surface flow of water due to a rain event that may damage the fencing. ▪ All damage to long-term or short-term desert tortoise exclusion fencing will be immediately blocked to prevent desert tortoise access and repaired within 72 hours. 	<p>and U.S. Fish and Wildlife Service (USFWS) and CDFW, as appropriate. A designated biologist is the person responsible for overseeing compliance with specific applicable DRECP BLM LUPA biological CMAs.</p>	
LUPA-BIO-IFS-9	<p>A designated-qualified biologist (see Glossary of Terms) will accompany any geotechnical testing equipment to ensure no tortoises are killed and no burrows are crushed.</p>	<p>Designated biologist. A biologist who is approved as qualified by BLM, and U.S. Fish and Wildlife Service (USFWS) and CDFW, as appropriate. A designated biologist is the person responsible for overseeing compliance with specific applicable DRECP BLM LUPA biological CMAs.</p>	<p>This essentially repeats LUPA-BIO-IFS-6 but qualifies that a designated biologist is required. A qualified biologist should be sufficient.</p>
LUPA-BIO-	<p>If Bendire’s thrasher is present, a qualified biologist will conduct appropriate activity-</p>	<p>Biological</p>	<p>A qualified biologist should be</p>



IFS-11	<p>specific biological monitoring (see Glossary of Terms) to ensure that Bendire’s thrasher individuals are not directly affected by operations (i.e., mortality or injury, direct impacts on nest, eggs, or fledglings).</p>	<p>monitoring. Visual survey of an area conducted by a designated biologist to determine if a biological resource is present. Biological monitoring is commonly conducted on the sites of proposed projects. Biological monitoring conducted during the implementation of activities is used to implement DRECP BLM LUPA CMAs that require construction setbacks or that require the designated biologist to move a biological resource out of harm’s way.</p>	<p>sufficient here. The designated biologist would not normally be called out to a site during operations.</p>
LUPA-BIO-IFS-12	<p>If burrowing owls are present, a designated-qualified biologist (see Glossary of Terms) will conduct appropriate activity-specific biological monitoring (see Glossary of Terms) to ensure avoidance of occupied burrows and establishment of the 656 feet (200 meter) setback to sufficiently minimize disturbance during the nesting period on all activity sites, when practical.</p>	<p>Designated biologist. A biologist who is approved as qualified by BLM, and U.S. Fish and Wildlife Service (USFWS) and CDFW, as appropriate. A</p>	<p>A qualified biologist should be sufficient. This should be significantly clarified such that the buffer is only required for owls occupying active nests, and that a variance for a smaller buffer can be granted where appropriate.</p>



		designated biologist is the person responsible for overseeing compliance with specific applicable DRECP BLM LUPA biological CMAs.	
LUPA-BIO-IFS-14	Activity -specific active translocation <u>of burrowing owls</u> may be considered, in coordination with CDFW.		This should be rewritten to refer only to burrowing owls (the reference to BUOW only occurs in the subheading).
LUPA-BIO-IFS-21	If condors begin to regularly visit a site, BLM may require, in coordination with USFWS, and CDFW as appropriate, the implementation of additional measures to minimize potential impacts to condors. These measures <u>must be scientifically warranted and commercially feasible, and</u> will be based on activity and areas specifics, and may include, but are not limited to: <ul style="list-style-type: none"> ▪ Barriers, including welded wire fabric or hardware cloth, will be installed to prevent access around any facility element that poses a danger to condors. ▪ Stainless steel lines, rather than poly chemical lines will be used to preclude condors from obtaining and ingesting pieces of poly chemical lines. ▪ Landing deterrents attached to the walking perching substrates, such as porcupine wire or Daddi Long Legs ®. 		Imposing operational redesign costs will make a project unfinanceable. At a minimum, this should be clarified to only be required where warranted and commercially feasible.
LUPA-BIO-IFS-26	For activities that <u>are known to</u> impact golden eagles, <u>such as wind</u> generation, applicants will conduct a risk assessment per the USFWS Eagle Conservation Plan Guidance using best available information as well as the data collected in the pre-project golden eagle surveys.		This should be rewritten to only apply to projects with known impacts to golden eagles.
LUPA-BIO-IFS-31	As determined necessary <u>for projects with known impacts to golden eagles, such as wind facilities</u> by BLM in coordination with USFWS, and CDFW as appropriate, implement site-specific golden eagle mortality monitoring in support of the pre-construction, pre-activity risk assessment surveys.		This should be rewritten to only apply to projects with known impacts to golden eagles.
LUPA-BIO-IFS-33	Access to, and use of, designated water sources <u>for desert bighorn sheep</u> will not be impeded by activities in designated and new utility corridors.		Should be clarified that this refers to desert bighorn sheep water sources.
LUPA-BIO-IFS-34	Transmission projects and new utility corridors will minimize effects on access to, and use of, designated water sources <u>for desert bighorn sheep</u> .		Should be clarified that this refers to desert bighorn sheep water



LUPA-BIO-IFS-36	<p>Activities in key MGS population centers, as identified in Appendix H, requiring an Environmental Impact Statement are required to assess the effect of the activity on the long term function of the affected key population center.</p> <ul style="list-style-type: none"> Activities within a key population center, as identified in Appendix H, must be designed to avoid adversely affecting the long-term function of the affected key population center. 		<p>sources.</p> <p>CMA should clarify that it refers only to MGS.</p>
LUPA-BIO-IFS-39	<p>During the typical active MGS season (February 1 through August 31), conduct clearance surveys throughout the site, immediately prior to initial ground disturbance in the areas depicted in Appendix H. In the cleared areas, perform monitoring to determine if squirrels have entered cleared areas. Contain ground disturbance to within areas cleared of squirrels.</p> <ul style="list-style-type: none"> Detected occurrences of Mohave ground squirrel will be flagged and avoided, with a minimum avoidance area of 50 feet, until the squirrels have moved out of harm’s way. A designated biologist (see Glossary of Terms) may also actively move squirrels out of harm’s way. 	<p>Designated biologist. A biologist who is approved as qualified by BLM, and U.S. Fish and Wildlife Service (USFWS) and CDFW, as appropriate. A designated biologist is the person responsible for overseeing compliance with specific applicable DRECP BLM LUPA biological CMAs.</p>	<p>Should explicitly refer only to MGS.</p>
LUPA-BIO-COMP-1	<p>Impacts to biological resources [define] from activities in the LUPA Decision Area will be compensated using the standard biological resources compensation ratio, except for the biological resources and specific geographic locations listed as compensation ratio exceptions, specifics in CMAs LUPA-BIO-COMP-2 through -4, and previously listed CMAs. Compensation acreage requirements may be fulfilled through non-acquisition (i.e., restoration and enhancement), land acquisition (i.e., preserve), or a combination of these options, depending on the activity specifics and BLM approval/authorization. Compensation for the impacts to desert tortoise critical habitat will be in the same critical habitat unit as the impact (see Table II.3-23). Compensation for impacts to desert tortoise will be in the same recovery unit as the impact. Lower ratios will be allowed where designated critical habitat has low occupancy, low habitat connectivity</p>		<p>No definition of “biological resources” exists. “Biological resources” should be defined as “previously undisturbed land that harbors populations of listed species.”</p> <p>Lower ratios should be allowed where it can be shown that designated critical habitat has low occupancy, low habitat</p>



	<p><u>value, and low climate refuge value.</u></p> <p>Standard Biological Resources Listed Species Compensation Ratio 1.1</p> <p>Biological Resource Standard Compensation Ratio Exceptions</p> <p>Desert tortoise designated critical habitat 5:1 in same CH unit</p> <p>Mohave ground squirrel: 2:1</p> <p>Key population centers</p> <p>Flat-tailed horned lizard: RMS</p> <p>FTHL Management Areas</p> <p>Wetlands 2:1</p> <p>Desert riparian woodland vegetation types 5:1</p>		<p>connectivity value, and low climate refuge value.</p>
LUPA-BIO-COMP-3	<p>Golden eagle – Wind aActivities, BLM and third-party initiated, will provide specific golden eagle compensation in accordance with the most up to date BLM’s policies, and USFWS Eagle Conservation Plan Guidance.</p>		<p>As written, this provision could apply to any activity, including solar facilities, which would not be scientifically warranted.</p>
LUPA-BIO-COMP-4:	<p>Golden eagle – Third-party applicant/activity proponents <u>of projects that have known impacts to golden eagles, such as wind facilities,</u> are required to contribute to a DRECP-wide golden eagle monitoring program.</p>		<p>As written, this provision could apply to any activity, including solar facilities, which would not be scientifically warranted.</p>
LUPA-AIR-2	<p>Because project authorizations are a federal undertaking, air quality standards for fugitive dust should <u>exceed-comply with</u> local standards and requirements.</p>		<p>The use of “exceed” here is very confusing. Suggest “comply with.”</p>
LUPA-AIR-4	<p>Fugitive dust is the number one source of PM10 and PM2.5 pollution in the Mojave and Sonoran Deserts.Where fugitive dust impacts to air quality may be significant under NEPA, requiring analysis through an Environmental Impact Statement, the analysis must include a model of the sources of PM10 and PM2.5 that occur prior to construction from the project and show their timing, duration and transport on and off site of each source. Modeling will also identify how the generation and movement of PM10 and PM2.5 will change during and after construction of the project under all alternatives.</p>		<p>First sentence doesn’t belong.</p>



LUPA-PALEO-4	Due to recent significant discoveries in areas within the Chuckwalla Valley where previous assessments had predicted low sensitivity, require paleontological surveys and construction monitors ground disturbing activities that require an EIS.		This sentence is not clear. Suggest revision.
LUPA-SW-17	An activity's groundwater extraction shall not contribute to exceeding the estimated perennial yield for the basin in which the extraction is taking place. Perennial yield is that quantity of groundwater that can be withdrawn from the groundwater basin without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical, chemical, or biological integrity. It is further clarified arithmetically below. <u>The activity shall not contribute to an unfair share of exceedance without compensation.</u>		This should be clarified that the activity shall not contribute to an unfair share of exceedance without compensation.
LUPA-SW-22	All hydrologic alterations shall be avoided that could reduce water quality or quantity for all applicable beneficial uses associated with the hydrologic unit in the project area, or specific mitigation measures shall be implemented that will minimize unavoidable water quality or quantity impacts, as determined by BLM in coordination with USFWS, CDFW, and other agencies, as appropriate. These beneficial uses may include municipal, domestic, or agricultural water supply; groundwater recharge; surface water replenishment; recreation; water quality enhancement; flood peak attenuation or flood water storage; and wildlife habitat. <u>Compensation should be allowed where avoidance is not possible.</u>		Compensation should be allowed where avoidance is not possible.
LUPA-SW-24	<u>For impacts that clearly result from project activities, a</u> Groundwater Monitoring and Reporting Plan, and, <u>if needed, a</u> Mitigation Action Plan shall be <u>prepared to verify the Water Supply Assessment and adaptively manage water use as part of project operations.</u> This plan shall be approved by BLM, in coordination with USFWS, CDFW, and other agencies as appropriate, prior to the development, extraction, injection, or consumptive use of any water resource. The quality and quantity of all surface water and groundwater used for the project shall be monitored and reported using this plan. Groundwater monitoring includes measuring the effects of groundwater extraction on groundwater surface elevations, groundwater flow paths, changes to groundwater-dependent vegetation, and of aquifer recovery after project decommissioning. Surface water monitoring, if applicable, shall monitor changes in the flows, water volumes, channel characteristics, and water quality. Monitoring frequency and geographic scope and reporting frequency shall be decided on a site-specific basis and in coordination with the appropriate agencies that manage the water and land resources of the region. The geographic scope will include at the very least, all basins/sub-basins that potentially receive inflow from the basin where the proposed project may be sited, and all basins/sub-basins that may potentially contribute inflow to the basin where the		This should be clarified to refer only to impacts clearly resulting from a project activity.



	proposed project is located. The plan shall also detail any mitigation measures that may be required as a result of the project. This plan and all monitoring results shall be made available to BLM. BLM will make the plan and results available to USFWS, CDFW, and other applicable agencies.		
LUPA-SW-29	Groundwater pumping mitigation may also be imposed if monitoring data indicate <u>significant</u> impacts on groundwater or groundwater-dependent habitats outside the DRECP area, including those across the border in Nevada. <u>See LUPA-SW-26 for a description of the measures.</u>		Should refer to LUPA-SW-26 for a description of the measures.
NCLS-LANDS-1	Renewable energy activities and related ancillary facilities are not allowed. New transmission <u>and generation tie</u> lines would be allowed in <u>existing or newly</u> -designated corridors <u>only, and the National Conservation Land designation will not be used as the sole reason to reject or deny a proposal for a new transmission or generation tie line through National Conservation Lands.</u> National Conservation Lands would be right-of-way avoidance areas for all other land use authorizations. Right-of-way avoidance areas are defined as areas to be avoided but may be available for location of right-of-ways with special stipulations.		<p>This CMA would prohibit the development of “[r]enewable energy activities and related ancillary facilities” on National Conservation Lands. Effectively, new transmission/gen-ties would be prohibited from passing through most of the DRECP planning area unless they are within designated utility corridors subject to right-of-ways with special stipulations.</p> <p>This strict prohibition could choke off development in DFAs with limited access and/or artificially inflate the cost of private land alternatives. It furthermore seems to be inconsistent with the permissive, although costly, approach to development on National Conservation Lands taken in NLCS-DIST-2</p>



Mojave Desert Resource Conservation District
15415 W. Sand St., #103 - Victorville, CA 92392
Phone: (760) 843-6882

DIRECTORS

CHUCK BELL
President

PAUL JOHNSON
Vice President

NEVILLE SLADE
Director

TOM IRWIN
Director

ELLEN JOHNSON
Director

Vicki Campbell
DRECP Program Mgr.
2800 Cottage Way Suite W1623
Sacramento, CA 95825
blm_ca_drecep@blm.gov

5/9/16

RE: DRECP-ACEC COMMENTS

The MDRCD is a non-regulatory special district that works with farmers, ranchers, landowners on natural resource issues. We partner with USDA's Natural Resource Conservation Service and many other entities. Habitat restoration is one of our primary activities.

Disturbance Caps:

The methodology of calculating disturbance caps does not seem to provide enough detail to ensure objective and consistent data. Measurement of disturbance caps by different parties could achieve different results depending on the information used and who is doing the calculating. The methodology also does not describe how to identify and account for a disturbance in a given calculation. **What is considered a disturbance?** In the document, an exception to the disturbance mitigation requirement are BLM activities designed and implemented to reduce existing disturbance, such as ecological, cultural, or habitat restoration or enhancement activities (p. II.3-22). However, there is no clear explanation of what specific habitat restoration or enhancement activities are allowed.

C11-1

How are conservation activities viewed under the cap? What kind of conservation measures can be taken without being counted towards the disturbance cap? Restoration and enhancement activities need to be clearly defined.

C11-2

Chuck Bell, Pres. 760 964 3118

May 9, 2016

Bureau of Land Management
DRECP Program Manager
2800 Cottage Way Suite W-1623
Sacramento, California 95825

Attn: Vicki Campbell

Email: blm_ca_drecp@blm.gov

Re: Notice of Areas of Environmental Concern on Public Lands under the DRECP

Ref: Jan 25 2016, June 4, 2015

Ms. Campbell:

National Public Lands.com has been commenting on EIR/EIS's, EA's, EIS's, LEIS's, FEIS's and Rules and other Environmental Documents since 1999 and one of our Directors has been commenting on FLPMA, the CDCA Plan and different rules since 1976. We have commented on NEMO, WEMO, NECO and WECO, JLUS of 2006, DRECP and LUPA. The Board represents a diversified group with knowledge of resource issues as well as multiple use and sustainable yield issues.

GENERAL COMMENT, Once again, the public is asked to comment on another plan (ACEC) under the DRECP. Interestingly enough the address is different than the Draft EIS. The public is confused as to who is in charge what address should they be using and which plan is going forward while a court decision is holding up the WEMO Travel Management Plan that is being challenged. The public is further challenged by the fact that at different meetings the BLM Staff says the WEMO will go forward with the roads identified or in most cases were only shapes without any identifying marks on them. To further compound the problem these ACECs were identified only as Work Sheets without the benefit of going through the proper public involvement in 1610.2 which clearly states that it has to have a management plan with each ACEC. Did I miss them somehow in this 18000 page document? Clearly I did as I was only capable to reading 6,000 pages in the allotted time constraint.

C12-1

FEIS changed significantly from the Desert Renewable Energy Conservation Plan, Proposed Land Use Plan Amendment and Final Environmental Impact Statement. This LUPA only addressed BLM Lands many of which were changed in this Final compared to the document that included state and county implementation.

At that time, we asked for a "SEIS" and to include: impacts to threatened or endangered species, air and water quality reports with the different counties affected, including Ground Water Bulletin 118 and the Sustainable Groundwater Management Act passed in 2014, social and economic impacts to local communities including property values and a cost analysis of each alternative. This SEIS should also include why in the original document it alludes to WEMO being part of the plan and is now going to be implemented after the fact. It should also include implementation of the Least Environmentally Damaging Practicable Alternative (LEDPA) to comply with federal, state and local environmental laws that are ancillary to NEPA.

C12-1.1

Instead, the majority of the ACEC's in the DRECP DEIS were dependent on the route network provided for in the 2000 WEMO FEIS. These Worksheets, as were called did not contain the elements that are required under 43 CRF 1610. It alluded to the shapes and sizes of the ACEC's and the BLM Staff kept implying they were safe under the rules of WEMO. The BLM maintained that it would enforce the 2006 WEMO FEIS as consistent policy. Also, at this same time, the description in the worksheets that were provided, with much of the information as

C12-2

C12-2.1

to why it was an ACEC, was vague and not specific and did not meet the requirements of the ACEC Process and it did not contain any disturbance caps in each ACEC. Of course, we understand that Rule 2.0 will significantly change this and, is this why, this push to get this through before the Rule 2.0 is endorsed?

↑ C12-2.1
| Cont.

PROCESS COMMENT and SPECIFIC COMMENTS

1) Public was not provided sufficient data to support the decision making

A) In general, the National Environmental Policy Act (NEPA) requires a threshold level of information to be provided to the public in order to comply with the legal requirements for meaningful public participation. Specifically, 40 CFR 1500.1(b) provides that "the information must be of high quality" and that "public scrutiny (is) essential to implementing NEPA." Furthermore, 40 CFR 1500.2 and 1502.8 both call for the environmental analysis to be "clear" and written so "the public can readily understand them."

B) The Final EIS does not present any data or calculations that were used to justify the doubling of ACEC acreage. The EIS fails to adequately explain the need for a radically high 60:1 ratio of ACEC acreage (4,858,000 acres) to offset the projected renewable energy foot print of just 81,000 acres. For the public to provide informed input, they must understand the mathematical calculations and reasons behind the boundaries set for each ACEC's.

| C12-3

C) BLM's failure to include the designated route networks on the maps for ACEC's in the West Mojave (WEMO) planning area deprived the public of basic, critical information on which to provide meaningful participation and fact-based input. NEPA contemplates opinions, not guesses. Maps provided to the public also failed to depict the ACEC/NLC layers with sufficient clarity.

| C12-4

D) Knowing the designated route network within each ACEC is a critical component of assessing the vulnerabilities associated with protecting the asset(s) of the ACEC, and thereby whether the size and shape of the ACEC are adequate to the task

2) Unit Management Plans (Work Sheets) are incomplete

| C12-5

A) The documents referred to as Unit Management Plans are merely assemblages of skeletal bullet points that do not meet the bar of being "management plans." These stark outlines still require considerable fleshing out to be actual management plans. In the draft documents these were called "worksheets," which is a more appropriate description for them. These management priority bullets are far from being cohesive and comprehensive Unit Management Plans.

| C12-6

B) The Appendix L documents lack consistent language with respect to travel management. In particular, across the many unit management outlines the terms "open route," "designated route," and "existing route" are used interchangeably and without specificity, and the term "new routes" is entirely undefined and open to ambiguity. BLM should work with the recreation community to develop definitions for these terms, and they should be defined in the glossary.

| C12-7

3. There is a need to calculate the disturbance levels that already exist. An explanation and clarification should be made dealing with the 1 to 10,000 scale on satellite imagery and compared with BLM aerial surveys. To what level do ministerial actions trigger disturbance cap action for assessment? We believe that there should be a definition of what the trigger is and what constitutes implementation of the trigger in regard to changes in the disturbance cap. There has also been a significant change from the draft to the final DRECP in regard to the increase in acres of unallocated lands. The disturbance caps that are set in the DRECP goes backwards and forwards, however, the disturbance caps in WEMO only go forward with different values. How will that change to roads in the ACEC's.

| C12-8

A. Regarding disturbance caps, the caps themselves are arbitrary and are inconsistent within WEMO. BLM provides no data describing how it arrived at the various caps. The public needs to know the current baseline disturbance levels in order to comment on proposed disturbance caps outlined in the Unit Management Plans. Disturbance cap limitations should apply only to “future” disturbance in order to remove conflict with past planning assumptions and to return to the Bureau the flexibility to meet the adaptive management goals of the DRECP.

C12-9

4. OHV areas within ACECs (such as Jawbone and Dove Springs) should be excluded from disturbance caps. Designated route networks from approved BLM travel management plans such as WECO, NECO, NEMO and WEMO (per Decision Record/ CDCA Plan Amendment, Western Mojave Desert Off Road Vehicle Designation Project June, 2003) should also be excluded from disturbance caps.

C12-10
C12-10.1

5. The BLM should not designate roadless ACEC’s that have not had substantive public participation process required by NEPA. The BLM should postpone designation of any and all ACEC’s for which route networks were not provided in the DEIS of the DRECP. The postponement should remain in place until the WEMO route designation process has concluded. At that time the applicable route networks should be added to the individual ACEC’s, along with a summary that has been developed explaining the relationship of the route networks to the size and shape of the ACEC’s. Then a new public process should be started.

C12-11

6. The BLM’s Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California, published on March 11, 2016, failed to list visual impacts among the resources and uses for which each proposed and existing ACEC would be evaluated to determine if special management was needed. Therefore, the public was not informed that the BLM would be undertaking Visual Resources Management (VRM) as described in Section II.3.4.1.12, nor was it informed that the BLM would be designating VRM Classes in the DRECP. As a result, we conclude that the BLM should revise and republish the notice, and reopen the 60-day comment period that is required under Federal Regulations at 43 CFR 1610.7-2(b).

C12-12

7. Addresses for the public to write to are used indiscriminately between Sacramento and Moreno Valley without indicating to the public any conformity in the planning process. Please see enclosed my letter of Jan 25, 2016.

C12-13

8. There has been no budgetary costs during the whole process on the LUPA, DRECP, and now the ACEC nor any future planning or implementation costs.

C12-14

Thank you for the opportunity to comment on the ACEC component of the DRECP Final EIS. We appreciate your consideration of our concerns.

Sophia Anne Merk, Director
National Public Lands News
941 E. Ridgecrest Blvd.
Ridgecrest, CA 93555
samnplnews@yahoo.com

cc: Sen Boxer and Feinstein
Rep McCarthy and Cook
Supervisors Gleason, Scrivner, Kingsley and Lovingood
Mike Tupper, Nepa Division mtupper@blm.gov
Environmental Protection Agency

Public Lands Roundtable of Ridgecrest

Public Lands Roundtable of Ridgecrest
941 E. Ridgecrest Blvd.
Ridgecrest, CA 93555

May 9, 2016

Bureau of Land Management
DRECP Program Manager
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

Re: Notice of Areas of Environmental Concern on Public Lands under the DRECP

Dear DRECP Program Manager,

The Public Lands Roundtable of Ridgecrest is comprised of area residents and other interests that place importance on the public lands managed by the BLM Ridgecrest Field Office. The Roundtable meets monthly with representatives of the BLM in an open setting to share information on issues and efforts of the Ridgecrest Field Office.

The Desert Renewable Energy Conservation Plan (DRECP) has been a priority topic of discussion at Roundtable meetings since long before the Notice of Areas of Environmental Concern on Public Lands under the DRECP. Several of our members participated in scoping meetings and supplied comment at various intervals in the process.

At a meeting of the Roundtable held on April 28, 2016, members representing a wide range of viewpoints – conservation, mining, recreation, local government, and multiple use advocates, all achieved consensus on the comments filed herein on the Notice of ACEC's.

I'm proud to offer this work product from a civic organization that sets the bar for collaborative and inclusive participation in the management of our public lands.

A. GENERAL COMMENT

The process of creating an Area of Critical Environmental Concern (ACEC) is analogous to building a structure to protect a special asset inside. The public participation component of creating an ACEC is like asking the public for input on whether the building as been properly designed to accomplish its task of protecting that asset. The public process of the DRECP, wherein the request required the public to utilize maps with no roads on them, amounted to asking an opinion on whether the structure was adequate without being able to identify where the primary vulnerabilities, i.e. the doors and windows, are.

If I came to you and said, "I want your help in protecting something special inside this new building I'm putting together, but I can't show you where the doors and windows are" — would you think that is fair, safe, or reasonable?

B. SPECIFIC COMMENTS

1) Public was not provided sufficient data to support the decision making

A) In general, the National Environmental Policy Act (NEPA) requires a threshold level of information to be provided to the public in order to comply with the legal requirements for meaningful public participation. Specifically, 40 CFR 1500.1(b) provides that "the information must be of high quality" and that "public scrutiny (is) essential to implementing NEPA." Furthermore, 40 CFR 1500.2 and 1502.8 both call for the environmental analysis to be "clear" and written so "the public can readily understand them."

B) The Final EIS does not present any data or calculations that were used to justify the doubling of ACEC acreage. The EIS fails to adequately explain the need for a radically high 60:1 ratio of ACEC acreage (4,858,000 acres) to offset the projected renewable energy foot print of just 81,000 acres. For the public to provide informed input, they must understand the mathematical calculations and reasons behind the boundaries set for each ACEC's.

C13-1

C) BLM's failure to include the designated route networks on the maps for ACEC's in the West Mojave (WEMO) planning area deprived the public of basic, critical information on which to provide meaningful participation and fact-based input. NEPA contemplates opinions, not guesses. Maps provided to the public also failed to depict the ACEC/NLC layers with sufficient clarity.

C13-2

D) Knowing the designated route network within each ACEC is a critical component of assessing the vulnerabilities associated with protecting the asset(s) of the ACEC, and thereby whether the size and shape of the ACEC are adequate to the task.

2) Unit Management Plans are incomplete

A) The documents referred to as Unit Management Plans are merely assemblages of skeletal bullet points that do not meet the bar of being "management plans." These stark outlines still require considerable fleshing out to be actual management plans. In the draft documents these were called "worksheets," which is a more appropriate description for them. These management priority bullets are far from being cohesive and comprehensive Unit Management Plans.

C13-3

B) The Appendix L documents lack consistent language with respect to travel management. In particular, across the many unit management outlines the terms "open route," "designated route," and "existing route" are used interchangeably and without specificity, and the term "new routes" is entirely undefined and open to ambiguity. BLM should work with the recreation community to develop definitions for these terms, and they should be defined in the glossary.

C13-4

3) Disturbance Caps

A) The Appendix L documents consistently refer to "disturbance caps," but the caps themselves appear to be arbitrary. BLM provides no data showing how it arrived at the various caps, and their rounded values. Why 1% and not 0.93%, or 1.12%?

C13-5

B) The public needs to know the current baseline disturbance levels in order to comment on the proposed disturbance caps and remedies outlined in the Unit Management Plans. We believe the disturbance cap limitations should also be changed from "past, present and future" to just "future" disturbances (i.e. WEMO 2006). This not only removes the DRECP's conflict with all past planning assumptions, but it returns to the Bureau the flexibility appropriate to the adaptive management goals of the DRECP.

C13-6

C) OHV areas within ACECs (i.e. Jawbone, Dove Springs) should be excluded from disturbance caps. Also excluded should be designated route networks from approved BLM travel management plans, i.e. Rand Mountains, WECO, NECO, NEMO, and WEMO (per Decision Record/CDCA Plan Amendment, Western Mojave Desert Off Road Vehicle Designation Project, June 2003.)

C13-7

4) Designated Routes

There is no overriding, overarching need on the part of the BLM to designate roadless ACEC's at this time that have not had the substantive public participation contemplated and required by NEPA.

Therefore, BLM should postpone designation of any and all ACEC's for which route networks were not provided in the DEIS of the DRECP. Such postponement should last until the WEMO route designation process has concluded.

At that point, the applicable route networks should be added to the individual ACEC's, a summary explaining the relationship of the route networks to the size and shape of the ACEC's should be developed, and a new public process should be started.

C13-8

5) Deficiency in Federal Register Notice

The BLM's *Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California*, published on March 11, 2016, failed to list visual impacts among the resources and uses for which each proposed and existing ACEC would be evaluated to determine if special management was needed. Thus, the public was not informed that the BLM would be undertaking Visual Resources Management (VRM) as described in Section II.3.4.1.12, nor was it informed that the BLM would be designating VRM Classes in the DRECP.

C13-9

Therefore, the BLM should revised and republish the notice, and reopen the 60-day comment period that is required under Federal Regulations at 43 CFR 1610.7-2(b).

On behalf of the Public Lands Roundtable of Ridgecrest, thank you for this opportunity to comment on the ACEC component of the DRECP Final EIS. We appreciate your kind consideration of these consensus comments.

Sincerely,



Randy Banis
Chairman, Public Lands Roundtable of Ridgecrest

44404 16th St. W., Ste. 204
Lancaster, CA 93534
(661) 942-2429
RBanis@DeathValley.com

Stephan C. Volker
Alexis E. Krieg
Stephanie L. Clarke
Daniel P. Garrett-Steinman
Jamey M.B. Volker (of counsel)
M. Benjamin Eichenberg

Law Offices of
Stephan C. Volker
436 – 14th Street, Suite 1300
Oakland, California 94612
Tel: (510) 496-0600 ❖ Fax: (510) 496-1366
svolker@volkerlaw.com

11.192.01

May 10, 2016

blm_ca_drecp@blm.gov

Vicki Campbell
DRECP Program Manager
U.S. Bureau of Land Management
2800 Cottage Way
Suite W-1623
Sacramento, CA 95825

Re: Comments of Backcountry Against Dumps and Donna Tisdale on the Desert Renewable Energy Conservation Plan and Environmental Impact Statement Designations of 134 Areas of Critical Environmental Concern

Pursuant to the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.*, 43 C.F.R. section 1610.7-2(b), and the National Environmental Policy Act (“NEPA”), 42 U.S.C. section 4321 *et seq.*, Backcountry Against Dumps and Donna Tisdale (collectively “Backcountry”) submit the following comments addressing the designation of 134 Areas of Critical Environmental Concern (“ACECs”) under the Proposed Land Use Plan Amendment (“LUPA”) and Final Environmental Impact Statement (“EIS”) for the Desert Renewable Energy Conservation Plan (“DRECP”). These comments supplement Backcountry’s February 23, 2015 comments on the DRECP Draft EIS and Backcountry’s December 14, 2015 Protest.

INTRODUCTION

The DRECP admittedly impacts “the California Mojave and Colorado/Sonoran desert region[, which] is a remarkable place, home to an impressive array of sensitive species and their habitats, a robust cultural heritage, and recreational opportunities for residents and visitors.” Final EIS, Executive Summary 6. Because this plan is intended to be used so broadly – to aid agencies in creating renewable energy plans, land use plans and policies, renewable energy development projects, and “other private development and public infrastructure projects, as well as identifying conservation priorities” and “appropriate mitigation areas for the impacts of locally approved projects” – on such important lands, the accuracy, integrity, and completeness of the DRECP and its LUPA and EIS are of paramount importance.

Under all the action alternatives examined, the DRECP would hasten the creation of 20,000 megawatts of industrial-scale energy generation (notwithstanding the lack of projected demand for this amount of remotely generated energy) and to that end, allow the wholesale destruction of vast untrammelled expanses of the California Mojave and Colorado/Sonoran desert regions. Despite the presence of urban, developed, and disturbed areas in the DRECP Project area – let alone within the urban demand centers where the energy can and should be generated – the DRECP and its EIS exclude these already disturbed lands from consideration for renewable energy development. The DRECP opts instead to push development onto remote wild and undeveloped areas farther from users and existing transmission infrastructure.

In doing so, the EIS vastly understates the environmental impacts including unsustainable water demand of non-geothermal renewable energy projects, and fails to properly consider a reasonable range of alternatives and mitigation measures to reduce those impacts. Its analysis of the Project’s direct, indirect and cumulative effects on biological resources, scenic and cultural values, noise, EMFs, fire ignition and suppression, agriculture and outdoor recreation ignores or understates these significant impacts. Thus, the DRECP fails to inform decisionmakers of the foreseeably massive impacts of its approval. The DRECP’s acknowledged – as well as overlooked – significant and unmitigable impacts to biological resources, groundwater supply, agriculture, visual resources, cultural resources, tribal resources, outdoor recreation and others should not be overridden based on speculative energy benefits that can be found elsewhere at less cost and with fewer impacts.

C14-0

AREAS OF CRITICAL ENVIRONMENTAL CONCERN

I. Backcountry Supports the Protection and Expansion of Areas of Critical Environmental Concern

As the Final EIS explains, “ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes.” Final EIS II.3-66; 43 U.S.C. § 1702(a); 43 C.F.R. § 1610.7-2(a)(2). Such designations further FLPMA’s objective of providing “special management attention . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes.” 43 U.S.C. § 1702(a).

Congress has directed that the EIS must provide the public with a “hard look” that identifies all of the DRECP’s impacts – and alternatives that would avoid or reduce them – so as to “encourage productive and enjoyable harmony between man and his environment[, and] to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. §§ 4321, 4332; *National Parks and Conservation Association v. Bureau of Land Management* (“NPCA”) 606 F.3d 1058, 1072 (9th Cir. 2009).

BLM's "special management measures to protect" ACECs are an important step in accomplishing Congress' environmental goals. They help ensure that significant and sensitive natural and cultural resources are protected and "accommodated when future management actions and land use proposals are considered." Final EIS II.3-66; 43 U.S.C. §§ 1702(a), 1712(c)(3); 43 C.F.R. § 1610.7-2(a)(2). However, to assure they are properly located and managed, an adequate NEPA process is essential.

Backcountry supports the designation of ACECs but as discussed below, BLM's NEPA process is flawed. And, to achieve Congress' management direction BLM should place greater restrictions on uses that impact the ACECs to ensure protection of their irreplaceable scenic, historic, cultural and natural resources. 43 U.S.C. § 1712(c)(3); 43 C.F.R. § 1610.7-2(a)(2).

II. BLM Should Impose Greater Protections on Areas of Critical Environmental Concern

Congress' intent to designate ACECs to assure protection of their unique and vulnerable resources is indisputable. Indeed, BLM repeatedly acknowledges its authority to create ACECs and restrict development thereon. Final EIS C16-7, E8-3, E18-113, E21-17 to 18, E23-11, E24-5, E30-9, E65-82, E74-10, E79-272, E126-3, F13-3, F22-3, F161-3, F206-14, H9-85, H11-72. As BLM explains, it must "give priority to the designation and protection of [ACECs]." 43 U.S.C. § 1712(c)(3); 43 C.F.R. § 1610.7-2(a)(2). To this end, all ground disturbing activities within any ACEC are limited by the disturbance cap for that ACEC. Final EIS II.3-67, Appendix L. "[T]he disturbance caps range from 0.1% to 1.0%" only, and consider past, present, and proposed future disturbances. *Id.*

Yet even with these disturbance caps BLM allows development and disturbance greater than 1%. Final EIS II.3-68 to 71. BLM must impose additional restrictions on land uses that impact the ACECs to ensure their preservation and prevent excessive disturbances, rather than mitigating the impacts *after* disturbance caps are violated. 43 U.S.C. § 1702(a). And, it must provide a more complete analysis of these impacts, and of alternatives and mitigation measures that would avoid or reduce them, in its EIS.

A. Ground Disturbance in an Area of Critical Environmental Concern Should Not Exceed the Disturbance Cap

Under FLPMA and BLM's implementing regulations, BLM is statutorily required to designate ACECs and afford them the highest protection. 43 U.S.C. §§ 1702(a) (defining ACECs as "areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources"), 1712(c)(3) (requiring BLM to "give priority to the designation and protection of areas of critical environmental concern"); 43 C.F.R. § 1610.7-2(b) (requiring public comments for the designation of ACECs and their general management practices in order to

C14-1



protect the land). However, the DRECP would allow ground disturbance within ACECs that conflicts with their protection.

BLM's allowance of ground disturbance that exceeds the proposed disturbance cap directly conflicts with its duty to "give priority to the designation and protection of [ACECs]." 43 U.S.C. § 1712(c)(3). Even though BLM purports to mitigate these excessive ground disturbing activities, those mitigations fail as discussed in detail below. And more importantly, those mitigations should never be necessary since the area of ground-disturbing activity should be strictly limited to assure compliance with the disturbance cap for each ACEC.

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B. All Areas of Critical Environmental Concern Should Be Protected by a Buffer

The EIS fails to address a reasonable range of alternatives including creation of buffer zones when needed to protect the ACECs' vulnerable resources. All 134 ACECs should be protected by a buffer to ensure that adjacent development would not degrade each ACEC's unique resources. For instance, development adjacent to an ACEC could displace or otherwise harm its wildlife, or consume or pollute its surface or groundwater resources. Wind or solar energy development adjacent to an ACEC, for example, could create a significant risk to birds and other wildlife, or harm its water supplies. In order to avoid these and other foreseeable impacts from development located near an ACEC, each ACEC should be protected by a buffer zone. The inclusion of a buffer around each ACEC is essential to ensure that all of the ACEC's scenic, historic, cultural and natural resources are preserved.

C14-2

C. Wildlife Connectivity Corridors and Critical Habitat Must Be Preserved Within Areas of Critical Environmental Concern

The EIS should consider the alternative of designating protective corridors to preserve wildlife connectivity and linkages. Habitat corridors and linkages are essential to species' genetic diversity and survival. Chapter III.7 of the Final EIS details significant habitat linkages necessary for the survival and recovery of many special status species and focus species found within the Program area. In order to meet the recovery goals for these special status species, the ACECs must include all identified habitat linkage and connectivity corridors included in that Chapter. Further, the ACECs should include habitat linkage and connectivity corridors between Joshua Tree National Park and identified essential habitat within protected lands to the north.

C14-3

D. Where Land Use Designations Overlap, the More Environmentally Protective Restrictions Should Apply

As the public has noted in numerous comments on the Draft EIS, where land designations overlap in the DRECP, the more restrictive ACEC requirements should apply. Final EIS A4-12, E18-71 to 72, E18-90, E22-2, E37-22, E74-7, E92-8, E101-2 to 3, E120-2, E122-58 to 69, E134-

C14-4

3 to 4, F144-2. The Final EIS acknowledges that “[w]here two or more designations overlap, all applicable [Conservation and Management Actions (“CMAs”)] apply to activities within those areas,” and declares that where there “is a conflict between the CMAs, the more restrictive CMA would be applied, *unless otherwise specified*.” Final EIS, Appendix L, pp. 1-2 (emphasis added). However, the EIS fails to define what is “more restrictive,” and to close the “unless otherwise specified” loophole. *Id.* And nothing in BLM’s responses to comments remedies these failures. Final EIS A4-91, E18-111, E18-113, E22-3, E37-68, E74-10, E92-59, E101-7, E120-3, E122-71, E134-10, F144-7 to 8. For these reasons, the Final EIS should clarify that conservation-based restrictions take precedence over *all* other management direction, lest protected scenic, historic, cultural and natural resources “otherwise” be harmed.

Resource degradation from exploitation of these regulatory loopholes is not a mere hypothetical threat. The Final EIS admits that substantial resource harm could result. For example, it states that while “ACECs are closed to geothermal leasing and development,” where they overlap with a Development Focus Area, “ACECs are open to geothermal leasing.” *E.g.* Final EIS, Appendix L.03, pp. 6, 17, 31, 57, 67, 90, 153. The EIS also allows grazing in ACECs that overlap with grazing allotments, and motorized recreation in ACECs that overlap with recreation areas. Final EIS, Appendix L.03, pp. 17, 54, 67. The Final EIS only limits motorized recreation in these overlap areas “if there [is] a conflict,” but provides no guidance on what type of conflict must be present to enforce conservation policies, or who will make that determination – and after what public process. Final EIS F144-7 to 8.

The overarching objective of the ACEC designation – “to protect and prevent irreparable damage to important . . . resources or other natural systems” – is obviously undermined when the designation and its restrictions are not applied. Final EIS, Appendix L, p. 1. There is no purpose in BLM “highlight[ing] areas where special management attention is needed,” unless those special management requirements are in fact enforced. *Id.*

E. Projects Cannot Be Excluded From Disturbance Calculations

BLM’s purpose in designating ACECs is also undermined by the Final EIS’s allowance of exceptions to disturbance calculations. Final EIS II.3-69. By excluding numerous development projects from the disturbance calculations, BLM understates the land disturbance that will occur within a given ACEC designation, and fails to “protect and prevent irreparable damage” to highly vulnerable and irreplaceable resources. 43 U.S.C. §§ 1702(a), 1712(c)(3); 43 C.F.R. § 1610.7-2.

The Final EIS excludes “[a]ctions that are authorized under a DOI or BLM NEPA Categorical Exclusion” from the required “disturbance calculation.” Final EIS II.3-69, II.3-70. However, a categorical exclusion under NEPA does not guarantee that a project will not cause ground disturbance. 40 C.F.R. § 1508.4. And as the Final EIS recognizes, even those projects that are subject to a categorical exclusion under NEPA “are not exempt from the disturbance

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C14-5

mitigation requirement if a unit is at or above its cap.” Final EIS II.3-69, II.3-70.

Yet BLM is expected to magically know if “an area is at or exceeding the cap,” and therefore requires mitigation. *Id.* Such a determination is impossible without calculating the disturbances created by the categorically excluded project. *Id.* BLM not only puts the cart before the horse by ostensibly requiring disturbance mitigation before the disturbance calculation is performed, it omits the disturbance calculation horse entirely and expects the cart to move on its own.

BLM also excludes livestock grazing permit renewals from the disturbance calculations. Final EIS II.3-69. By omitting this information, the Final EIS again erroneously ignores potential ground disturbing activity that would require the implementation of ground disturbance mitigation measures.

Furthermore, emergency services that cause ground disturbance will only “count towards the disturbance cap when next calculated for non-emergency activities.” Final EIS II.3-69. But delaying that calculation until the next “non-emergency activit[y]” could allow ground disturbance to reach levels that far exceed the ACEC’s disturbance cap without implementing any of the required mitigation measures, and to remain at those unacceptable levels indefinitely. *Id.* In order to assure the statutorily required protection of the ACECs and their resources, ground disturbance should be calculated immediately after any emergency services that disturb ground resources. 43 U.S.C. §§ 1702(a), 1712(c)(3); 43 C.F.R. § 1610.7-2.

In summary, BLM cannot ensure that ACECs are protected and preserved if disturbance calculations omit significant ground disturbing activities. Without comprehensive and thorough calculations, the need for mitigation cannot be adequately assessed, let alone adequately addressed.

F. Mitigation Measures Fail to Mitigate the Ground-Disturbance Impacts Within Areas of Critical Environmental Concern

ACECs are designated because they contain important resources that require special management attention. Final EIS II.3-66; 43 U.S.C. §§ 1702(a), 1712(c)(3); 43 C.F.R. § 1610.7-2(a)(2). Yet BLM proposes ground disturbance mitigation “to allow actions to occur in [an] . . . ACEC that is at or above its designated disturbance cap.” Final EIS II.3-70. This defeats the whole purpose of capping disturbance levels. Furthermore, the measures that are contemplated fail to mitigate the significant impacts that would occur due to excessive ground disturbance within ACECs. *Id.*

First, “[r]estoration of previously disturbed BLM lands” does not remedy the *additional* loss of scenery, water, habitat, or species that BLM proposes to allow. Final EIS II.3-71. No additional disturbance should be permitted until all past disturbances have been fully rectified



C14-5
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C14-6

through comprehensive restoration programs. It may require decades of effort to restore previously disturbed land, if it is even possible to do so. Until that restoration is accomplished, it is irresponsible to allow further degradation of the already impaired resources. Under BLM’s proposal, while land is slowly being restored in one area of an ACEC, other – potentially even more sensitive – land within the ACEC would be lost to development. This would leave a dearth of the very scenic, historic, cultural and natural resources that the ACEC designation is designed to protect in the first place.

Second, the Final EIS’ claim that “[d]isturbance mitigation can be ‘nested’ (i.e., combined) with other resource mitigation requirements” undermines BLM’s duty to prioritize and protect ACECs. Final EIS II.3-71; 43 U.S.C. §§ 1702(a), 1712(c)(3); 43 C.F.R. § 1610.7-2(a)(2). The “nesting” of mitigation measures potentially reduces the amount of land protected for species and other resources by combining the mitigations to preserve these lands while allowing harmful development in other areas. *Id.* For example, the EIS proposes that “a parcel restored for desert tortoise habitat mitigation may also satisfy the disturbance mitigation requirement.” Final EIS II.3-71. But this assumption does not reduce environmental harm. Instead, it subverts the purpose of ACEC designation and of mitigating the impacts of excessive ground disturbance. By short-shifting the mitigation measures while allowing expanded development elsewhere, the EIS’ ground disturbance mitigation measures fail to mitigate the cumulative impacts of development. Instead, they mask the increased degradation caused by the additional development. To ensure that *all* harmful activities within ACECs are fully mitigated, these measures must not be nested.

Finally, although the EIS implies that all mitigation land must be located within the affected ACEC, it does not expressly require this. Final EIS II.3-70 (ground disturbing activities “will not be allowed . . . until which time opportunities for disturbance mitigation *in the unit* become available”) (emphasis added). Therefore, the EIS should explicitly articulate this requirement. Due to the unique and irreplaceable nature of the resources in each individual ACEC, mitigation for ground disturbing activities within each ACEC should occur within the same unit.



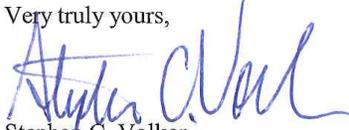
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CONCLUSION

For all of the reasons discussed above, the Final EIS is deficient and BLM’s proposed designation of ACECs fails to mitigate the damage caused by the DRECP. All of the unique and irreplaceable resources within the ACECs must be protected with *adequate* restrictions that ensure their preservation, as BLM is obligated to do under FLPMA. And, these restrictions must be based on adequate environmental review. All potentially significant environmental impacts, and alternatives and mitigations that would avoid or reduce them, must be identified and fully analyzed as required under NEPA.

blm_ca_drecp@blm.gov
May 10, 2016
Page 8

Very truly yours,



Stephen C. Volker
Attorney for Backcountry Against Dumps
and Donna Tisdale



California Construction and Industrial Materials Association

VIA FIRST CLASS MAIL & EMAIL

Ms. Vicki Campbell
 DRECP Program Manager
 2800 Cottage Way, Suite W-1623
 Sacramento, CA 95825
blm_ca_drecp@blm.gov

May 10, 2016

Re: Proposed Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California

Dear Ms. Campbell:

The California Construction and Industrial Materials Association (“CalcIMA”) hereby submits this comment letter concerning the Areas of Critical Environmental Concern (“ACECs”) proposed by the U.S. Bureau of Land Management (“BLM”) as part of the California Desert Renewable Energy Conservation Plan (“DRECP”).

CalcIMA is a trade association for the construction and industrial material industries in California, which include aggregate, industrial minerals, and ready mixed concrete producers. These producers provide people and businesses with cement, concrete, and other materials used to build and repair California’s homes, schools, roads, airports, bridges and other public infrastructure. CalcIMA serves its members and the public by providing information on aggregates, industrial minerals, and ready mixed concrete; supplying safety, technical, and compliance training; and addressing legislative, regulatory, and judicial matters that affect the building materials industry.

As part of the DRECP, BLM has proposed to designate 130 ACECs, comprising nearly six million acres, through a land use plan amendment to the California Desert Conservation Area (“CDCA”) Plan. These ACECs would be managed according to a set of resource use limitations called Conservation Management Actions (“CMAs”), including stringent caps on ground disturbance (ranging from 0.1 to 1 percent of a given ACEC), right-of-way limitations, and mitigation requirements. For the reasons discussed below, we request that BLM, in consultation with individual operators: (1) further define the expansion areas for existing operations in the DRECP and reiterate that such expansion areas are not subject to ACEC designation or ACEC CMAs, and (2) exclude from ACEC designation and ACEC CMAs those rights-of-way that are reasonably necessary for the present and future operation of excluded surface mines (including those mines’ designated expansion areas).

CalcIMA has members that currently operate surface mines in the proposed ACECs or propose to do so in the future. While the DRECP appropriately excludes mining operations from ACECs and their

C15-1

CalcIMA 1029 J Street, Suite 420 Sacramento, CA 95814 Phone: 916 554-1000 Fax: 916 554-1042 www.calcima.org www.distancematters.org	Regional Office: 3890 Orange Street, #167 Riverside, CA 92501-9998 Phone: 951 941-7981
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associated CMAs, mining operators may still be unnecessarily and unreasonably restricted. This is true for two reasons. First, as far as we can tell, the DRECP does not specifically define the “expansion areas” for excluded mining operations. Like the operations themselves, those expansion areas are intended to be excluded from the DRECP’s land use restrictions, including ACEC designation and ACEC-related CMAs. Without better definition of the expansion areas, future expansion operations may be subject to ACEC-related CMAs despite the DRECP’s clear intent to the contrary, and operators will not have sufficient certainty about the restrictions they may face as a result of the DRECP. (This same concern applies to all of the DRECP’s land use restrictions, not just those associated with ACECs.) Accordingly, we request that BLM, in consultation with individual operators, further define the expansion areas for existing operations in the DRECP and reiterate that such expansion areas are not subject to ACEC designation or ACEC CMAs.

C15-2

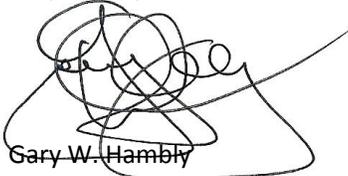
Second, as BLM is aware, surface mining operations require rights-of-way for access roads, power lines, water pipelines, water extraction facilities, and other surface mine-related infrastructure. We appreciate that the DRECP appropriately excludes existing mining operations and their expansion areas from ACECs and their related CMAs, but those operations cannot function without the rights-of-way for this infrastructure. Thus, we are concerned that even if operations themselves are not subject to the ACEC CMAs, the fact that the rights-of-way for operation-related infrastructure are subject to those CMAs will serve to indirectly restrict or even preclude surface mining operations that were intended to be excluded. Of particular concern are the ACECs’ caps on ground disturbance and related mitigation. In light of these concerns, we request that BLM exclude from ACEC designation and ACEC CMAs those rights-of-way that are reasonably necessary for the present and future operation of excluded surface mines (including those mines’ designated expansion areas). Alternatively, we request that BLM provide an exception to the ground disturbance caps and other restrictions that may limit operators’ ability to secure the rights-of-way that are necessary for the present and future operation of their excluded surface mines (and those mines’ expansion areas).

C15-3

We appreciate the immense amount of work that has gone into preparing the DRECP, including the proposed ACECs. We also appreciate BLM’s willingness to consider through public comment how its tremendous work can be further improved. We believe that our proposed changes are modest, affecting few and relatively small areas of the proposed ACECs, and that they would most effectively harmonize the needs and concerns of surface mining operators with the natural resource conservation goals that underlie the proposed ACECs and the DRECP more generally.

Thank you for the opportunity to comment on the proposed DRECP ACECs. Please let us know if you have any questions concerning our comments or require further information.

Respectfully,



Gary W. Hambly
President/CEO

LUCERNE VALLEY ECONOMIC DEVELOPMENT ASSOCIATION (LVEDA)

To: Vicki Campbell
DRECP Program Mgr.
2800 Cottage Way Suite W1623
Sacramento, CA 95825
blm_ca_drecp@blm.gov

Date: 5/9/16

From: Chuck Bell, Pres. chuckb@sisp.net _____
P. O. Box 193
Lucerne Valley, CA 92356

RE: ACECs IN THE DRECP

Lucerne Valley ACECs

- Northern Lucerne Wildlife Linkage ACEC (disturbance cap: 0.5%).
- Granite Mountain Wildlife Linkage ACEC (disturbance cap: 0.25%).
- Juniper Flats ACEC (disturbance cap: 1%)
- Ord/Rodman ACEC (disturbance cap: .5% to 1%)

Disturbance Caps

A disturbance cap assigned to one ACEC differs significantly from the disturbance cap assigned to an immediately adjacent ACEC. How does BLM arrive at an objective and consistent calculation? Specific resource issues in each ACEC will dictate different measures throughout the ACEC network that would be confusing, inconsistent and difficult to implement by all parties. And what constitutes a “disturbance”?

Without knowing the current status of the cap in each ACEC it is difficult to know if disturbance mitigation will be required for activities occurring within the ACECs.

The Ord/Rodman ACEC – which includes the active Ord Mt. Cattle Allotment – with significant acreage of private land within it and apparently included in the cap requirements - is an example of an arbitrary boundary around a lot of ground



that has existing, historic pre-disturbed areas likely greater than the designated .5% to 1% cap. If that is the case, would the private land owner on his/her private parcels – or on BLM lands where certain ranch ‘projects’ are allowed - be required to mitigate/compensate at some high ratio for any so-called ‘disturbance’ associated with permitted operation of the allotment. Would BLM’s proposed fencing and spring ‘protection’ projects count as a disturbance? Would BLM’s designation of a new OHV route (part of it likely a non-existing trail) through the allotment from the Johnson Valley OHV area to the Stoddard Valley OHV area (at least to the Slash X beer joint) constitute a new disturbance? How would BLM compensate for this? By a BLM ‘project’ taking up more of any remaining margin in the cap - would it jeopardize a future project (disturbance) that the rancher would need to perform as part of its grazing operation? This could be considered a “taking” of private land – and definitely a major hardship on the private land owner/BLM lessee in performing the necessary and allowable functions associated with a permitted grazing lease. What are the consequences? Where will all this end – certainly not well? Again, what constitutes a “disturbance” – on private and public land?

C16-3
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Other Private Land Issues

The disturbance cap program could prevent access to many private in-holdings within all the ACECs and cause a financial burden.

The property owner is required to pay for a disturbance cap analysis for any proposed development on their land as well as the cost of mitigation (e.g., a road to their property). What does this ‘analysis’ entail?

The ACEC designs contain a mix of private and public lands. The southern portion of the Granite Mountain Linkage ACEC near the San Bernardino Mountains contains private lands that are surrounded by federal lands.

Private lands are important for the economic development of Lucerne Valley. What analysis has been done that can ensure that economic development can continue to be achieved on private lands?

C16-4

Additional Comments

We are in support of the Town of Apple Valley’s position regarding the Northern Lucerne Linkage ACEC design as stated in their comment letter dated May 9, 2016.

C16-5

This ACEC contains an area that is heavily used for recreation and is unsuitable for inclusion within the ACEC. This area should be removed from the ACEC design.

The ACEC also excludes Upper Lucerne Valley, which contains high-quality desert tortoise habitat essential to the success of the Ord-Rodman DWMA and this ACEC. BLM lands within this area should be added to the ACEC design.

We are in support of the Town of Apple Valley's linkage design, which identifies landscape-scale linkages that connect to existing conservation areas.



C16-5
Cont.



201 Mission Street, 4th Floor
San Francisco, California 94105

Tel (415) 777-0487
Fax (415) 777-0244

nature.org

Vicki Campbell
DRECP Program Manager
2800 Cottage Way
Suite W-1623, Sacramento, CA 95825

May 10, 2016

Sent via email to: blm_ca_drecp@blm.gov

Re: Public Comment on Areas of Critical Environmental Concern (ACEC) designations in the final Land Use Plan Amendments (LUPA) and Environmental Impact Statement (EIS) for Bureau of Land Management (BLM) administered lands within the Desert Renewable Energy Conservation Plan (DRECP)

The Nature Conservancy thanks the BLM for the opportunity to provide additional public comments on the agency’s proposed ACEC designations in the final LUPA/EIS for the DRECP.

The Nature Conservancy is a non-profit organization devoted to biodiversity conservation. The Conservancy has been involved in all stages of DRECP planning, including providing extensive public comment of BLM’s draft and final LUPA/EIS for the DRECP. These comments included recommendations on BLM’s ACEC proposals, and we incorporate those comments here by reference. The following recommendations are a limited reconsideration of the ACEC provisions in the final LUPA/EIS Preferred Alternative. Our recommendations address the following issues:

- 1) Inclusion of ecologically significant lands in the National Landscape Conservation System.
- 2) Inclusion of ecologically signification lands as ACEC, if not included in the National Landscape Conservation System.
- 3) Conservation importance of Conservation Management Actions in ACECs.
- 4) Overlap of ACEC lands with recreation designations.

Inclusion of ecologically significant lands in the National Landscape Conservation System

The 2009 Omnibus Public Land Management Act (P.L. 111-11) required BLM to add public lands managed for conservation in the California Desert Conservation Area to the National Landscape Conservation System (NLCS). In the final LUPA/EIS for the DRECP, BLM proposed different amounts and locations of NLCS land designations for each alternative, which BLM roughly based on the configuration of development focus areas. This clearly illustrates BLM’s considerable flexibility to define NLCS units, meaning BLM could include additional NLCS units on desert lands it manages for conservation – such as ACECs – if

C17-1

warranted. This is critically important since BLM has deemed NLCS designations to be permanent and not subject to administrative alternations while ACEC designations can be changed in future land use planning processes under the Federal Land Policy Management Act (FLPMA).

As mentioned in our protest letter on the DRECP¹, the Conservancy has done a series of ecological assessments and studies² aimed at determining the ecological importance of desert lands based on an integrated, landscape scale approach and methodology. These analyses identify a group of lands that are critical to *minimally* maintaining the integrity of desert biodiversity across the Mojave and Sonoran Deserts and ecoregions: Ecologically Core lands identified in the Conservancy’s Mojave Desert Ecoregional Assessment (EA) and lands with the highest conservation value in the evaluation the Conservancy commissioned, “A Framework for Effective Conservation Management of the Sonoran Desert in California.”³

TNC Ecologically Core lands are chosen for their intactness, high level and importance of ecological diversity, the presence of multiple species, whether they provide habitats for listed species and other “sensitive species” – in essence, these lands certainly meet all or nearly all of the primary and additional ecological criteria BLM used for inclusion into the NLCS, i.e., are lands with “nationally important conservation values.”

The Conservancy contends that all Ecologically Core lands in the California Deserts must be designated as conservation lands in perpetuity, as this is the only way to ensure long-term protection of biodiversity. Because inclusion into the NLCS provides permanent conservation, this is our preferred designation.

Accordingly, we recommend BLM review the approximately 1.3 million acres proposed for ACECs not included in the NLCS in the LUPA/EIS Preferred Alternative, especially those designated for ecological values, and expand the acreage of NLCS lands by including Ecologically Core lands in NLCS. Map 1, enclosed, shows the location of these lands, totaling of 1.6 million acres. This would ensure that important ecological lands within these ACECs would be provided the most durable conservation protection designation available to BLM within the scope of the LUPA/EIS.



C17-1
Cont.

¹ The Nature Conservancy. Protest of the Bureau of Land Management’s proposed Land Use Plan Amendment and Final Environmental Impact Statement for the Desert Renewable Energy and Conservation Plan. Submitted December 14, 2015

² Randall, J. M., S.S. Parker, J. Moore, B. Cohen, L. Crane, B. Christian, D. Cameron, J. MacKenzie, K. Klausmeyer and S. Morrison. 2010. Mojave Desert Ecoregional Assessment. Unpublished Report. The Nature Conservancy, San Francisco, California. 106 pp + appendices. Available at: http://scienceforconservation.org/downloads/mojave_desert_ecoregional_assessment. GIS data available at: http://scienceforconservation.org/downloads/mojave_desert_geodatabase and Stallcup, Jerre Ann. 2009. A Framework for Effective Conservation Management of the Sonoran Desert in California. Conservation Biology Institute. Available at: <http://consbio.org/products/projects/sonoran-desert-conservation>.

³ Both Ecologically Core lands from the Mojave Desert Ecoregional Assessment and lands with the highest conservation value from “A Framework for Effective Conservation Management of the Sonoran desert in California” are henceforth collectively referred to as “Ecologically Core lands.”

Inclusion of ecologically significant lands as ACEC, if not included in the National Landscape Conservation System

In our protest letter to the BLM, the Conservancy requested that all Ecologically Core lands in the California Deserts be included in the National Landscape Conservation System in order to provide protection to the minimum viable constellation of lands needed for long-term protection of biodiversity. Map 2 shows TNC's Ecologically Core lands that are not protected by any conservation designation and instead are designated as development focus area ("DFA"; 87,300 acres), variance process lands ("VPL"; 7,500 acres), or unallocated ("UL"; 264,400 acres). The Nature Conservancy requests that these lands be removed from DFAs, VPLs, and ULs, and designated for conservation by including them in the National Landscape Conservation System.

C17-2

At a minimum, if BLM chooses not to include these lands in the NLCS, the Conservancy recommends that these lands be designated as ACEC in the LUPA/EIS, to ensure some level of long-term protection of ecological resources.

Overlap of ACEC lands with recreation designations

In the final LUPA/EIS BLM has also proposed considerable overlap between ACECs and recreational units, principally Special Recreation Management Areas (SRMAs). Specifically, Map 3 shows that 4.26 million acres of ACEC are also designated as either SRMA or Extensive Recreation Acre (ERMA). It is essential that the LUPA/EIS make clear that management prescriptions that protect biological and ecological values in these areas take precedence over recreation management.

C17-3

To ensure this, the Conservancy recommends that the BLM amend or adopt specific Conservation Management Action (CMA) language ensuring that where overlap between ACECs and SRMAs/ERMAs exists, ACECs are preferentially managed for ecological and biological values and recreation and other uses are of secondary importance. Further, CMAs should make clear that, in cases where there are conflicts between multiple CMAs, CMAs for biological and ecological values are preeminent.

Conservation importance of Conservation Management Actions in ACECs

Additionally, the final LUPA/EIS provides a strong set of disturbance caps and specific CMAs to protect ACECs. In a number of instances, such as groundwater, CMAs have been clarified and strengthened. The ACEC disturbance caps and CMAs should be retained and strengthened in the Final LUPA EIS. The CMAs are especially important for ACECs that do not also have the benefit of increased durability of protection through inclusion in NLCS.

C17-4

Conclusion

The Conservancy believes that these recommendations will improve the conservation outcomes of the LUPA/EIS through enhanced ACEC design and management. The ACEC and NLCS designations in the final LUPA/EIS for the DRECP, coupled with these recommendations and a well-structured and enforced set of CMAs, represents a reasonable and balanced initial approach to protection of the public lands of the California desert.

Sincerely,

Erica Brand

Erica Brand
California Energy Program Director
The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
ebrand@tnc.org
(415) 281-0451

Enclosures:

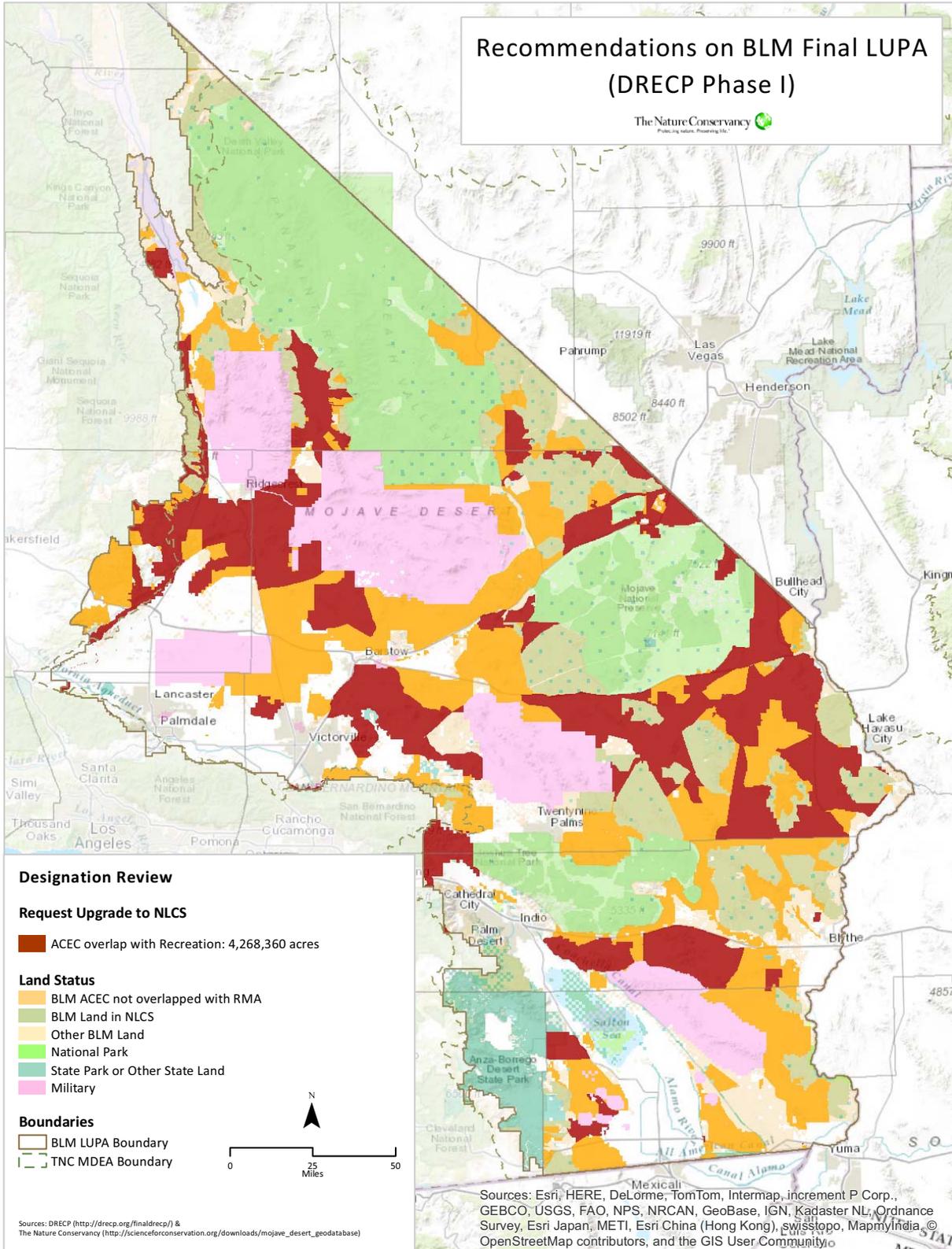
Map 1. Ecologically Core lands in Areas of Critical Environmental Concern that do not overlap with National Conservation Lands.

Map 2. Ecologically Core lands designated as Development Focus Areas, Variance Process Lands or Unallocated.

Map 3. Areas of Critical Environmental Concern that overlap with Recreation designations.

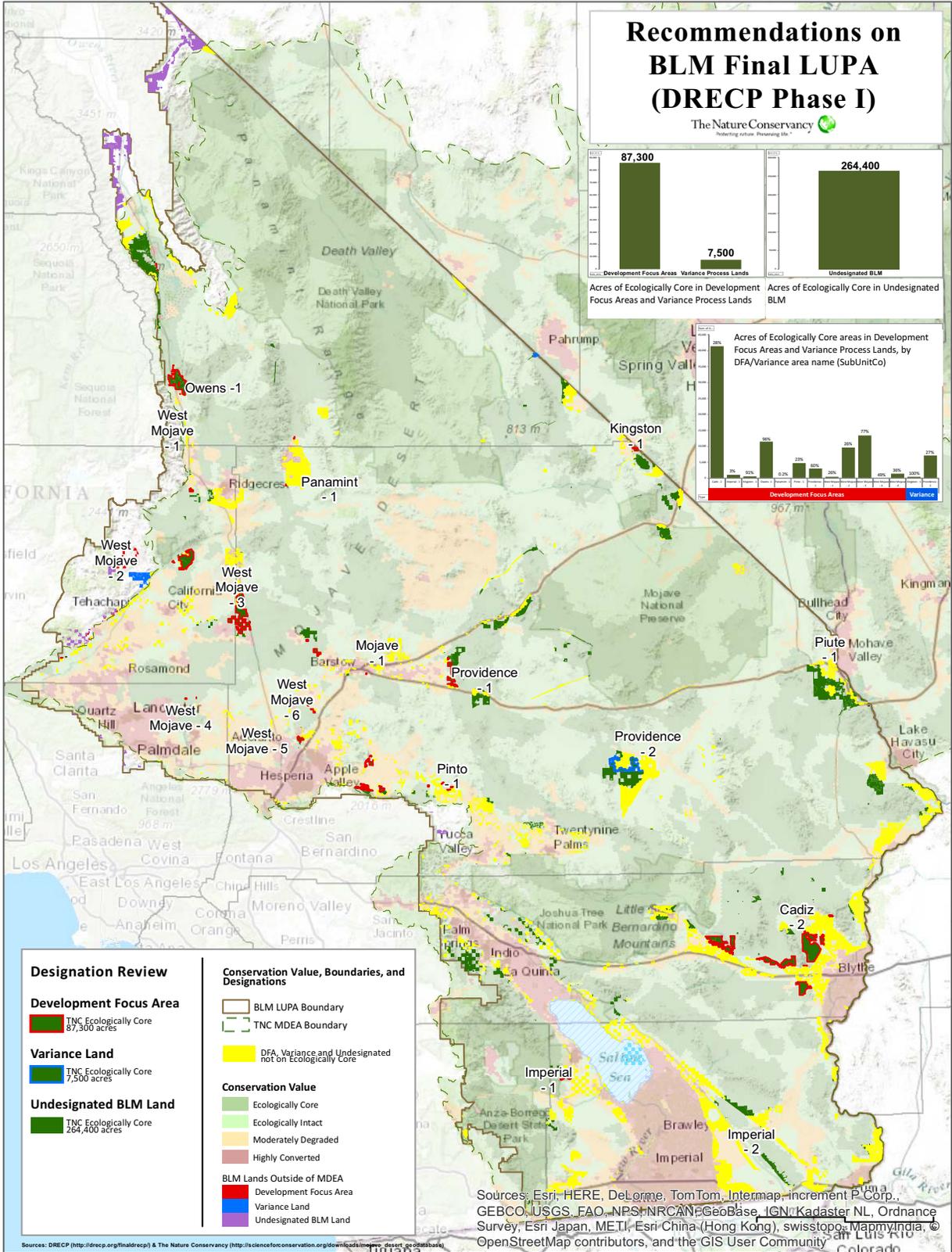
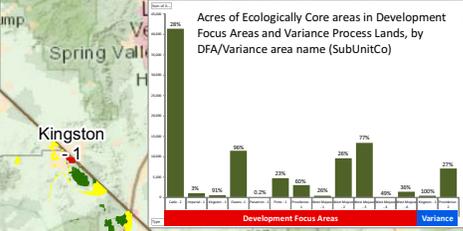
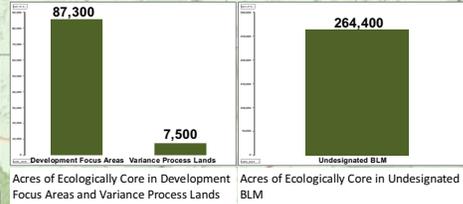
Recommendations on BLM Final LUPA (DRECP Phase I)

The Nature Conservancy
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Recommendations on BLM Final LUPA (DRECP Phase I)

The Nature Conservancy



Designation Review

Development Focus Area
 TNC Ecologically Core
 87,300 acres

Variance Land
 TNC Ecologically Core
 7,500 acres

Undesignated BLM Land
 TNC Ecologically Core
 264,400 acres

Conservation Value, Boundaries, and Designations

BLM LUPA Boundary
 TNC MDEA Boundary

DFA, Variance and Undesignated not on Ecologically Core

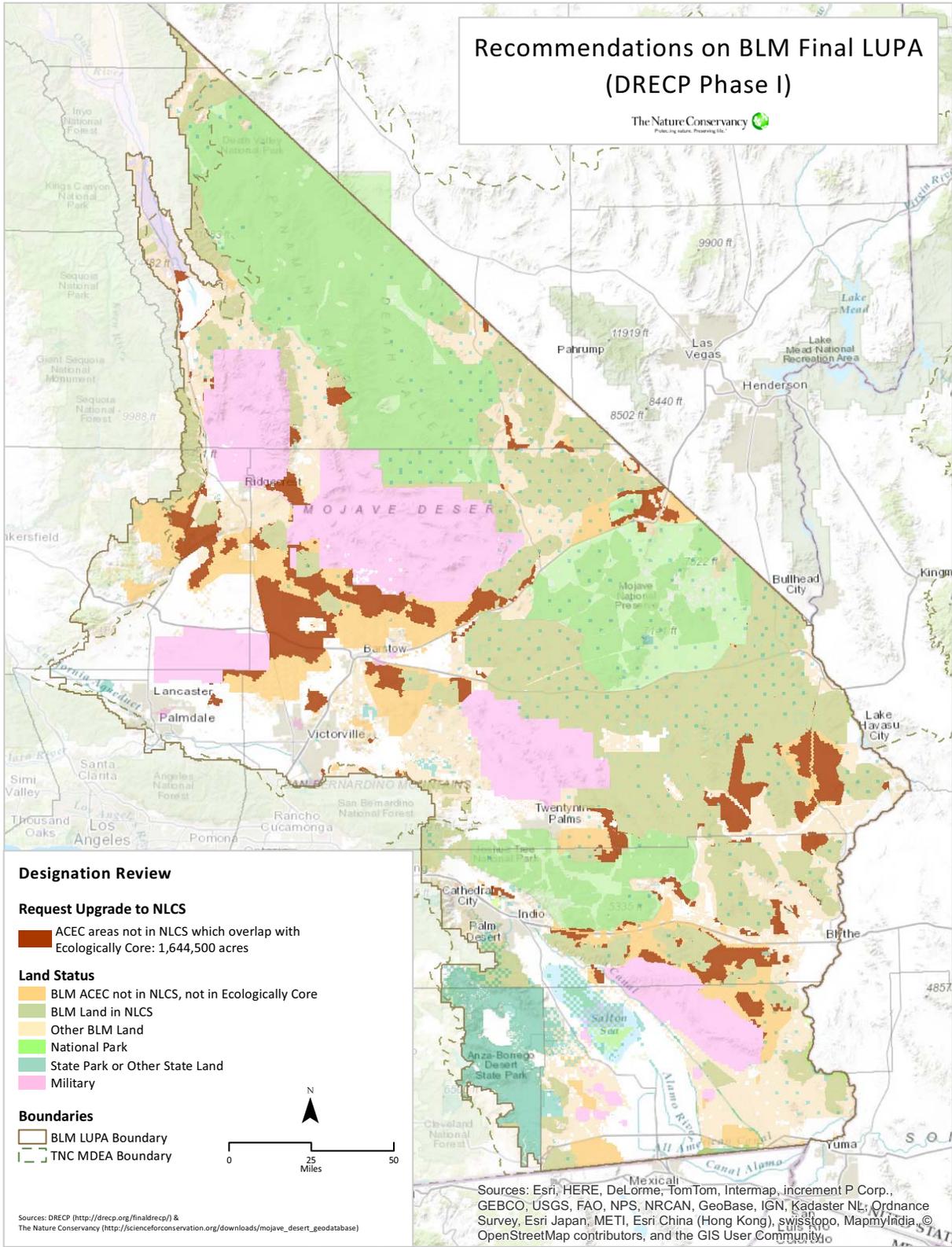
Conservation Value
 Ecologically Core
 Ecologically Intact
 Moderately Degraded
 Highly Converted

BLM Lands Outside of MDEA
 Development Focus Area
 Variance Land
 Undesignated BLM Land

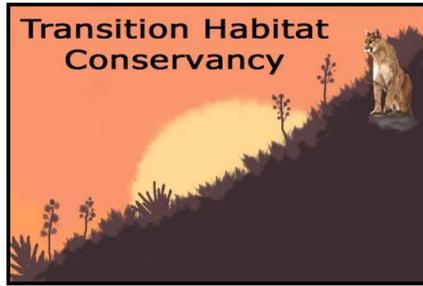
Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Recommendations on BLM Final LUPA (DRECP Phase I)

The Nature Conservancy
Protecting nature. Powering life.



10 May 2016



PO Box 720026, Pinon Hills, CA 92372

www.TransitionHabitat.org

Tax ID 74-3146328

10 May 2016

SENT VIA EMAIL

Bureau of Land Management
 DRECP Program Manager, Ms. Vicki Campbell
 2800 Cottage Way, Suite W-1623
 Sacramento, CA 95825

Dear DRECP Program Manager,
 Subject: Notice of Areas of Critical Environmental Concern within the DRECP,

We appreciate the opportunity to comment on ACEC designations and management plans within the DRECP. Transition Habitat Conservancy (THC) is a conservation organization whose mission is to protect areas of critical habit, transition zone and wildlife corridor ecosystems and their scenic, agricultural, and cultural resource values in the West Mojave Desert. We currently own over 4,000 acres throughout the proposed Fremont-Kramer, Superior-Cronese, Barstow Woolly Sunflower DWMA/ACECs, and very near to the Harper Lake, and the Black Mountain Cultural Area ACECs. We are active stewards of our lands, as well as the vast surrounding public lands in this region, in an effort to improve desert habitat and OHV compliance. This includes land acquisitions, habitat restoration, OHV route signing, fencing, kiosk installation, public education outreach events, biological monitoring, and overall cleanup of this area. We are obligated to manage our lands for habitat preservation in perpetuity, and we are pleased to know that this region may receive an additional level of protection under the DRECP's Proposed LUPA.

General Comment:

THC would like to take this opportunity to point out the significant contributions to the ACECs in this region (mentioned above) by organizations like ours, including the Desert Tortoise Preserve Committee, Mojave Desert Land Trust, Friends of El Mirage, Friends of Jawbone; conservation crews such as the Student Conservation Association and the AmeriCorps National Civilian Conservation Corps; agencies such as the CA Department of Fish and Wildlife, National Fish and Wildlife Foundation; and entities such as Wildlands Inc. (mitigation bank), Hardshell Labs (desert tortoise conservation), and Andy Zdon and Associates (hydrology surveys). These conservation contributions in land, labor, science, and administration to these ACEC regions are in the **tens of millions** of dollars. Therefore, we would request that these substantial conservation contributions of resources be considered when determining the final level of management protection/restriction for the Fremont-Kramer, Superior-Cronese, Barstow Woolly Sunflower, Harper Lake, and Black Mountain Cultural Area ACECs in the DRECP. Due to its critical habitat nexus for important species, we feel that this region is worthy of the most robust conservation management.

C18-1

10 May 2016

Disturbance Caps and Evaluation:

Since the WEMO Plan will be the management plan for large ACECs in this region, and its approved route designations (including a probable increase in number of routes) will affect many other ACECs, then perhaps it should be considered a "Disturbance Proposal" for these ACECs. This could trigger the ground disturbance calculations using the GTLF or WEMO route system with aerial imagery to provide BLM and the Public with a reasonable baseline for all current and future evaluations of this region. If ground disturbance is truly considered to be all routes of travel (both designated and undesignated), then this would a great opportunity to determine the current baselines of disturbance and potentially help refine the WEMO route system.

C18-2

Harper Lake ACEC:

The Objective for Soil, Air, and Water: Provide permanent water source references agricultural sources and improving the water quality from these sources. However, there are no more agricultural operations in this area. It has all been converted to solar. The wetland does receive water from groundwater pumped from a well by the solar facility, but it has been intermittent lately (possibly due to bankruptcy and operator issues). This Objective and management plan should be updated to reflect the current situation and water source.

C18-3

Sincerely,



Jill Bays
President
Transition Habitat Conservancy
760 868 5136
Jill@TransitionHabitat.org
PO Box 720026
Pinon Hills, CA 92372-0026
www.TransitionHabitat.org

From: **Laura Cunningham** <bluerockiguana@hughes.net>
Date: Thu, May 12, 2016 at 10:35 AM
Subject: Comments on ACECs in the DRECP
To: blm_ca_drecp@blm.gov

Dear Ms. Campbell,

Please accept our comments on Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California.

ACECs should not allow any transmission, and do not allow them to be decreased in size with every Resource Management Plan re-write. We need more information on the Development Focus Areas (DFAs), including much more detailed maps, descriptions of resources, impacts, and mitigation proposals, so that we can see how the DFAs might impacts ACECs. We want to be able to comment on the DFAs in more detail.

C19-1

Thank you,
Laura Cunningham
Kevin Emmerich
Basin & Range Watch

Desert Tortoise Preserve Committee, Inc.

4067 Mission Inn Avenue • Riverside • CA 92501
 Phone • (951) 683-3872 • Fax • (951) 633-6949
 E-mail: • dtpc@pacbell.net
www.tortoise-tracks.org



Vicki Campbell
 DRECP Program Manager
 2800 Cottage Way, Suite W-1623
 Sacramento, CA 95825

April 14, 2016

Dear Ms. Campbell,

On behalf of the Desert Tortoise Preserve Committee, Inc. I am submitting the following comments on the Desert Renewable Energy Conservation Plan Areas of Critical Environmental Concern. We are very pleased with the listing of the Desert Tortoise Research Natural Area as a protected ACEC; however we are concerned about the ability for BLM to monitor and manage the impressive amount of Conservation and Management Actions affiliated with each ACEC.

The Desert Tortoise Preserve Committee, Inc. is a nonprofit charitable organization established in 1974 to promote the welfare of the desert tortoise (*Gopherus agassizii*) in the wild through land acquisition and management, scientific research, and educational outreach. The DTPC Inc. currently owns and manages over 7,000 acres of habitat for the desert tortoise and other sensitive species in the Mojave and Colorado Deserts. In collaboration with the Bureau of Land Management and other state and federal agencies, the DTPC Inc. helped establish the Desert Tortoise Research Natural Area (DTRNA) in Kern County, California and to this day, the DTPC Inc. helps manage the DTRNA under a cooperative agreement with the BLM Ridgecrest Field office. The DTRNA has hosted numerous studies of desert ecology and animal biology which have greatly aided in desert ecosystem management. Multiple studies have indicated that the DTRNA contains significantly higher densities of tortoises^{1,2,3} and higher quality habitat than on adjacent BLM-managed lands and private lands.^{1,4,5}

First of all, the designation of the Desert Tortoise Research Natural Area should **automatically omit the DTRNA and surrounding lands from any development of any kind**. This leads me to a concern we have with disturbance caps. The narrative explaining the rules of disturbance caps on any National Conservation Lands or Areas of Critical Environmental Concern states that if the ground disturbance condition is at or above the designated cap, it would trigger the implementation of compensatory mitigation. If land is designated as an Area of Critical Environmental Concern or as a National Conservation Land, there should not be ANY disturbance allowed. Having a designated disturbance cap of 0.1% for the Desert Tortoise Research Natural Area allows for more than 200 acres to be disturbed, which can be disastrous for tortoises living within the DTRNA. A cap is generally put in place to prevent something from reaching or surpassing that designation. Our hopes would be that any and all disturbance

C20-1

on a protected piece of land would be refused, and if not, at least monitored closely enough that it does not exceed a designated cap and trigger the need for compensatory mitigation. Previous construction of roads within the Desert Tortoise Research Natural Area sum up to approximately 0.08% of disturbance; which should already eliminate any further disturbance, should the disturbance cap remain.

↑
C20-1
Cont.

Our second comment is in regards to the list of Conservation and Management Actions related to the list of ACECs. While this list is extensive and seems to be comprehensive, there is a concern about whether all of these actions can be enforced. Having renewable energy neighbors, we are well aware of the damage and accumulated trash that can be produced by a development project. While requiring development projects to file all appropriate paperwork and to follow all protocols can help prevent unwanted damage and trash, it will likely become a cumbersome thing to oversee once extensive development on public lands begins. We would like the Bureau of Land Management to take this into consideration when projects are being proposed on or near lands with suitable desert tortoise habitat.

↑
C20-2

We appreciate the opportunity to voice our comments and concerns about the Final Desert Renewable Energy Conservation Plan list of Areas of Critical Environmental Concern. We have worked with BLM to obtain and protect these lands and look forward to continued cooperation in doing so.

Sincerely,



Jillian Estrada
Preserve Manager & Conservation Coordinator
Desert Tortoise Preserve Committee, Inc.



Ron Berger
President
Desert Tortoise Preserve Committee, Inc.

¹ Berry, K.H., L.L. Lyren, T. Bailey. 2012. A comparison of Agassiz' desert tortoise populations and habitat in the Rand Mountains, Fremont Valley, and the Desert Tortoise Research Natural Area in spring 2011. Report to the U.S. Dept. of the Interior, Bureau of Land Management, and California Department of Parks and Recreation, Sacramento, California.

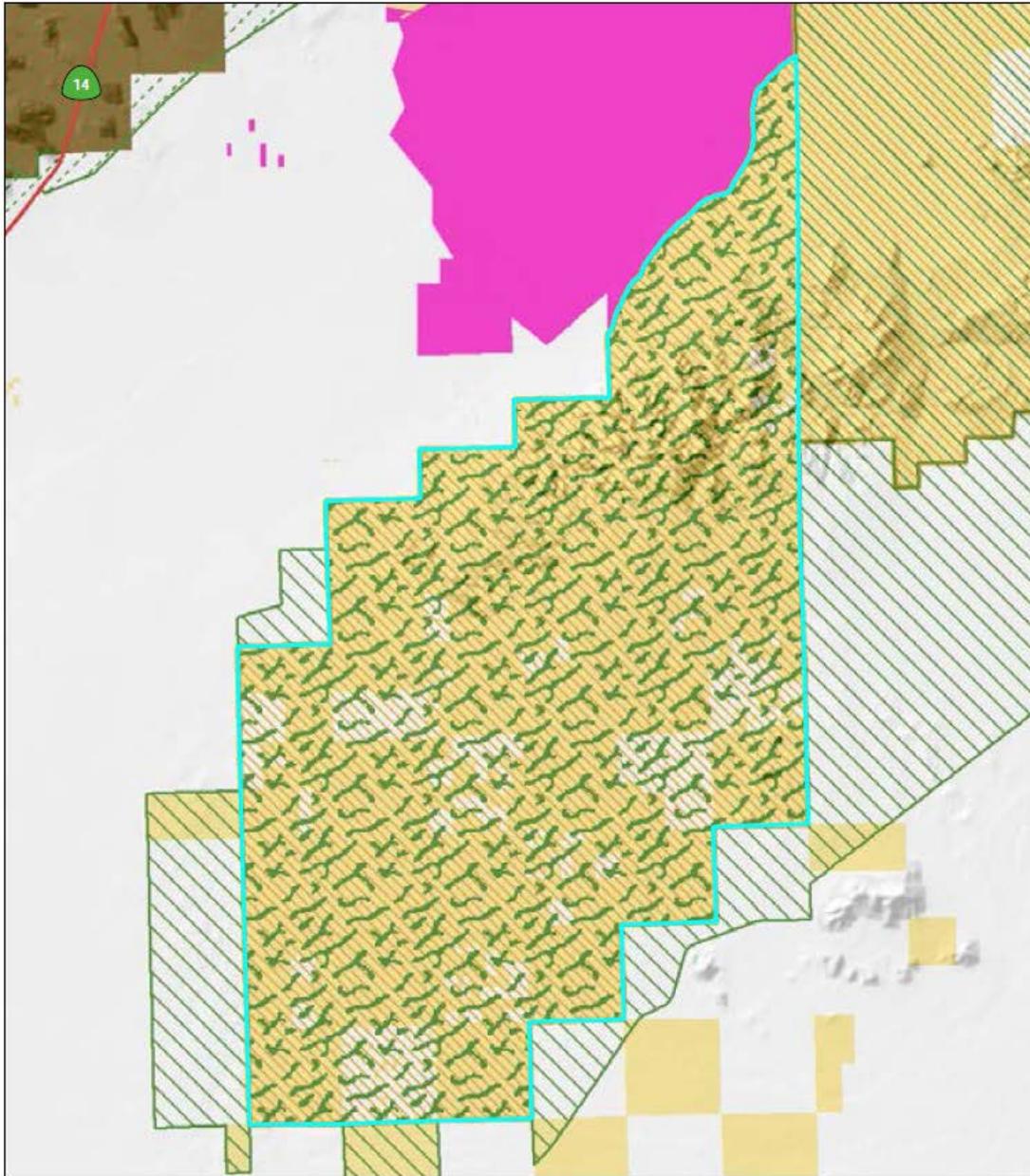
² Berry, K.H., T. Shields, and L. Lyren. 2013. Management Implications of Protective Fencing: A Comparison of Desert Tortoise and Predator Populations at and near the Desert Tortoise Research Natural Area Interpretive Center Plot, Kern County, California in 2012. 35 pp.

³ Berry, K.H., L.M. Lyren, J.L. Yee, and T.Y. Bailey 2014. Protection Benefits Desert Tortoise (*Gopherus agassizii*) Abundance: The Influence of Three Management Strategies on a Threatened Species. Herpetological Monographs 28(1):66-92.

⁴ Brooks, M.L. 1995. Benefits of protective fencing to plant and rodent communities of the western Mojave Desert, California. Environmental Management 19:65-74. 4 Brooks, M. 1999a. Effects of protective fencing on birds lizards, and black-tailed hares in the western Mojave Desert. Environmental Management 23:387-400.

⁵ Brooks, M. 1999a. Effects of protective fencing on birds lizards, and black-tailed hares in the western Mojave Desert. Environmental Management 23:387-400.

Attachments: Figures depicting Development Focus Areas in relation to the Desert Tortoise Research Natural Area.



Conservation Footprint

- | | | |
|---|----------------------------|---------------------------|
| Legislatively & Legally Protected Areas | DRECP Boundary | Land Status |
| National Conservation Lands | CDCA Boundary | Bureau of Land Management |
| ACEC Boundaries | | |
| 0.1% Disturbance Cap | Renewable Footprint | |
| 0.5% Disturbance Cap | Development Focus Areas | |
| 1% Disturbance Cap | | |

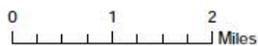
Desert Tortoise Research Natural Area

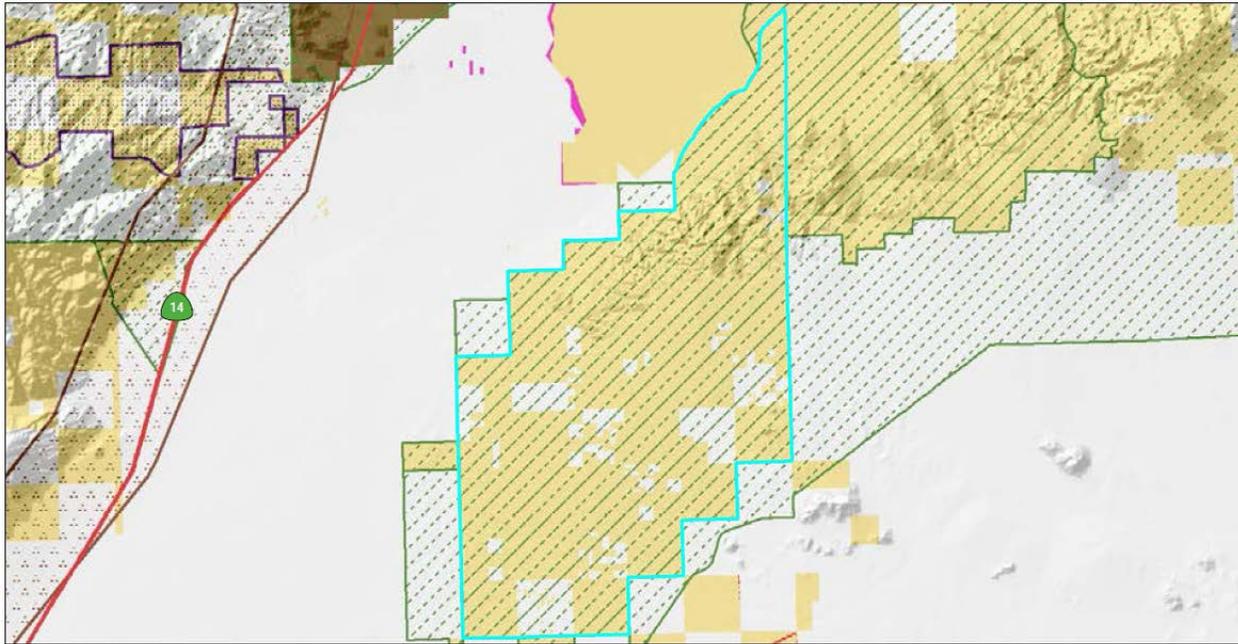


8/24/2015



Draft Map Boundaries Subject to Change





Conservation Footprint

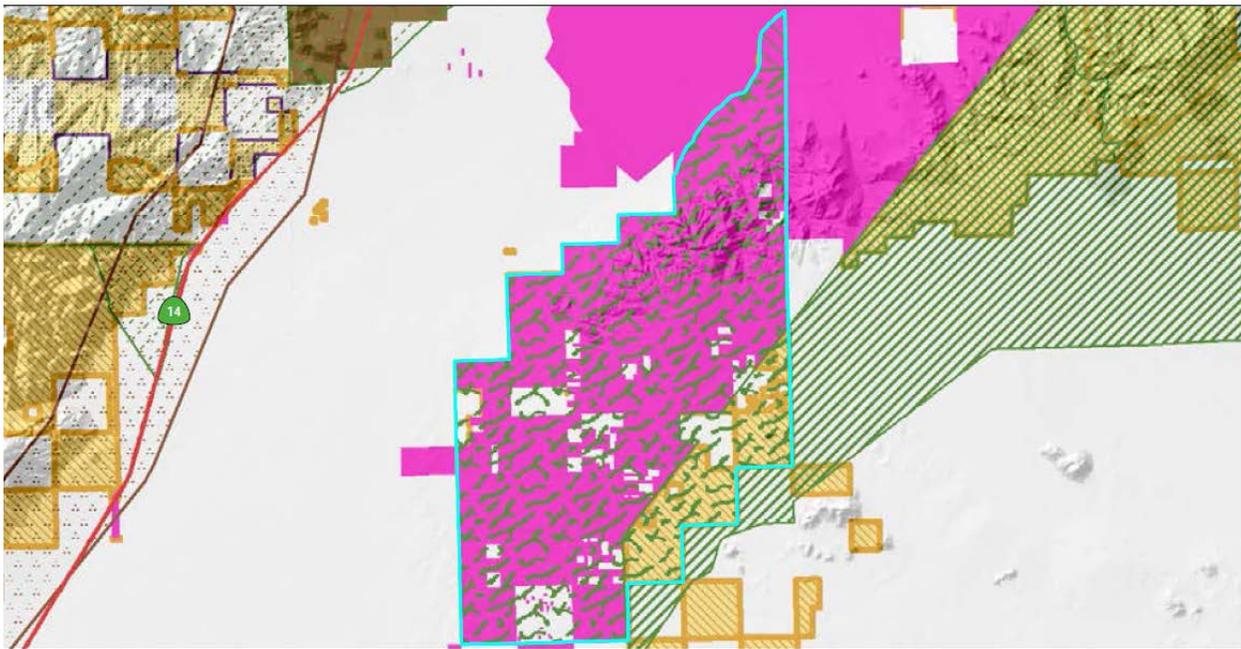
- Legislatively & Legally Protected Areas
- DRECP Boundary
- CDCA Boundary
- Transmission Corridor
- OHV Boundary
- Bureau of Land Management
- ACEC Boundaries
- 1% Disturbance Cap
- Renewable Footprint
- Development Focus Areas
- Variance Lands

0 1 2 Miles

**Desert Tortoise Natural Area
Alternative 1**

8/25/2015

Draft Map Boundaries Subject to Change



Conservation Footprint

- Legislatively & Legally Protected Areas
- DRECP Boundary
- CDCA Boundary
- Transmission Corridor
- OHV Boundary
- Bureau of Land Management
- National Conservation Lands
- ACEC Boundaries
- 0.1% Disturbance Cap
- 0.25% Disturbance Cap
- 0.5% Disturbance Cap
- 1% Disturbance Cap
- Renewable Footprint
- Development Focus Areas

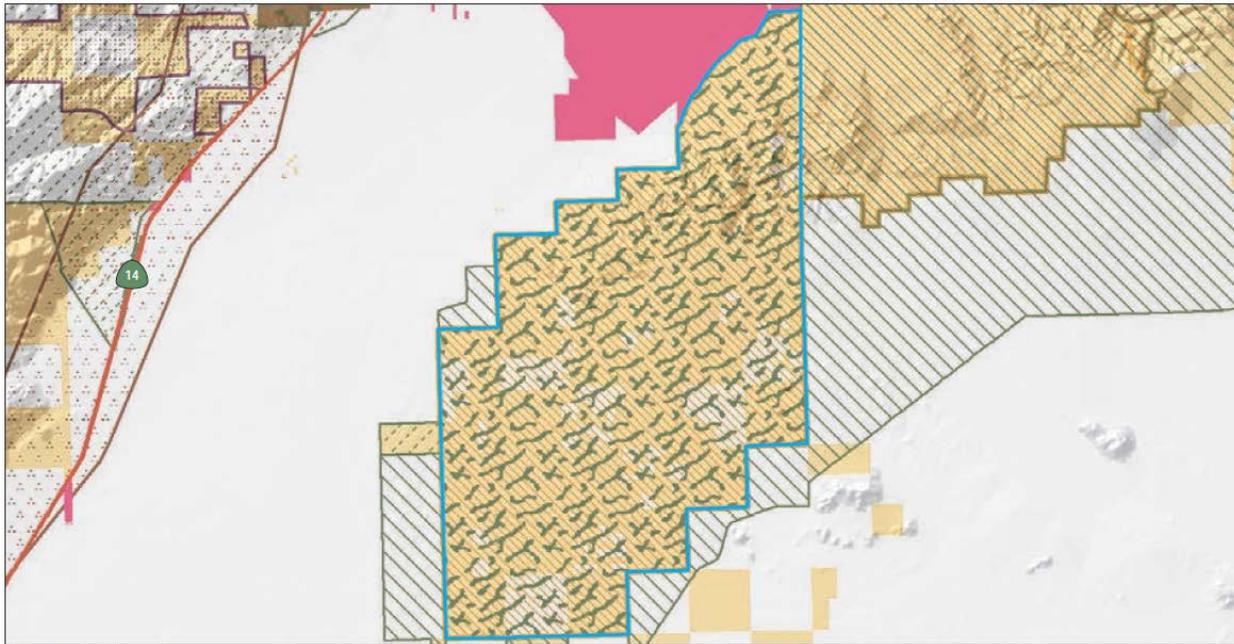
0 1 2 Miles

**Desert Tortoise Natural Area
Alternative 2**

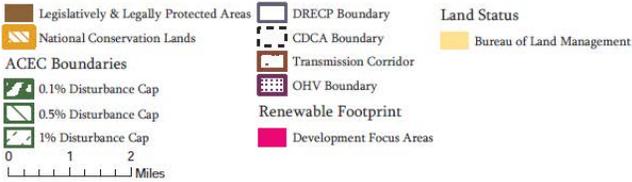
8/26/2015

Draft Map Boundaries Subject to Change





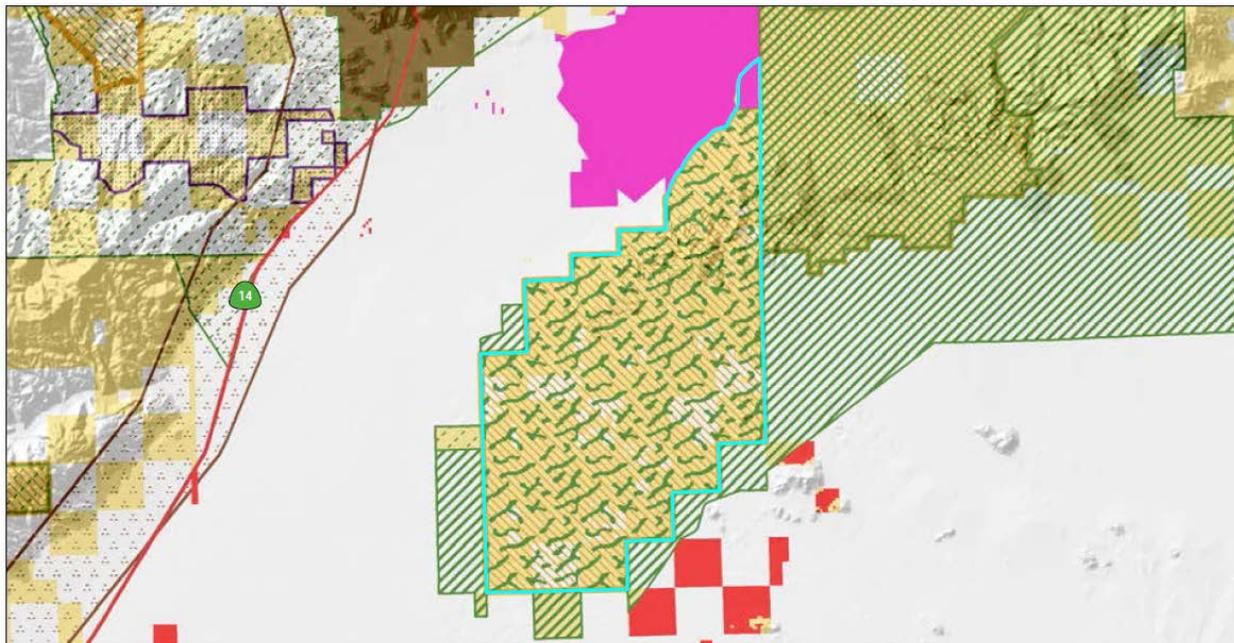
Conservation Footprint



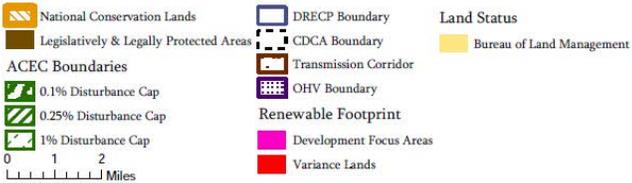
Desert Tortoise Natural Area
Alternative 3

8/26/2015

Draft Map Boundaries Subject to Change



Conservation Footprint



Desert Tortoise Natural Area
Alternative 4

9/16/2015

Draft Map Boundaries Subject to Change





2005 Market Street, Suite 2800 P 215.575.9050
Philadelphia, PA 19103-7077 F 215.575.4939
901 E Street NW, 10th Floor P 202.552.2000
Washington, DC 20004 F 202.552.2299
pewtrusts.org

May 12, 2016

Via electronic mail: blm_ca_drecp@blm.gov

Vicki Campbell, DRECP Program Manager
Bureau of Land Management
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825

Re: Comments on Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California

We appreciate this opportunity to provide comment on BLM’s March 11th, 2016 *Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California*. The Pew Charitable Trusts has a keen interest in BLM’s use and designation of Areas of Critical Environmental Concern (ACECs) in the Desert Renewable Energy Conservation Plan (DRECP) and elsewhere across the West where we engage with partners in the public process of developing a balanced set of management proscriptions for our nation’s public lands.

We view the DRECP as a critical land use plan not only for California and the lands directly under the purview of the plan, but also as a template that has wider implications for how the BLM balances renewable energy development and conservation across the West, given the President’s direction for significantly increasing renewable energy production from our nation’s public lands and Secretary Jewell’s recent remarks about the methodology of and lessons learned from this plan. As such, it is of paramount importance to ensure that DRECP responsibly balances durable conservation while identifying areas for renewables development.

ACECs are a major component of conservation lands designated as part of the pending DRECP Record of Decision. The 134 proposed ACECs contained within the proposed plan represent roughly more than 10% of BLM’s entire “system” of ACECs throughout the country. The diversity in size and scope of DRECP’s ACECs are significant as well, ranging from small areas intended to protect archeological resources to large, landscape-level designations intended to protect sizable portions certain species’ ranges. We fully support this broad application of ACECs in DRECP and believe that the plan appropriately follows the Federal Land Management and Policy Act’s (FLPMA) direction to prioritize the designation of these areas. Clearly, renewable energy development is not compatible with the various values that each ACEC is intended to protect, therefore the proposed plan’s general intention to prohibit such development in these areas is appropriate.

As described in our comments submitted for the DRECP Final Environmental Impact Statement (FEIS), we support a stronger approach to protecting ACECs than is currently proposed. Similar to BLM’s proposed decision to prohibit renewable energy development within designated ACECs, we believe the plan should recommend a withdrawal of all ACECs from mineral entry. Similar to renewable

C21-0
C21-1

energy development, mining activities involve significant ground disturbance, altering the natural setting that invariably supports the values for which the ACEC exists. We make a similar argument for National Conservation Lands designated as part of DRECP's Record of Decision as well, and refer you to our comments on the matter dated 1/12/2016.

↑
C21-1
Cont.

Additionally, we call attention to the BLM's proposed management of five specific ACECs proposed in the DRECP FEIS. ACECs proposed for the Symmes Creek Wilderness Study Area (WSA), Independence Creek WSA, Crater Mountain WSA, Cerro Gordo WSA and the Southern Inyo Mountains WSA contain weaker management prescriptions than all other proposed ACECs. Appendix L outlines how certain ground disturbing activities in these five ACECs, dissimilar to all other proposed ACECs, would not contribute to calculations used to assess disturbance thresholds or caps, therefore potentially allowing a greater degree of impact than in other ACECs. We find this exception arbitrary and urge the BLM to remove disturbance exceptions for these five areas and apply a 0.25% disturbance cap for all allowable activities therein. By doing so, the BLM will make its approach to managing its desert ACECs more consistent and in-line with the stated purpose of protecting the special values these management areas were created for. While activities intended to improve an area's natural condition or protect cultural resources may be necessary, the impacts to the landscape generated by these activities should not be excluded in calculating an area's level of disturbance. While they may provide a net benefit in the long term, all associated short term impacts must be accounted for to ensure ACEC values are protected.

↑
C21-2

We appreciate this opportunity to provide additional comment on the proposed DRECP and its laudable conservation components. We look forward to the DRECP Record of Decision in the near future.

Sincerely,



Matthew Skroch, Officer
U.S. Public Lands Program