

**Defenders of Wildlife
Natural Resources Defense Council
Sierra Club
Audubon California**

September 12, 2011

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Jim Bartel, Field Supervisor
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(Via email to: FW8DRECP@fws.gov)

and

California Energy Commission
Dockets Office, MS-4, Docket No. 09-RENEW E0-01, Scoping Comments
1516 Ninth St.
Sacramento CA 95814-5512
Attn: Kristy Chew
(Via email to: docket@energy.state.ca.us)

Re: Desert Renewable Energy Conservation Plan, Habitat Conservation Plan and Possible Land Use Plan Amendment, Southern California: Environmental Impact Statement

Dear Mr. Bartel and Ms. Chew:

Our organizations, all of which are Stakeholders in the Desert Renewable Energy Conservation Plan (DRECP) effort, appreciate the opportunity to provide issue scoping comments for use by the action and cooperating agencies in preparing the draft DRECP, including the range of alternatives and the required analysis of environmental impacts. Our scoping comments are intended to assist the agencies in ultimately developing and approving an environmentally responsible and legally sufficient plan that is based on consideration of a range of alternatives that provide lasting, effective and timely conservation of our remaining biological resource heritage in the planning area, while concurrently providing opportunities for and facilitating renewable energy generation and transmission in appropriate locations.

These comments are in addition to, and incorporate by reference, all of the comments submitted by our organizations as part of the DRECP process, including comment submitted as part of the

previous Notice of Intent, Federal Register: November 20, 2009 (Volume 74, Number 223) [Page 60291-60292]; the three workgroups (Mapping, Covered Species, and Covered Activities; the DRECP Stakeholder process; and on the various draft documents previously issued for comment (e.g., the Covered Species list, Proposed Species Habitat Modeling Approach, DRECP Science Input, DRECP Subarea Options, Proposed Approach to the DRECP Effects Analysis, and Approach to Structuring the Preliminary Conservation Strategy).

Our issue scoping comments on the DRECP follow, by subject:

1. General

We wish to emphasize, and will do so in other sections of our letter, that the DRECP planning area is, for the most part, within the California Desert Conservation Area (CDCA), a special area established under federal law in 1976 for the immediate and lasting protection of sensitive natural, cultural, scenic and other resources occurring on public lands administered by the Bureau of Land Management (BLM). We are strong advocates for maintaining and enhancing conservation of natural biological communities and landscapes in the planning area, especially considering that the CDCA Plan has proven to be inadequate in protecting various at-risk species and their habitats on public lands from significant incremental and cumulative loss due to industrial-scale solar and wind energy developments. The DRECP should be a conservation-driven process, with the various alternatives formulated around a range of conservation opportunities or alternatives. The renewable energy development opportunities can then be derived for each alternative in a manner that is easy to analyze, understand and describe. The Independent Science Advisors to the DRECP should be fully involved in analyzing the effects and adequacy of alternatives that will be considered in the planning process and their findings should be incorporated into the draft and final NEPA/CEQA analysis for public review.

In our comments we emphasize the importance of the DRECP in achieving lasting, effective and timely conservation of remaining natural habitats for the numerous species covered under the plan by applying the necessary legal and regulatory standards of the Endangered Species Act (ESA), the California Endangered Species Act (CESA), the Natural Communities Conservation Planning (NCCP) Act, the California Fish and Game Code, and the Federal Land Policy and Management Act (FLPMA). Once a DRECP is finalized, we have high expectations the BLM will adopt its provisions in a manner that augments, rather than diminishes, the existing conservation provisions of the CDCA Plan.

We support conservation actions targeting essential habitats for at-risk species on private lands that are deemed essential in meeting the conservation standards of the NCCP Act and the Fish and Game Code, and we strongly recommend that timely, effective and lasting conservation activities on these lands target, at a minimum, the following species; 1) Desert tortoise, 2) Mojave fringe-toed lizard, 3) Flat-tailed horned lizard, 4) California condor, 5) Golden Eagle, 6) Swainson's hawk, 7)

Willow flycatcher, 8) Mohave ground squirrel, 9) Desert bighorn sheep, and 10) Peninsular ranges bighorn sheep. We support the covered species list set forth in the notice of intent, but urge the inclusion of Willow flycatcher and Desert bighorn sheep as covered species.

The DRECP will also identify lands, public and private, where renewable energy project development is appropriate and will facilitate such development by making available programmatic incidental take authorizations or permits to participating agencies at the local, state and federal levels, and subsequently to project applicants, for various species protected under state and federal laws, noted above, and also those protected under the California Fish and Game Code, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act. We believe the DRECP can provide reasonable opportunities for renewable energy development that will contribute significantly in meeting, and possibly exceeding, state and federal standards for the generation and utilization of electrical energy derived from solar, wind and geothermal energy sources. We also believe that facilitating such development, through the issuance of programmatic incidental take permits and authorizations, and other mechanisms, (e.g., consolidation of parcelized private lands in appropriate development areas through local, state and federal initiatives), will provide opportunities for timely and efficient development of renewable energy while maintaining and enhancing conservation of various at-risk species and their habitats on a landscape scale throughout the planning area.

We also recognize that the DRECP planning area extends outside of the CDCA in some areas, such as within the Owens Valley and along the Colorado River.

The DRECP must address the projected effects of global climate change on plants, animals and their habitats throughout the planning area as part of the environmental baseline. Opportunities for species to adapt to environmental changes will be essential components of the plan. Such changes include, for example, movement of certain species to higher elevations as temperatures increase, shifts in species composition of various plant communities, and precipitation patterns. The baseline condition should account for the existing impacts to species adaptation opportunities such as habitats lost and fragmented by highways, canals, fences and general urban development. Maintaining opportunities to allow for species adaptation in response to climate change essentially means maintaining sufficient natural communities to allow for species movements and colonization of habitats within their range of tolerance.

2. National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA)- Range of Alternatives

Because of the large amount of land affected by the DRECP, and the legal and regulatory standards that must be met with regard to the range of alternatives analyzed, we strongly recommend that all the alternatives analyzed under NEPA and CEQA conform to a framework that is consistent with the following:

A. Public Lands under BLM jurisdiction

- The statutory and regulatory requirements for management of public lands as contained in the Federal Land Policy and Management Act and expressed in the California Desert Conservation Area Plan, as amended (including regulatory standards for achieving healthy rangelands in compliance with 43 CFR 4180, the Vegetation Element, and the Wildlife Element).
- The statutory requirements placed on Federal agencies by the Endangered Species Act to 1) prevent jeopardizing the continued existence of listed species or adversely modifying or destroying their critical habitats, and 2) recover or conserve threatened or endangered species through deliberate actions, such as through implementation of recovery plans, for example.
- Executive Orders placed on federal agencies: 1) 11514 – Protection and Enhancement of Environmental Quality, 2) 11990 – Protection of Wetlands, 3) 13186 - Responsibilities of Federal Agencies to Protect Migratory Birds.
- National policy requirements for BLM administration of public lands contained in various BLM Manuals: 1) 1601 – Land Use Planning, 2) 4180 – Land Health, 3) 6500 – Wildlife and Fisheries Management, and 4) 6840 – Special Status Species Management.
- CDCA public land management standards contained in the CDCA Plan, as amended for the Northern and Eastern Mojave Planning Area; the Northern and Eastern Colorado Desert Planning Area; and the West Mojave Planning Area.

B. Private Lands under jurisdiction of local agencies and State lands under jurisdiction of State agencies (e.g., State Lands Commission, California Department of Parks and Recreation, California Department of Fish and Game)

- Fish and Game Code provisions: 1) Section 2805(f) states: ‘Conserve,’ ‘conserving,’ and ‘conservation’ mean to use, and the use of, methods and procedures within the plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to [CESA] are not necessary, and for covered species that are not listed pursuant to [CESA], to maintain or enhance the condition of a species so that listing pursuant to [CESA] will not become necessary, 2) Section 2800, et seq. requires the DRECP to conform to the standards of the NCCP Act, which is the only conservation planning statute in current law that sets forth strong standards for conservation, independent science, collaboration, and public participation.
- NCCP Act provisions: The NCCP Act definition of conservation requires the use of all methods and procedures within a plan area necessary to recover a covered species or ensure that a covered species will not be listed as endangered or threatened. This standard is broader and more protective than the incremental “contribute to survival and recovery.” Therefore, we would urge the DRECP planning agreement use the

actual definitions of conservation found in the NCCP Act rather than reinterpretations of law that do not fully reflect what is required in the NCCP Act.

C. Requirements common to all lands

- **Bald and Golden Eagle Protection Act:** This act prohibits take, including harm, of Bald and Golden Eagles, and the Fish and Wildlife Service (FWS) has determined it will not issue incidental take permits for individual renewable energy projects, but may do so in the future for programmatic incidental take. The latter will require “no net loss” in Golden eagles, which could be achieved through programmatic conservation or protection plans that would place specific requirements on individual energy projects.

Although it is relatively easy to survey for Golden eagle nests using recommended survey protocols developed by the FWS, it is much more difficult to accurately identify nesting and foraging territories due to general lack of behavioral information for this species. Golden eagle foraging territories in the planning area are unknown and, due to the arid nature of the region, they may be much larger than in more mesic regions where the prey base is larger and more consistent. With this in mind, we strongly recommend the DRECP provide protection of the largest foraging territories anticipated in the desert region.

- Fully Protected Species as per California Fish and Game Code: Various sections of the Fish and Game code prohibit issuing permits allowing for the “take” of fully protected animals except under limited circumstances involving scientific research in support of conservation. The following Fish and Game Code Sections, and their associated fully protected species are known or likely to occur in the DRECP planning area are as follows:
 1. Section 3511 (Birds): American peregrine falcon, Brown pelican, California black rail, California clapper rail, California condor, California least tern, Golden eagle, Light-footed clapper rail, Southern bald eagle, White-tailed kite, Yuma clapper rail.
 2. Section 4700 (Mammals): Bighorn sheep (except for authorized hunting of Nelson bighorn), Ring-tailed cat.
 3. Section 5050 (Reptiles and Amphibians): None in planning area
 4. Section 5515 (Fishes): Mohave chub, Owens River pupfish.

The agencies need to be aware that the law prohibiting “take” of fully protected species may change on January 1, 2012, if Governor Brown signs Senate Bill 618, which was passed by the California Legislature on September 10, 2011. If that bill becomes law, take of fully protected species may occur within an NCCP as long as the fully protected species is “covered,” as defined by the state NCCP Act.

- California-listed Endangered, Threatened or Candidate Species as per Fish and Game Code: Section 2081 of the Fish and Game Code allows incidental take permits to be issued for California-listed Endangered, Threatened and Candidate species, but only in circumstances where the impacts of the authorized take are minimized and fully mitigated.
- Endangered Species Act (ESA). The ESA prohibits the take of threatened or endangered species on private land except when authorized through an incidental take permit and an associated Habitat Conservation Plan. The ESA also prohibits federal agencies from authorizing the adverse modification or destruction of designated critical habitat, which may occur on both federal and private lands.

D. Reasonable Range of Alternatives

Opportunities for development of renewable energy under each of the conservation-based alternatives should also reflect accurate renewable energy generation projections for the entire state, and a reasoned analysis of the contribution that could come from the planning area. Analysis of the adequacy of energy generation opportunities under each alternative in achieving the minimum standards for California should be part of the NEPA/CEQA analysis.

We also strongly support DRECP provisions that would greatly facilitate the development of small to medium scale solar and wind projects and maximize opportunities for distribution through existing utility distribution systems, including substation tie-in. In addition, we urge that all of the alternatives provide opportunities for or facilitate development in those portions of the Imperial Valley and Eastern Riverside zones identified in the BLM's Solar Programmatic Environmental Impact Statement, and the proposed West Chocolate Mountains renewable energy zone, that are found to have low biological resources and conservation values. These zones have been supported by our organizations as most appropriate for development (with some additional refinement to address local environmental impacts). In particular, we believe that the alternatives should look at development primarily in the Imperial Valley, West Chocolate Mountains, Eastern Riverside area, and West Mojave. Finally, we strongly urge that all alternatives provide that development is prioritized to occur in degraded and disturbed areas. The conservation community has developed criteria to assist in the identification of appropriate areas for renewable energy development. These criteria are attached.

3. Environmental Baseline

The environmental baseline should consider the existing ecological condition and trend of 1) plant and animal communities, 2) plant and animals populations, especially those that are listed by BLM as Special Status Species, and State-listed endangered and threatened species. The environmental baseline should also consider 1) current land uses allowed under various federal, state and local

agency land management plans, 2) the degree to which these plans have allocated certain lands for conservation of biological resources, and 3) the effectiveness of conservation allocations in these plans in ensuring lasting and effective conservation of biological resources, and especially Special Status Species and State-listed endangered and threatened species.

We raise the above issues because of our concern that the various land management plans of federal, state and local agencies, except in certain situations, do not provide a level of protection of biological resources sufficient to ensure their long-term conservation.

4. Recovery of Federally Listed Endangered and Threatened Species

The DRECP presents a unique opportunity to make significant progress in the recovery of threatened and endangered species as mandated by Section 7(a)(1) of the Endangered Species Act. This opportunity is especially critical for the Desert tortoise, which continues to decline over much of its range despite its listing as threatened in 1990 and the subject of a recovery plan since 1994. We recommend incorporation of conservation recommendations contained in various biological opinions from the FWS for proposed renewable energy projects and land use plans. Recent examples of the former are included in biological opinions for the Ivanpah, Calico, Desert Sunlight, Palen, Genesis and Blythe solar projects.

Existing recovery plans for threatened and endangered species occurring within the planning area should be used in developing conservation strategies in the DRECP. Such plans cover the following species: 1) Amargosa vole, 2) Arroyo southwestern toad, 3) California condor, 4) Coachella Valley fringe-toed lizard, 5) Desert pupfish, 6) Desert slender salamander, 7) Least Bell's vireo, 8) Light-footed clapper rail, 9) Owens Basin Wetland and Aquatic Species, 10) Peninsular Ranges bighorn sheep, 11) Inyo California towhee, 12) Mojave tui chub, 13) Quino checkerspot butterfly, 14) Desert tortoise, 15) San Bernardino Mountains carbonate endemic plants, 16) Southwestern willow flycatcher, and 17) Yuma clapper rail. Additional conservation actions are contained in regional amendments to the CDCA Plan (i.e., West Mojave, Northern and Eastern Colorado, Northern and Eastern Mojave regions).

5. Habitat conservation in the DRECP planning area

Our organizations have given considerable thought and consideration of what lands should be included in a conservation strategy within the planning area, and we believe the conservation lands should not be subject to renewable energy development. We believe conservation lands should include the following:

- Areas of Critical Environmental Concern (ACECs) on public lands designated by BLM
- Wildlife Habitat Management Plan areas on public lands designated by BLM
- Critical habitats designated by FWS not otherwise included in ACECs

- Golden eagle nesting territories
- Desert bighorn sheep permanent ranges and their intermountain connectivity habitats
- Sensitive and Highly Sensitive Unusual Plant Assemblages designated by BLM
- Lands acquired by BLM through purchase, exchange or donation for conservation purposes
- Lands acquired by the U.S. Army to mitigate the impacts activities associated with the expansion of Ft. Irwin
- Lands identified by the FWS in conservation recommendations contained in various biological opinions for exclusion from renewable energy development
- Connectivity habitats identified in the California Essential Habitat Connectivity Project
- Lands identified as Ecologically Core and Ecologically Intact by The Natural Conservancy
- Habitats supporting known concentrations of plants included on List 1.B. of the California Native Plant Society (these are also BLM designated Sensitive Species)
- Sand transport and dune systems occupied by Mojave fringe-toed lizards and other sand-dependent species
- Los Angeles County Significant Ecological Areas
- Audubon Society Important Bird Areas

6. The BLM's Land Use Plan Amendment must be subjected to the federal ESA's Section 7 consultation process.

Similar to our comments on the BLM's Solar Energy PEIS, we urge the BLM to conduct formal consultation under the ESA with the U.S. Fish and Wildlife Service. Section 7 of the ESA requires that each federal agency insure that any action authorized, funded or carried out by that agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat for any threatened or endangered species. 16 U.S.C. §1536(a)(2). In meeting this duty, an agency shall consult with the appropriate Secretary so that the Secretary can determine if the action will jeopardize the species or cause adverse modification or destruction of critical habitat. *Id.* at §1536(b)(3). An agency shall review its actions at the earliest possible time to determine if the action may affect listed species or critical habitat. 50 C.F.R. 402.14.

Since the DRECP will likely result in a proposal and decision to amend the CDCA Plan, which may affect listed species and critical habitat, we urge BLM and the U.S. Fish and Wildlife Service to enter into consultation as early in the planning process as possible so that the formal consultation process under Section 7 is as efficient and streamlined as possible. If the DRECP as it pertains to public lands is based on a strong conservation strategy, and builds upon the current conservation commitments in the CDCA Plan, BLM could potentially complete its Section 7 responsibilities with a proposed plan amendment that would be entirely beneficial to federally listed species and thus simply seek a letter of concurrence from the U.S. Fish and Wildlife Service.

This concludes our issues scoping comments on preparation of a combined NEPA/CEQA analysis for the DRECP. Please contact us if you have questions or would like any additional information.

Sincerely,



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A handwritten signature in cursive script that reads "Garry George". The signature is followed by a long, horizontal horizontal line that extends to the right.

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