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*Working to protect and restore Western Watersheds*

# DOCKET

09-RENEW EO-1

DATE MAY 03 2012

RECD. MAY 04 2012

May 3, 2012

By Email

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Re: Notice of Amendment to the Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Desert Renewable Energy Conservation Plan, Including Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, and San Diego Counties; and Possible Land Use Plan Amendments  
Docket No. 09-RENEW EO-01/Scoping

Dear Ms. Campbell:

On behalf of the staff and members of Western Watersheds Project, please accept the following comments as you prepare an Environmental Impact Statement for the Environmental Impact Statement for the Proposed Desert Renewable Energy Conservation Plan ("DRECP") and possible amendments to the California Desert Conservation Area (CDCA) Plan, Bishop Resource Management Plan (RMP), Caliente/Bakersfield RMP, and Eastern San Diego County RMP.

Western Watersheds Project works to protect and conserve the public lands, wildlife and natural resources of the American West through education, scientific study, public policy initiatives, and litigation. Western Watersheds Project has over 1,600 members nationwide with offices in Arizona, California, Idaho, Montana, Utah, and Wyoming. Western Watersheds Project, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve wildlife habitats, riparian areas, water quality, cultural resources, and other sensitive resources and ecological values.

Western Watersheds Project recognizes that global climate change poses new challenges to our already stressed public lands. However, while climate change threatens biodiversity and

entire fragile ecosystems, our response to climate change also threatens our public lands and their wildlife. Accordingly, WWP supports responsible development of power plant projects. Responsible development requires the use of comprehensive, ecologically sound, science-based analysis in determining power plant locations. This is best achieved by focusing energy developments on private or severely altered lands that are located close to points of use to minimize new disturbance or further fragmentation of fragile, native ecosystems. We believe that the BLM can best serve the American public by ensuring that public lands and their resources are protected and preserved.

The BLM has identified the following preliminary issues: special status species, mitigation measures for special status species, vegetation communities, cultural resources, special area designations, and areas of high potential for renewable energy development. In addition to those issues, the BLM must also consider the impact that industrial scale power plant projects and their associated infrastructure will have on BLM's multiple use mandate, and on visual resources.

A single solar energy plant may cover thousands of acres from which native plants and animals are permanently excluded. Obviously, multiple solar energy plants will multiply this impact to the desert's flora and fauna. However, multiple developments bring in additional cumulative impacts that must be carefully and fully analyzed.

The Federal Land Policy and Management Act ("FLPMA") mandates the BLM to prevent unnecessary or undue degradation of the lands it manages. Adding the impact of the loss of hundreds of thousands of acres of habitat to solar energy development on top of other consumptive impacts such as livestock grazing and off-road vehicle use to which the habitat of many animals and plants is already subject, is both unsustainable and inappropriate. In order to mitigate for any impacts of power plant developments on public lands, the BLM must seek to balance these impacts. Accordingly, the multiple impacts of all other consumptive uses authorized by any given land use plan will need to be reduced to the point at which there is a net decrease in cumulative impacts to remaining sensitive and listed species habitat to compensate for the habitat loss. Mechanisms to achieve this could include eliminating conflicting uses such as livestock grazing from the California Desert Conservation, Bishop, Caliente/Bakersfield, and Eastern San Diego County Resource Planning Areas, and establishing Areas of Critical Environmental Concern ("ACEC").

BLM is obligated under FLPMA to "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved." 43 U.S.C. §1732(d)(2)(a). Other laws, including the Endangered Species Act, also entail the need for mitigations to minimize impacts. BLM is required to consider measures to mitigate potential environmental consequences in its NEPA analysis. 40 C.F.R. § 1502.16. The NEPA implementing regulations define "Mitigation" to include:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- [40 C.F.R. §1508.20]

The scale of the degradation and the potential massive loss of public resources under the DRECP will make development of appropriate mitigation measures extremely costly and difficult. All of the mitigation measures outlined in §1508.20 are applicable to various aspects of solar energy development.

The BLM should consider the following actions in all of the alternatives it analyzes in the DRECP EIS:

- (a) Within the CDCA, designate the existing Mohave Ground Squirrel Conservation Area as an Area of Critical Environmental Concern.
- (b) Within the CDCA, designate all habitats in linkage corridors identified by the USFWS that provide connectivity between designated desert tortoise conservation areas (“DWMAs”) as ACEC.
- (c) Amend the California Desert Conservation Area (CDCA) Plan, Bishop Resource Management Plan (RMP), Caliente/Bakersfield RMP, and Eastern San Diego County RMP to allow for voluntary relinquishment of livestock grazing leases to (a) resolve resource conflicts, and (b) provide mitigation opportunities to offset the impacts of renewable energy development.

The NEPA implementing regulations specify that NEPA documents must analyze a full range of alternatives including “reasonable alternatives not within the jurisdiction of the lead agency” (40 C.F.R. § 1502.14). Based on the information and analysis presented in the sections on the Affected Environment (40 C.F.R. § 1502.15) and the Environmental Consequences (40 C.F.R. § 1502.16), the NEPA document should present the environmental impacts of the proposed action and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public

In order to comply with the spirit and letter of NEPA, the EIS must consider alternatives that meet the project goals and not simply propose “straw man” alternatives that can then be dismissed from further consideration. We suggest that the BLM consider the following reasonable alternatives in addition to any proposed action

- (a) No Action Alternative as is required by NEPA.
- (b) Siting projects only on Public lands that are not habitat for listed species such as desert tortoise.

- (c) A private lands alternative under which the project is built on private lands only and the public lands to provide for resiliency of special status species and their habitats within large blocks of public land while maintaining connectivity between conserved areas.
- (d) Distributed energy alternatives such as using “roof top” solar to avoid impacts to all sensitive resources in the region.

Full analysis of these alternatives will help clarify the need for the land use plan amendments, provide a baseline for identifying and fully minimizing resource conflicts, facilitate compliance with the BLM’s FLPMA requirement to prevent the unnecessary and undue degradation of public lands and its resources, and will help provide a clear basis for making an informed decision.

In addition, the BLM must take a hard look at impacts to the following resources:

### **Desert Tortoise.**

The DRECP will directly, indirectly and cumulatively impact desert tortoises. According to Lovich and Ennen (2011)<sup>1</sup>, the potential effects of the construction of solar energy facilities include the direct mortality of wildlife; environmental impacts of fugitive dust and dust suppressants; destruction and modification of habitat, including the impacts of roads; and off-site impacts related to construction material acquisition, processing, and transportation. The potential effects of the operation and maintenance of the facilities include habitat fragmentation and barriers to gene flow, increased noise, microclimate alteration, pollution, water consumption, and fire.

The BLM needs to analyze the direct, indirect and cumulative effects on desert tortoise for each alternative. The BLM must clearly characterize and identify the desert tortoise populations that will be impacted by each alternative considered. It needs to determine the affected population size, fully analyze the cumulative effects of fragmentation, and fully analyze the impacts to connectivity between desert tortoise genetic units and between desert tortoise conservation areas. The BLM must provide a mechanism to ensure that this linkage habitat is protected. In view of the enormous scale of the DRECP, the only effective mechanism for the BLM to protect this essential connectivity is to designate this linkage habitat as an ACEC.

### **Mohave Ground Squirrel.**

The DRECP will directly, indirectly and cumulatively impact the BLM-sensitive, state-listed Mohave ground squirrel. The EIS should evaluate the significance of the established Mohave Ground Squirrel Conservation area and its effectiveness in protecting and conserving the Mohave ground squirrel in the light of the massive developments and disturbances that the DRECP will entail. The BLM should explain how amending the land use plan will maintain connectivity between units of the Mohave Ground Squirrel Conservation Area, and will allow for dispersal of Mohave ground squirrels from “core areas”. The EIS must address all projects that

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<sup>1</sup> Lovich, J. E. and Ennen, J. R. 2011. Wildlife Conservation and Solar Energy Development in the Desert Southwest, United States. *BioScience*, 61(12): 982-992.

have contributed or will contribute to loss of habitat within the Conservation Area in the cumulative effects analysis.

Because the BLM has allowed consideration of construction of industrial scale solar power plants within the Mohave Ground Squirrel Conservation Area (such as the Ridgecrest Solar Power Plant project), the BLM should use the land use plan amendment to re-designate the Mohave Ground Squirrel Conservation Area as an ACEC to ensure that an adequate regulatory mechanism exists to assure conservation of the species on public lands.

### **Burrowing Owl.**

Burrowing owls occur throughout the DRECP planning area. The EIS must fully analyze impacts to this species and ensure compliance with all the biological goals of the CDCA Plan.

### **Sage-grouse.**

The Bishop Resource Management Area includes important habitat for Bi-state Sage-grouse, a candidate species for listing under the ESA. High quality sagebrush habitats or those that have good restoration potential should not be developed for power plant projects in areas where these sage-grouse occur because this species requires landscape level conservation measures to promote its recovery. The EIS should identify all affected and potentially affected Sage-grouse Population Management Units and analyze the direct and indirect impacts to the Bi-State sage-grouse DPS. The cumulative effects analysis must consider transmission lines and fences, and access roads that will be engendered by each alternative.

### **Desert Bighorn Sheep.**

Many special status populations of bighorn sheep including ESA-listed populations occur on BLM lands within the DRECP planning area. The CDCA Plan includes biological goals of maintaining habitat connectivity within and between bighorn sheep demes and for example requires that, “Installation of new roads, fences and other linear projects will be mitigated to consider passage of bighorn sheep” [NECO Plan at 2-44]. The EIS should review all direct, indirect and cumulative impacts to this species including impacts to population viability, and to linkage habitat and connectivity.

### **Black Toad.**

The black toad, *Anaxyrus exsul*, occurs on BLM lands including occurrences in ephemeral washes draining into Deep Springs Valley. The BLM must ensure that all populations of this BLM-sensitive, California fully-protected species are protected on public lands.

### **Other Sensitive Species Including Rare and Special Status Plants.**

The BLM must consider the direct, indirect, and cumulative effects on all of the many special status species found on public lands within the DRECP. It must consider impacts to important ecological processes including hydrological and aeolian (wind) components.

The proposed plan amendments must be consistent with the CDCA Plan's biological goals. For example, this requires that the BLM consider, "The fragmenting affects of projects ... in the placement, design, and permitting of new projects." [NECO Plan at 2-43]

### **Invasive Species.**

Invasive weeds grow easily wherever the natural vegetation and biological soil crusts are disturbed. The disturbance to the soil and natural vegetation that will occur as a result of the construction and maintenance of the proposed transmission line must not be allowed to establish a "weed corridor" across the landscape. Once established, weeds are almost impossible to remove permanently. Invasive plants and weeds are threats to native habitat, rare plants, and sensitive species. They pose an immense fire hazard. Using chemicals to kill weeds requires exposing the environment, species, and watershed area to a toxic substance which can be the source of further damage to environmental and human health. Manual weed control requires much human effort, machinery, and can cause even more disturbance, leading to erosion, disturbance, and, in some cases, more weeds. The EIS should carefully consider how invasive plants and weeds will be managed and controlled.

### **Hazards and Hazardous Materials.**

The EIS should disclose all potentially toxic or hazardous wastes that may be associated with projects authorized on public lands under the DRECP during project construction, operation, and maintenance including pesticides and herbicides.

### **Fire Prevention and Suppression.**

The EIS should address the effects that each alternative may have on wildfire risks. Wildfires are becoming increasingly common in the Mojave Desert facilitated by the spread of invasive weeds and climate change. Wildfires can result in type conversion of large expanses of habitat. Wildfires could be caused by construction or operation of the transmission lines. Development of roads and transmission lines could encourage increased motorized vehicle access which increases fire risk especially when coupled with the spread of invasive weeds.

### **Desert Washes, Ephemeral Streams and Soils.**

Desert washes, drainage systems, and washlets are very important habitats for plants and animals in arid lands. Water concentrates in such places, creating greater cover and diversity of shrubs, bunch grasses, and annual grasses and forbs. The topography is often more varied, as are soil types and rock types and sizes, creating diverse sites for burrows, caves, and other shelters. The resulting "habitats" tend to attract more birds, mammals, reptiles, and invertebrates. For example, desert tortoises spend disproportionately more time in washes than they do on "flat" areas.<sup>2</sup> The wash habitat impacted by each alternative should be evaluated and appropriate mitigations made for stream bed alterations.

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<sup>2</sup> Jennings, B.J. 1997. Habitat Use and Food Preferences of the Desert Tortoise, *Gopherus agassizii*, in the Western Mojave Desert and Impacts of Off-Road Vehicles. Proceedings: Conservation, Restoration, and Management of Tortoises and turtles—An International Conference, pp. 42–45. New York Turtle and Tortoise Society.

Soil erosion on low fill slopes and steeply graded areas could result in sedimentation of water bodies. Changes in hydrology and soil movements may impact rare plants and habitats for sensitive species, and may impact burrowing species such as the desert tortoise.

### **Cultural & Paleontological Resources.**

The Mojave Desert is rich in structures and artifacts of significant cultural value that are irreplaceable once lost. A Class III cultural resources survey and report is needed to satisfy the requirements of NEPA and the National Historic Preservation Act. The EIS should discuss and analyze all impacts to paleontological and Native American cultural resources. Building new transmission lines could cause physical damage to artifacts and sites, expose cultural resources to looters, and could increase fires due to soil disturbance and subsequent weed invasion placing these cultural resources at risk of future damage.

### **Visual Resources.**

The DRECP planning area includes wilderness, National Parks and other nationally significant resources. The EIS should fully review the impacts of each alternative on visual resources including the effects to wilderness character and values.

### **Water Issues.**

Water and hydrological processes are the live-blood of the desert. The EIS must provide comprehensive information on the direct, indirect, and cumulative effects on hydrology, watersheds, and water quality, and fully analyze the impacts to local and regional water reserves.

### **Global Climate Change.**

Department of the Interior Order No. 3226 mandates that the BLM must consider the impacts of each proposed alternative with respect to global climate change in its NEPA reviews. The agencies should use the recently released USGS desert tortoise habitat model to determine likely changes in desert tortoise habitat quality in the area and the importance of the desert tortoise habitat. In addition to addressing climate change in the cumulative effects analysis, the EIS should address the carbon footprint of actions that will occur under each alternative and any losses to carbon storage and sequestration this will engender.

### **Monitoring Programs.**

The NEPA documents must explain the monitoring programs that will be in place to monitor the short and long term impacts of the DRECP on the public lands managed by the BLM. This should include the timelines, and estimated costs and sources of funding for the monitoring programs.

### **Mitigation.**

BLM is obligated under FLPMA to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” [43 U.S.C. §1732(d)(2)(a)] Other laws, including the Endangered Species Act and the California Endangered Species Act also entail the need for mitigations to minimize impacts. BLM is required to consider measures to mitigate potential environmental consequences in its NEPA analysis. [40 C.F.R. § 1502.16]

The EIS should explain the mitigation measures that will meet all these requirements including avoidance. The primary mitigation for impacts to special status species should be acquisition of compensation habitat since this is the only mitigation measure that will offset the habitat loss. Desert tortoise compensation habitat lands should be acquired within the affected Recovery Unit.

The conservation measures for existing defined habitat conservation areas should be enhanced to compensate for the massive loss of habitat the DRECP could unleash and to ensure that these habitat areas are conserved including designation of the Mohave Ground Squirrel Conservation Area as an ACEC. Acquisition of all replacement habitats should be accompanied with enhancement measures to compensate for the net loss of habitat. These measures should include removal of livestock, fencing where appropriate, invasive species control, small scale restoration projects, acquisition of water rights, and route closures. All the affected Resource Management Plans should be amended to allow for conservation buyout and voluntary relinquishment of grazing permits to facilitate conservation and habitat enhancement.

Western Watersheds Project thanks you for this opportunity to assist the Bureau and other agencies by providing additional scoping comments for the DRECP planning process. Please keep Western Watersheds Project informed of all further substantive stages in this and related NEPA processes and document in the record our involvement as members of the ‘interested public’. If we can be of any assistance or provide more information please feel free to contact me by telephone at (818) 345-0425 or by e-mail at <mjconnor@westernwatersheds.org>.

Yours sincerely,

A handwritten signature in black ink that reads "Michael J. Connor". The signature is written in a cursive style and is underlined with a single horizontal line.

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