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September 19, 2012

SUBMITTED VIA ELECTRONIC MAIL & UNITED STATES MAIL

Dave Harlow, Director
Desert Renewable Energy Conservation Plan (DRECP)
Docket Number: 09-RENEW EO-01
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-512
DHarlow@energy.state.ca.us

Re: Comments on Desert Renewable Energy Conservation Plan Alternatives Presented in the July 25-26, 2012 Stakeholder Committee Meeting Briefing Materials

Dear Mr. Harlow:

We are writing on behalf of California Unions for Reliable Energy ("CURE") to provide the California Energy Commission ("CEC") with preliminary comments on the proposed Desert Renewable Energy Conservation Plan ("DRECP") Draft Alternatives. We appreciate the work that the CEC and the other Renewable Energy Action Team ("REAT")[1] agencies have invested in this process. The development of a full range of alternatives is critical to the success of achieving the twin DRECP objectives to balance renewable energy development in California's desert with the protection of its unique and sensitive resources.

CURE is a coalition of unions whose members help solve California's energy problems by building, maintaining, and operating renewable energy power plants. CURE is committed to building a strong economy and a healthier environment.

[1] The REAT is made up of the following agencies: (1) California Energy Commission ("CEC"); (2) California Department of Fish and Game ("DFG"); (3) the Bureau of Land Management ("BLM") and the United States Fish and Wildlife Service ("USFWS").

CURE supports the development of renewable energy, and the critical role it plays in the effort to reduce greenhouse gas emissions, thereby avoiding the worst consequences of global warming. CURE also encourages sustainable development of California's energy and natural resources. Environmental degradation jeopardizes future growth and jobs by causing construction moratoriums, depleting limited air pollutant emissions offsets, threatening biological resources, and imposing other stresses on the environmental carrying capacity of the state. This in turn reduces future employment opportunities for CURE's members. Therefore, CURE has an interest in ensuring that renewable energy projects are built to meet California's renewable portfolio obligations and that the environmental impacts of such projects are fully analyzed and mitigated pursuant to federal, state, and local laws. The DRECP process allows for a balanced consideration of renewable energy development in California's desert and the protection of its unique and sensitive resources, and it is in this spirit that we offer these comments.

CURE's comments are intended to strengthen the DRECP and ensure a real choice between viable alternatives that each balance renewable energy development with the protection of the environment.

I. THE CURRENT DRECP MATERIALS FAIL TO PROVIDE A CLEAR PICTURE OF HOW THE DRECP WILL INTERACT WITH THE SOLAR PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.

The relationship between the DRECP and the Solar Programmatic Environmental Impact Statement ("Solar PEIS") is unclear. The undefined relationship raises serious questions as to how environmental review will be conducted and decisions will be made on lands made available and restricted for utility-scale solar development in the Solar PEIS. The Solar PEIS is intended to streamline future environmental review for solar energy projects proposed in the Solar Energy Zones ("SEZ"), of which there are two in California: Riverside East and Imperial East. The Solar PEIS further proposes "variance areas" for potential solar development. It is important to note that the PEIS itself recognizes the lack of rigorous review conducted for the variance areas, indicating that "[projects within the variance areas] ... will likely result in EIS-level NEPA documentation."[2]

[2] Solar Program PEIS, p. 2-56.

The absence of a clearly articulated relationship can yield serious and permanent consequences related to identification of significant impacts and feasible mitigation measures, adequate and timely disclosure to the public and informed decisionmaking prior to approval of projects. Environmental issues may be swept under the rug or lost in cross application of both plans. Therefore, the CEC should provide the public with answers to the following clarifying questions:

1. What is the relationship between the mitigation and monitoring identified in the Solar PEIS's programmatic design features (mitigation measures) and those conservation mitigation measures that will be developed in the DRECP? If conflicts arise, how will they be handled?

2. Which plan's (DRECP or Solar PEIS) policies and procedures should, or will, be applied to pending applications for utility scale solar renewable energy projects as those applications continue to be processed?

3. In what geographical areas will environmental review be complete at the conclusion of the DRECP and PEIS process, and in what geographical areas will environmental review still be required?

CURE encourages the CEC to answer these questions and clarify for the public and decision makers how the DRECP will interact with the Solar PEIS and how these documents will affect future environmental review.

II. THE PROPOSED DRAFT ALTERNATIVES ARE FUNDAMENTALLY FLAWED.

The development of detailed and balanced alternatives is essential to the success of the DRECP. The alternatives serve as the building blocks for the forthcoming environmental review. While the draft alternatives provide a good basis for discussion, more is needed in terms of revision and refinement in order to maximize responsible renewable energy development and minimize habitat fragmentation within the large planning area.

As explained in more detail below, CURE makes the following recommendations:

1. The CEC and REAT should first develop and identify Biological Goals and Objectives (BGOs) based on the best scientific data available and then propose draft alternatives that are designed to ensure the BGOs are met and recovery standards are achieved.

2. The CEC and REAT should revise the draft alternatives in a way that offers the public and decision makers a real choice in balancing renewable energy development in California's desert with the protection of its unique and sensitive resources.

    a. The CEC and REAT should include the contribution that is being made by projects already under construction and projects in the advanced planning stages in development of revised alternatives.

    b. The CEC and REAT should remove the BLM's "variance areas," which the BLM concluded have the potential to occur on medium and high resource conflict lands, from Alternative 1– *Disturbed Lands/Low Resource Conflict.*

    c. The CEC and REAT should overlay low resource/disturbed area mapping on the transmission line framework in Alternative 2 – *Geographically Balanced/Transmission Aligned.*

    d. The CEC and REAT should provide a range of megawatt ("MW") targets in Alternative 3 and 4 – *West Mojave Emphasis and Tribal Sensitivity* and *Southeast Emphasis.*

    e. The CEC and REAT should overlay low resource/disturbed area mapping and transmission corridor mapping in Alternative 5 – *Increased Geographic and Technology Flexibility.*

By combining already disturbed/low resource conflict areas with areas that are most aligned with the existing transmission infrastructure and accounting for proximity to end-uses and/or within discrete regions of the desert, the resulting DFAs could better reflect the DRECP's twin objectives. Preparing revised

alternatives, as suggested in these comments, would provide a real choice between several viable alternatives.

A. The Absence of Well-Defined Biological Objectives and Goals Frustrates the Development of Comprehensive and Meaningful Alternatives.

The DRECP's Biological Goals and Objectives ("BGOs") for the proposed covered species remains undefined and unanalyzed. Given that the DRECP functions as a Habitat Conservation Plan ("HCP") under the federal Endangered Species Act and a Natural Communities Conservation Plan ("NCCP") under the State Natural Communities Conservation Planning Act, it is egregious that the proposed alternatives lack clearly articulated BGOs to serve as a foundation for the conservation scenarios. As of today, after the initial drafting of alternatives, the complete list of species proposed for coverage under the plan also remains outstanding.

The BGOs must be identified prior to the release of revised draft alternatives. It is illogical, and contrary to the recommendation of the conservation community at large, to have the BGOs finalized and evaluated after selecting the preferred development scenario. Most importantly, this approach is contradictory to traditional conservation planning practice, **which first applies identified conservation and recovery standards, or BGOs, to covered resources and then designs appropriate development around the reserve design to ensure BGOs are met and recovery standards achieved.**[3] For a plan that is the first of its kind, in terms of complexity and sheer scale, it is illogical for the DRECP process to depart from this traditional and proven methodology.

The BGOs must be developed based on the best scientific data available and then fully articulated to the public and agencies. Clarity is needed regarding what data sets and criteria were used in the development of the biological sensitivity determination and subsequent mapping provided in the briefing materials. From what little information can be extrapolated from the data sets provided, the determination lacks meaningful evidentiary support. As a result, the mitigation ratios derived from the biological sensitivity data sets are premised on incomplete

[3] *See Generally,* United States Fish & Wildlife Service, *Habitat Conservation Plans Under the Endangered Species Act,* April 2011. http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.

and unsupported information. Reliance on unsupported information to determine mitigation acreages cannot lawfully serve as the basis for ecosystem conservation or adaptive management plans and may ultimately be detrimental to biological resources and the environment.

The scientific foundation for the DRECP is too important to be glossed over. The whole conservation planning process is undermined if the REAT does not invest the necessary time to develop a solid scientific foundation the conservation plan. As a result, the outcome will, at best, be ineffective and, at worst, result in irreversible damage. CURE recommends that the CEC and REAT first develop and identify BGOs based on the best scientific data available and then propose draft alternatives that are designed to ensure the BGOs are met and recovery standards are achieved.

B. Each of the Alternatives Fail to Properly Balance the Dual Objectives of Conserving the Desert Ecosystem, Species, and Habitats While Promoting Responsible Renewable Energy Development.

CURE strongly recommends that the CEC revise the draft alternatives in a way that offers the public and decision makers a real choice in balancing renewable energy development in California's desert with the protection of its unique and sensitive resources. As proposed, the draft alternatives appear designed to fail and result in only one viable alternative.

1. Alternative 1 – *Disturbed Lands/Low Resource Conflict*

While CURE supports development being focused on already disturbed/low resource conflict lands, this alternative is facially misleading. From its name, the alternative appears to confine the DFAs to low conflict and already disturbed lands. As a general concept, this type of strategy is highly commendable. It embraces the precautionary principles advanced by the Independent Science Advisors. However, as the alternative evolved into its present state, it transformed into an alternative that generically includes all of the expansive BLM's variance areas, which the BLM concluded have the potential to occur on medium and high resource conflict lands. The variance areas encompass approximately 766,078 acres of public land.[4] The blanket addition of these lands eliminates the *only* draft alterative that may be

[4] PEIS, Attachment B.

effectively capable of achieving minimal conflict between renewable energy development and biological (and other) resources.

Given the dispersed and geographically diverse nature of the variance areas, development in the various areas may have effects on the broader surrounding landscape. As recognized by the PEIS, the variance areas have not yet received rigorous review. In fact, the Solar PEIS acknowledges that the variance areas would require substantive subsequent environmental review and could be associated with potentially high resource conflicts.[5] The National Parks Service identified areas within the proposed variance areas where utility-scale solar development poses a high potential for conflict with natural and cultural resources.[6] The USFWS also identified sensitive resource areas within the identified variance areas that will require special consideration.[7] Specifically, the USFWS identified lands in the variance areas that are important to desert tortoise connectivity, including critical habitat linkage corridors.[8]

If variance areas are to be included, they should be included with exacting precision and not appear in the disturbed lands/low resource alternative. Each variance area should undergo an assessment of its appropriateness for development in terms of conservation and ecosystem management. In this context, the REAT agencies must provide additional clarification regarding the relationship between the DRECP and the Solar PEIS, explicitly stating how the SEZs and the variance lands will be modified by the DRECP to meet the BGOs and the overall conservation standards of State and federal law.

2. Alternative 2 – *Geographically Balanced/Transmission Aligned*

This alternative as proposed does not appear to achieve the DRECP's goal of focusing renewable energy development close to the sources of consumption to assist in efforts to minimize impacts associated with the construction of new transmission infrastructure. As drafted, the alternative appears instead to encourage sprawling development that would have far more impacts than benefits. The alternative is missing vital information in which to assess whether the plan would achieve the

[5] PEIS at p. 2-56.
[6] *Id.* at p. 2-43.
[7] *Id.*
[8] *Id.* at p. 2-48-49.

necessary biological conservation standards. The low resource/disturbed area mapping should be overlaid on the enumerated transmission line framework in order to present a viable alternative for development along existing transmission corridors. Utilizing this methodology, the alternative would simultaneously achieve maximization of renewable energy efficiency and conservation, rather than at the expense of one another. Also, the information presented about the alternative is absent any justification for the additional inclusion of 500,000 acres of DFA lands. Modifications and more information is required if the alternative is to present a viable possibility.

3. Alternatives 3 and 4 – *West Mojave Emphasis and Tribal Sensitivity* and *Southeast Emphasis*

Alternatives 3 and 4 concentrate three-fourths of the proposed renewable energy development into two specific geographic areas. The geographic limitation can present an issue in terms of transmission planning. The clustering of development must account for the additional transmission infrastructure required to transmit the energy generated to end-use areas, potentially significant distances away. The geographic restriction could also make it difficult to achieve the conservation objectives for species whose habitat is located primarily or exclusively within the area slated for intensive development. The impacts of development in these constrained DFAs cannot simply be mitigated elsewhere. The California desert ecosystem is complex, composed of multiple ecotypes embedded with inherent geographical restrictions.

Furthermore, these alternatives include the nearly identical 20,324-megawatt ("MW") target as all other alternatives.[9] The considerable ranges in the size of the DFAs (amongst the various alternatives) without any change in the expected megawatt production not only allows but fosters sprawl across the desert and, for Alternatives 3 and 4, it nearly ensures that these alternatives will not be viable. As a result, the inclusion of nearly identical MW targets for each alternative artificially taints the analysis and thwarts the necessary reasonable range needed for a meaningful analysis in the forthcoming Environmental Impact Report/Environmental Impact Statement ("EIR/S") for the DRECP.

[9] DRECP, Briefing Materials July 25th and 16th, p. 7.

In light of these potential issues, draft alternatives 3 and 4 should provide a range for target megawatts. The dynamic between the alternatives' benefits and impacts undergo considerable changes depending on the type, location and intensity of renewable energy development within the DFAs. Providing the alternatives with flexibility in terms of target megawatts alleviates the pressures imposed by the geographic limitations. The ideal target megawatts could be revealed by overlaying the transmission mapping and BGOs. If draft alternatives 3 and 4 fail to provide this essential flexibility in the megawatt target, then it would be certain – by design –that the impediments posed by the geographic limitations would preclude alternatives 3 and 4 from being viable options.

4. Alternative 5 – *Increased Geographic and Technology Flexibility*

This alternative is the largest and most expansive of the five draft alternatives provided. The alternative is seeking to open over two million acres of desert lands for development. Despite its size, this alternative lacks specific goals and clear criteria that would make it a viable option. The alternative lacks assurances and a procedure to ensure compliance and satisfaction of the BGOs. Again, it is important to design the alternatives so that the public and decisionmakers have a real choice as to the best way to balance renewable energy development with the protection of the desert's resources.

CURE appreciates this alternative's inclusion of lands that have greater potential for siting wind energy projects within the DFA. By retooling the alternative to incorporate conservation-heightening elements, such as BGOs, and existing and planned transmission corridors, this "catch-all" alternative could be a viable candidate for plan implementation.

C. A Proposed Mix-and-Match Alternative is Lacking and Must Be Developed and Analyzed.

For all the reasons articulated within this comment letter, none of the draft alternatives as presented appropriately evaluate a scenario that truly balances ecosystem conservation goals with responsible renewable energy development. CURE recommends and strongly encourages a mix-and-match approach be taken within each alternative that will be analyzed in the DEIR/S.

By combining already disturbed/low resource (biological and cultural) conflict areas with areas that are most aligned with the existing transmission infrastructure and accounting for proximity to end-uses and/or within discrete regions of the desert, the resulting DFAs could truly reflect the DRECP's twin objectives. Preparing revised alternatives, as suggested in these comments, would provide a real choice in addressing the conservation needs for desert species and habitats based on the best available science along with the most efficient placement of renewable energy development.

III. CONCLUSION

We appreciate the opportunity to review and provide preliminary comments on these draft alternatives and for your consideration of the comments and recommendations outlined in this letter. If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

Pamela N. Epstein

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