California Energy Commission
DOCKETED
09-RENEW EO-1
TN 72884
APR 08 2014

CENTER for BIOLOGICAL DIVERSITY
Because life is good.

VIA ELECTRONIC MAIL

April 8, 2014

James G. Kenna. State Director
California State Office
Bureau of Land Management
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825
jkenna@blm.gov

Michael Fris, Asst. Regional Director
Region 8, Ecological Services
U.S. Fish and Wildlife Service
2800 Cottage Way W-2606
Sacramento, CA 95825
Michael_Fris@fws.gov

Re: National Landscape Conservation System Lands in the California Desert Conservation Area and the DRECP Planning Area

Dear State Director Kenna, and Assistant Director Fris,

The Center for Biological Diversity provides this letter as part of the ongoing discussions relevant to the development of the Desert Renewable Energy Conservation Plan. Specifically, we are writing regarding the lands within the California Desert Conservation Area that Congress designated as part of the National Landscape Conservation System.

Many Public Lands Within the CDCA Are Already Part of the NLCS

In 2011, Congress established the National Landscape Conservation System ("NLCS") or "System") "to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." At the same time, Congress determined which public lands administered by the Bureau of Land Management would be included in the System.

First, Congress listed several *categories* of lands that are, by definition, to be included within the NLCS including: 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). Within the California Desert Conservation Area ("CDCA"), there are many lands that are included in the NLCS because they fall into the categories listed in subsection (b)(1) including, but not limited to: San Jacinto/Santa Rosa Mountains National Monument, Amargosa River and Cottonwood CreekWild & Scenic River segments, the Old Spanish Trail, at least 72 designated wilderness areas, and at least 8 wilderness study areas.[1]

[1] We have been informed that these areas are included in the "legally and legislatively protected areas" layer utilized in the DRECP planning to date.

Alaska · Arizona · California · Minnesota · Nevada · New Mexico · New York · Oregon · Vermont · Washington, DC
351 California St., Ste. 600 · San Francisco, CA 94104 tel: (415) 436.9682 fax: (415) 436.9683 www.BiologicalDiversity.org

Second, Congress also expressly designated other lands as part of the NLCS. 16 U.S.C. § 7202(b)(2). As relevant here, Congress stated that all "public land within the California Desert Conservation Area administered by the Bureau of Land Management for conservation purposes" were designated as part of the NLCS. 16 U.S.C. § 7202(b)(2)(D). At that time, in 2011, pursuant to subsection (b)(2), all of the lands within the CDCA "administered by the Bureau of Land Management for conservation purposes" were included by Congress in the NLCS *in addition to* wilderness, wilderness study areas, national monuments, wild and scenic river segments, and national scenic or historic trails designated in subsection (b)(1).

At minimum, the NLCS lands within the CDCA include: 1) all of the lands that fall within the categories listed in subsection (b)(1); and 2) all lands administered by BLM for conservation purposes as of 2011 pursuant to subsection (b)(2).

We have compiled a list below of the lands administered by BLM for conservation purposes as of 2011 (which is not exhaustive).

Under the terms of the statute these lands are already part of the NLCS:

- All designated Areas of Critical Environmental Concern ("ACEC") in the CDCA, which protect a variety of resources (water sources, cultural, rare species, and other unique resources). The CDCA Plan recognizes that "the primary management focus for ACECs is the protection of important cultural and natural resources." CDCA Plan at 102. The CDCA Plan also anticipates that each designated ACEC would also have a site-specific plan to protect the resources therein "designed to meet the immediate management needs for each area: to eliminate threats to critical resource values . . . and to provide other measures that result in protection of the most environmentally important and fragile resources." *Id.*[2]

  There can be no doubt that the ACECs in the CDCA that had been designated by the BLM as of 2011 were "administered by the Bureau of Land Management for conservation purposes" and accordingly were included by Congress as part of the NLCS.

- All designated Desert Wildlife Management Areas ("DWMAs") within the CDCA which were designated to conserve the desert tortoise and its critical habitat with the

[2] 95 ACECs were listed in the CDCA Plan as of 1999 (CDCA Plan at 103-104) and others have been added after that time including 14 new ACECs designated in the WEMO Plan amendments. Just a few examples of the ACECs designated within the CDCA as of 2011 include: West Mesa, East Mesa, and Yuha Basin (which are also management areas for the protection of the flat-tailed horned lizard as part of the FTHL Rangewide Management Strategy (2003)); Desert Tortoise Research Natural Area; Pilot Knob ACEC; Desert Lily Preserve, Mojave Monkeyflower Conservation Area, and Barstow Woolly Sunflower ACECs adopted to conserve rare plants; Mojave Fringe-toed Lizard Conservation Area ACEC; Bendire's thrasher Conservation Area ACEC; Pisgah ACEC; Juniper Flats ACEC; Middle Knob ACEC; Jawbone/Butterbredt ACEC; Carbonate Endemic Plants ACEC; Amargosa River ACEC; Carson Slough ACEC; San Sebastian Marsh/San Felipe Creek ACEC; Dos Palmas ACEC; Big Morongo Canyon ACEC; and Afton Canyon Natural Area ACEC; and Mule Mountains ACEC.

intent that they be managed to support both survival and recovery of the desert tortoise. For example, the Northern and Eastern Colorado ("NECO") Plan amendment to the CDCA Plan states: "Proposed Desert Wildlife Management Areas (DWMAs) address the recovery of the desert tortoise. These are stand-alone areas. [E]mphasis is placed on minimizing disturbance and maximizing mitigation, compensation, and restoration from authorized allowable uses." NECO Plan at 2-2. The specific objectives for desert tortoise survival and recovery are tied to the designation of the DWMAs:

> "The objectives are to
>
> a. Establish desert wildlife management areas (DWMAs) where viable desert tortoise populations can be maintained.
>
> b. Implement management actions within DWMAs to address conflicts with the goal.
>
> c. Acquire sufficient habitat within the DWMAs to ensure that management actions are effective in the DWMAs as a unit.
>
> d. Reduce tortoise direct mortality resulting from interspecific (e.g., raven predation) and intraspecific (e.g., disease) conflicts that likely result from human-induced changes in ecosystem processes.
>
> e. Mitigate effects on tortoise populations and habitat outside DWMAs to provide connectivity between DWMAs."

NECO Plan at 2-17. (*See also* WEMO Plan at ES-5)

There can be no doubt that, as of 2011, the designated DWMAs in the CDCA were being "administered by the Bureau of Land Management for conservation purposes" and, accordingly, are part of the NLCS.[3]

- All BLM designated Conservation Areas for imperiled plants and wildlife. For example, the BLM designated the Mohave Ground Squirrel ("MGS") Conservation Area in the West Mojave ("WEMO") Plan Amendments to the CDCA Plan. WEMO ROD at 15. As the ROD stated, the MGS conservation area was designated to "facilitate protective management for this species and serve to prevent further declines and assist the California Department of Fish and Game. A goal of the CDCA Plan is to prevent rare species from declining to the point of becoming federally listed as threatened or endangered." *Id.*

  There can be no doubt that, as of 2011, the designated Conservation Areas in the CDCA were being "administered by the Bureau of Land Management for conservation purposes" and, accordingly, are part of the NLCS.

- All wetland and riparian areas designated in the CDCA in 2011. The CDCA Plan Goals include specific requirements to:

[3] The DWMAs designated as of 2011 include: Chuchwalla, Chemehuevi, Fenner, Pinto Mountains, Ivanpah-Shadow, Ord-Rodman, Superior-Cronese, and Fremont-Kramer. Notably, the DWMAs designated in the CDCA planning areas are administered and designated as ACECs as well.

> "5. Manage wetland and riparian areas in the CDCA, with the following specific objectives:
>
> a) To avoid the long-term and short-term impacts associated with the destruction, loss, or degradation of wetland and riparian areas;
>
> b) To preserve and enhance the natural and beneficial values of wetland and riparian areas which may include constraining or excluding those uses that cause significant long-term ecological damage;
>
> c) To include practical measures to minimize harm in all actions causing adverse impacts on wetlands and riparian areas; and
>
> d) To retain all wetlands and riparian habitats presently under BLM administration wherever high resource values exist and adverse impacts cannot be mitigated."

CDCA Plan at 38.

There can be no doubt that, as of 2011, wetland and riparian areas in the CDCA were being "administered by the Bureau of Land Management for conservation purposes" and, accordingly, are part of the NLCS.[4]

In addition other areas within the CDCA were "administered by the Bureau of Land Management for conservation purposes" in 2011 and, accordingly, are part of the NLCS

- Unique Plant Assemblages ("UPAs") designated for conservation in the CDCA Plan. The UPAs include a variety of rare plant communities across the CDCA.[5] The CDCA Plan Goals include specific requirement to: "4. Manage unusual plant assemblages (UPAs) so that their continued existence is maintained. In all actions, include consideration of UPA's so that impacts are avoided, mitigated or compensated." CDCA Plan at 38. All UPAs "administered by the Bureau of Land Management for conservation purposes" in 2011 are also, accordingly, part of the NLCS.

- Wildlife Habitat Management Areas ("WHMA") were designated in the CDCA Plan to provide for wildlife conservation zones and habitat connectivity or continuity. WHMAs were clearly intended to be administered for conservation, as shown in the NECO Plan amendment to the CDCA Plan which fulfilled its objective to "Protect and enhance habitat" (NECO Plan at 2-55), by "designa[ting]":

[4] Some of the wetland and riparian areas are mapped and identified in the CDCA Plan and amendments, it is our understanding that mapping and identification of seeps and springs in the CDCA is ongoing.

[5] The most comprehensive list of UPAs we have found is provided in the legend to Map 6 of the CDCA Plan 1980 as amended (1999). The UPAs include, but are not limited to: Johnson Valley/Lucerne Valley Creosote bush (*Larrea*) Clones; Palm Oases in the Colorado desert; Crucifixion Thorn Assemblages in Ward-Chemehuevi Valley, Cronese Valley, and Yuha Desert; and Smoke Tree Assemblage in Piute Valley. Notably, UPAs also include all seeps and springs and riparian and river bottomland in the CDCA. Map 6, III B 3&5.

> multi-species WHMAs . . . such that approximately 80 percent of the distribution of all special status species and all natural community types would be included in the Multi-species Conservation Zone (Map 2-21 Appendix A). See Appendix H for a description of the process used to define the WHMA and the concept of conservation zones.

NECO Plan at 2-55; *see also* NECO ROD at D-1 (13 Multi-species WHMAs established). All WHMAs in the CDCA "administered by the Bureau of Land Management for conservation purposes" in 2011 are also and, accordingly, part of the NLCS.[6]

While many of these designated areas in the NLCS overlap, taken together, these lands which include millions of acres, and comprise the existing NLCS lands within the CDCA and provide the baseline of conservation designated lands within the CDCA. Because all of these lands were designated by Congress as part of the NLCS at the time the System was created in 2011, they remain within the NLCS today. The status of these lands as part of the NLCS cannot be changed by the BLM, because that status is the result of a Congressional designation.

The Draft DRECP Documents Must Include a Comprehensive List of All CDCA Lands within the NLCS As Part of the Existing Baseline of Conservation

As part of the California Desert Renewable Energy Plan Amendment (DRECP) planning process BLM must: 1) provide a comprehensive list of all NLCS lands in the CDCA as of 2011; and 2) utilize the comprehensive list of NLCS lands in the CDCA part of the conservation baseline for the DRECP plan amendments.

BLM has variously has stated that it would "enroll" or "list" areas within the NLCS system along with the DRECP plan amendment. We urge the BLM to undertake this administrative task promptly. The BLM should must first make explicit the NLCS status of these important conservation lands in the CDCA through providing a comprehensive list and, second, ensure that this is used as the baseline in any DRECP related plan amendments.

Of course, simply "listing" or "enrolling" these lands in the NLCS in the context of the DRECP plan amendments (or at any other time) does not change their status which, as discussed above, was determined by Congress in 2011. Further, simply listing these lands as NLCS lands in the context of the DRECP plan amendments (or at any other time) does not provide any "additive" conservation value because these areas have already been designated as conservation areas in the CDCA since 2011.

While this may appear to be an obvious step, we are concerned that, over the past few years, in the context of the planning for the DRECP, the BLM has used the term "National Conservation Lands" or "NLC" in a way that does not include all of the existing NLCS lands. As a result, the BLM's use of these terms has created confusion by suggesting that BLM may not

[6] 13 Multi-Species WHMAs were adopted for conservation in the NECO planning area including, but not limited to, Palen-Ford dry lake Multi-species WHMA; bighorn sheep WHMAs including Southern Mojave and Sonoran WHMAs.

appropriately recognize all of the existing System lands that Congress clearly designated as part of the NLCS in 2011.

BLM must recognize all of the lands designated by Congress as part of the NLCS in 2011 and cannot remove any of these lands from the System. Nothing in the statute allows the BLM any discretion to remove lands designated by Congress as part of the NLCS.

For BLM to fail to recognize any of the existing lands administered for conservation by BLM as part of the NLCS in the baseline for the DRECP plan amendments would be a major error. Moreover, it is clear that the DRECP cannot provide *less* conservation than currently exists in the CDCA, since this would be an absurd result.

Conclusion

Millions of acres of land within the California Desert Conservation Area were designated by Congress as a permanent part of the National Landscape Conservation System in 2011. 16 U.S.C. §§ 7202(b)(1)(A–F) *and* (b)(2)(D). The BLM needs to formally recognize the status of these lands as soon as possible in order to minimize confusion and ensure that the Desert Renewable Energy Conservation Plan includes an accurate description of the conservation baseline on which to build a strong and comprehensive conservation future for the California Deserts.

Thank you in advance for your attention to this matter. Please do not hesitate to contact us directly if you have any questions or would like to set up a meeting to discuss these issues in more detail.

Sincerely,

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
(415) 632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson, Senior Scientist, Public Lands Desert Director
8033 Sunset Blvd., #447
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

Cc: (via email)

California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
docket@energy.ca.gov

Karen Douglas, Commissioner
California Energy Commission
Karen.Douglas@energy.ca.gov

Kevin Hunting, Chief Deputy Director
California Department of Fish and Wildlife
Kevin.Hunting@wildlife.ca.gov

Chris Beale, Acting Executive Director
Desert Renewable Energy Conservation Plan (DRECP)
cbeale@resourceslawgroup.com