

February 20, 2015

Via Email docket@energy.ca.gov and First Class Mail

California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

Re: DRECP NEPA/CEQA Comments of Alliance for Desert Preservation and Mojave Communities Conservation Collaborative on the Draft DRECP document and related Environmental Impact Report/Statement

Dear Sir or Madam:

The Alliance for Desert Preservation (ADP) is a nonprofit mutual-benefit corporation formed to protect the environmental and economic well-being of the High Mojave Desert and to support a sustainable future, while safeguarding against activities that may harm the High Mojave Desert.

The Mojave Communities Conservation Collaborative (MC3) is a grassroots organization formed in response to the need for a local voice for residents and stakeholders in the Mojave Desert regarding a variety of plans and projects poised to permanently impact our rural communities; its mission is to save Mojave Desert Communities through collaboration with like organizations, and local stakeholder empowerment, preserve the rural way of life, sustain healthy productive local communities, implement habitat conservation, and preserve one of the most significantly threatened, under-represented species of all: *"The rural living community"*.

The Morongo Basin Conservation Association advocates for a healthy desert environment that nurtures our rural character, cultural wealth, and economic well-being. The objectives of MBCA, as incorporated in Article II of its By-Laws, are:

- a) To preserve the economic and environmental welfare of the Morongo Basin against exploitation deemed not in the best interest of the residents thereof, and
- b) To promote master planning for the entire area known as the Greater Morongo Basin including all of the various communities therein.

The Desert Protective Council (DPC) is a 501(c) (3) non-profit membership organization founded in 1954 with members throughout the southwest and scattered nationwide. The DPC's mission is to safeguard for wise and reverent use by this and succeeding generations those desert areas of unique scenic, scientific, historical, spiritual, or recreational value, and to educate children and adults to a better understanding of the deserts.

Basin and Range Watch is a group of volunteers who live in the deserts of Nevada and California, working to stop the destruction of our desert homeland. Federal and many state agencies and some local governments are seeking to open up millions of acres of unspoiled habitat in our region to industrial renewable energy development. Our goal is to identify the problems of energy sprawl and find solutions that will preserve our natural ecosystems and open spaces.

We jointly respectfully submit the following comments on the draft DRECP document and related draft Environmental Impact Report/Statement. For ease of reference, in this letter we will frequently simply use the acronym "DRECP" or the phrase "draft DRECP" when referring to the draft DRECP document and related draft Environmental Impact Report/Statement.

1. Procedural Defects.

In ADP's letter dated January 15, 2014, we made two formal requests that the REAT agencies correct two procedural flaws in the DRECP public notice/public comment process. One flaw arises from a substantial defect in the Notice of Availability of the Draft DRECP and Draft EIS/R, published in the Federal Register Volume 79, Number 187 on September 26, 2014. Specifically, the Notice fails to give any real notice that the DRECP is proposing a Land Use Plan Amendment which would entirely overhaul and supplant the "MUC" land use designations which have been in place for more than 30 years, and, further, that this total overhaul would apply not just to federal lands within the DRECP area but to the entire CDCA plan area, and would be applicable to all uses whether or not related to renewable energy. The second flaw relates to the anticipated revised WEMO Plan and related revised FEIS; this plan and related environmental document necessarily inter-relate with the DRECP and Draft EIS/R; for example, the Draft DRECP relies heavily on approximately 150 proposed new ACEC's as a mechanism to

conserve important environmental values, but the worksheets for these proposed ACEC's provide no data for access routes, which are apparently awaiting issuance of the revised WEMO Plan. The absence of any route data in the proposed ACEC's makes it impossible to assess how well the proposed ACEC's would fulfill their assigned function.

Unfortunately, the REAT agencies did not respond to our January 15 letter's proposal to cure now these two procedural defects. Remaining uncured, these defects will now carry over and infect the final product unless and until the REAT agencies cure the procedural problems.

2. The Draft DRECP Has not Allowed Ample Time for Public Review and Comment.

The draft DRECP is an enormous document containing more than 10,000 pages. The approximately 145-day comment period doesn't provide enough time to thoroughly read the document and provide meaningful comment. One would have to read about 70 pages per day over the allocated 145 days, which does not leave room for evaluation and comment.

Also, the draft DRECP lists sources, but does not tie any source to a particular finding. Instead, it aggregates the sources according to chapter and subchapter. This requires the reviewer to judge which part was intended to support the citation. This makes it difficult to determine whether a statement made in the draft DRECP is supported by substantial evidence.

According to CEQA requirements, meaningful public comment is the key phase of the review process. CEQA Guidelines 15203 states:

“The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on the draft EIR or negative declaration that it has prepared.”

Adequate time is required not only because “Public participation is an essential part of the CEQA process” (CEQA Guidelines 15201), but because the Legislature has declared that the purposes of the review period include:

- (a) Sharing expertise;
- (b) Disclosing agency analysis;
- (c) Checking for accuracy;
- (d) Detecting omissions;
- (e) Discovering public concerns; and
- (f) Soliciting counter proposals.

The Legislature has further found:

“(i)t is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration (under CEQA) as that of private projects required to be approved by public agencies.” (Pub. Res. Code 21001.1)

According to CEQA:

15105. Public Review Period for a draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration

- (a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days *except under unusual circumstances*. When a draft EIR is submitted to the Estate Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse. (Emphasis added).

No one would disagree that the scope and magnitude of the DRECP brings it into the “unusual circumstances” category.

One additional factor contributing to “unusual circumstances” is the DRECP’s choice to format much of its data in the “Gateway” GIS format. Simply to learn how to access and utilize this tool was a big demand on time and money; the REAT agencies acknowledged the complexity of the Gateway system when it sponsored workshops and webinars simply to teach people the basics of navigating the system. Further, because of the “layering” feature of Gateway, each Gateway page is the equivalent of many pages of data formatted more conventionally.

Under these circumstances, 145 days is grossly insufficient, except perhaps for members of the public with very specific or narrow agendas. Persons with a broad concern for the interplay of renewable energy planning and conservation values in the desert – including the authors of this letter – have found the sheer volume of information to be too overwhelming. Clearly important issues and problems have been overlooked simply because there has not been time to absorb it all.

Therefore, the time for public comment should be extended for at least an additional 180 days beyond the date of announcement of the extension.

3. The Draft DRECP fails to Analyze the Impacts of the Plan in the Context of FLPMA.

Under the Federal Lands Policy Management Act (FLPMA), Congress designated 25 million acres of southern California as the California Desert Conservation Area (“CDCA”). 43 U.S.C. § 1781(c). FLPMA declares that the CDCA is a rich and unique environment with “historical, scenic, archaeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources.” 43 U.S.C. § 1781(a)(2). FLPMA provides that this desert and its resources are “extremely fragile, easily scarred, and slowly healed.” *Id.* FLPMA requires the BLM to, “by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

Under FLPMA, the BLM is charged with managing BLM lands with its eye steadily on multiple uses and sustained yield. This is what the BLM has done since the inception of the CDCA, through the MUC (Multiple Use Categories) land categorization tool. The DRECP proposes to jettison this approach altogether, in favor of a “programmatic” designation of 2 million acres of land streamlined for development. This effectively deprives the BLM of being able to bring judgment, discretion, and flexibility to decisions over land use in any DFA over the life of the DRECP, i.e. for 25 years. Under this “programmatic” approach, it appears to be difficult if not impossible for the BLM to fulfill its multiple use mandate imposed by the FLPMA.

The Draft DRECP gives no consideration to the implications of this mass abandonment of MUC classes in favor of a programmatic approach, nor does it in any specific or concrete way analyze whether the proposed LUPA will prevent unnecessary or undue degradation of BLM lands. The Draft DRECP offers little in the way of critique regarding the effect of the proposed new designations on uses on public lands such as mining, grazing and OHV use. Moreover, under the existing system of land use designations, lands with particular conservation values are identified and appropriate protective actions are crafted; the Draft DRECP does not state clearly whether or how this policy would be continued under the proposed LUPA.

The same radical and far-reaching features of the Plan Amendment process under the DRECP – and the same vexing legal problems they present -- infect the document’s approach to conservation lands, ACEC designations, Special Recreation Management Areas and Extensive Recreation Management Areas. All of these new land management rubrics wear a programmatic mask which is at odds with the need for case-by-case discernment inherent in the BLM’s multiple use mandate. Under the DRECP the BLM would be designating, all at once, fifty-eight new ACEC’s. This mass designation is contrary to the site-specific nature of ACEC designation characteristic of the BLM’s approach to multiple use.

The DRECP's omissions, as set out in the immediately preceding two paragraphs, render it defective as an EIR/S. The DRECP is required to give this issue serious consideration; it must evaluate the proposed amendments to the CDCA land use plan by the BLM in terms of their impacts on other parts of the CDCA plan beyond the renewable energy element. And it must do so within the framework of Sections 1781 and 1732 of Title 43; that is, the primary analytical touchstone must be whether the proposed land use amendments will prevent unnecessary or undue degradation of BLM lands.

4. The Draft DRECP Makes “Moving Targets” of ACEC and NLCS Lands, in Contravention of the FLPMA.

When the Omnibus Public Lands Act of 2009 was made into law, it established the National Lands Conservation System (NLCS), which is made up of BLM lands with significant resources for conservation properties (identified as National Conservation Lands (NCLs)).

Under the Act, land with significant conservation resources is to be included in the NLCS. These significant conservation resources are, by their nature, immutable; they do not suddenly become “lesser” or “greater” conservation resources according to how important a competing use is deemed to be, or according to broad-brush alternative ways of valuing competing uses throughout the CDCA area.

However, the Draft DRECP indeed turns these conservation resources into plastic features which can be stretched or shrunk, depending on the deemed importance of critical uses and/or broad philosophical alternative concepts of the CDCA area. The DRECP does this by calling for weighing of criteria on a case by case basis, so as to accommodate different renewable energy outcomes for individual alternatives. Under this scheme, resources identified as worthy of NCL status are lost in one alternative and “found” in another alternative. If the boundaries of those lands with significant resources are adjusted to fit different alternatives, then effectively conservation properties are forced out of existence.

By way of illustration, and using the summary in Table 7 of the Executive Summary, total acreage for NLCS lands varies from as little as 1,682,000 (for Alternative 1) to as much as 5,124,000 (Alternative 2), and total acreage for ACEC lands varies from as little as 1,104,000 (alternative 2) to as much 3,609,000 (alternative 1). These vast disparities are a signal that the basic mandates of FLPMA are not being followed in the Draft DRECP, since the conservation values for the lands in question are exactly the same, regardless of the Alternative being considered.

5. The Draft DRECP Omits Critical Documents

The DRECP states that the Programmatic Agreement regarding Section 106 Cultural Resource evaluations does not yet exist, but yet it is expected to be incorporated in the final ROD. It is not clear from the DRECP whether there are other documents or agreements which will become part of the ROD but which do not exist at this time.

Failure to include such documents in the Draft DRECP and DEIS/R leaves a critical gap in the ability of the public to assess and critique the Plan. The EIR is an informational document, the purpose of which is to provide public agencies and the public in general with detailed information about the likely effect of a proposed project on the environment. Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal.3d 376, 391 (1988). The DRECP may not defer the providing of this “detailed information” to a point where it is too late for the public to do anything about it. Failure to include this document renders the Draft DRECP and DEIR/S defective, as to the subject of Cultural Resource. Equivalent omission as to the other topics may render the Draft DRECP and DEIR/S defective as well; the time allotted for public comment has simply been insufficient to allow a full vetting of the document for similar omissions.

6. The Memorandum of Understanding Between CDFW and the BLM Does Not Appear to be a Proper Mechanism to Satisfy the Durability or Monitoring Requirements of the NCCP.

It appears that the NCCP segment of the DRECP depends heavily on the preservation of conservation values by the BLM; to be accomplished pursuant to a memorandum of understanding (MOU) between California Fish and Wildlife and the BLM. Apparently the MOU is only in draft form, so that at this time there is no agreed-to mechanism in place to advance the necessary elements of a conservation plan under the NCCP. However, even if there were a valid and effective MOU, the fact remains that the MOU is not up to the job, because the conservation management tools at the BLM’s disposal are by their nature temporary.

The BLM is, of course, subject to FLPMA, which requires BLM to balance a number of disparate land-use goals. Various criteria and concerns can change over time, and thus administratively-designated areas within BLM jurisdiction are by their nature not necessarily fixed for all time. This very flexibility becomes a defect when the Plan leaves it to the BLM to accomplish conservation values which by their nature need to be durable.

Thus, the BLM cannot and does not have land use designations which are durable and which recognize conservation as the primary land use. Therefore, mitigation on public lands cannot be durable or adequate. Despite this, the DRECP, and the MOU, attempt to make the BLM the responsible agency for assuring adequate conservation values on public lands.

The draft memorandum of understanding is defective in other respects as well. It does not address the requirement of tracking of the 37 Covered Species and the impacts of development and MCA's on each species. It contains no mention of keeping track of actual acreage of impacts, monitoring of implementation, or loss of habitat. It fails to address even the basics of paying for and conducting the monitoring of whether the DRECP's biological goals and objectives are actually being met.

7. The Draft DRECP Should Consider a "Brownfields" Alternative.

Viable alternatives to remote, utility scale renewable energy development on public lands have been proposed by the Environmental Protection Agency (EPA). Unfortunately, the EPA's proposal has been given no serious consideration by the DRECP.

In its RE-Powering America's Lands Initiative, the EPA recommends siting renewable energy on potentially contaminated lands, landfills, and mine sites. The fact that no discussion of the EPA reports cited below has been included in the DRECP underscores that the EPA's energy siting criteria have not been considered by the DRECP as a framework for modifying the Alternatives considered, or as the basis for an entirely new and separate alternative emphasizing development on brownfields.

The EPA's "Best Practices for Siting Solar Photovoltaics on Municipal Solid Waste Landfills," February 2013" states, "EPA has screened more than 11,000 potentially contaminated sites and MSW landfills – covering nearly 15 million acres across the United States – for suitability to site renewable energy generation facilities, including utility-scale solar." EPA identified several benefits of locating solar photovoltaic facilities on these sites, noting that these sites generally are located near existing roads and energy transmission or distribution infrastructure, may reduce the environmental impacts of energy systems, and can be developed in place of limited open space, preserving the land as a carbon sink and/or for other ecosystem services

The EPA further noted that MSW landfills are particularly well-suited for solar development because they are

- Located near critical infrastructure, including electric transmission lines and roads

- Located near areas with high energy demand (e.g., large population bases)
- Constructed with large areas of minimal grade
- Offered at lower land costs when compared to open space
- Able to accommodate net metered or utility scale projects

As part of its RE-Powering America's Land Initiative, the "Renewable Energy Projects on Potentially Contaminated Lands, Landfills, and Mine Sites," report of October 2012" documents the development of 184 megawatts of renewable energy on the 15 million acres referred to in the EPA's above-cited best practices document.

The DRECP goes to great lengths to attempt to work out a balance between the conflicting policy goals of encouraging utility scale renewable energy development, and protecting the fragile desert environment. Yet it makes no attempt to consider an alternative which has, to a great extent, a built-in solution to this tension in policy goals: identifying and emphasizing placement of renewable energy projects on brownfields. This alternative is such a reasonable one that the DRECP is required to consider it. See discussion under headnote 9 below.

8. The Draft EIR/S Improperly Constricts its Definition of "Purpose and Need" to Diminish or Eliminate the Consideration of the Effects of California State Statutes and Regulations on the Perceived Need for 20,000 Megawatts of Utility-Scale Renewable Energy Projects in the Desert.

An EIR's statement of purpose and need "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." CEQ Guidelines, Section 1502.13. Although "[c]ourts have 'afforded agencies considerable discretion to define the purpose and need of a project, . . . this discretion is not unlimited.'" Westlands Water Dist. v. U.S. Dept. of Interior, 376 F.3d 853, 866 (9th Cir. 2004). Such statements are reviewed for their "reasonableness." Id. Among other things, "[a] purpose and need statement will fail if it unreasonably narrows the agency's consideration of alternatives so that the outcome is preordained." Alaska Survival v. Surface Transp. Bd., 705 F.3d 1073, 1084 (9th Cir. 2013).

Were it otherwise, a lead agency could effectively excuse itself from properly considering alternatives by deftly wording "purpose and need" to eliminate all but the one it prefers. Unfortunately, this is what the draft DRECP does.

The DRECP's stated "purpose and need" is to generate 20,000 MW of renewable energy through incentivizing development of utility-scale plants. By injecting "utility-scale" into the "purpose and need", the draft DRECP pre-ordains that any alternative focused on a method of generating electricity other than utility-size projects will be inadequate.

Thus, the DRECP:

(1) summarily dismisses the "Distributed Generation Alternative" on the ground that it "would not meet the interagency [20,000 MW] goal because it does not provide a streamlined process for the development of utility-scale renewable energy . . . [Chapter II.8-9 of the section entitled, "Alternatives Considered But Not Carried Forward;"]"¹

(2) acknowledges elsewhere that Distributed Generation would "partially respond to USFW's purpose and need to conserve the ecosystems upon which federally protected species depend may be conserved . . . because sensitive desert habitats would not be disturbed by large, utility-scale solar facilities. However, this alternative would not respond to the USFW's purpose and need to advance DOI's national policy goals to identify and prioritize specific locations best suited for large-scale production of solar energy on public lands and encourage the production, development, and delivery of renewable energy as one of DOI's highest priorities" [II.8-9]; and

(3) acknowledges that distributed generation "could partially meet the CEC, CDFW, and CSLC objectives to contribute to California's RPS and greenhouse gas reduction mandates and goals . . ." but then concludes that distributed generation conflicts with the interagency objectives because distributed generation "would only partially meet the objective of accommodating and minimizing the potential environmental impact of utility-scale renewable energy generation sufficient to accommodate foreseeable demand in Plan Area through 2040 [II.8-9]"

The last of the above three conclusion is particularly startling. It says, in essence, that utility scale makes for bad environmental consequences, and that any alternative such as distributed generation which avoids these consequences is unacceptable because it wouldn't give the DRECP the chance to "accommodate" and "minimize" the bad environmental consequences

¹ The DRECP cites an additional ground (at II.8-9) for its refusal to consider a Distributed Generation alternative: it ". . . does not provide for the long-term conservation and management of Covered Species and other physical, cultural, scenic and social values within the Plan Area." This assertion is unjustifiable, and is not supported by any analysis, studies or data. In fact, this assertion is contradicted by the DRECP's separate conclusion that distributed generation supplants large utility scale facilities that disturb ecosystems upon which federally protected species depend.

of utility scale. This is akin to the police chief bemoaning the lack of crime because it prevents the police from proving their crime-fighting skills.

Leaving this aside, the DRECP is saying that even though Distributed Generation would advance the REAT agencies' environmental goals in ways that centralized generation cannot, the DRECP's hands are tied – and Distributed Generation cannot be accorded any genuine consideration – because various state and federal “outside mandates” (such as AB 32 and the state's 33% RPS) supposedly require the DRECP to increase the generation of renewable energy by way of *utility-scale* generation.

California statutory and regulatory policy is directed squarely against, not for, maximizing remotely situated, utility scale renewable energy. These policies militate strongly against the DRECP's current prioritizing of centrally-located, large-scale projects.

AB 32 is a greenhouse gas statute that does not specify that its goals must be achieved only through utility-scale renewable energy plants, that does not set a 20,000 MW goal, and that does not specify that utility plants must be concentrated in the California desert. Rather, AB32 clearly acknowledges a diverse suite of tools to address climate change, including energy efficiency, demand response, storage solutions and protection of our ecosystems and water sources to bolster resilience, in addition to generation of renewable energy.

California Executive Order S-14-08 – which calls for a 33% RPS goal – does not state that utility-scale plants are all the REAT agencies need consider in seeking to advance that goal. In fact, the executive order says that “fostering greater and more timely renewable energy development means California energy agencies must establish a more cohesive and integrated statewide strategy” that involves, among other things, “encouraging technically and economically feasible distributed energy opportunities.” Moreover, the executive order uses technology-neutral language -- in stating that “[s]tate government agencies are hereby directed to take all appropriate actions to implement this target [33% renewable energy by 2020] in all regulatory proceedings . . .” – which also signals that a broad array of renewable energy generation techniques are to be encouraged by the affected agencies, including distributed generation. The executive order does not require that the DRECP turn a blind eye to consideration of alternatives to utility-scale renewable energy generation, such as distributed generation. The “mandate” that supposedly compels the four REAT agencies to eliminate distributed generation as an alternative does not in fact exist.²

² Well-informed and well-respected public officials – and the California Energy Commission itself (which is one of the four REAT agencies) -- have stated that the 33% Renewable Portfolio Standard (RPS) has already been met.

Similarly, California Public Utilities Code Section 454.5(b)(9)(C) does not enshrine the 33% RPS as the sole means of achieving energy efficiency. Rather, this Section requires that an electrical corporation “shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.”

To the same effect is the “loading order” established by the CPUC and CEC. The loading order for electricity procurement is:

First Priority: Energy Efficiency and Demand Response.

Second Priority: Remote Procurement of Renewables, if needed.

At the August 5, 2014 CEC Workshop on Integrating Environmental Information in Renewable Energy Planning Processes, Ed Randolph, the chief of the Energy Division of the PUC, stated (on page 23: lines 13 -16 of the transcript thereof) that “[i] think this [a discussion of how the history of the environmental screening has played a role in the larger planning activities] is an important conversation at this particular moment in time because, as several of you have mentioned, *we’re by and large at the 33% goal in terms of procurement.*” (Emphasis added.)

The California Energy Commission’s “Tracker” states that currently operating renewable energy projects in California provide approximately 30.3% of the state’s demand forecast for 2020. The CEC Tracker states that, “[a]s of June 30, 2014, the Energy Commission estimates that 20,500 MW of RPS-eligible renewable capacity is operating in California.” When this 20,500 figure is divided by the total projected “Mid Energy Demand Scenario” for 2020, of 67,550 MWs (as per Table 1 of the CEC Tracker), it yields a figure of 30.3%.

These assessments that the 33% goal has been met *exclude* renewable energy generated from “distributed generation” sources such as roof-top solar and community solar. Paul Douglas, the Supervisor for Renewable Procurement and Resource Planning for the California Public Utilities Commission, stated at the above-mentioned August 5, 2014 CEC Workshop that “the RPS Calculator is in for a very significant overhaul,” noting that current methodology only measures generation—it fails to measure transmission impacts, that the Calculator also fails to reflect changes in technology, costs and resource potential, that all of California is suitable for solar, not just the desert, and that there are many opportunities throughout California to connect to renewable energy sources.

This strong acknowledgement of California policy-makers and planners that the current RPS goal has already been met, and that the Calculator itself is due for an overhaul, calls into very serious question the DRECP’s premise that it is narrowly charged with a planning for 20,000 MW of utility-size renewable energy in the desert. For this reason, the DRECP must fundamentally rethink its currently stated “purpose and need.”

Taking its cue from PUC Code Section 454.5(b)(9)(C), the CPUC has, with the direct involvement of California utilities, created the California Energy Efficiency Strategic Plan (CEESP).

The CEESP presents a “single roadmap to achieve maximum energy savings across all major groups and sectors in California,” by implementing rooftop solar, and bold appliance and building efficiency standards.

The CEESP has set ambitious 2020 energy efficiency and rooftop solar targets for existing and new residential, commercial, and industrial buildings in the CEESP. It prioritizes energy efficiency and rooftop solar consistent with state law and the loading order (detailed above). These CEESP targets must be incorporated into each utility’s biennial Long Term Procurement Plan in the current planning cycle at the CPUC.

Clearly, California’s tilt toward site-specific generation and aggressive innovations in efficiencies and conservation is a practical reality, not merely a set of abstract goals. By making its interpretation of the RPS as the dominant driver of its Purpose and Need, the draft DRECP thereby eliminates California energy policies which are at least equally as important as the RPS standard.

The same result obtains when one examines the statutory and regulatory mandates applicable to the REAT agencies themselves; these mandates require the agencies to fashion their purpose and need statements in a way to allow the inclusion, rather than the exclusion, of alternatives which are reasonable and feasible and environmentally sound.

The National Environmental Policy Act directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;...” (NEPA Sec102(2)(E))

This same Section requires the BLM to do an analysis of “Reasonable alternatives includ[ing] those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

Similarly, according to the draft DRECP, the U.S. Fish and Wildlife Service is charged with “designing alternatives for a renewable energy program and conservation strategy for all public trust resources, including natural communities, wildlife, and special-status species consistent with the conservation objectives under the ESA, NEPA, Migratory Bird Treaty Act, Eagle Act, and other applicable federal laws, regulations, and policies.”

The two California REAT agencies' self-described task is to: "Reduce the biological and other environmental impacts of future utility-scale renewable energy developments in the Plan Area by designating appropriate areas for renewable energy development within the context of a landscape-scale conservation plan that are sufficient to accommodate the foreseeable demand for renewable energy in the DRECP through 2040", and

"Provide for the long-term conservation and management of Covered Species within the Plan Area and preserve, restore, and enhance natural communities and ecosystems in which those species are found by focusing renewable energy development away from areas of greatest biological importance or sensitivity; coordinating and standardizing biological avoidance, minimization, mitigation, compensation, conservation, and management requirements for Covered Activities within the Plan Area; and taking other actions to meet conservation planning requirements in state and federal law."

The DRECP's refraining from taking any of the foregoing points into consideration has resulted in an information void. At the Desert Advisory Council (the "DAC") meeting on March 15, 2014, DAC member April Sall pointed to the DRECP's presupposition of the need for 20,000 MW of utility-scale renewable energy in the desert, she predicted a good deal of public resistance and a lot of questions from the public regarding these assumptions, and she stated: "[t]he REAT team is essentially setting policy to make utility-scale renewable energy development in the desert the model for meeting the state's 33-percent goal" [Ex. A in the Appendix to this letter (3/15/14 Transcript), 112:25-113:3]. She urged that the REAT agencies come forward with data regarding how much renewable energy was already being generated by such alternative means as rooftop solar, and that this data cover the entire state [Ex. A, 111:14-112:21].

Teri Watt, speaking for the Governor's office, replied, in part: "There are definitely gaps in information.... There are probably gaps in what we know about what local governments are producing on the renewable end, especially rooftops. But I know a focus of the governor's office and the Office of Planning and Research is to try to go find the best ways to assemble the information." [Ex. A, 116:3-10].

Unfortunately, the Draft DRECP does not redress the DG information gap, does not identify this information gap as a problem to be redressed, and does not point to this information gap as a reason to scale back its goals or phase in its proposals. To the contrary, the DRECP simply treats this all-important variable as a non-issue.³

³ The California Energy Commission ("CEC"), one of the REAT agencies, has not plugged the gap, so far as may be determined. Its website posts a renewable energy tracker, but this

As a result, and as further discussed below, the DRECP has greatly overstated the amount of desert acreage that it believes should be set aside as DFAs for development of utility-scale renewable energy generation capacity.

In the section describing Distributed Generation (II.8 – 7 and 8), the DRECP: (1) acknowledges that Distributed Generation “will be needed to meet California’s RPS and climate change goals, along with other energy resources and energy efficiency technologies” [Chapter II.8-7]; (2) cites the benefits of Distributed Generation as including “local electricity reliability, elimination of the need for some new transmission lines, and compatibility with urban areas” [II.8-7]; and (3) acknowledges that “[t]he state is actively working to overcome barriers to the development of distributed renewable energy generation,” which includes the CEC’s “working with a variety of stakeholders, including the California Public Energy Commission, the California Independent System Operator, community and environmental justice groups, and federal agency partners, to implement the recommendations of the [CEC’s 2012] Renewable Energy Action Plan and accelerate the development of distributed renewable energy generation in California.”

The DRECP nevertheless dismisses Distributed Generation, citing purported technological and economic barriers to its implementation.

In that regard, the DRECP concludes (at II.8 -7 and 8) that Distributed Generation “cannot meet the goals for renewable energy development” because: (1) the “grid planning framework is disjointed and fails to adequately consider or plan for the potential grid impacts or benefits of local renewables;” (2) unless “managed appropriately, the integration of local renewable energy can impact safe and reliable operation of distribution grids. Integration is hindered by a lack of information about the capacities and constraints of existing distribution grids;” (3) even though California has programs in place that “promote widespread development of customer-side systems . . . many residents and businesses are still unable to buy or lease equipment or purchase renewable energy,” and federal tax incentives “and procurement programs stimulated rapid development but may expire or neglect key technologies . . .;” (4)

tracker appears to be focused on RPS-eligible renewable energy only. Further, in 2007 the CEC commissioned and received a well-researched study known as the “PIER study,” **which concluded that California has 68,000MW of reasonable Distributed Generation potential.** However, the PIER study was absorbed into the CEC in 2011, and seems to have disappeared at that point; the CEC has made no apparent attempt to follow up to determine whether the PIER report’s projections of penetration of Distributed Generation were being borne out in actuality.

interconnection of small-scale generation “to the power grid functions as a source of significant uncertainty and inefficiency;” and (5) “many cities and counties do not consider renewable energy in the planning codes and requirements . . . [l]ocal governments cited a lack of funds and time to update codes to address local renewable energy and the difficulty in keeping pace with the rapid development of renewable energy technologies.”

However, the DRECP does not bring any real analysis or data study to support these five above-cited rationales. The current data show that the technical barriers to high-saturation DG have been sharply reduced. In fact, the California legislature and the CPUC have in recent years adopted a series of programs essentially compelling that first attention be given to expediting the absorption of widespread DG into the grid (as will be discussed below, they include the Community Choice Aggregation Law, the California Energy Efficiency Strategic Plan, Distribution Resource Plans (under P.U.C. Code Section 769), AB 811 and the Green Tariff Shared Renewables Program (AB 43)), all of which demonstrates that points (1), (2) and (4) are not well taken.

Regarding point (3) – the DRECP’s assertion that many people lack the money to buy or lease Distributed Generation systems (like rooftop solar) – the DRECP does no analysis or comparison of or between the costs of rooftop solar versus the tens of billions of dollars needed to develop 20,000 MWs of new utility-scale projects, and to construct the thousands of miles of transmission lines (and substations and related support facilities) needed to connect them to the grid. The DRECP assumes, without analysis, that the state’s utility ratepayers, who would ultimately foot this enormous bill, would be willing and able to bear such costs.⁴

Point (5) is unsupported as well. The DRECP refers to a purported lack of local codes by “some local governments” regarding Distributed Generation, as a reason why DG would be slow to be implemented. The DRECP does not identify the “local governments” supposedly in question or give any indication as to how many of them there are. In any event, there cannot be any appreciable number of them in light of the fact that Distributed Generation has been around for some time, and given that counties in the Plan Area, such as San Bernardino County, have participated in or are participating in CEC-funded programs aimed at revising the existing renewable energy elements of their general plans. The City of Lancaster, by way of another example, has instituted a Community Choice Aggregation plan, under the auspices of long-

⁴ A report by a well-respected analyst, Flynn Resource Consultants, Inc., estimates that the new transmission lines called for in the DRECP, which are needed to handle the utility-scale renewable energy projects it seeks to fast-track into DFAs, would have a capital cost of about \$10 billion to \$22 billion; this estimate is only partial because it covers only the 500kV lines.

standing California legislation, under which the city would become the power-purchasing authority for its residents, and under which solar rooftop generation, among other things, is incentivized.

Further, local governments would have to consume far more time and money in addressing applications for utility-scale projects – given the enormous impact they have on the surrounding region – than they would in approving far less intrusive Distributed Generation proposals.

The DRECP suggests that Distributed Generation remains a key component of the DRECP. Specifically, the DRECP states (at II.8-8) that, consistent with the efforts being made by state and federal governments to accelerate the development of Distributed Generation in California, the “DRECP Renewable Energy Calculator assumes a high level of rooftop solar distributed generation . . . [and] anticipates 7,000 MW of small rooftop solar distributed generation and more than 9,000 MW of ground-mounted distributed generation (only approximately 25% of which would be assumed to be located in the DRECP, and 1,700 MW of which would actually be “utility-scale distributed generation rated at 20 MW”).⁵

In making these assumptions and estimates, the DRECP fails to cite reliable data or studies. Its 7,000 MW estimate for rooftop solar is exceedingly small given the growing consensus in the business community and among the Legislature and the state’s regulatory agencies that small-scale solar is fast becoming the predominant power source for the state, and that utility-scale energy projects are rapidly becoming dinosaurs.

⁵ The DRECP Acreage Calculator (at p. 21) states that (under the “July 2012 Scenario”), of the 41,979 MW of zero-carbon energy required in 2040 due to a change made in the “1990 Baseline,” only 10,000 MW would be “Customer-side DG.” Even that figure is misleadingly high – in the adjacent column for “MW in DRECP,” it says “N/A,” which appears to be saying that no “Customer-side DG” is posited for the DRECP plan area. In short, the DRECP is making the very dubious assumption in its calculator that non-utility-scale Distributed Generation will not, over the 25-year life of the DRECP, increase its share in the state’s energy generation portfolio.

That the DRECP is so resolute in not carrying Distributed Generation forward runs contrary to its own acknowledgment that “any prediction of the profile of the electricity sector decades from now is highly speculative [Section 2.1, p. 16 of the Executive Summary].”

In that regard, the DRECP fails to address any of the laws and programs which are leading an accelerating movement away from utility-scale projects, declines to take into account how those laws and programs have already affected the energy industry and regulatory landscapes, and provides no assessment as to how such laws and programs will continue to re-shape our energy future. Those laws and programs are as follows:

A. The Community Choice Aggregation Law (Assembly Bill 117).

California's Community Choice Aggregation Law, or CCA (embodied in Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394 and 394.25) allows counties and cities to procure and provide alternative energy supplies for their residents in competition with electrical utilities, while keeping those providers in place to maintain needed transmission and distribution services. By forming CCAs, counties and cities can incentivize the development of small-scale renewable energy generation, the installation of rooftop solar on homes and businesses and energy efficiency programs.

According to the LEAN Energy US (Local Energy Aggregation Network) website (www.leanenergyus.org), Sonoma County, Marin County and San Francisco County have CCAs underway. Monterrey and Santa Cruz Counties have partnered to form Monterrey Bay Community Power. Local leaders committed to launching the first southern California CCA have formed the San Diego Energy District Foundation – the San Diego County Board of Supervisors unanimously approved funding for a CCA study. Within the DRECP Plan Area, the City of Lancaster has adopted a CCA. Many more counties and cities are expected to follow.

Further, according to the LEAN Energy US website, five other states have adopted CCAs, including Illinois, which has “experienced the fastest rate of CCA adoption, driven primarily by rate savings of 25% -- 30% through June, 2014. Over 600 municipalities have passed aggregation referenda since 2011, including the City of Chicago which now has the largest program in the Country.”

The DRECP is remiss in not considering the impact of CCAs on a shift of new and existing residential and commercial development to behind-the-meter small-scale solar energy generation. The DRECP, as it fashions an accurate set of assumptions and a correctly articulated “purpose and need,” must take into account the existing and anticipated future effect of the CCA law.

B. The California Energy Efficiency Strategic Plan.

The DRECP has not taken California Public Utilities Code Section 454.5(b)(9)(C) into consideration. This Section requires that an electrical utility corporation “shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.”

Tasked with making this statutory requirement a reality, the CPUC has initiated several proceedings⁶ out of which has emerged the all-important California Energy Efficiency Strategic Plan (“CEESP”). The CPUC – not usually noted for its rhetoric -- calls the CEESP the "Big Idea" approach. The “Big Idea” is this: Zero Net Energy (ZNE) for all new residential construction by 2020 and for all new commercial construction by 2030, and for 50% of all new construction by 2030.

Utilities regulated by the CPUC are compelled to show compliance with Section 454.5(b)(9)(C), and this compliance almost certainly will entail a major reliance on new efficiencies, conservation measures and technological innovations at the level of individual building structures. The DRECP nevertheless fails to address the effect of this program, and the results of compliance with the program, on the grid load assumptions and projections which are at the core of the DRECP, and which in turn determine its articulation of purpose and need.

C. Distribution Resource Plans Under Public Utilities Code Section 769
(Enacted by AB 327).

The DRECP does not account for the fact that Public Utilities Code Section 769 requires investor-owned utilities, like Southern California Edison (SCE) to come up with a plan to integrate cost-effective Distributed Resources, which are defined as “distributed renewable energy resources, energy efficiency, energy storage, electric vehicles, and demand response technologies.”

The CPUC took up this mantle in its Case No. 14-08-013, which relates to "Distribution Resources Plans." In its rulings and orders thus far, the CPUC has described the goal as maximizing penetration of Distributed Generation while minimizing the need for transmission and distribution upgrades. As the CPUC specifically notes, this is a revolutionary approach, because for the first time it takes into account customer-side interactions, and not just meeting load growth and peak consumption.

⁶ These PUC proceedings include D08-09-040, 08-07-011 and 10-09-047.

The investor-owned utilities must come up with their initial plans by early summer, 2015. As antithetical as the five statutory elements of Distributed Resources might be to the old utility model of doing business, the IOUs must propose specific plans to *maximize* Distributed Generation, while *minimizing* the old utility staples of new transmission and distribution facilities and upgrades. The DRECP has not considered that the plans that the utilities (and PUC) come up with are likely to lead to an enormous reduction in the demand on the grid, which in turn requires a re-couching of the DRECP's assumptions and, it follows, a probable re-casting of "purpose and need," which in its current form is single-mindedly focused on utility scale, centralized generation..

D. California's Assembly Bill 811 (July 21, 2008).

The DRECP does not consider AB 811, which authorizes cities and counties to designate areas within which willing property owners may use the property tax assessment process to contract for the installation of distributed energy generation, as well as energy efficiency improvements. These financing arrangements would allow property owners to finance renewable generation and energy efficiency improvements through low-interest loans that would be repaid as an item on the property owners' property tax bills.

The DRECP has, nevertheless, declined to take into account the effect of this program, which clearly points to a further reduction of demand on the grid.

E. Green Tariff Shared Renewables Program (Assembly Bill 43).

The DRECP also ignores California's AB 43, which created the Green Tariff Shared Renewables program. It incentivizes groups like renters, churches, schools and businesses to build unique, on-site shared solar renewable energy projects, with a specific portion of the project capacity to be located within "disadvantaged communities" in order to encourage job creation.

The DRECP fails to consider that Plan Area governments may, under an AB 43 program, fashion their land use general plans to encourage and streamline development applications seeking to take advantage of this program, which would result in the creation of Distributed Generation facilities, the reduction of energy demand, and the creation of much-needed jobs in their poorer communities.

Similarly, the DRECP has overlooked numerous informational guidelines and programs that explain exactly how smart renewable energy planning, which includes putting CCAs in place, can be implemented and the enormous benefits that flow from them.

For example, the U.S. Department of Energy's Community Energy Strategic Planning (CESP) lays out a step-by-step process for local governments to create a comprehensive, long-term energy strategy, and it identifies various sources of funding, including block grants, loan programs and technical assistance needed to implement it.

Another example is the Community Solar Program (CSP), which is a program created by the Los Angeles Department of Water and Power (LADWP) to incentivize the development of residential and commercial rooftop solar systems and establish a feed-in tariff program. The LADWP has published an outline of this program and is currently soliciting comments on it.

Another example is the Interstate Renewable Energy Council (IREC), which has instituted shared community and cooperative solar programs across this country. Based on this "boots on the ground" experience, IREC has prepared and compiled, and will share, reports, best practices guidelines and regulatory policy recommendations and innovations that have become foundational elements in regional, state and federal policy-making efforts, all of which have enabled millions of people to gain access to distributed energy.

Finally, LEANEnergy US (Local Energy Aggregation Network), a non-profit organization dedicated to the accelerated expansion of CCAs, has broad experience and knowledge concerning how CCAs operate and regarding the environmental benefits and enormous cost savings they generate for their participants.

As noted above, there is a growing and widely-known consensus in the business community, and in the energy industry, that small-scale solar is fast becoming the predominant power source for the state, and that utility-scale energy projects are rapidly becoming outmoded.

According to the "2015 State of the Electric Utility Survey Results (Here's What the Utility of the Future Looks Like, According to Over 400 U.S. Electric Utility Executives)," which is published by Utility Dive Brand Studio in association with Siemens, utilities are moving away from "the traditional vertically integrated utility model toward a more distributed, service-based model." In other words, according to the survey, Distributed Generation is seen as the biggest driver of industry growth, while "[t]he opposite of distributed energy – centralized generation – seems to offer little promise of future revenue to utilities. Once a profit center, central station power is viewed by only 8% of utilities as their biggest growth opportunity." The reason for this pronounced shift: "In 2015, the U.S. electric utility is in a state of transition . . . Emerging technologies, shifting consumer expectations, and new energy economics are causing the industry to rethink the business and regulatory models that have served them for over 100 years." Relevant pages from the above-referenced survey are Ex. B in the Appendix to this letter.

Edison Electric Institute, the utilities' trade group, warned members (in a January 2013 report) that Distributed Generation and companion factors have put them in the same position as airlines and the telecommunications industry in the late 1970s. Essentially the same point was made in an article in Bloomberg Business, entitled "Why the U.S. Power Grid's Days Are Numbered" (August 22, 2013) (a copy of this article is attached as Ex. C in the Appendix to this letter).

David Crane, the CEO of NRG Energy – an energy giant with more than \$6 billion in assets world-wide -- agrees that the old model of the U.S. electrical grid, with its centralized power plants and lengthy transmission lines, is doomed to obsolescence (according to the Bloomberg Business article mentioned in the previous paragraph). He said that in about the time it has taken cell phones to supplant land lines in most U.S. homes, the grid will become increasingly irrelevant as customers move toward decentralized homegrown green energy, and that some customers, particularly in the sunny West and high-cost Northeast, already realize that "they don't need the power industry at all." Mr. Crane's championing of decentralized Distributed Generation is particularly noteworthy, given that NRG Energy is the developer of the Ivanpah solar thermal plant.

The rooftops and parking lots on which DG depends are in close proximity to the consumer, and they present none of the vexing environmental problems presented by large-scale energy plants. UCLA's Luskin Center for Innovation did a study showing that the rooftops in Los Angeles County alone could accommodate over 22,000 megawatts of Distributed Generation solar panels. A 2009 Black & Veatch and Energy and Environmental Economics, Inc. report to the CPUC found 11,543 megawatts of large (greater than 1/3 acre) urban rooftop capacity and 27,000 megawatts of ground-mounted capacity near existing substations. A June 2010 update of the study found that California has a capacity of 55,000 megawatts of decentralized solar photovoltaic (over 100,000 GWh/ year). The above-referenced UCLA study is available at <http://innovation.luskin.ucla.edu/sites/default/files/Bringing%20Solar%20to%20Los%20Angeles.pdf>; the Black & Veatch report is available at <http://tinyurl.com/45n2j7x>.

The first sentence of the CEC's Distributed Generation Strategic Plan aptly sums up this state of affairs quite nicely: "We are at the threshold of reinventing the electric power system."

None of this information has found its way into DRECP's analysis of the significance of Distributed Generation, notwithstanding that it is readily available. Yet all of these programs and economic and technological trends are a required part of what an EIR must consider as it makes forecasts and couches the "purpose and need" it is purporting to plan for.

9. The Draft DRECP/EIS/R Fails to Consider a Reasonable Range of Alternatives, Including Brownfields, Distributed Generation, and Various Hybrids of These Two Which Include Energy Efficiencies and Conservation Measures.

“CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, also consider and analyze project alternatives that would reduce adverse environmental impacts. [Citations.] The [Guidelines] state that an EIR must ‘describe a range of reasonable alternatives to the project...which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project...’ [Citation.] An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. [Citations.] (California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 988.)

The BLM shall “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;...” (NEPA Sec102(2)(E)). NEPA further requires the BLM to analyze “reasonable alternatives includ[ing] those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

The DRECP has failed to discharge its responsibilities, in its decision not even to consider Alternatives including Brownfields (see discussion under headnote 7 above) and distributed generation, either alone or together or further mixed with various conservation and efficiency measures.

As discussed in detail under headnote 8 above, a substantial reason for this deficit in analysis lies in the DRECP artificially narrowing its definition of “purpose and need” in such a way as to foreclose consideration of alternatives which are not only feasible, but which offer benefits both to the renewable energy picture and to the desert environment not offered by any of the Alternatives that the DRECP does consider.

By identifying 20,000 megawatts of utility scale renewable energy in the DRECP region as the primary purpose and need, the DRECP eliminates alternatives much stronger than the ones the DRECP chooses to consider, because any alternative that does not emphasize large scale renewable energy facilities by definition does not suit the stated purpose and need.

One essential element of current California statutory and regulatory policy is distributed generation – that is, energy generated on a site-specific basis, that primarily serves the site location and (typically) sends any surplus energy to the grid. The DRECP dismisses a DG alternative, stating (on page 11.8-7 of the Executive Summary): “For a variety of reasons (e.g.,

upper limits on integrating distributed generation into the electric grid, cost, lack of electricity storage in most systems, and continued dependency of buildings on grid-supplied power), distributed energy generation alone cannot meet the goals for renewable energy development.”

But this curt dismissal contradicts current data – not to mention the CEESP and other government programs – showing first that much DG can be designed to be consumed on site and thus would not need to be delivered to the grid, and second that the utilities have already made much progress on smart grid programs which enable bidirectional flow. These trends – which again, are being dictated both by the market and by statutory and regulatory policy – require a full analysis and comparison of a DG alternative, rather than summary rejection.

To attempt to justify giving short shrift to a DG alternative, the DRECP relies heavily on a conference convened by Governor Brown at UCLA in July 2011. But the speakers at this conference argued for a spectrum of positions; many respected experts presented persuasive cases at that Conference that the grid, even before the upgrades for full two-way flow, could handle 20,000 MW of customer-side DG solar without causing any backflow on the grid. (See also, e.g., Powers, December 16, 2009 opening testimony, CEC’s Ivanpah Solar Electric Generation System proceeding, pp. 7-8, <http://tinyurl.com/p2s5zg8>). This is *before* taking into account upgrades to the grid and other advances which are reasonably to be expected during the 25-year planning horizon.

Thus, the DRECP is required by CEQA and NEPA to make DG one of the alternatives and to do a genuine study and comparison of this alternative as opposed to the other alternatives posited by the DRECP, all of which depend on siting 20,000 of utility-scale centralized generation in the DRECP area.

An additional flaw in the DRECP’s short-shrift approach to DG is found in its arithmetic and assumptions in Appendix F3. There the DRECP purports to estimate the effect on the demand for centrally-generated electricity, depending on different scenarios for the development of customer-side solar. Even under its most “aggressive” assumption about increases in DG solar, the DRECP assumes only a very minor net reduction in the demand for utility-scale solar PV and thermal. This arithmetic doesn’t work. Further, the implementation of the CEESP Alternative would result in customer-owned DG solar increasing at a rate of approximately 15,000 to 20,000 MW per decade beginning in the 2011-2020 ten-year period. If the total 2040 MW capacity of wind, geothermal, and biofuels (for California) is held constant across the three customer-provided DG solar scenarios, increasing the amount of customer-provided DG solar from 10,000 MW in the base case scenario to approximately 30,000 MW by 2040 would completely eliminate the need for any of the combined 16,323 MW of utility-scale PV, utility scale solar thermal, wind, or utility DG in the DRECP base case scenario.

Furthermore, the DRECP – having done no analysis of the DG alternative – draws the non-sequitur conclusion that DG does not serve the purpose and need of “long-term conservation and management of Covered Species within the DRECP”. Vol II, page 8-3. The short answer to this is that a DG alternative would put much less stress on Covered Species and other conservation values because it would involve a sharply reduced or eliminated allocating of desert lands to large-scale RE development and the extensive new transmission systems which would have to follow. The “need” for the “conservation” portion of the DRECP is driven in major part by the rather illusory perceived “need” to sequester 2 million acres for large-scale RE development.

As discussed above under headnotes 7 and 8, respectively, the DRECP overlooks both brownfields, and a mix of efficiency and conservation measures and innovations (an example being the “ZNE” aspect of the CPUC’s CEESP program), as elements of an Alternative to be considered.

All of these elements – distributed generation, brownfields, and efficiency/conservation programs – must be considered as one or more feasible alternatives.

10. As to Groundwater, the Draft DRECP Fails to Establish a Proper Baseline, Fails to Address Environmental Impacts, and Impermissibly Attempts to Defer the Fashioning of Viable CMA’s.

Under Section 15151 of the CEQA Guidelines, the REAT agencies are required to prepare an EIR with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure. [emphasis added]. Town of Atherton v. California High-Speed Rail Authority, 228 Cal.App.4th 314, 343 (2014).

The DRECP states in its Executive Summary, at Table 9 that the Preferred Alternative will have a “less than significant” impact on groundwater in terms of solar and wind renewable energy facilities. This conclusion is without foundation, for the Draft DRECP fails both (1) to establish a proper baseline for groundwater, and (2) to conduct an analysis of the existing data

regarding effects on desert groundwater of the construction and operation of utility-scale renewable energy plants.

This conclusion is also at odds with observations made in the DRECP about the pronounced negative that the new renewable energy projects would have on the desert's groundwater basins. For instance, the DRECP acknowledges that its DFAs would be located primarily on already overdrafted groundwater basins from which the enormous volumes of water needed -- for the construction, maintenance and operations of large-scale generation facilities -- would have to be drawn. In that regard, it concedes (at IV.6-24) that "[d]evelopment would occur in 35 groundwater basins, that 14 of them are stressed or in "overdraft or stressed," that "[m]ost (97%) of the developed area is within four ecoregion subareas [the High Desert areas of Los Angeles and San Bernardino Counties and the Imperial Valley]" -- which are the most populated areas of the California desert⁷ -- and that "increased groundwater use in these sensitive basins can adversely affect water supplies and exacerbate impacts associated with overdraft conditions and declining groundwater levels." Moreover, the Draft DRECP selects the Pinto/Lucerne/Eastern Slopes -- part of this DFA is located in overdrafted groundwater basins -- to bear a greatly disproportionate amount of new generation development. Table IV.6-2 projects 7,000 acres of new generation in this area to generate 2,000 megawatts, which is a full 10% of the DRECP's 20,000 MW goal.⁸

⁷ When the DRECP's map of the Preferred Alternative DFAs (which, along with transmission corridors, would entail approximately 177,000 acres of "ground disturbance" (IV.7-215)) is superimposed on top of the DRECP's Overdraft Groundwater Basins map, one sees that (with small exceptions) all of the High Desert DFAs -- from the Antelope Valley east to the Johnson Valley -- are located within the boundaries of already overdrafted groundwater basins. Indeed, the DRECP concedes: "[u]nder the Preferred Alternative, development in BLM lands can affect groundwater in 12 basins characterized as either in overdraft or stressed" [Section IV.6 of the DRECP].

⁸ Just as the DRECP provides no rationale whatsoever as to why new energy development must be radically concentrated in "Pinto/Lucerne/Eastern Slopes," the DRECP provides no justification as to why the desert should bear the sole burden of meeting the 20,000 MW goal, especially given that all areas of the state have ample renewable energy resources (this point is discussed further elsewhere in this letter). Further, as will also be discussed elsewhere in this letter, the DRECP provides no explanation as to why 20,000 MWs of large new energy plants are needed in the first place, especially given that the state has already reached, or come close to reaching, its goal of having 33% of its energy come from renewable sources, and given that distributed generation is fast becoming the state's prime source of renewable energy.

The DRECP also states that the total estimated water use for the new projects it would foster would be 91,000 acre-feet per year (IV.6-24), and that that the “[r]enewable energy facilities permitted under the DRECP could influence the quantity and timing of groundwater recharge because construction would include grading the land surface, removing vegetation, altering the conveyance and control of runoff and floods, or covering the land with impervious surfaces that alter the relationships between rainfall, runoff, infiltration and transpiration [IV.25-45].” Solar energy – which is the renewable technology preferred in the DRECP -- “would result in the largest amount of grading so it would have the largest impact on groundwater recharge among the renewable technologies permitted under the DRECP [IV.25-45].”

According to the DRECP, the “use of groundwater for renewable facilities permitted under the DRECP would combine with [other uses of groundwater] . . . to result in a cumulative lowering of groundwater levels affecting basin water supplies and groundwater [IV.25-46].”

The DRECP also takes note (IV.25-45) of the “[p]opulation growth and anticipated development summarized in Section IV.25.2.2,” including “future residential development that would also use a large amount of groundwater continuously [IV.25-46],” that would result from anticipated renewable energy and other projects, as further contributing to the drawdown of desert ground water basins.

Even more ominously, the DRECP notes that the proposed renewable energy projects would result in “compression [of groundwater basins that would reduce] the volume of sediment beds and lower land surface elevations, which can damage existing structures, roads, and pipelines; reverse flow in sanitary sewer systems and water delivery canals; alter the magnitude and extent of flooding along creeks and lakes. This compression of clay beds [that make up groundwater basins] also represents a permanent reduction in storage capacity” [IV.25-47]. The proposed renewable energy plants and transmission facilities “could also cause water-level declines in the same groundwater basins and contribute to the migration of the saline areas of groundwater basins” [IV.25-47].

Nevertheless, the DRECP makes no study of the impact on the desert’s aquifers of siting 20,000 MWs of new generation facilities, nor does the DRECP include any real baseline data concerning the health or sustainability of those basins under current demands, or when the effects of an ongoing drought of historic proportions is factored in.

The DRECP must: (1) conduct and incorporate a comprehensive, plan-wide assessment as to how the siting of 20,000 MWs of new renewable energy generation would affect the groundwater basins, as well as an analysis as to how precisely each of them would be impacted, i.e., to what degree would their sustainability be threatened; and (2) conduct a baseline study as to the current status of those aquifers – how much water is each of the groundwater basins

currently holding? How much water is being pumped out of each basin by the residents and businesses currently relying upon them? How much water can be expected to recharge the basins, either from natural sources or from the State Water Project? Are the groundwater basins sustainable in view of the demands currently being made on them, and in view of their recharge rates, or are they approaching collapse? What is likely effect of the ongoing, historic drought on our groundwater basins?

Instead of doing this, the DRECP states (at IV.6-32) that actual groundwater impacts would be assessed only on a project-by-project basis, by way of Conservation and Management Actions (CMAs) that would be adopted by the Coordination Group, prior to certification of a particular project, for the purpose of assessing whether the project would exacerbate any existing overdraft.⁹ The DRECP acknowledges that “CMAs were developed for BLM lands only, but nevertheless presents an analysis that “assumes that all CMAs would be applied also to nonfederal lands [IV.6-32].” This appears to be wishful thinking, especially given that the DRECP does not require that such CMAs be prepared by any particular person or agency, nor does it specify the process for approving them or where the funds needed to pay for their preparation and monitoring would come from. In short, there is no assurance in the plan document that any CMAs will ever be created or that, if they are, they would properly address impacts on groundwater or their remediation; it should be expected that, if the task of preparing CMAs is to be left to developers, they would be quite resistant to preparing full-blown CMAs obligating them to undertaken costly mitigation measures.

The approach of relying on yet-to-be-drafted and ill-defined CMAs, Water Assessment Plans and Mitigation Action Plans is inadequate, as a matter of science and as a matter of law.

⁹ As part of such assessments, the period of “aquifer recovery after project decommissioning would” have to be specified, and groundwater extraction cannot contribute to exceeding the estimated yearly yield for the basin without “exceeding the long-term recharge of the basin . . .” Further, the hydrology of the site must be designed to enhance percolation. Also required would be a “Water Supply Assessment for all projects,” as well as “Water Monitoring and Reporting Plans” and “Mitigation Action Plans.” This is obviously too-little, too-late – these kinds of inquiries must be done up-front as part of the DRECP if it is to be a proper program EIR/S.

It is also worth noting that there is a long-standing and very distressing pattern and practice of developers getting away with poorly supported, minimal numbers of projected water use in their permit applications, followed by records of actual use that are sometimes ten times the amount stated in the applications.

The DRECP is a program EIR. After a program EIR is approved there is no road down which to kick the can. If the proper analytic work is not done at the program EIR stage, there will be little opportunity for it at the later, project-level stage.

The subject of groundwater impacts, usage and mitigation cries out for landscape-level analysis, because the deleterious effects of siting 20,000 MWs of new energy plants and transmission lines cannot feasibly be studied, measured, or mitigated for on an incremental, project-by-project basis. By way of a rough but instructive analogy, a pack-a-day smoker can typically enjoy an additional cigarette – probably an entire carton – without necessarily showing any immediate ill effects, but, if his health is assessed over a twenty-year period, the impacts become apparent and undeniable. To take the analogy a step further, you cannot “mitigate” the long-term, unavoidable health effects of smoking, just as the cumulative effect of siting 20,000 MWs of new energy plants and transmission lines in an increasingly arid, water-starved desert cannot be mitigated away – it is inevitable that the resulting drawdown on already-depleted groundwater basins would render them increasingly unsustainable and incapable of storing water. “Mitigation” measures can be posited with respect to those activities immediately on hand – such as, “consider refraining from smoking that cigarette” or “provisionally reduce your energy plant’s draw on groundwater” – but such measures cannot be extrapolated forward as credible “landscape-level” methods for reducing the long-term, cumulative harm inflicted by these activities.

By not conducting programmatic analyses bearing on groundwater impacts and mitigation, the DRECP – which fashions itself as a program EIR – has failed to fulfil the purposes earmarked for such EIRs, which are as follows: “(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, [para.] (2) Ensure consideration of cumulative impacts that might be slighted on a case-by-case analysis, [para.] (3) Avoid duplicative reconsideration of basic policy considerations, [para.] (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, [and] [para.] (5) Allow reduction in paperwork.” Town of Atherton v. Cal. High-Speed Rail Authority, supra, 228 Cal.App.4th 314, 343 (2014).

The DRECP nonetheless claims (at IV.6-39) that “most adverse impacts of the DRECP will be minimized by implementation of the CMAs and existing laws and regulations. Further mitigation is required to reduce the following remaining impacts.” However, having forfeited its obligation as a program EIR to do a “more exhaustive consideration of effects and alternatives than would be practical...on an individual action”, or to consider “cumulative impacts that might be slighted on a case-by-case basis”, the DRECP has not established with any specificity the

impacts on groundwater to be mitigated. How, then, can it propose effective mitigation measures?

It can't. And this becomes immediately clear when one examines the so-called mitigation measures proposed by the DRECP (in Section IV.6.3.2.1.1). These mitigation measures are so general – so poorly delineated – that they provide no practical guidance as to how mitigation would be effected to reduce the impacts on groundwater basins of 20,000 MWs of new development. Nothing resembling a mitigation plan is stated, no clear criteria are laid out and no standards are set, nor are any methods specified for measuring the effectiveness of any mitigation efforts.

For instance, the draft EIR asserts (at IV.6-39) that, if groundwater basins are being depleted by drawdowns from renewable energy projects, Mitigation Measure GW-2a can be adopted (“Minimize Water Use”). But GW-2a makes only the extremely impractical suggestion that “dry cooling for solar thermal” be employed to minimize water use. Mitigation Measure GW-2b says that, if “drawdown thresholds are reached in water supply wells . . .,” compensation can be paid and that there can be “pumping reduction or cessation, and providing an alternative water supply.” But no “drawdown thresholds” or other necessary details are specified, and there is no indication as to which agencies, if any, would be vested with the right to declare and enforce pumping moratoriums that would effectively (and perhaps permanently) suspend the operations of renewable energy projects. Hence GW-2b is nothing more than a dressed-up iteration of the following common-sense proposition: if too much groundwater is being consumed, pump less or find some other water source.

Mitigation Measure GW-1a (IV.6-39) is similarly devoid of any meaningful guidance. It says only that, in order to combat the fact that renewable energy development would alter the recharge (i.e., re-filling) of groundwater basins, it would require developers “install pervious groundcover” and direct drainage to a “common pervious drainage basin.”

By way of another example (at IV.6-40), if basin and site-specific studies confirm that land subsidence has been or might be caused by groundwater pumping, a “Subsidence Monitoring and Reporting Plan” can be adopted – by way of Mitigation Measure GW-3a – to “[p]rovide detailed methodology to establish pre-project land-surface elevations and measure changes that could occur resulting from project construction and operations,” or a “Mitigation Action Plan” can be adopted – as per Mitigation Measure GW-3b – to “identify actions to be taken by the developer if subsidence thresholds are reached” that can include “restrictions on, or cessation of, project groundwater use and compensation to landowners for impacts resulting from land surface elevation changes; prompt detection and mitigation will limit the permanent loss of storage capacity to a small fraction of the total capacity.” Reduced to their essence, GW-

3a and 3b say nothing more than the following truism: when subsidence is detected, figure out something fast, like pumping out less water, so that it won't get any worse. In any event, the DRECP has made it clear that excessive groundwater pumping has already caused substantial subsidence (Table III.6-1) over some of the same aquifers that would be drawn on for new renewable energy projects in the DFAs, so the DRECP should now include an assessment as to the degree to which new energy development in the DFAs would create further subsidence.

Finally, Mitigation Measure GW-4a (IV.6-40) provides that, if groundwater consumption causes poor-quality groundwater to migrate into an aquifer, "the developer shall identify actions to be taken" which could include restrictions on project water use and compensation to adjacent land owners. Relying on an offending developer to come up with, implement and monitor its own remediation plan – especially one that would depend on a developer voluntarily shutting down operations by curtailing its use of groundwater -- is bad policy, and is unworthy of a Plan-wide mitigation plan in a programmatic EIR.

In short, the DRECP has no real programmatic mitigation plan in place to address the cumulative impacts of renewable energy development on desert groundwater basins, so there is no principled basis for its "less than significant impact" finding (at, among other places, IV.25-49).¹⁰

"Designating an EIR as a program EIR . . . does not by itself decrease the level of analysis otherwise required in the EIR. 'All EIR's must cover the same general content. [Citations.] (Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency (2000) 82 Cal.App.4th 511, 533.) In considering a challenge to a program EIR, "it is unconstructive to ask whether the EIR provided 'project-level' as opposed to 'program-level' detail and analysis. Instead, we focus on whether the EIR provided 'decision makers with sufficient analysis to intelligently consider the environmental consequences of [the] project.'" (Citizens for a

¹⁰ The DRECP's fails to provide any meaningful mitigation guidelines with respect to other serious cumulative impacts that would arise from renewable energy development and transmission corridor construction. For example, the draft EIR states only that, in order to mitigate the projected increase in dust, exhaust emissions, ozone and several types of fine particulates (in a region which is already a state nonattainment area) to a "less than cumulatively considerable" level, developers should be asked to prepare (and self-monitor) abatement plans, to use electrically powered vehicles/equipment, to use of the "best available emission controls," to locate "new stationary air pollution point sources" an "adequate distance" from residential areas (and from other sensitive land uses) and the like (IV.25-30 through IV.25-36).

Sustainable Treasure Island v. City and County of San Francisco (2014) 227 Cal.App.4th 1036, 1052.)

This DRECP's focus on the figurative "trees" -- to the complete exclusion of the "forest" -- means that there would be no meaningful, over-arching analysis as to what the demands of 20,000 MW of new capacity would do to groundwater supplies, while all the while the DRECP would nevertheless be actively incentivizing the development of that new capacity throughout the DFAs.

At the meeting of the BLM's Desert Advisory Committee (the "DAC") on September 27, 2014, in Pahrump, Nevada: certain members openly questioned the wisdom of the "less than significant" impact finding on much the same grounds stated in this letter. The reply of Peter Godfrey, a BLM water specialist who was one of the authors of the groundwater portions of the DRECP, was that, in terms of assessing our aquifers' future sustainability, a long-term time horizon of as much as 30 years is required -- that is, after the DRECP's own 25-year lifetime has ended, and perhaps long after the groundwater basins may have passed the point of no return. [Excerpts of Mr. Godfrey's presentation are Ex. F in the Appendix hereto]

If this is indeed true, then the DRECP's attempt to address groundwater at the project level is futile, because the same absence of data and understanding which according to Mr. Godfrey makes program-level analysis impossible will torpedo analysis at the project level. Yet the DRECP pretends that, at the project level, the same questions which are unknowable about groundwater at the landscape level become knowable at the project level. For the project level, the draft DRECP stipulates that the developer must conduct a "Water Supply Assessment", using an arithmetic formula including precipitation, evaporation, transpiration, groundwater outflow. This assessment, in turn, will (says the Draft DRECP) quantify the "existing perennial yield of the basin(s)." II.3-406 to 411. All well and good, except that these variables are the same ones that the DRECP at the program level deems to be unknown and unknowable.

Moreover, it is not true that important, reliable information does not exist regarding the groundwater baseline and the effects of renewable energy projects on groundwater supplies. The Draft DRECP essentially ignores good and reliable current data which clearly have direct relevance both to establishing a groundwater baseline and evaluating the impact of groundwater of 20,000 megawatts of new development. According to statements made by Max Gomberg, climate change advisor to the California Water Resources Control Board (at a recent workshop conducted by the Lahontan Regional Water Quality Control Board): (1) several cities and towns are in danger of running out of water in 60 to 90 day; (2) several dozen communities are on the critical water list, which is 120 to 150 days from running out of drinking water; and (3) domestic wells are already dry and more are expected to dry up as the water table declines (see December

1, 2014 Desert Dispatch article, entitled “Hydrologist urges panel to make water decisions now”) [A copy of this article is attached as Ex. G in the Appendix to the instant letter].

The DRECP itself references data having a direct bearing on the groundwater issue. According to the draft DRECP, the Upper Mojave groundwater basin -- which serves the DFA-encompassed region around Victorville, Hesperia, Apple Valley and parts of Lucerne Valley -- has been sustained by surface water from the State Water Project (Figures III.6-6 and III.6-36) that can no longer be counted on due to the drought. The Upper Mojave basin is among the biggest users of groundwater (Figure III.6-13), and (III.6-58); groundwater pumping has caused land subsidence of “many tens of feet” in basins along the Mojave River, “and further east from the Lucerne Valley to Morongo Valley Region,” as well as significant declines in well levels of up to five feet (Table III.6-1).

The Upper Mojave groundwater basin, which underlies much the same region as the adjudicated “Alto” groundwater basin (a designation made by the Mojave Water Agency in its annual Watermaster reports) received, for a time in 2014, only 5% of its requested allocation (according to a December 2, 2014 article in the Desert Dispatch, that allocation was actually reduced to 0% for a time, then brought back up to 5% in light of recent rains -- the 5% allocation is the lowest ever made in the State Water Project’s history because a sparse snowpack melted early and most of the state experienced near record lows in rainfall) [a copy of this article is Ex. H in the Appendix to the instant letter]. The Alto basin’s allocation from the Mojave Water District has, in turn, been ramped down to 60%. Eventually any water stored in the ground as a sort of “rainy day fund” will run out.

The DRECP’s plan-wide analysis on the groundwater issue must take into account the amounts of water typically consumed by utility-scale renewable energy projects during their construction and during their maintenance and operation.

In terms of construction usage, the 550 MW Desert Sunlight 250 project (on 4,400 acres of land) – and the 1,550 acre feet of water allocated to its construction – can be used as a metric. Forty projects of that size would produce just over the DRECP’s targeted 20,000 MW in renewable energy. Assuming that those forty projects would use a similar amount of water during their construction, construction of 20,000 MW of new renewable energy projects would consume 620,000 acre feet of water, which equates with approximately 20 billion gallons of water.

In their maintenance and operations, the utility-scale solar projects in the Lucerne Valley DFA under the Preferred Alternative would, according to data from the DRECP, consume almost 1,000 acre-feet of water **per year**, which is enough water to fill four Rose Bowls to the brim. On a DRECP-wide basis, if all 20,000 MW of generation were to come from the least water-

intensive generation method – which is solar PV (as opposed to solar thermal, which requires many multiples more water in cleaning, as well as a great deal of additional water for cooling operations) – and the PV panels were washed only six times per year, the cleaning of the panels alone would consume .15 acre feet per year per megawatt of generation, which would amount to a total water expenditure of approximately 3,000 acre feet per year (20,000 times $.15 = 3,000$).

None of this information is included in the DRECP's approach to the effects of any of its Alternatives to groundwater.

11. The Draft DRECP Fails to Consider the Most Current and Important Studies Regarding Carbon Sequestration.

But for the issue of climate change, there would be no DRECP. The core driver of the Executive Order is the perceived need to take big steps to reduce the net emissions of GHG into the atmosphere. Volumes III (baseline) and IV (environmental effects) both have chapters devoted to Meteorology and Climate Change, which they purport to study across the six different Alternatives. Appendix P encompasses an analysis of existing research regarding climate change, and it delves into several alternative climate change scenarios as they would play out for various aspects of the desert ecosystem.

One critical aspect of net contribution of GHG to the atmosphere is the part played by the native plant systems in sequestering carbon dioxide in the soils. Michael F. Allen and Alan McHughen, "Solar Power in the Desert: Are the current large-scale solar developments really improving California's environment?" UC Riverside. The authors of this article (the article is attached as Exhibit I in the Appendix to this letter), led by Mr. Allen, who is one of the most informed and authoritative experts on carbon sequestration in the desert, say: "Unfortunately, many federal and state agencies, as well as several non-government organizations, whose goal is to protect habitats appear to have overlooked...existing literature addressing net carbon fluxes that would be affected by the proposed solar development."

The authors continue as follows: "Many of the areas that are proposed to be developed for the solar development include Microphyll woodlands. The dominant plants (legume trees) have deep roots capable of reaching groundwater (several meters). When desert plants grow, they absorb carbon dioxide (CO₂). The carbon (C), as sugars, moves into roots and soil organisms. Carbon dioxide is respired back into the soil, part of which reacts with calcium (Ca) in the soil to form calcium carbonate. This is how our deserts sequester large amounts of C and thus function to reduce atmospheric CO₂. The magnitude of the carbon storage process is still a crucial research question and remains unknown for our California deserts. However, values of

up to 100g/m²/y of C-fixation are reported for deserts in Baja and Nevada (Serrano-Ortiz et al. 2010). After vegetation is removed to make way for solar arrays, carbon dioxide will be left to return to the atmosphere that ordinarily would have been used to form soil organic matter buried up to several meters deep, or released by roots and soil micro as as soil CO₂, which in turn, binds with soil Ca to form caliche.”

The authors of said paper also say the following:

“Our deserts have large amounts of CO₂ stored as caliche (CaCO₃). The amount of C in caliche, when accounted globally, may be equal to the entire C as CO₂ in the atmosphere. This caliche is formed from weathering of Ca in desert soils binding to carbonates that originate in large part from respiration of roots and soil organisms. Most of the caliche in our deserts was formed during the ice ages, when the vegetation was more dense and more productive. These deposits likely have been stable since (Schlesinger 1985). Being stable, though, means that inputs equal exports. Carbon in caliche may in fact be released, especially when vegetation and soils are disturbed. Mielnick et al. (2005) reported losses of up to 145g C/m²/y....The net C loss due to a loss of native desert vegetation could be as high as 50g C/m²/y plus weathering and dissolution of carbon dioxide from caliche up to 150g/m²/y for an areas of 7,000 acres (a common size for solar plants of 1,000MW). This translates to an annual loss of nearly 6,000 metric tons of C released by caliche, or retained in the atmosphere due to the loss of vegetation. This does not include the land disturbed by transmission corridors and maintenance roads through desert lands.”

The study goes on to point out that the benefits of reduced GHG emissions from a large-scale solar plant are finite, because the plant has a limited life, whereas the detriments caused by the destruction of soils entailed by the building and maintenance of the power plant and the related transmission facilities are extremely long-term. “Understanding the lifespans of the solar plants, compared with this long-term slow C balance is a critical need for determining if these solar developments represent a net long-term reduction in greenhouse gases.”

Vol IV, Chapter 3 of the draft DRECP purports to address the net cumulative effect on greenhouse gas emissions after the energy facilities and associated transmission facilities are built out by 2040. The Chapter specifically states that one of the “metrics” used to assess the impact is “the loss of carbon uptake from vegetation removed as a result of ground disturbance under each alternative”. This Chapter acknowledges that soils and plants on each development site provide a natural carbon sink, and that development of the land eliminates some but not all of this natural carbon sequestration. It asserts that “vegetation management and restoration practices” can “partially restore” the natural removal of CO₂ from the atmosphere.

In Table IV.3-1, the DRECP purports to quantify the estimated loss of annual carbon uptake under the no-action alternative. The only studies it cites for these estimated figures are the “average U.S. forests” estimates from the EPA, and the “grasslands” estimates as reported by the California Climate Action Registry and California Emissions Estimator Model. Neither of these data bases takes note of the Allen/McHughen study. Further, it appears that both data bases address only the loss of absorption potential, and that neither takes account the emission of CO₂ into the atmosphere resulting from destruction of caliche and other desert soils, which is a critical point in the Allen/McHughen analysis. Still further, the DRECP footnotes Table IV.3-1 in a way to suggest that desert biomes are *less* valuable CO₂ sinks than “forests” or “grasslands”, whereas the Allen/McHughen study strongly militates in favor of the opposite conclusion.

In Chapter IV.28, “Literature Cited”, the only citation for Chapter IV.3, “meteorology and Climate Change”, is the 2010 Staff Report for the California Air Resources Board on “Initial Statement of Reasons for Proposed Regulation for a California Renewable Electricity Standard”, Appendix D. Table D1-3. Missing from this Appendix D is the Allen and McHughen study quoted from above, as well as any of the studies and papers relied on and cited by the Allen/McHughen study. Again, it does not appear that this resource relies on or even considers the information in the Allen/McHughen report tending to show that the disruption of desert soils necessitated by the construction of new generating and transmission facilities would add much more atmospheric CO₂ than considered by the DRECP.

Under Section 15151 of the CEQA Guidelines, the REAT agencies are required to prepare an EIR with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. *Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts.* The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure. Town of Atherton v. California High-Speed Rail Authority, supra, 228 Cal.App.4th 314 (2014). [emphasis added].

The Draft DRECP does not mention, and certainly does not summarize the conclusions of, the Allen/McHughen study, as it relates to the critical issue of carbon sequestration and the true net effect of the long term destruction of desert soils needed to build large-scale renewable energy facilities and associated transmission facilities.

12. The Draft DRECP/EIS/R Fails to Meet the Requirements of a Program EIR Because it Does a Less, Rather than More, Exhaustive Consideration of Effects and Alternatives, and it It Defers, Rather than Considers at an early Stage, Broad Policy Alternatives and Program Wide Mitigation Measures.

The draft DRECP and draft EIS/R purport to be a program EIR, which is “an EIR which may be prepared on a series of actions that can be characterized as one large project” and are related in specified ways. (Guidelines, § 15168, subd. (a).

It is vital that a Program EIR fully discharge its opportunity, and its responsibility, to do a more exhaustive consideration of effects and alternatives, and to consider broad policy alternatives at an early stage, precisely because agencies may limit future environmental review for later activities that are found to be ‘within the scope’ of the program EIR. (Latinos Unidos de Napa v. City of Napa (2013) 221 Cal.App.4th 192, 196).

Where an agency prepares a program EIR for a broad policy document such as a local general plan, Guidelines section 15168, subdivision (c)(2) allows agencies to limit future environmental review for later activities that are found to be "within the scope" of the program EIR. “In effect, after a sufficiently comprehensive and specific program EIR has been certified, CEQA allows much of the initial site-specific review to occur outside a formal CEQA process and beyond public view. CEQA does not require the Department to engage in a public process when it determines whether the impacts from a site-specific project were addressed and adequately mitigated in the program EIR. And if the Department finds the impacts were addressed, it need not prepare a new environmental document at all.” Center for Biological Diversity v. Dept. of Fish and Wildlife, 2015DJAR 1668, 1674 (Feb. 11, 2015).

Once a program EIR is approved, a court generally cannot compel an agency to perform further environmental review for any *known* or *knowable* information about the project’s impacts omitted from the EIR. (Citizens Against Airport Pollution v. City of San Jose, 227 Cal.App.4th at pp. 807-808; Citizens for Responsible Equitable Environmental Development v. City of San Diego (2011) 196 Cal.App.4th 515, 531-532; emphasis added.)

Using these principles as a point of departure, the DRECP clearly announces its intent that proposed projects within the Development Focus Areas in the DRECP are to receive streamlined treatment:

“The DRECP would streamline the permitting process in several ways, including: Greater certainty of permit requirements. Simplified mitigation requirements for projects sited within identified Development Focus Areas. A programmatic environmental analysis that may simplify project-specific environmental reviews. A quicker process for receiving

state and federal endangered species permits on private lands. A quicker process for receiving state endangered species permits on public lands. Priority processing and economic incentives for projects on BLM lands.” Draft DRECP, Executive Summary, §2.3

With these words the REAT agencies have made unequivocally clear that any deficiencies in the DRECP’s examination of effects, alternatives, or mitigation measures will be waived if they are not flushed out and dealt with now, at the program level.

Having taken this approach, the REAT agencies have a duty to do a thorough job of analyzing the impacts, alternatives and mitigation measures now, as to all subjects and criteria which are known or knowable. Unfortunately, however, the DRECP far too often falls back on the nostrum that it is just a planning tool, and that the real digging into effects and mitigation measures can happen at the project level. The excerpt quoted two paragraphs above makes it clear that in fact the REAT agencies intend – at least for any proposed utility scale renewable project in a DFA – to “streamline” the project right past any careful study of impacts and mitigation measures.

The DRECP’s approach to Impacts (the subject of Vol IV of the DRECP) is repeatedly to put off all but the broadest, most self-evident statement of impacts, and to defer specific review to the specific project level. For example, it states, in its study of socioeconomic impacts: “This analysis cannot evaluate site-specific impacts associated with future individual renewable energy projects, as the locations and scale of individual projects is unknown. Instead, the analysis is presented at a broader, programmatic level, regarding the proposed land use plans of the DRECP and its alternatives.” Vol IV, §23.1.1.2.

The Draft DRECP then goes on to make very broad, obvious and self-evident statements about the kinds of impacts that one may logically expect to see on socioeconomic and social justice values from constructing and de-commissioning, operations and maintenance, the Reserve Design, BLM land use plan decisions, Natural Community Conservation Plan and General Conservation Plan (generally, DRECP Vol IV, §23.2). Indeed, these statements are so broad and so elementary that they contribute virtually nothing to anyone’s understanding of the expected impacts. The “socioeconomics and economic justice” chapter then goes on to do the same kind of extremely general and anodyne “analysis” of the impacts of the Plan’s various Alternatives. The Chapter ends, and the average person has learned almost nothing that he or she did not already know about how the DRECP would impact socioeconomic and economic justice values in the DRECP area.

When one combines this abstention from analysis of the socioeconomic and economic justice impacts with the DRECP’s stated intent to “streamline the permitting process”, one sees

that the analysis of socioeconomic and economic justice impacts is very likely never going to get done.

For another example, one may examine Vol. IV of the Draft DRECP, which purports to evaluate the environmental impact of each of the Alternatives on various conservation resource values. Its study of the impact of the Preferred Alternative on Biological Resources appears in IV.7.3.2. It concludes, in section IV.7.4.3.2.6, at pages IV.7-464 through 469, that there would be significant impact on all of the identified categories of Biological Resources – including a number of endangered or other special-status species – from the construction of utility-scale renewable energy projects on 177,000 acres of California desert, but that all of these impacts would be brought below the significance threshold by means of generally-described mitigation measures. It reaches this conclusion despite the fact that the DFA’s under the Preferred Alternative overlap with critical habitat areas for a number of threatened or endangered species. It typically supports this conclusion with a sentence reading like this: “The adverse effects of the loss of [species or other biological resource named here] would be avoided and minimized through the implementation of avoidance and minimization CMAs and compensation CMAs established to offset the impacts of Covered Activities.” These CMAs, in turn, are described in only the most general and broad-brush manner. Missing is any discussion of how there could be any mitigation technique – even if one were very specifically delineated – to compensate for the loss of critical habitat for a species already found to be threatened or endangered. More importantly, the effect of this Section IV.7.4.3.2.6 is to justify the conclusion that for any specific project in a DFA, there need be no further examination of the actual effect of that project, even on threatened or endangered species, and even when the project would be sited in a critical habitat area. Even relatively small projects typically are found to have significant impacts (despite broad-brush conceptual mitigation ideas) when they are located in critical habitat areas for threatened or endangered species, but that level of evaluation threatens to go out the window under the DRECP’s “programmatic” approach. To permit this “programmatic” approach to impacts analysis to short-circuit the environmental review process on issues so environmentally sensitive and important reflects a misunderstanding of the programmatic EIR concept.

“The core of an EIR is the mitigation and alternatives sections.” Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1089.) Section 21002 requires agencies to adopt feasible mitigation measures to substantially lessen or avoid otherwise significant adverse environmental impacts. [¶] The CEQA guidelines state that to be legally adequate mitigation measures must be capable of: “(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

impacted environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.”

“For each significant effect, the EIR must identify specific mitigation measures; where several potential mitigation measures are available, each should be discussed separately, and the reasons for choosing one over the others should be stated. If the inclusion of a mitigation measure would itself create new significant effects, these too, must be discussed, though in less detail than required for those caused by the project itself.” (Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1027.)

“An EIR shall describe feasible measures which could minimize significant adverse impacts. (Guidelines, § 15126.4, subd. (a)(1)). An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project’s significant effects and may be accomplished in more than one specified way. (Id., subd. (a)(1)(B)).

“Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” (Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260, 280-281.)

Under other headnotes in this comment letter we home in on many other examples of this environmental prestidigitation, in which specific study of critical environmental issues is purportedly postponed to a later “tier”, while in fact the DRECP states upfront that the later “tier” will be so “streamlined” that the study will likely never take place. It is simply not possible to list more than a sampling of such sleights of hand, for they permeate the DRECP’s approach to impacts and mitigation. The point of this current headnote 12 is that the DRECP as a whole *never gets off the ground* as a program EIR, because it refrains from doing the careful and thorough job required of a program EIR as to matters known and knowable, nor does it “set[] standards” for mitigation measures at the project level.

As one very recent case points out, the law guards against the “kick the can down the road” approach to program EIR’s; there is one chance for the public to get a good, detailed, accurate look at the environmental consequences of a program, and that is right now, during the draft DRECP and DEIR/S process. (Cleveland National Forest Foundation v. San Diego Assn. of Governments, 231 Cal.App.4th 1056 (2014) (modified and rehearing denied, 2014 Cal.App. LEXIS 1150)

“Designating an EIR as a program EIR . . . does not by itself decrease the level of analysis otherwise required in the EIR. ‘All EIR’s must cover the same general content.

[Citations.] The level of specificity of an EIR is determined by the nature of the project and the “rule of reason” [citation], rather than any semantic label accorded to the EIR.” (Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency (2000) 82 Cal.App.4th 511, 533.) Consequently, in considering a challenge to a program EIR, ‘it is unconstructive to ask whether the EIR provided “project-level” as opposed to “program-level” detail and analysis. Instead, we focus on whether the EIR provided “decision makers with sufficient analysis to intelligently consider the environmental consequences of [the] project.”’” Citizens for a Sustainable Treasure Island v. City and County of San Francisco (2014) 227 Cal.App.4th 1036, 1052.

13. The Draft DRECP Provides Neither a Specific Cumulative Impacts Analysis, Nor a Way to Conduct a Supplemental Analysis Based Upon Later Actual Experience and Data.

The Draft EIR/EIS has a cumulative impact analysis. As may be expected for such a purely programmatic plan, the analysis is purely hypothetical at this point. However, once the DRECP is put into effect, and projects actually start to be built, real world statistics of impacts will start to appear. The DRECP provides no mechanism for, and no clear method of funding, the comparison of actual impacts with hypothesized impacts. This supplemental cumulative impact analysis is a necessary part of the DRECP document, for otherwise the actual real-world experience will never be evaluated or measured.

To be clear, the supplemental analysis for real world experience must be distinguished from the Monitoring and Adaptive Management principles currently in the Plan. These Monitoring and Adaptive Management concerns are tiered to be project-specific; whereas the supplemental studies discussed under this heading must be undertaken against the larger background of migration corridors, the reserve design envelope and other programmatic, landscape-level issues.

14. The Draft DRECP's Analysis of the Mechanism to fund Mitigation and Monitoring is Inadequate, Given the Size and Scope of the DRECP.

At several different points in this letter we address specific subject areas where the Draft DRECP omits to provide any meaningful examination of how mitigation and monitoring measures are to be paid for. However, this omission is so pervasive throughout all of the DRECP that it merits a separate heading here.

The DRECP offers no detailed study of the mechanism for funding mitigation, monitoring, or conservation actions. Missing is any description of a permanent, direct, fixed, earmarked, durable and reliable funding mechanism for any of the planned conservation actions. Repeatedly the DRECP relies on mitigation, management and monitoring measures as the justification for finding “less than significant” impacts, yet just as repeatedly the DRECP refrains from spelling out how this management, mitigation or monitoring will be paid for. Without any direct, fixed or reliable sources of funding, the question remains unanswered as to how the federal and state agencies will live up to their commitments in this plan.

On one of the informational webinars sponsored by the REAT agencies during the public comment process, Scott Flint identified grants, tax credits and other State funds for various aspects of “grant assemblage”, as a method of funding mitigation and monitoring. However, in the DRECP document these potential sources never get beyond the realm of the hypothetical.

What makes this void particularly critical is the fact that the DRECP leans very heavily on mitigation and monitoring as the key method of turning what it concedes to be very significant impacts into less than significant impacts. For example, its discussion of the impacts of the Preferred Alternative on biological resources of the Preferred Alternative, the DRECP concludes that every one of the listed categories of biological resources would be significantly impacted, but that every one of these significant impacts could be rendered less than significant through the application of mitigation techniques. Left unspecified is a clear and reliable method for mitigation of such impacts. This is discussed in greater detail herein under heading 15.

As another example, the DRECP does the same thing with its discussion of impacts of the Preferred Alternative on groundwater. That is, it states that impacts would be significant, but identifies a set of groundwater mitigation techniques supposedly rendering the impacts less than significant. These techniques include such things as monitoring water usage with automatic shutoffs when certain thresholds are hit, monitoring land subsidence, and so on. How are these monitoring and enforcement functions to be funded? The DRECP leaves this unclear. This is discussed in greater detail herein under headnote 10.

The extensive tables in the Draft EIS/EIR lack quantitative clarity of analysis in crucial areas when it comes to the practicalities of mitigation, management, monitoring and enforcement.

For example, Sections II.3.1.5 et seq. provide the beginnings of a structure of the Executive Policy Group and an Adaptive Management Team, but the discussion is very vague on

the all-important elements of funding. Advancing any new programs that lack clear and objectively verifiable funding requirements and funding resources raises both academic concerns and the likelihood of legal challenges.

Similarly, it is not enough to propose coordinating conservation efforts without also coordinating oversight of development, mitigation, monitoring and enforcement. The DRECP does the former but not so often does it do the latter with any real-world specificity. It lacks any detailed, clear and direct explanation of rank and tenure for the DRECP management structure. It offers no elaboration with respect to how to staff and pay for all positions, and it is missing a detailed Table of Organization (TOR) from each agency participating in the DRECP. Each office of the California Desert District BLM should be required to provide a “TOR”, that is disclosed and approved in advance by the public at large.

The DRECP does not seriously address the questions of whether and from what sources the BLM will have the financial resources or agency staffing for implementation of the BLM's key roles of monitoring and mitigation and enforcement for any projects approved per DRECP, the millions of acres of SRMAs, ERMAs, CMAs, CPAs and Reserve Design areas, or the staffing to deal with streamlining of project approvals and reviews. Currently, all southern California offices of the BLM do not have enough staff to keep up with their current workload. For instance, our best information is that the Barstow office at full staff has 12-16 rangers, but in fact currently has only seven. It is also our understanding that at present three of the BLM California Desert District offices do not have a biologist on staff.

The BLM plays one of the largest roles of any agency in this large-magnitude endeavor; how can it provide the enforcement required to preserve conservation values per the Plan, over millions of acres and thousands of miles, if it is already short-funded as it is?

Similarly, as to the thousand-plus miles of new transmission lines proposed in the Plan area per Appendix K, the DRECP lacks any discussion of any funding for any of the monitoring, mitigation or enforcement required for these projects.

The DRECP lacks quantitative economic analysis and focus on local and regional costs and benefits of Renewable Energy generation, or policy strategies to improve local economic benefits. Under the Preferred Alternative, areas such as Lucerne Valley, Apple Valley, Western Antelope Valley and the Imperial Valley face significant economic injustice issues, and the ability of the DRECP agencies to detect or prevent the utility-scale ghettoization of these areas questionable. Where is the funding going to come from to mitigate these negative impacts? Who will patrol the thousands of miles of new transmission lines? Who will make sure that dust is not traveling into residents' homes and schools? How will residents be compensated for severe

reductions in property values and increased health care costs due to the negative impacts of renewable energy generation in close proximity to their homes?

Further, the DRECP is obligated to identify and analyze how resources will be sufficient to effectively achieve the streamlined permitting in DFA areas while at the same time assuring that proper conservation and mitigation measures are employed. The DRECP has not done this.

Ron Rempel, former assistant director of the California Department of Fish and Wildlife, said the following at the October 21st DRECP Public Comment Meeting in San Diego [the quote is included in the excerpts from the public comment transcript of this meeting, Ex. J in Appendix hereto]:

“One of the clear pieces the NCCP Act requires is funding for the long term management and monitoring of species. The plan does not appear to include funding that will take those management and monitoring into the long term. I think the assumption is that someday some plants will be taken out and be restored. But that is, I think, really open for question over the long term.

But in addition the costs associated with management and monitoring appear to be off by a factor of 20 or more. In other words, there isn't near enough money being put into the program in order to do the management and monitoring. And I'm sure there some folks here in San Diego that would be more than willing to sit down with Staff and go over the real costs of management and monitoring for an NCCP and the types of species we are talking about since we do know those cost today, and it's far greater than anybody anticipated.

I think the piece, also, with the long-term funding for management and monitoring is—I see that really as a cost shift to future--- to future residents, to future developers out in the desert. Because this program really is going to underestimate the required mitigation to fully offset impacts. We know out at Coso Geothermal, the mitigation that was put in there did not work for Mojave Ground Squirrels. There was not demonstratable increase to take care of the losses that occurred there, and I think that's going to be a situation throughout the Conservation Plan area.”

Mr. Rempel in the above quote has put his finger on one of the biggest concerns raised by a programmatic EIR/EIS of this scale: that is, the uncertainty in knowing the true impact of the "program" on living things. The future needs to be protected against these uncertainties, and this takes money. For these reasons, the DRECP should call for a public committee of scientists who are field based and readily familiar with the above raised issues to scrutinize the long term Monitoring and Mitigation funding needs.

In the DRECP's treatment of "Cost and Funding" (found in Appendix I), the REAT agencies include a discussion of "Cost" but no real discussion of "Funding". Further, even the "Cost" discussion is abbreviated, and no effort is made to tie the estimated costs to the specific CMA's proposed by the DRECP to mitigate against serious environmental impacts.

As noted under heading 12 above, once a program EIR receives a ROD, there is very limited project-by-project analysis of actual effects. "New and substantial information" is one of the few things that can trigger a requirement to amend a programmatic EIR. But without a clear source of funding, aligned with a clear plan for subsequent re-evaluation of cumulative impacts, there would be no way to be aware of "new and substantial information". The DRECP has neither a clear source of funding nor a clear plan for subsequent re-evaluation of cumulative impacts. Thus the DRECP, as it currently reads, has built into it a method of maintaining ignorance, with the perverse effect of making the DRECP impervious to later re-evaluation. Essentially the draft DRECP has created its own de facto guarantee that no supplemental EIR will be required, because the actual impacts are never measured. This is directly contrary to the letter and spirit of CEQA and NEPA.

15. As to Biological Resources, the Draft DRECP Fails to Establish a Proper Baseline, Fails to Address Environmental Impacts, and Impermissibly Attempts to Defer the Fashioning of Viable CMA's.

The "Biological Resources" portion of the DRECP's "cumulative effects" discussion (IV.25.3.7, at p. IV.25-50) starts out with a strong statement about the need to comply with laws calling for preservation of the desert's biological heritage: "[u]nder all alternatives, activities proposed within the Plan Area would be required to conform to federal, state, and local laws and regulations to protect biological resources, such as, but not limited to: Endangered Species Act, Clean Water Act, Clean Air Act, Migratory Bird Treaty Act, Eagle Act, California Endangered Species Act, California Fish and Game Code (1600 – 1616), Porter-Cologne Water Quality Act, Native Plant Protection Act, and local authorities and administering agencies." Nevertheless, one of the main aims of the DRECP is to incentivize development in DFAs that would destroy thousands of acres of habitat for endangered and threatened plant and animal species, and mortality of listed and sensitive animals and plants.

The DRECP does not deny this; it concedes that "cumulative" renewable energy, transmission and other development listed in Tables IV.25-1 through IV.25.4, as well as the development projected in county General Plans (summarized in section IV.25.2), would cause a significant loss of listed and sensitive plants and wildlife, as well as of habitats for them, habitat

linkages and wildlife movement corridors (IV.25-50 and 51). Further, the development fostered by the DRECP in the DFAs would “result in the degradation of vegetation through the creation of dust, use of dust suppressants, exposure to fire, implementation of fire management techniques, and the introduction of invasive plants (IV.25-54)” and “adverse impacts to Covered and Non-Covered Species (direct and indirect impacts to individuals and habitat), as described in Chapter.IV.7 (IV.25-55).”

And, according to Section IV.25-51, those serious cumulative impacts would be unmitigable on a project-by-project basis -- “through piecemeal efforts” -- because: (1) “project-by-project mitigation would not likely achieve large blocks of contiguous habitat in a connected reserve system across the Plan Area and would lack the inter-agency, coordinated management and monitoring of habitat lands for these species;” (2) the lack of a “comprehensive and integrated reserve design and Plan-wide implementation and supplemental mitigation in the form of bird and bat conservation plans would lead to cumulative impacts to natural communities, wildlife and plant species, and sensitive biological resources;” and (3) there is “a lack of enough available private land with habitat.”

Having itself concluded that mitigation at the next, project-level tier is not feasible, the DRECP assumed the obligation to: (1) identify impacts with specificity (both in terms of specific regions and technologies) in conjunction with a thorough and comprehensive biological baseline study; and (2) develop a set of CMAs with very well-defined, program-level mitigation measures. But the DRECP does none of this; it fails to provide a baseline study and or a study assessing the true impacts of renewable energy development and transmission work on Covered and Non-Covered flora and fauna. And, in respect to the CMAs, it ventures a rather broad-brush outline of the aspirational goals it would like to see incorporated in future CMAs, an outline that is so vague that – as will be discussed below – mitigation would for all practical purposes continue to be formulated and monitored on a project-by-project basis.

In that regard, the DRECP proposes (IV.25-52) that mitigation of 20,000 MWs of new renewable energy projects be accomplished on a Plan-wide, programmatic basis “through implementation of avoidance and minimization CMAs and compensation CMAs established to offset the impacts of Covered Activities [i.e., the construction and operation of new energy projects and transmission lines].” According to the DRECP, these CMAs – this “overall DRECP conservation strategy” – would (IV.25-52) contribute “to the overall DRECP conservation strategy, conservation within Reserve Design Lands and a coordinated Monitoring and Adaptive Management Program (MAMP),” and reduce the adverse effects on biological resources “to a less than significant impact for the action alternatives.” The DRECP also states (IV.25 – 56) that the “CMAs would contribute to the overall DRECP conservation strategy, which includes

conservation within the Reserve Design Lands and a coordinated Monitoring and Adaptive Management Program.”¹¹

But, again, the DRECP is devoid of real guidance as to how mitigation would actually be conducted to reduce the impact of industrializing the desert to a “less than significant” level. The DRECP does not say exactly what a “Monitoring and Adaptive Management Program” would entail, who would be entrusted with creating the MAMPs and CMAs, when they would be prepared, what the approval process would be for them, how and whether they be funded or how many MAMPs and CMAs might be needed.

The DRECP does not, in the CMAs, in the MAMPs or in other referenced program documents, provide any practical guidance as to how exactly mitigation would be effected to reduce the impacts of 20,000 MWs of new development to a “less than significant” level. No plan is stated, no clear criteria are laid out and no standards are set, nor are any methods specified for measuring the effectiveness of any mitigation efforts. All the DRECP states in terms of the CMAs is that they would include (depending on the particular species) the siting of DFAs to “avoid the majority of habitat,” “avoidance and setbacks from riparian, wetland, and dune habitat,” “compensation to offset habitat loss,” “habitat assessments and/or pre-construction surveys,” “biological monitoring to ensure individuals are not directly affected by the operations,” the siting of projects to avoid habitat impacts “to the maximum extent possible,” a “bird and bat use and mortality monitoring program,” and development of a “Bird and Bat Operational Strategy” that would apply during operation of renewable energy projects.” [IV.25-55 and 56].

But this is nothing more than an anodyne statement of broad goals, ones so bland and common-sense in nature that anyone could make it, even someone totally unfamiliar with the desert and renewable energy issues. Who could argue with the irrefutable proposition that, in

¹¹ The DRECP acknowledges that CMAs were developed for BLM lands only, but it nevertheless presents an analysis that “assumes that all CMAs would be applied also to nonfederal lands [IV.6-32].” This appears to be wishful thinking, especially given that the DRECP does not require that such CMAs be prepared by any particular person or agency, nor does it specify the process for approving them or where the funds needed to pay for their preparation and monitoring would come from. In short, there is no assurance in the plan document that any CMAs will ever be created or that, if they are, they would properly address impacts on groundwater or their remediation; it should be expected that, if the task of preparing CMAs is to be left to developers, they would be quite resistant to preparing full-blown CMAs obligating them to undertaken costly mitigation measures.

constructing large energy plants, an effort should be made to avoid putting them in sensitive habitats, and that developers should refrain from destroying Covered Species and their habitats? In failing to say how any of this is to be accomplished, the CMAs provide no more guidance than would a cheerfully worded greeting card.

Other stated CMA goals, such as the above-quoted suggestion that compensation be provided “to offset habitat loss,” are totally impractical. The DRECP does not specify where the compensation acreage would come from (wouldn’t this in effect being “robbing Peter to pay Paul?”), what other species would be displaced in the process or who would pay for the compensation land.

Table IV.25-5 (IV.25-58 et seq.), which purports to address mitigation on a species-by-species basis, provides no hard-edged mitigation plan. The table offers only useless truisms – such as, that “Plan-wide and landscape-level avoidance and minimization CMAs would further avoid and minimize impacts” (How would a “minimization CMA” differ from an “avoidance and minimization” CMA? Are there other sorts of CMAs?), curious statements such as: “project-specific mitigation would be implemented if needed” (notwithstanding that the DRECP provides no guidelines at all in that regard and purports to rely on a programmatic approach to mitigation), further bland, common-sense proclamations (such as: “CMAs would require detection and curtailment practices to avoid injury and take of a condor),” statements of amorphous conservation goals that are swallowed by broadly stated exceptions (such as: “CMAs would require avoidance of TCAs [Tortoise Conservation Areas], except for impacts associated with transmission or disturbed portions of CMAs”), and reiterations of the broad CMA goals quoted above.¹²

In short, the DRECP has not begun to assess biological impacts on a cumulative, programmatic level, nor has it provided anything resembling a definitive plan for achieving Plan-wide mitigation. Hence, even though the DRECP bills itself as a program EIR, it has not fulfilled the purposes earmarked for such EIRs, which are as follows: “(1) Provide an occasion

¹² Table IV.25-5 suggests (given that the geographical boundaries of the CMAs are not specified) that, in regions where there are more than one Covered Species, there could be a bewildering tangle of overlapping CMAs. The table also tries to make the point that the DRECP generally sets aside more of a particular species’ habitat in its “reserve design” than it does for DFAs, but this ignores the fact that the Preferred Alternative would sacrifice to industrial-scale development thousands of acres of sensitive and irreplaceable habitat that is crucial to the survival of Covered Species protected by the above-referenced laws.

for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, [para.] (2) Ensure consideration of cumulative impacts that might be slighted on a case-by-case analysis, [para.] (3) Avoid duplicative reconsideration of basic policy considerations, [para.] (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, [and] [para.] (5) Allow reduction in paperwork.” Town of Atherton v. Cal. High-Speed Rail Authority, *supra*, 228 Cal.App.4th 314, 343 (2014).

The REAT agencies most certainly have available to them now the means, the data and the ability to adopt the programmatic approach laid out in Atherton. That they must do so now is underscored by the stated intent, in the DRECP, to greatly limit future environmental review for later, specific renewable energy projects in the DFAs, all of which are supposed to “tier” from the so-called programmatic environmental analysis in the DRECP. In that regard, the Executive Summary (para. 2.3) states that: “[t]he DRECP would streamline the permitting process in several ways, including: Greater certainty of permit requirements. Simplified mitigation requirements for projects sited within identified Development Focus Areas. A programmatic environmental analysis that may simplify project-specific environmental reviews. A quicker process for receiving state and federal endangered species permits on private lands. A quicker process for receiving state endangered species permits on public lands. Priority processing and economic incentives for projects on BLM lands.”¹³

¹³ The DRECP also states, in that same vein, that: (1) “[e]nvironmental review of individual future renewable energy and transmission projects in the Plan Area would tier from the DRECP PEIR/EIS, as appropriate,” which “would require inclusion and adoption of a mitigation monitoring program [“MMRPs”] to ensure that mitigation measures identified in the PEIR/EIS and any subsequent environmental documents are implemented [VI-1 of Vol. VI (“Mitigation Monitoring and Reporting Plan”)];” (2) under CEQA, as part of the approval of a Mitigated Negative Declaration, “the lead agency must adopt an MMCRP [a Mitigation Monitoring, Compliance, and Reporting Program], which is to be implemented during project execution . . . [m]itigation for adoption of the DRECP consist of imposing mitigation measures identified in the PEIR/EIS and any future mitigation measures on all projects implemented under the DRECP [VI-2];” and (3) MMCRPs are to include mitigation measures adopted by the lead agency (the identity of which would depend on the nature, size and location of a particular project), as well as measures proposed by the project proponent (VI-3).

There is an additional, very compelling reason that the DRECP must now bring into its analysis all available information relevant to impacts and mitigation. Once a program EIR is finally approved, a court generally cannot compel further environmental review for any known or knowable information about the project's impacts that have been omitted from the EIR. In other words, according to May v. City of Milipitas, 217 Cal.App.4th 1307, 1325-1326 (2013), agencies may limit future environmental review for later activities that are found to be within the scope of a program EIR, except to the extent that new information which was not known or could not have been known at the time of the program EIR was certified as complete becomes available.

The above-cited legal doctrines make it even more imperative that the REAT agencies now consider all “known or knowable” data, science, studies and other information bearing on the impacts that would arise from the development that the DRECP seeks to foster and bearing on the degree to which (and on the manner in which) those impacts can supposedly be mitigated to a “less than significant” level. There is undeniably an embarrassment of riches available to the REAT agencies when it comes to “known or knowable” data, information and off-the-shelf studies concerning the extent and characteristics of Covered Species (plant and animal), their habitats, wildlife corridors and movements, how various species are impacted by various types of development and the nature, and the extent and likely impacts of the renewable energy and transmission development that the DRECP seeks to incentivize in the DFAs.

The DRECP is legally prohibited from averting its eyes and pretending that – in assessing landscape-level impacts and mitigation – it is entitled to ignore this informational treasure trove and to claim nevertheless that it is a program EIR which curtails later, project-by-project environmental review. Were it otherwise, the desert's human and natural communities would be left facing the absolute worst of both worlds, where no real environmental analysis would be undertaken at any stage, either at landscape - or at project-level, with respect to the enormous impacts of the 20,000 MWs of new energy development (and transmission infrastructure construction) that the DRECP is seeking to usher into the DFAs.

While mitigation for particular projects is ostensibly placed under the supervision of a lead agency, or co-lead agencies, they have limited enforcement authority – “CEQA and NEPA do not provide Lead Agencies authority to take action, including ordering an immediate temporary suspension of activities, if the requirements of an MMRCP are not met” [VI-2]. Accordingly, lead agencies are accorded “considerable leeway in how they go about [monitoring compliance],” so much so that they can “rely on various levels of self-reporting and certification by the project proponent” [VI-2]. Given the lack of funding and staffing that would allow a lead agency to conduct meaningful overview, it can be assumed that self-reporting will be relied on primarily to monitor mitigation efforts.

Strikingly absent from the DRECP is any legal mechanism allowing REAT or other agencies to curtail, delay or modify renewable energy projects across the board in the DFAs, or even within a particular DFA, if the cumulative impacts of development cannot be mitigated below predetermined quantitative and/or qualitative -- “less than significant” – levels. Essentially, counties, cities and the BLM are left to rely on their authority to formulate and enforce conditions of project approvals insofar as they address mitigation on particular projects.

The DRECP appears to defer implementation of any real, boots-on-the ground mitigation measures and strategies to specific renewable energy projects, but such mitigation measures would not have any real teeth given the DRECP’s position that deferral of mitigation to a later project tier is not feasible and given that the program-level CMAs consist of only vague, aspirational goals, rather than a set of clear standards. In any event, this reliance on so-called project-level mitigation measures represents a major flaw in the DRECP which, as noted above, has conceded that, in light of the magnitude of the renewable energy projects and transmission lines slated for the DFAs, their impacts would be too severe to be reduced to a “less than significant” level on a project-by-project basis.

In summary, the DRECP has failed to define a set of Plan-wide mitigation measures capable of reducing cumulative impacts on biological resources to a “less than significant” level. The habitat assessments, pre-construction surveys and biological monitoring, among other things, that the DRECP leaves to an indeterminate future -- after adoption of a final DRECP -- must be undertaken now, before its adoption. Otherwise, the DRECP would serve only as a standing “green light” for a plethora of utility-scale projects and as a free pass exempting developers in DFAs from having to undergo full environmental reviews of their individual projects, i.e., they would claim that particular projects have already been blessed by a “programmatic” environmental assessment that incorporates pre-approved mitigation measures.

16. The Draft DRECP’s Baseline and Environmental Setting Discussion, as Well as its Conservation Actions Discussion, are Inadequate.

Guidelines section 15125, subdivision (a), provides: “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”

To fulfill its information disclosure function, “an EIR must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified.” (Smart Rail, *supra*, 57 Cal.4th at p. 447; see County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 953 [without an adequate baseline description, “analysis of impacts, mitigation measures and project alternatives becomes impossible”]; Guidelines, § 15125, subd. (a).) If the description of the environmental setting “is inaccurate, incomplete or misleading, the EIR does not comply with CEQA. [Citation.] Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the [EIR] adequately investigated and discussed the environmental impacts of the development project.” (Clover Valley Foundation v. City of Rocklin (2011) 197 Cal.App.4th 200, 219.)

The fact more precise information may be available during the next tier of environmental review does not excuse the DRECP agencies from providing what information they reasonably can now. (Guidelines, § 15144.) Moreover, if known impacts are not analyzed and addressed in a program EIR, they may potentially escape analysis in a later tier EIR. (§ 21166; Citizens Against Air Pollution v. City of San Jose, *supra*, 227 Cal.App.4th at pp. 807-808; Concerned Dublin Citizens v. City of Dublin, *supra*, 214 Cal.App.4th at p. 1320; Citizens for Responsible Equitable Environmental Development v. City of San Diego, *supra*, 196 Cal.App.4th at pp. 531-532; Fort Mojave Indian Tribe v. Department of Health Services, *supra*, 38 Cal.App.4th at p. 1605.)

Without a clear understanding of the current status of resources at issue in the DRECP on both private and public lands, the agencies cannot make rational decisions and thus cannot comply with their obligation under the NCCP/HCP laws.

The DEIS/R does not provide adequate baseline information and description of the environmental setting in many areas, including the desert tortoise, golden eagles, rare plants, riparian resources, and sand transport corridors. Without the necessary baseline data, the public cannot make an informed decision.

In the study commissioned by the Alliance for Desert Preservation from its consultant Kristeen Penrod, Conservation Director SCWildlands (said study is Exhibit K hereto, included in the Appendix to this letter), Ms. Penrod identifies a number of shortcomings in the DRECP’s baseline analysis as it relates to Covered Species and wildlife corridors, particularly in the Pinto-Lucerne and Eastern Slopes subarea. All of these comments of Ms. Penrod are incorporated herein by reference, as though set forth in full herein.

These defects in baseline analysis are compounded by the DRECP’s short shrift approach to conservation actions, mitigation and monitoring. The DRECP does not answer these basic

questions: how is the baseline going to be established so that one may verify whether or not change occurs? What change has to occur in order for the CDFW to take the step of revoking the permits or removing species from the Covered Species List? How is monitoring to be managed and funded? The DRECP assumes that a way will be found to answer these questions, but it does not identify what that way is, or analyze whether it will really work.

Another defect in the DRECP's baseline analysis is that it does not clearly identify existing public and private conservation needs. In fact it appears to propose – without acknowledging that it is doing so -- that, as to some species, existing conservation needs will be sacrificed in order to expedite construction of renewable energy facilities. This would constitute a substantial erosion of the baseline as to that species. Since it is not acknowledged, the DRECP has no way to analyze the additional conservation actions needed to deal with the impairment of the species.

For example, in all of the DRECP's Alternatives, the Desert Tortoise Research Natural Area, a long-term conservation reserve assembled through successful public and private cooperation, is partially proposed for development. This proposal directly conflicts with recognized scholarship on the desert tortoise, which shows that desert tortoise populations continue to decline throughout the DRECP area. The reservation of 2 million acres for new development clearly would have a negative impact on the tortoise. The DRECP does not address this, because it does not acknowledge its proposal to sacrifice existing tortoise conservation area to begin with.

The DRECP proceeds from the basic assumption that DFA lands are already poor in conservation features, and thus easily sacrificed without further jeopardizing conservation values. However, this assumption remains unexamined, and frequently it appears to be incorrect. For example, the DRECP proposes DFA's in the West Mojave, while it identifies as Conservation Planning Areas (CPAs) certain areas east of California City, south of Edwards Air Force Base, and south of Palmdale. Again using the tortoise as an example, there is no analysis showing that desert tortoises are more likely to be found in the proposed CPAs than in the DFA's. Thus the purchase of the identified lands for treatment as CPAs may do nothing to help the tortoise, which meanwhile will have last valuable habitat in the DFA's.

Another example is the DRECP's approach toward DWMA's and critical habitat. Each of the DRECP's proposed alternative would allow solar facilities to be developed in DWMA's and critical habitat. However, the DRECP offers no data and no analysis to show that various special status species can survive the taking away of critical habitat.

Similar defects pop up in the context of what consists of reasonable “takes” of various species. How many reasonable “takes” are permitted, if one does not know the baseline for these species? In other words, where are the existing populations of these species now, and what amount of “takes” is too many? Where are they located? There will need to be one or more biological opinions for the DRECP before it is implemented, in which USFWS will need to determine take limits for threatened and endangered species, including desert tortoise. What are the baseline data that will allow USFWS to identify an actual take limit associated with the DRECP? For example, how many tortoises occur in the DFAs proposed under Alternative 1 versus the Preferred Alternative?

Another example of short-changed baseline work relates to the Migratory Bird Treaty Act (MBTA). The DRECP mentions the MBTA only in the narrowest of terms. In choosing to consider only on its “Covered Species”, the DRECP has disregards the many species covered under the MBTA. There is a MOU between the USFWS and the BLM regarding the MBTA; what are the ramifications of this MOU for the DRECP baseline? The DRECP does not say.

Yet another shortcoming in the DRECP’s approach to baseline and conservation action analysis is its reducing these subjects to gross acreage figures, without a more specific analysis. The DRECP presents DFAs, Conservation Planning Areas, Study Area Lands, and so on in terms of acreage; missing is any discussion of habitat quality or any indication that the covered species are even present.

Acreage is not a good measure of habitat quality; some habitats have relatively dense populations of a special status species, while in others there are none. Yet this planning exercise treats each acre as if it was equal to every other acre. Having made each acre equal to every other acre, the DRECP has taken away the ability of the CDFW to keep track of what actions on which acreage will contribute to conservation, as opposed to additional population loss. For example, a study might identify the number of tortoises displaced by a project, but no baseline exists to quantify the number of tortoises conserved as a result of that project.

17. The DRECP’s Treatment of What it Calls “Undesignated Lands” Creates, But Does not Answer, Large Questions About the Deleterious Effect on the Environment of Such a Designation.

The authors of this letter respectfully incorporate herein, and refer the REAT agencies to, the comments from Kristeen Penrod, Conservation Director, SC Wildlands, relating to the potentially significantly destructive results of the DRECP’s treatment of “Undesignated Lands”. Ms. Penrod’s report is Exhibit K, in the Appendix hereto. By way of very abbreviated summary,

and not by way of substitution for the reading of Ms. Penrod's report, the following points may be made:

In the Preferred Alternative there are 1,323,000 acres of Undesignated lands (appearing to mean BLM Unallocated Land), 709,000 acres of which are within BLM LUPA (Table II.3-42). These Undesignated lands overlap several areas of high conservation value, including but not limited to habitat for Covered Species, "Reserve Drivers" (e.g., bighorn sheep mountain habitat, bighorn sheep intermountain habitat, desert tortoise intact habitat and fragmented habitat in the Desert Tortoise TCA Habitat Linkages), and numerous areas of the Desert Linkage Network. Further, while much of the Mojave River itself is designated as Conservation Planning Areas in the Preferred Alternative, Undesignated lands or DFAs are located in the uplands along most of the Mojave River.

What is the significance of these "Undesignated Lands"? One of the bullets under II.3.2.3.4.2 "Conservation and Management Actions", reads: "In non-designated lands (i.e. lands not covered by the specific CMAs below), make lands available for disposal through exchange or land sale".

It appears that Undesignated lands are synonymous with BLM Unallocated and "non-designated lands". This would mean that over 1.3 million acres of existing public land administered by the BLM will be available for "disposal". However, there is no mention of Undesignated, BLM Unallocated, or Non-designated lands in Vol. III.13 "BLM Lands and Realty - Land Use Authorizations and Land Tenure" or Vol. III.7 "Biological Resources". A map that clearly depicts ALL Undesignated lands and how they overlap with FAAs, SAAs, and DRECP Variance Lands should be included.

Vol IV.7-281 mentions Undesignated Areas as follows: "Approximately 471,000 acres were not designated as Reserve Design Lands under the Preferred Alternative that were identified in the conceptual reserve envelope, which is primarily comprised of BLM-administered lands in the Plan Area without BLM LUPA conservation designations over them." But what about the other 852,000 acres of Undesignated lands mentioned in Table II.3-1? Where is the impact analysis regarding these lands?

This concept of Undesignated Lands appears to overlap with, and may be synonymous with the concept of public lands proposed for withdrawal. In Vol II.3.2.1.1, II.345, the DRECP states: "Public lands in DFAs would be proposed for withdrawal, in accordance with regulation, subject to valid existing rights, from settlement, location, or entry under the general land laws".

Does this mean that implementation of the DRECP Preferred Alternative would immediately result in the available transfer of all public lands within the 2,000,000 acres within

the DFAs into private land ownership, available for development of renewable energy facilities and other uses? If these public lands are going to be collectively withdrawn and made available to the private sector, how is the DRECP going to ensure they are not developed for purposes other than renewable energy development?¹⁴

Further, there is no analysis in the Draft DRECP regarding whether transfer of these public lands into private hands is the “best use of public lands.” At first blush, the concept of withdrawal to private hands is antithetical to the best use of public lands, because many hundreds of thousands of acres of public lands would suddenly be removed from federal management action jurisdiction, to the detriment of the species to be protected.

18. The Draft DRECP fails to address the effect of SRMAs and ERMAs on biological resources.

The DRECP proposes to designate millions of acres as Special Recreation Management Areas and Extensive Recreation Management Areas. This raises the fairly obvious conclusion that there would be a significant increase in recreational use in these SRMAs and ERMAs. Yet the DRECP does nothing to address how to pay for an increase in law enforcement to govern the resulting increased vehicle use, nor does it address the effect on biological resources if, for lack of funding, there is no increase in enforcement.

Thus the DRECP wholly fails to study the environmental impacts of these new SRMAs and ERMAs, which apparently would include certain areas now treated as protected habitats. How will Covered Species be affected by increased recreational use in dedicated conservation areas? The DRECP fails to assess how designating something as an “Extensive” recreation area

¹⁴ The DRECP’s approach to environmental impacts on biological resources refrains from any attempt to quantify, even by number of acres, and certainly not by species or populations of species, or covered species, the losses due to development on public lands within DFAs and non-designated areas that would be disposed of under the DRECP. See, for example, Vol IV.7232, IV.7.3.2.1.1, Impact BR4. What makes this particularly inadequate as an environmental document is that the DRECP clearly states that the Preferred Alternative will have significant negative impacts on all biological resource categories. Vexingly, the document then, as to each category of biological resource, concludes that mitigation measures will render insignificant each of the negative impacts, yet these mitigation measures are equally vague and non-quantified.

is likely to change how the public perceives the area and how recreational uses, including destructive uses, may increase.

Also missing is any sense of the magnitude of change to recreational uses (and concomitant effects on conservation values) from the new proposed SRMAs and ERMAAs. The discussion of the Preferred Alternative in Volume II devotes 42 pages describing National Conservation Lands (pages II.3319 through 361), and only one page describing SRMAs and ERMAAs. Do increased ERMAAs mean more designated open areas? Will there be more vehicle travel, even if it is required to be on existing roads, in species conservation areas in SRMAs? As is, we cannot answer any of these questions with the information provided in the Draft EIR/EIS' Preferred Alternative.

Furthermore, the DRECP does not seem to provide any current baseline for OHV impacts in areas proposed as SRMAs and ERMAAs. Thus, the DRECP does not enable one to determine if there would be an increase in these impacts in response to these new designations, or the magnitude of this increase. Certainly there cannot be, and there is not, any analysis of the threshold at which these impacts are considered unacceptable and require remediation.

19. The DRECP Does not do a Proper Consideration of the Environmental Impacts of the Transmission Element.

A. The Draft DRECP Fails to Analyze the Impacts of Constructing Transmission Facilities.

The transmission needed to connect 20,000 MW of new utility-size renewable energy projects will include over 1,000 miles of transmission lines, hundreds of miles of collecting lines, delivery lines, 19 sub stations and super collector sub stations. See Flynn Resources report, attached hereto as Ex. L in the Appendix hereto.

In DRECP Appendix "L", table 4-2, the document lists Acreage of Impacts per Ecoregion for Each Alternative, reflecting a range of 29,944 acres to 35,574 acres of impacts. However, the document stops there. No impacts are analyzed. Nowhere else in the document is the Impacts on the Environment or Baseline information provided regarding Transmission or Appendix K.

The DRECP is required to disclose and analyze the impacts on the environment of the needed transmission facilities, given the fact that at least 30,000 acres will be impacted, as set forth in the Appendix K.

Pursuant to the CDCA Plan 5-6, “Management Principals”, resolution of conflicts in the California Desert Plan area require innovative management approaches. There cannot be any such innovative management approaches without first conducting a detailed analysis of impacts of the transmission facilities to Covered Species, Air Quality and the overall ecological systems and linkages in the desert.

The fact that the DRECP has not attempted exact specification of location of transmission lines does not excuse its failure to examine the impacts of over 1,000 miles of disturbance of soils on any of the Covered Species. The approximate corridors are known, within a couple of miles.

That this is so is borne out by the fact that the RETI design has changed only slightly in 7 years. The DRECP states in Appendix K, Table 4-2 (page 28) that “the TTG did not conduct a comprehensive siting evaluation, so the transmission lines shown on Figures 1 through 7 should be considered as conceptual only and these figures only show new lines. While the acreage was adjusted in response to the revised Alternatives, the lines would follow the same general corridors as identified in the December 2012 report”. However, the first version of this TTG Transmission report was originally introduced as part of RETI in 2008. In the last 7 years only minor modifications and adjustments have been incorporated. During the same period of time the same TTG individuals(or their companies) who are acknowledged on iii of this Appendix “K” have entitled, processed, designed, estimated and constructed at least four other extensive transmission projects. These include Sunrise Power link, Tehachapi Renewable Transmission Project, Devers-Colorado River Project and Barren Ridge Renewable Transmission project. Most of these are partially or completely within the DRECP plan area.

Looking at the CDCA requirements in the context of CEQA and NEPA review, it is clear that the EIR/S will need to analyze how the proposed locations and amendments would avoid or lessen those transmission impacts. Even in 1980 the Congress was concerned about the impacts of Transmission on the environment. The CDCA Plan (CDCA93) includes an Energy Production and Utility Corridors Element which focuses on utility corridors primarily. Even in 1980 the CDCA plan contemplated that the expansion of the CDCA Corridors (CDCA 94) may be brought forward into the Plan after successfully completing the Plan Amendment process. A contingent corridor, however, will not become a planning corridor unless the identified project has been successfully proposed through the complete State and Federal Regulatory and environmental review process.

The principals expressed in the Decision Criteria are also applicable to the DRECP, including minimizing the number of separate rights of way, providing alternatives for

consideration in the EIS/R, and avoiding sensitive resources where possible (CDCA93). The Landscape Levels have not been considered in Appendix K.

B. The DRECP Fails to Consider the Economic Impacts of the Transmission Facilities needed to bring DFA-Located Renewable Energy to the Grid.

The DRECP chooses to plan for 20,000 MW of utility-scale RE projects in the California desert; it chooses not to consider any alternative method of generating, transmitting, delivering, conserving and consuming renewable energy. One of the many pernicious results of this failure of analysis is the fact that the DRECP takes as a given the need for the construction of hundreds of miles of new transmission facilities needed to get utility-size projects' output to the grid, with little consideration of the economic impacts of having to construct these new transmission facilities.

20,000 MW in the any of the DRECP's alternative DFAs would require more than 1,000 miles of new, expensive transmission lines and substations, both inside and outside of the DRECP plan area. The initial capital cost of the proposed 500 kv lines alone, as shown on Appendix K (alternative 1) of the DRECP, would amount to ten to twenty-two billion dollars, according to an analysis undertaken for the Alliance for Desert Preservation by Flynn Resource Consultants, Inc. (Ex. L hereto). Even this estimate is too low, because it does not include the cost of the new 220, 230, 34.5 and 66 kv lines shown in Appendix K, nor does it include the cost of constructing the proposed 19 new electrical substations or of obtaining any required rights of way. Factoring in a rate of return, once the ten to twenty-two billion dollars in capital costs is passed on to the ratepayers, it will balloon to between thirty to sixty-six billion dollars.

The Flynn estimate, while partial, does make it clear that concentrating the development of 20,000 megawatts of new renewable energy projects here in the desert would be incredibly expensive, just from the standpoint of the cost of the requisite new transmission facilities.

Stringent CAISO "deliverability" requirements have driven billions of dollars of transmission infrastructure expenditure (Since 2007 an estimated \$8 billion in large-scale deliverability-driven transmission projects have been approved, permitted and/or are under construction). This infrastructure investment has been devoted primarily to accessing the full capacity of renewable generation. This has happened without an assessment of the economic or environmental costs.

The DRECP would accelerate by a factor many times over this build out of transmission infrastructure.

Reliable data is available. As noted above, the TTG Transmission Report referenced in Appendix K has been in place since 2008, with minor modifications and adjustments along the way. During this time the same four IOU's, representatives from the CEC, CAISO, and the CPUC and two consulting companies who are acknowledged on iii of Appendix "K", or their representatives, have entitled, processed, designed, estimated and constructed at least four other extensive transmission projects. Most of these are partially or completely within the DRECP plan area. The cost experience of these four projects provides an important touchstone for estimating the costs of transmission necessitated by each of the Alternatives in the DRECP. Indeed, Flynn and Associates provided The Alliance for Desert Preservation with a budget estimate for the 500kv portion of the needed transmission within a few weeks of engagement.

The DRECP must include at least two other overarching analyses in the economic analysis. The first is to study the line losses affecting long-distance transmission. By some estimates, the line loss could be between 16-20%. The second is to analyze the costs to protect the vulnerability of the grid system to terrorism and acts of God.

To perform its proper function as a programmatic EIR/S, the DRECP must analyze build out details, relying on past budgets and pro forma estimated costs.

An omission of this magnitude renders the DRECP unhelpful at best, and quite possibly seriously misleading. Consider this analogy: If the Navy drew up a master plan to build a new fleet of carriers, and chose to place the ship-building facilities in Nebraska, one would naturally expect an intelligent discussion of why a facility so far inland was preferable to one at a deep water ocean port; this discussion would include, among other things, a study of the added cost of delivering the finished ships to their distant destination. If the plan lacked any such analysis, it would be dismissed out of hand. Yet this is what the DRECP has done. This is a flaw which must be remedied.

C. The DRECP Fails as a Programmatic EIR, and in its Study of Cumulative Impacts, as to Transmission.

The DRECP as a Programmatic EIS/R has potential advantages, one of which is to undertake a more exhaustive consideration of effects and alternatives than would be practical in an individual action. However, these advantages are not taken advantage of, with transmission being a prime example. Instead, a genuine analysis of cumulative impacts is dispensed with, and papered over with the "programmatic" label.

“Programmatic” is not an excuse to neglect the thorough study of relevant, available data pertaining to important environmental impacts.

Part of the cumulative impacts analysis for transmission is compelled by CDCA Decision Criteria (CDCA 93), which requires minimizing the number of separate rights of way, providing alternatives for consideration in the EIS/R, and avoiding sensitive resources where possible. This kind of study isn’t even feasible at the subsequent tier level; but it is custom-made for a programmatic analysis.

The data are there; the DRECP simply elected for some reason not to get into it. In places, the DRECP does do detailed estimates of impacts, analyzed by Ecoregion, down to tens of acres of generators in a few Ecoregions. These are very site specific and the locational variances cannot significantly change. Further, the Development Focus areas have for the most part been vetted out and reasonable certainty is very clearly developed in Tables 3-1 through 3-6.

Moreover, in Appendix K, section 3.2 on page 15, “Standardized Grid Components and expected Acreage Impacts”, there is a reasonable certainty regarding how wide the corresponding corridors need to be to the various Ecoregions, with estimates corresponding voltages. Since the DRECP has fairly specifically estimated the locations, and the anticipated or estimated energy generated, and the approximate voltages desired, the DRECP is required to analyze this data in a study of cumulative transmission impacts.

Chapter 8 of the *2014 IEPR Update* was dedicated to “Integrating Environmental Information in Renewable Energy planning Processes.” The CEC staff has worked with the CPUC to develop an environmental scoring metric that was used in the 2013 LTPP proceeding. Further, the CEC has played a key role in providing environmental scoring input into the CPUC’s RPS Calculator. For example, The CPUC RPS Calculator included a methodology that was used to generate an environmentally-preferred RPS portfolio (with 100% weight on environmental scoring). Further, we understand that the CPUC Energy Division staff plans on updating the environmental scoring methodology in a separate Ruling in the near future. However, this environmental scoring is essentially ignored by the DRECP in its treatment of transmission impacts. If the Draft DRECP in its current form were to achieve an ROD, then all of the data and expertise from the CPUC and CEC relating to the environmental effects of new transmission projects will be lost.

In appendix K, Page IV, Note to Readers, the DRECP acknowledges that the report is based upon professional judgment of experienced transmission planners representing major utilities across the state, as well as the TTG and the three most important State agencies. i.e. the California Energy Commission, California Independent System Operator, and the California Public Utilities Commission, and two large environmental consulting companies. The failure of

the DRECP to take advantage of this consortium of expertise, after spending in excess of \$30 million dollars on consultants, and the decision not to analyze the Cumulative Impacts, leaves a void in this DEIS/R.

D. The Assumptions underlying the Transmission Element are Outmoded, Leaving the Analysis – to the Extent there is any Analysis of Impacts – Fatally Flawed.

All of the DRECP assumptions contemplate a centralized grid. This model is becoming increasingly anachronistic. Third generations of building materials are coming to market now which in the next few years that will render the even the most current PV solar roof panels obsolete. These materials provide greater efficiency, while furthering the trend towards utilizing the energy where it is generated.

The market is rapidly moving to localized or DG because it is more efficient, easier, cleaner and cheaper.

Even the investor-owned utilities are pursuing new, much more localized technologies, because the economic advantages are so evident. However, the IOU's are still very much tied to the old, grid-dependent model, which offers something close to a guaranteed return, at an extremely advantageous rate, for every dollar invested in still more new transmission facilities. Thus, in Appendix K, Page 3, "Assumptions", the first paragraph explains how the TTG report assumes that the build out indicated in the 2020 California Transmission Planning Group (CTPG) case would be a reasonable proxy for the availability of existing transmission capacity in 2040. In other words, the DRECP regards the TTG Transmission Plan to be so front-loaded that the build-out by 2020 will be more than enough to handle all additional load for the twenty following years. This goes against all of the planning principals embodied in the CPUC. What if the technology changes and DG and rooftop solar render the transmission grid a minor role in the energy nexus? We have already paid for and guaranteed the IOU's their return for at least 30 years. All this, on the backs of the California ratepayers when they chose newer more efficient technology. Please remember two things: (1) this is a very large amount of money -- in the tens of billions of dollars over the next 25 years, and (2) energy demand is flat in California over the last 40 years. All this being said, we would like to have the TTG report and transmission analyzed by a third party independent from the Utility companies and the CAISO.

E. The Draft DRECP is Planning for, and thereby Enabling, an Over-Supply of Transmission Capacity:

The DRECP is supposed to be a planning document. However, with respect to transmission the DRECP can easily become a policy document, when it comes to making decisions about construction of new transmission facilities. If the DRECP studies for an aggressively high amount of utility scale renewable energy in the California desert – which it does – then it acts as a virtual mandate for the construction of all of the transmission needed to get the energy to the grid.

The following is an excerpt from Bay Area Municipal Transmission Group (BAMx) written comment by Dr. Pushkar Wagle of Flynn Resources, Inc., filed in CEC, Docket number 15-IEPR-01: “While the recent and projected unprecedented increase in transmission costs is only one of many issues driving up electric rates in California, it is seemingly growing at a rate faster than any other sector. We need to accomplish the State’s renewable goals while minimizing the adverse impact on the natural environment and at minimum cost to customers. For example, billions of dollars of customer money has been spent, and are planned to be spent, in building transmission infrastructure to access not the energy, but the full capacity of renewable generation, while the state is long in this system capacity. In other words, billions of dollars are being spent to deliver a product that is already over supplied. We hope this subject will get significant attention in the *2015 IEPR*. We believe the CEC and the California Public Utility Commission (CPUC) should be responsible in determining this aspect of how to get our future capacity needs in the State. In the recent past, the Participating Transmission Owners (PTO), renewable developers, and the CAISO have, in essence decided to build transmission to obtain system capacity from renewables. This is now occurring as the CAISO declares that transmission is needed as “Policy- Driven” projects under their FERC approved Tariff.”

These critical comments (included in Exhibit M in the Appendix hereto) are entirely correct. They apply directly to the DRECP, which can easily become the most powerful policy-driver of all for the construction of new transmission facilities. This cannot take place without the DRECP first conducting an analysis of the impacts of all of this new transmission on the environment, and doing a comparison with Alternatives which create much less demand for large, expensive, and ecology-damaging transmission systems.

F. The DRECP Must Include an Analysis of Visual Impacts of the TTG report transmission design.

The proposed TTG findings included in Appendix K are for the most part a fixed design, with the exact locations varying a mile or two. These paths in some areas are not in keeping with the Visual Impact mandates of the CDCA (CDCA 94), the BLM's VRM Guidance, CEC regulations, or the County of San Bernardino General Plan¹⁵. Those areas include the Northern Slope of the San Bernardino Mountains, Cady Mountains, Rodman Mountains, and the Fry Mountains. All of these are directly adjacent to or within the Feinstein National Monument, or Sand to Snow, Bill.

The DRECP's Visual Impact Analysis for these areas does not adequately take into account the mandates and guidelines cited herein in the immediately preceding paragraph. See Volume III.20.2 "Visual Resources", for the Pinto Lucerne and Eastern Slopes Ecoregion.

The DRECP must conduct an analysis of the Scenic Quality, Visual Sensitivity Levels and the Visual Distance Zones, in the context of creating a transmission corridor in these areas. The local community and the County need to be consulted on this analysis.

G. Energy Efficiency and Transmission Supply and Demand

The transmission assumptions in the DRECP are based upon a model that is already outdated and will become increasingly outmoded in the future. Per capita and overall demand is flat for energy in California over the past four decades. These facts reflect patterns of efficiency and conservation (as well as increased reliance on DG) which the DRECP's assumptions simply refuse to acknowledge.

In the Executive Summary and Appendix F, the DRECP postulates what the goals or target should be if the 2012 CEC demand forecast were used, but the DRECP also states that the REAT agencies chose to be conservative and add 20% in assumed increased demand, for good measure. This 20% is significant when it comes to transmission. As noted above, the TTG report

¹⁵ The County of San Bernardino has specific regulations (1) protecting scenic vistas by minimizing invasive ridgeline development (2) requiring that future land development practices be compatible with existing topography and scenic vistas (3) protecting natural vegetation ; (4) protecting the scenic and open space qualities of cinder cones and lava flows; (5) maintaining and enhancing the visual character of scenic routes in the County; and (6) requiring along the development along scenic corridors demonstrate, through visual analysis, that proposed improvements are compatible with present scenic qualities.

is already heavily front loaded, creating a large discrepancy between what is reasonably needed and what is called out in the TTG report. The assumed 20% “cushion” further widens the discrepancy.

The DRECP identifies as a prime “purpose and need” the 33% renewable energy goal of AB 32 and Executive Order S-14-08. However, there are other policies, equally as important as (and consistent with) AB32, including, by way of example, the CPUC proceeding creating the CEESP (see discussion under heading 8 of this letter). The Transmission element of the DRECP totally ignores these policies and goals, resulting in assumptions for a transmission buildout which is out of step with the state’s policies.

H. Garamendi Principles and the TTG report

Where transmission is determined to be necessary, the DRECP must follow the "Garamendi Principles". The Garamendi Principles are findings to Senate Bill (SB) 2431 (Stats. 1988, ch. 1457), legislation regarding the role of transmission in California's future development. In main part, the Garamendi Principles read:

“(b) The Legislature further finds and declares that the construction of new high-voltage transmission lines within new rights-of-way may impose financial hardships and adverse environmental impacts on the state and its residents, so that it is in the interests of the state, through existing licensing processes, to accomplish all of the following:

- “A. Encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable.
- “B. When construction of new transmission lines is required, encourage expansion of existing rights-of-way, when technically and economically feasible.
- “C. Provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons, as determined by the appropriate licensing agency.
- “D. Where there is a need to construct additional transmission, seek agreement among all interested utilities on the efficient use of that capacity.”

The DRECP has not adhered to the Garamendi Principles in the San Bernardino County area from Coolwater Substation south (and east) to a new super collector substation and then on to Lugo Substation. There are other paths or routes that could follow existing CDCA and Federal Transmission Corridors. These are along to Hwy 40, Hwy 15 Corridor, Hwy 58 corridor and

Hwy 395 corridor. All of these are already established energy transmission corridors. The only reason to locate the transmission in the proposed approximate route is to collect and deliver transmission to the Desert View Substation (or a similar super collector substation) and then on to Lugo Substation. The other existing routes mentioned above do this in a more environmentally sensitive manner and significantly less objectionable manner.

Unfortunately, the DRECP does not do a real analysis of its assumed and proposed sitings of new transmission facilities, and none of its discussion is seen through the lens of the Garamendi Principles. This failure even to consider a critical California policy, embodied in a statute, leaves a void in the transmission element of the DRECP

I. The County of San Bernardino and Transmission in the DRECP

In its proposed Position Paper, the County of San Bernardino states that Development Focus areas need to be removed from the communities of Newberry Springs, Stoddard Valley, Johnson Valley, Lucerne Valley and Apple Valley. We assume that the final comments to the DRECP from the County will reiterate this position. Since these proposed DFA's under the Preferred Alternative are primarily on private land, the County's position is critical. In view of the County's position, it makes no sense to plan for well over 100 miles of 500kv and 100 miles of 230kv transmission lines south of Coolwater Substation. The DRECP must be modified to reflect this reality. There are alternative routes less objectionable, more logical and significantly less impactful on the environment.

20. The Draft DRECP's Treatment of Soils is Deficient Because it Fails to Employ the Best Data, Including Data From the Natural Resources Conservation Service, and it Does Inadequate Analysis of the Data.

The Draft DRECP's treatment of soils at both the baseline and impacts level is deficient. It appears that a good deal of data compiled by the Natural Resources Conservation Service was not used. It further appears that much of the data was not determined from "boots on the ground" surveys, but rather from extrapolations and guesswork.

In Figure R1.4-1, Figure R1.4-10, Figure R1.4-7, "Soil Textures within Ecoregion Subarea", the reader is led to assume that this data represents actual soil textures in the various Ecoregion Subareas. In addition, the location of the soil texture is not specified. Is this the surface soil texture, the dominant soil texture in a certain depth, or something different? If it were representing surface texture then what will the data be used for? Surface textures usually

are often only 1 to 3 inches thick before changing to some other texture. Typically at least three inches of soil will be removed during any grading process, rendering the information practically useless for predicting erosion, or PM10/dust/health issues.

The acres of soils with “moderate to high potential” for wind or water erosion is listed in Table IV.4-3. The source of the data is not indicated, leaving the reader in the dark as to whether the data is realistic.

Table R2.2-2, showing “Potential Acres of Dust Emission Sources by Technology”, leaves open the basic question of what is being considered as the definition of “dust”. The PM-10 or PM-2.5 dust fractions both have different implications on human health. Also, there is “dust” that falls outside of these size fractions which may be generated by wind of sufficient velocity and duration which may be a visibility hazard but may only occur infrequently. There is no quantification of what is meant by “dust” or whether this nuisance/hazard will only occur during construction or will be a result of the construction activities and become a permanent issue. Will this dust be generated all at once or is the estimate for an unspecified period of time? How is this estimate derived? Soils data are needed to generate these numbers, and it must be made clear as to whether the soil data used refers to the surface layer or the subsurface layer apply.

Table R2.4-2, purports to show “Acreage of Erosive Soils”. The source of the data used to generate this table is unclear. It would require significant effort to attempt to create a map based on erosivity for such a large scale.

The DRECP does essentially no study on the effects of dust on Valley Fever; no such discussion occurs under the soils rubric, nor does it appear under air quality, public health, socioeconomics or environmental justice. The DRECP’s focus on PM10 and PM2.5 dust concentrates almost entirely on vehicle emissions, at the expense of any consideration of the effect on these particulates from grading for utility-scale energy projects.

21. The DFA’s in the Preferred Alternative for Apple Valley, Lucerne Valley and Johnson Valley Directly Conflict With Conservation Values for Covered Species’ and other Sensitive Species’ Migration Corridors and Critical Habitats.

The proposed DFA’s in the Preferred Alternative for the Pinto Lucerne Valley and Eastern Slopes subarea show a serious disregard for well-established data and studies relating to the preferred and critical habitats and connectivity corridors for the 37 Covered Species, as well

as other focal species. This data and these studies are referenced, and in fact embodied in, the report prepared by Kristeen Penrod for ADP, a copy of which is Ex. K in the Appendix to this Letter. Said report performs an in-depth and detailed examination of the draft DRECP's approach to DFA's and the reserve design envelope, particularly as they relate to the Preferred Alternative for Pinto Lucerne Valley and the Eastern Slopes subarea.

We will not further lengthen this letter by reiterating the data, inferences and conclusions drawn by Ms. Penrod in her report. Rather, we respectfully incorporate herein by reference her report in its entirety, and we draw particular attention to her conclusions, which compel, *based on biological habitat and connectivity issues alone*, that the Apple Valley, Lucerne Valley and Johnson Valley DFA's in the Preferred Alternative radically threaten the health and survival of many special status species.

Ms. Penrod's conclusions are a result strictly of her study of wildlife connectivity corridors and preferred and critical habitats. Nothing stated in or implied from this letter should be deemed to stand for the proposition that the proposed DFA's for Pinto Lucerne and the Eastern Slopes under the Preferred Alternative are acceptable after they are "whittled down". As a threshold matter, it is bad science and bad planning to streamline utility-scale renewable energy projects close to critical wildlife corridors and habitats. Moreover, the proposed DFA's for these areas are infected by numerous failures of analysis, many of which have been described in considerable specificity in the instant letter. By way of example only, the DRECP's approach to both the impacts and the mitigation measures as to groundwater, health concerns, socioeconomic factors, and fugitive dust is extremely deficient, as it relates to these proposed DFA's. For these and numerous other reasons, the proposed DFA's for Pinto Lucerne and the Eastern Slopes under the Preferred Alternative are not suitable for utility-scale development, even after they would be diminished to reflect the findings in Ms. Penrod's report.¹⁶

22. The Draft DRECP Should Call for Making the Entire Juniper Flats Recreation Area National Conservation Lands.

At headnote 4 of this letter, we point out some of the deficiencies in the DRECP's proposed approach to conservation measures on BLM land, which depend heavily on

¹⁶ Nor do we imply that the proposed DFA's for other subareas of the DRECP area do not create equivalent issues with respect to habitat and connectivity; the authors of this letter simply did not have the time or resources to commission a study from Ms. Penrod totally covering the entire DRECP area.

conservation designations (primarily NLCS or ACEC) which the draft DRECP proposes to make conceptually loose, in a way contrary to the BLM's mandate. In short, if an area of BLM land possesses important conservation values, then these values are immutable, and do not somehow come into our out of existence according to the other uses to which the land might be put.

The authors of this letter respectfully submit that one particular piece of BLM land, consisting of about 100,000 acres, and commonly called Juniper Flats Recreation Area, should be accorded Conservation Land Status, regardless of the Alternative considered.

The discussion in the Penrod report as to the Pinto Lucerne Valley and Eastern Slopes subarea gives an immediate picture of why Conservation Land status for this area is important. In short, Juniper Flats runs east-west across the migration corridors of a number of threatened and endangered species. A glance at map 5(b) in the Penrod report shows this, and it further shows that Juniper Flats sits as a small protuberance on the northern boundary of the much larger San Bernardino National Forest. As numerous special status species make their way between the desert floor and the National Forest and back again, they pass through this narrow BLM zone, located in a vital transitional biome between the ridgeline and the desert.

At least twenty-three community groups and environmental organizations have signed off on a letter to Jim Kenna, BLM Director for the State of California, requesting Conservation Land status for Juniper Flats. See Exhibit N in the Appendix to this letter; we incorporate by reference the entirety of said letter.¹⁷ For further information and background, please see the related photographs comprising Exhibit O in the Appendix.

23. The DRECP should Include a Phasing Feature.

The DRECP's failure to consider any aspect of phasing stems from an assumption at the core of the DRECP, which is that the "consequences of underestimating the need for renewable energy in the Plan Area may be greater than the consequences of overestimating the need." (ES, p.16)

The reverse is in fact true: it is relatively easy to revise the estimate upward, but it is virtually impossible to revise it downward to recover precious natural areas intact that have already been destroyed by development.

¹⁷ Wildlands Conservancy and California Native Plant Society signed off on the letter after its transmittal.

Similarly, the DRECP says:

“If energy and economic variables, governmental requirements, and other factors translate into a need for more or less development, the DRECP will still achieve its intended purposes of reducing project impacts and conserving sensitive species and habitats.” (ES, p.16)

The DRECP proffers no analysis or factual basis for this assertion, nor does it, as it must, compare this alternative with one that features a phased approach.

It appears to be a basic breach of elementary planning principles for the DRECP to have adopted, at its core, a single, fixed energy-horizon "20,000 MW in the DRECP area" without considering the flexibility that can be achieved by working with sub-horizons in a phased fashion.

The DRECP advocates immediate establishment of 2 million acres of DFA's, even as it acknowledges that it may be planning for more utility scale renewable energy than will ever be needed. The DRECP has overlooked phasing in the DFA's over time. This will minimize negative consequences from the immediate adoption of 2 million acres in DFA's, while continuing properly to address the DRECP's "purpose and need."

The DRECP leaves to the CMAs the entire task of providing minimization and mitigation for the projects that are actually developed.

As part of this phasing element, the DRECP can and should provide for release of lands designated as DFAs once statewide energy goals are met (that is, keyed to the state's actual experience in the coming years, not the Plan's targets, which are likely to be shown to be increasingly incorrect, leaving two million acres with the DFA designation despite the fact that there is not demand for more utility-scale renewable energy projects).

Phasing will slow down development, providing direct short term minimization. The long term minimization will come from time itself. Phasing is not at odds with the stated purpose and need of the plan, because phasing still allows for the full designation of DFAs over the life of the plan.

Thus, by way of example, an initial phase to handle 5,000 megawatts of utility-scale energy development could be used. The DFA's for this 5 thousand MWs would be brownfields and, if necessary, other areas highly disturbed, remote from populations, and adjacent to existing transmission lines.

Then if it turns out that more market-driven utility-scale energy development is needed

based on market conditions, the DFAs can then be enlarged based on the new (market-driven) estimates of needed energy development; that is, the new estimate should be based on the actual, then-current market for utility-scale energy development.

In this phased fashion, only the least sensitive areas of the desert need to be sacrificed, and the DFAs are not made unnecessarily large so as to cause unnecessary sacrifice to the more precious areas of the desert. So both objectives are satisfied: the plan will allow for as much market-driven energy development as needed, and yet will also preserve the more precious areas from unnecessary impacts. This can be done much more effectively through phasing than through the current Plan's single, fixed energy-horizon.

24. Conclusion.

We appreciate the REAT agencies' serious consideration of the points raised in this letter, as well as the points made by other concerned citizens during the public comment process. We remain dedicated to a collaborative and constructive approach to energy planning which gives full regard to the importance of conserving our precious and irreplaceable desert environment.

Very Truly Yours,

ALLIANCE FOR DESERT
PRESERVATION

Richard Ravana, President

MOJAVE COMMUNITIES CONSERVATION
COLLABORATIVE

Lorrie L. Steely, Founder

MORONGO BASIN CONSERVATION
ASSOCIATION

Sarah Kennington

DESERT PROTECTIVE COUNCIL

Terry Weiner

BASIN AND RANGE WATCH

Kevin Emmerich

Appendix Included with Emailed and Mailed Versions of this Letter

cc:

Sally Jewell
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

James G. Kenna
State Director, Bureau of Land Management
Email: jkenna@blm.gov

Chris Beale,
DRECP Acting Executive Director
Email: cbeale@resourceslawgroup.com

Scott Flint, DRECP Program Manager
California Energy Commission
Email: scott.flint@energy.ca.gov

Armand Gonzales, Special Advisor
California Department of Fish and Wildlife
Email: armand.gonzales@wildlife.ca.gov

Ken Corey, Assistant Field Supervisor
U.S. Fish and Wildlife Service
Palm Springs Fish and Wildlife Office
Email: Ken_Corey@fws.gov

Vicki Campbell, DRECP Program Manager
Bureau of Land Management
Email: vlcampbell@blm.gov

Robert Lovingood
First District Supervisor/Apple Valley
Email: SupervisorLovingood@sbcounty.gov

Janice Rutherford
Second District Supervisor
Email: SupervisorRutherford@sbcounty.gov

James Ramos

Third District Supervisor/Lucerne Valley

Email: SupervisorRamos@sbcounty.gov

Curt Hagman

Fourth District Supervisor

Email: SupervisorHagman@sbcounty.gov

Josie Gonzales

Fifth District Supervisor

Email: SupervisorGonzales@sbcounty.gov

Tom Hudson

SPARC Program Director

Email: Tom.Hudson@lus.sbcounty.gov

Matt Knox

District Director

Email: matt.knox@mail.house.gov