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working through science, law and creative media to secure a future for all species, great or small, hovering on the brink of extinction.

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California Energy Commission
Dockets Office, MS - 4
Docket No. 09 - RENEW EO - 01
1516 Ninth Street
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Re: **Comments on the Draft Desert Renewable Energy Conservation Plan (DRECP), Proposed Plan Amendments, and Environmental Impact Statement and Environmental Impact Report (EIS/R)**

To whom it concerns:

On behalf of the Center for Biological Diversity (Center) and our over 825,000 members and on-line activists, we are writing to provide comments on the state and federal agencies draft proposed Desert Renewable Energy Conservation Plan (DRECP) and the Environmental Impact Statement and Environmental Impact Report (EIS/R). The proposed project covers over 22.5 million of acres of public and private lands in Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, and San Diego Counties, in California. The current proposal includes: a Bureau of Land Management ("BLM") proposal to amendment to the California Desert Conservation Area Plan (CDCA Plan) as well as a draft Natural Communities Conservation Plan (NCCP) proposed to be issued by the California Department of Fish & Wildlife ("CDFW") to the California Energy Commission (CEC), State Lands Commission (SLC) and the California Public Utilities Commission (CPUC); and a draft General Conservation Plan (GCP) (in lieu of a Habitat Conservation Plan (HCP)) proposed to be issued by the U.S. Fish and Wildlife Service to those same state agencies.

Many of the Center's members and on-line activists reside in and recreate in southern California, including in the counties that will be affected by the proposed DRECP. The Center's members and staff regularly visit the desert lands in California for purposes of research, photography, hiking, enjoyment of desert areas and other recreational, scientific, and educational activities.

The development of renewable energy is a critical component of efforts to reduce greenhouse gas emissions, avoid the worst consequences of global warming, and to assist California in meeting emission reductions goals. The Center strongly supports the development of renewable energy production. However, like any project, proposed solar, wind and geothermal power projects should be thoughtfully planned to minimize impacts to the environment. In particular, renewable energy projects should avoid impacts to sensitive species

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and habitats, and should be sited in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors and the efficiency loss associated with extended energy transmission. Only by maintaining the highest environmental standards with regard to local impacts, and effects on species and habitat, can renewable energy production be truly sustainable.

In that context, a sound and effective DRECP has the opportunity to secure robust conservation through landscape level planning for renewable energy in the California deserts that avoids sensitive habitats. While some amount of utility-scale renewable energy projects can be accommodated on both private and public lands in the planning area, the development focus areas ("DFAs") must be clearly defined and carefully designed in areas that avoid degrading and destroying what remains of our relatively intact desert landscape and its associated biodiversity, scarce water resources, and other rural values.

Unfortunately, the draft plan does not meet the stated goals. Instead, the draft plan provides confusing and inaccurate information about the proposal and the likely impacts, fails to improve siting and permitting for renewable energy projects, fails to acknowledge the potential for distributed renewable energy to contribute to plan goals on private lands, rooftops, and parking lots in the planning area, and provides little more than empty promises of future conservation improvements on public lands that are unfunded and unlikely to occur. Moreover, the Center is shocked that BLM is inappropriately attempting to use this renewable energy planning process to completely restructure the CDCA Plan and lock-in recreation designations on over 3 million acres of public lands without any analysis of the impacts motorized recreation has on covered species and without any attempt to minimize those impacts – this proposal is far outside the scope and stated goals and objectives the plan amendment process.

The draft proposed plan elements and the alternatives are not adequately identified or explained in the documents, no clear baseline is provided, and proposed conservation rollbacks are not clearly disclosed. Accordingly, the NEPA and CEQA analyses of these proposals are flawed from the outset. The draft DRECP also fails to appropriately identify all of the conservation needs for listed species taking into account species recovery and thus fails the most basic requirements under the NCCP or ESA standards for NCCPs and HCPs/GCP. The draft DRECP also fails to adequately analyze the likely impacts from renewable energy development and other threats to species (including off-road vehicle use within the plan area). As a result, the proposed DRECP cannot go forward without major revisions and additional analysis.

Given the significant shortcomings of the environmental review for the draft plan amendments, GCP/HCP and NCCP, and the inclusion of sweeping changes to the CDCA plan and motorized recreation designations far outside the scope of the proposed DRECP plan amendment, the draft DRECP cannot be adopted as proposed. The Center urges the agencies to reconsider the scope of the proposal and provides some suggestions for moving forward with this important planning process in a revised proposal. Because many of the inadequacies in the draft DRECP affect compliance with multiple legal standards, the issues cut across the draft DRECP and our comments highlight only some of the insufficiencies related to each legal standard. These and other issues are discussed below in detail.

Comments Submitted By the Center Before the Draft DRECP Was Issued: As a stakeholder in the initial process to develop the DRECP, the Center provided input at meetings and workshops as well as in written comments. Over the past six years the Center has spent innumerable hours of staff time reviewing documents, meeting with key stakeholders and agency staff, participating in workshops, and drafting numerous joint and separate comments on this process including comments directed to the DRECP as well as to BLM, FWS, and state agencies including, but not limited to:

- Participated in numerous stakeholder and workgroup meetings from 2010 to the present;
- Presented at Independent Science Advisors meeting on April 22, 2010 and participated in ISA workshop in June, 2012;
- Participated in CEC workshop on durability;
- Submitted Scoping comments dated 9-12-2011;
- Submitted comments on the Draft Biological Goals and Objectives dated March 21, 2012
- Submitted comments on the 2012 DRECP Development Scenarios and the Methodology Memorandum on 5-22-12;
- Submitted comments on initial alternatives briefing materials 8-8-2012 (jointly with The Wildlands Conservancy);
- Submitted comments on "December draft maps";
- Submitted a joint letter on wind issues (http://www.drecp.org/documents/docs/comments-general/2012-08-24_Environmental_NGO_Wind_Energy_Recommendations.pdf) ;
- Submitted NLCS letter regarding current status of NLCS lands within the CDCA and baseline issues (http://www.drecp.org/documents/docs/comments-general/2014-04-08_Center_for_Biological_Diversity_ltr_on_NLCS.pdf) ;
- Submitted joint comments with other conservation organizations on draft Biological Goals and Objectives (BGOs) representing the first subset of "driver species" in mid-May 2013
- Submitted joint comments with other conservation organizations on draft Biological Goals and Objectives (BGOs) representing the second subset of "driver species" on July 2, 2013

In reviewing the draft DRECP, it is notable that many of our earlier comments appear to have been completely ignored by the agencies. As just one example, in response to the so-called "December draft maps" the Center pointed out conflicts between areas proposed for development and the Desert Tortoise Research Natural Areas—rather than address that issue and revise the proposal, the draft DRECP continues to proposed designations that conflict with conservation of this critical area. Similarly, in those same comments, the Center raised issues with the proposal to utilize "recreation area" designations to limit renewable energy development and ostensibly to provide conservation—as we noted then, and stress again in these comments below, in many cases recreation, particularly motorized recreation, is directly at odds with conservation. Nonetheless, the draft DRECP contains sweeping new recreation area designations on over 3 million acres of public land without any analysis of the impact this

proposal would have on species conservation or other desert resources. And another example, the Center provided a detailed letter regarding the legal issues related to the National Landscape Conservation ("NLCS") lands within the CDCA and how these were identified in the baseline for analysis—those comments also appear to have been completely ignored. We hope and expect that in reviewing and responding to comments on the draft DRECP the agencies take more time to fully consider comments from the Center and other members of the public, address our comments and make changes in the proposal.

Comments Already Submitted By the Center On the Draft DRECP EIR/EIS: The Center has also already provided comments specific to the Draft DRECP EIR/EIS including:

- Joint comments regarding the need for analysis of an alternative that includes DG (http://www.drecp.org/draftdrecp/comments/LCunningham_KEmmerich_BPowers_SBowers_comments_2015-01-30.pdf)

- joint comments with members of the California Desert Renewable Energy Working Group regarding the process and obvious deficiencies in the draft DRECP (http://www.drecp.org/draftdrecp/comments/CDREWG_to_CEC_BLM_DFW_FWS_2015-01-22.pdf; http://www.drecp.org/draftdrecp/comments/CDREWG_to_DOI_CA_Gov_2015-01-22.pdf)
- joint comments regarding the Durability MOU (http://www.drecp.org/draftdrecp/comments/Audubon_CA_et_al_comments_on_Draft_Durability_Agreement_2015-02-12.pdf), and
- separate comments on February 12, 2015 again raising the legal issues related to the Congressional designation of NLCS lands within the CDCA which cannot be overturned by BLM or the Secretary (the NLCS issues were presented to the agencies in 2-014, but like so many other comments appear to have been ignored leading to a proposal to "newly" designate NCL lands that do not comply with the statutory directive). In sum, BLM quite simply does not have the authority to add or remove areas from the NLC System. While the Center supports providing additional protections in key areas in the California deserts, this is not a lawful mechanism for accomplishing those goals. (http://www.drecp.org/draftdrecp/comments/Center_for_Biological_Diversity_comments_on_National_Conservation_Landscape_System_lands.pdf).

The Center also refers the agencies to the detailed information regarding inadequacies of the draft DRECP contained in comments submitted to the agency by other members of the public and key stakeholders including Desert Tortoise Preserve Committee, Desert Tortoise Council, Alliance for Desert Protection et al. (including SCWildlands Analysis) Defenders of Wildlife, National Parks and Conservation Association, Dr. Barry Sinervo, Sierra Club, and the California Native Plant Society).[1]

[1] While the Center's comments do not address cultural resources or NHPA requirements the Center notes that the draft DRECP fails to adequately address those critical issues as well. The

In addition, the draft must be reassessed in light of recent changes in the legal status of two of the covered species – tricolored blackbirds are now listed under CESA on an emergency basis and flat-tailed horned lizards are now a candidate for listing under CESA. Our review of the draft DRECP shows that the proposed conservation for both of these species is woefully inadequate to ensure survival and recovery of the populations within the DRECP plan area (see below).

I. Legal Background Summary: Some Key Legal Issues

A. NEPA and CEQA Basics:

NEPA is the "basic charter for protection of the environment." 40 C.F.R. § 1500.1(a). In NEPA, Congress declared a national policy of "creat[ing] and maintain[ing] conditions under which man and nature can exist in productive harmony." *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1120 (9th Cir. 2008) (quoting 42 U.S.C. § 4331(a)). NEPA is intended to "ensure that [federal agencies] … will have detailed information concerning significant environmental impacts" and "guarantee[] that the relevant information will be made available to the larger [public] audience." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

Under NEPA, before a federal agency takes a "'major [f]ederal action[] significantly affecting the quality' of the environment," the agency must prepare an environmental impact statement (EIS). *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1067 (9th Cir. 2002) (quoting 43 U.S.C. § 4332(2)(C)). "An EIS is a thorough analysis of the potential environmental impact that 'provide[s] full and fair discussion of significant environmental impacts and … inform[s] decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.'" *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993 (9th Cir. 2004) (citing 40 C.F.R. § 1502.1). An EIS is NEPA's "chief tool" and is "designed as an 'action-forcing device to [e]nsure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.'" *Or. Natural Desert Ass'n*, 531 F.3d at 1121 (quoting 40 C.F.R. § 1502.1).

An EIS must identify and analyze the direct, indirect, and cumulative effects of the proposed action. This requires more than "general statements about possible effects and some risk" or simply conclusory statements regarding the impacts of a project. *Klamath Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 995 (9th Cir. 2004) (citation omitted); *Oregon Natural Resources Council v. BLM*, 470 F.3d 818, 822-23 (9th Cir. 2006). Conclusory statements alone "do not equip a decisionmaker to make an informed decision about alternative courses of action or a court to review the Secretary's reasoning." *NRDC v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988).

Center is also concerned that affected tribes have not be properly consulted on the impacts of the plan, and when consulted at all the agencies have not properly listened to or addressed the tribes' concerns.

NEPA also requires the action agency (here both FWS and BLM) to ensure the scientific integrity and accuracy of the information used in its decision-making. 40 CFR § 1502.24. The regulations specify that the agency "must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential." 40 C.F.R. § 1500.1(b). Where there is incomplete information that is relevant to the reasonably foreseeable impacts of a project and essential for a reasoned choice among alternatives, the FWS and BLM must obtain that information unless the costs of doing so would be exorbitant or the means of obtaining the information are unknown. 40 C.F.R. § 1502.22. In the context of the draft DRECP, some necessary additional information has already been identified and the agencies do appear to have attempted to compile an adequate set of data as a basis for the planning and the EIS and has made much of that information available to the public. However, the draft DRECP does not clearly or adequately *utilize and evaluate* all available information including for example providing mapping that is inaccurate and conclusions regarding conservation that are completely unexplained and unsupported. The draft DRECP also relies heavily on modeling without clearly explaining the assumptions used in the modeling and without clearly disclosing or explaining the point at which such assumptions become too tenuous to support meaningful conclusions. NEPA requires that in those instances where complete data is unavailable, the EIS also must contain an analysis of the worst-case scenario resulting from the proposed project; the draft DRECP fails to do so. *Friends of Endangered Species v. Jantzen*, 760 F.3d 976, 988 (9th Cir. 1985) (NEPA requires a worst case analysis when information relevant to impacts is essential and not known and the costs of obtaining the information are exorbitant or the means of obtaining it are not known) *citing Save our Ecosystems v. Clark*, 747 F.2d 1240, 1243 (9th Cir. 1984); 40 C.F.R. § 1502.22.

B. ESA Requirements for HCPs (or GCP) (§10) and for Other Actions (§7)

Congress passed the Endangered Species Act, 16 U.S.C. §§ 1531-44, in response to growing concern over the extinction of fish, wildlife, and plants. 16 U.S.C. § 1531(a)(1). The purpose of the ESA is to conserve the ecosystems on which endangered and threatened species depend and to conserve and recover those species so that they no longer require the protections of the Act. 16 U.S.C. § 1531(b); 16 U.S.C. § 1532(3) (defining "conservation" as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary"). The Supreme Court has held that the ESA reflects "an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species." *T.V.A. v. Hill*, 437 U.S. 153, 185 (1978). As the Ninth Circuit emphasized, "the ESA was enacted not merely to forestall the extinction of species (i.e., promote species survival), but to allow a species to recover to the point where it may be delisted." *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service* ("*GP Task Force*"), 378 F.3d 1059, 1070 (9th Cir. 2004).

ESA protections only apply to formally "listed" species. 16 U.S.C. § 1533. Concurrently with listing, the Secretary must also designate the species' "critical habitat." 16 U.S.C. § 1533(b)(2). "[T]he purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary for the species' survival but also essential for the species' recovery." *GP Task Force*, 378 F.3d at 1070. The Secretary must also develop and implement

recovery plans. 16 U.S.C. § 1533(f)(1); *see Sw. Ctr. for Biological Diversity v. Bartel*, 470 F. Supp. 2d 1118, 1136-37 & n.16 (S.D. Cal. 2006).

Section 9 of the ESA and its implementing regulations prohibit any person from "taking" a threatened or endangered species. 16 U.S.C. § 1538(a)(1); 50 C.F.R. § 17.31. A "person" includes private parties as well as local, state, and federal agencies. 16 U.S.C. § 1532(13). "Take" is defined broadly under the ESA to include harming, harassing, trapping, capturing, wounding, or killing a protected species either directly or by degrading its habitat sufficiently to impair essential behavior patterns. 16 U.S.C. § 1532(19); 50 CFR § 17.3. The ESA not only bans the acts of parties directly causing a take, but also bans the acts of third parties whose acts bring about the taking.

Congress created two "incidental take" exceptions to section 9's take prohibition. Exceptions to Section 9's take prohibitions are provided for actions by non-federal actors under Section 10 and for federal agency actions under Section 7. Section 10(a)(1)(B) authorizes the FWS to issue private parties and state and local governmental entities incidental take permits for "any taking otherwise prohibited by section 1538(a)(1)(B) [section 9] of this title if such taking is incidental to and not the purpose of the carrying out of any otherwise lawful activity." 16 U.S.C. § 1539(a)(1)(B).

Section 10: In order to obtain an Incidental Take Permit under the ESA Section 10 for incidental harm to listed species, habitat conservation plans ("HCP") are designed to offset any harmful effects the proposed activity might have on the species in accordance with § 10 of the ESA. 16 U.S.C. § 1539. For a habitat conservation plan, the plan, implementing agreement, and of Incidental Take Permits ("ITP") are analyzed and approved as a complete package. In order to issue a Section 10 ITP, FWS must also comply with Section 7 consultation requirements discussed in detail below—so-called self-consultation.

A permit applicant must prepare and submit to FWS a proposed HCP. 16 U.S.C. § 1539(a)(1)(B). An HCP must contain specific measures to "conserve," or provide for the recovery of, the species. At a minimum, the ESA and implementing regulations require all HCPs to include the following: (1) a complete description of the activity sought to be authorized; (2) names of the species sought to be covered by the permit, including the number, age and sex of the species, if known; (3) the impact which will likely result from such taking; (4) what steps the applicant will take to monitor, minimize, and mitigate those impacts; (5) the funding that will be available to implement such monitoring, minimization, and mitigation activities; (6) the procedures to be used to deal with unforeseen circumstances; and (7) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized. 16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. §§ 17.22, 17.32. FWS cannot issue an incidental take permit if the HCP does not contain this information. 16 U.S.C. § 1539(a)(2)(A).

The ESA does not specifically authorize a so-called General Conservation Plan ("GCP") as proposed in the draft DRECP; this structure was developed by FWS as a policy in 2007. The policy itself states it is to be used for a "local area" and the Center does not believe that this large-scale plan covering diverse ecosystems, without clearly defined sub–areas, is an appropriate situation in which to utilize a GCP. Indeed, the policy Q&A also indicates that it

does not makes sense to use a GCP for such a large area and projects with as diverse scope and impacts as are included in the draft DRECP (wind, solar in differing technologies with very different impacts to species, geothermal, etc.):

> GCP is not a substitute for a County- or State-wide regional HCP which would cover many activities differing in scope and type of impact. The Service does not have the personnel or expertise to adequately analyze all activities that would be addressed in planning efforts of this scale.

2007 FWS GCP Policy at 5-6. Furthermore, it is important to note that, ***no ITP is issued with a GCP***—this is a critical point that has been obscured by the draft DRECP failure to clearly address this component of the proposed plan. The Center is concerned that FWS itself has been unclear about this key point; in conversations with FWS staff regarding the draft DRECP and on workshop Webex calls FWS staff has indicated that the all of the "take" would already be permitted—this is not true. *Only if* one or more HCPs are issued to one of the state agencies or commissions that are participating in the planning would *any* ITP be issued by FWS along with the approval of the DRECP and the "take" included under any such HCP would be limited to specific approvals and actions by those agencies or commissions.

In sum, while it is possibly that the GCP policy could be used to meet the statutory requirements and as a kind of "umbrella" for issuing future HCPs, that is ***only*** possible where the information and analysis meets ***all*** of the standards of an HCP. Even if a GCP could be adequately developed for the entire DRECP planning area (which the Center does not believe is likely to be possible), the draft DRECP clearly has not provided sufficient information or assurances to meet the standards required under the ESA §10 for an application or for FWS to make the required findings. Similarly, the information in the draft DRECP is insufficient for FWS to issue any HCP to any of the state agencies or commissions that are participating in the planning.

The proposed DRECP HCP/GCP does not meet the most basic initial requirements for including critical information. As one example, the draft DRECP does not adequately analyze and disclose the impact that is likely to result from the taking of covered species, primarily because the HCP/GCP contains inadequate and incomplete baseline, survey, and reserve data. Quantified take estimates are largely absent, relying on qualitative rather than quantitative values and losses to species are likely underestimated because the HCP/GCP did not utilize sufficient survey data prior in designing the reserve and relied heavily on modeling and general vegetation mapping. Among other problems these models are based on incomplete survey information that leaves out entire areas of private lands that have never been surveyed. As another example, the draft DRECP does not show that funding will be available to implement needed monitoring, minimization and mitigation activities. The Draft DRECP also fails to explain how alternative actions (including limiting the use of some renewable energy technologies in key areas) could avoid take of listed species including, for example, listed avian species like the Southwestern willow flycatcher and Yuma clapper rail.

Upon reviewing an HCP and before permit issuance, the FWS must make specific findings. FWS must find that (i) the taking will be incidental; (ii) the applicant will, to the

maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any other measures FWS requires will be met. 16 U.S.C. § 1539(a)(2)(B); 50 C.F.R. §§ 17.22, 17.32. Only if the FWS makes positive findings under section 10, FWS will issue the applicant an incidental take permit. 16 U.S.C. § 1539(a)(2)(B). It would be impossible for FWS to make the required findings based on the draft DRECP as the document provides no meaningful analysis of survival and recovery of the listed species, and no measures to minimize or mitigate the impacts to many of the listed species in the plan area—most glaringly contains no measures to reduce impacts to Yuma clapper rail which have already been "taken" by solar projects in the region.

The ESA also has strict requirements for ongoing monitoring of implementation of ITPs issued under section 10 that cannot be violated. If any conservation and management measures fall short, then the conclusions in the Biological Opinion are rendered invalid, consultation must be reinitiated and the ITP should be suspended or revoked. *See* 50 C.F.R. § §13.27 ("may be suspended at any time if the permittee is not in compliance with the conditions of the permit"), § 13.28 (permit revocation). Failure to comply with the mandatory terms and conditions of an incidental take permit constitutes a violation of the section 9 "take" prohibition. 16 U.S.C. § 1539(a)(2)(C).

Section 7: a federal agency may take listed species only in accordance with an Incidental Take Statement ("ITS"). 16 U.S.C. § 1536(b)(4). Section 7(a)(2) requires that "[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species." 16 U.S.C. § 1536(a)(2). The Secretary has delegated compliance with the ESA consultation requirements for terrestrial species to the Fish and Wildlife Service ("FWS"). The consultation process is designed "to ensure compliance with the [ESA's] substantive provisions." *Thomas v. Peterson,* 753 F.2d 754, 764 (9th Cir. 1985). BLM's approvals of plan amendments and the FWS' approval of an HCP or GCP are agency actions requiring ESA Section 7 consultation. *See Pacific Rivers Council v. Thomas,* 30 F.3d 1050, 1057 (9th Cir. 1994).

Formal Section 7 consultation results in a biological opinion ("BO") determining whether the proposed action is likely to jeopardize a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. § 1536(b)(3)(A). In making this determination, FWS must use the best available scientific information to evaluate the current status of the species and habitats, the effects of the action on species conservation, and the cumulative effects. 16 U.S.C § 1536(a)(2), (b)(3)(A); 50 C.F.R. §§ 402.14(g)-(h), 402.02. If the BO concludes that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat, FWS may authorize incidental take and issue an ITS based on the BO. An ITS must specify the impact of any incidental take and reasonable and prudent measures necessary to minimize impacts, and set forth terms and conditions to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

Having not seen any draft biological opinion for the plan amendments or proposed HCP/GCP it is difficult to say whether FWS could make the needed determinations. However, based on the scant analysis of impacts to listed species survival and recovery found in the draft DRECP the Center is skeptical that the needed BOs could be issued at this time. As just one example, the Draft DRECP fails to adequately address the recovery needs of the Western Mojave Recovery Unit of the desert tortoise or to even provide sufficient conservation in that key habitat area to ensure survival of that population over time. Indeed, relatively few of the conservation actions address the management protections needed in the West Mojave area which is subject to multiple threats from increasing ORV use and other actions that damage existing habitat in addition to the likely impacts that may occur from development of renewable energy in this very high solar resource area.

The Draft DRECP needs substantial revisions to provide the information needed and analysis that are required to support the likely "take" of listed species that would be authorized under the proposed DRECP and to ensure that destruction and adverse modification of critical habitat does not occur.

C. MBTA and BGEPA

The federal Migratory Bird Treaty Act ("MBTA") which was enacted to fulfill the United States' treaty obligations to protect migratory birds and provides that "[u]nless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird." 16 U.S.C. § 703(a); *see also Missouri v. Holland*, 252 U.S. 416, 434-35 (1920) (describing the "national interest of very nearly the first magnitude" in protecting migratory birds "that yesterday had not arrived, tomorrow may be in another State and in a week a thousand miles away").

The MBTA authorizes the Secretary of the Interior to promulgate regulations allowing the take of birds otherwise protected by the MBTA when doing so would be compatible with migratory bird conventions. 16 U.S.C. § 704(a). The Secretary has delegated this authority to FWS, which has promulgated regulations allowing the take of migratory birds after the issuance of a permit, under specified circumstances. *See* 50 C.F.R. §§ 21.11, 21.27, 21.42. FWS's regulations underscore the statute's categorical prohibition on taking migratory birds "except as may be permitted under the terms of a valid permit issued pursuant to the provisions of [the agency's MBTA regulations]." 50 C.F.R. § 21.11. FWS's list of species protected by the MBTA includes many birds that may be taken by wind or solar projects in the DRECP area, including both rare and common species. (*See* 50 C.F.R. § 10.13 [list of migratory birds].) Because many migratory birds that are protected under the MBTA may be killed by development permitted under the draft DRECP the agencies should have addressed these issues including breeding and nesting habitats and migratory pathways across the DRECP plan area.

Notably, in comments on a recently proposed solar power tower considered by the CEC, FWS explained that:

The unauthorized take of migratory birds is illegal under the Migratory Bird

> Treaty Act (MBTA) and currently, there are no mechanisms for the issuance of an incidental take permit for migratory birds for a project such as this. . . . the proposed mitigation does not alleviate the responsibility of PSH to avoid impacts to migratory birds under the MBTA. Furthermore, *without a clear assessment of bird use of the site and the level of harm the project may cause from direct and indirect take of migratory birds, we do not have any basis to evaluate whether total impacts from the project could be adequately offset through other conservation measures.*
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> . . .
>
> The BBCS [bird and bat conservation strategy] is not a surrogate for a take permit under the MBTA; therefore it does not limit or preclude the Service from exercising its authority under any law, statute, or regulation, nor does it release any individual, company, or agency of its obligations to comply with Federal State, or local laws, statutes, or regulations.

(FWS comments on Palen SEGS proposal, TN201199 at pdf 9 & 10, enclosure 1, page 4 & 5 (emphasis added), available at on the CEC website.) The FWS makes it clear that all development projects are liable for any take of MBTA covered species. At minimum, the draft DRECP should have analyzed impacts, and considered avoidance as well as potential minimization and mitigation measures.

Golden eagles and bald eagles are protected under the federal MBTA and also protected under the federal Bald and Golden Eagle Protection Act ("BGEPA") 16 U.S.C. § 668 *et seq*. Take of any eagle without a permit is prohibited under Federal law. (16 U.S.C. § 668 *et seq*.) The draft DRECP proposes that projects could take fifteen (15) golden eagles per year but provides insufficient information or analysis to support that level of take in the DRECP project area and issuance of a permit. If FWS intends to issue a BGEPA permit for the take of golden eagle under BGEPA in the DRECP area, the draft DRECP must be revised to provide far more information and analysis in order to show that eagle populations will be protected; relying on future monitoring efforts and adaptive management measures is insufficient as a matter of law. Moreover, where, as here the draft DRECP does not provide for secure funding for needed monitoring or future potential adaptive management mitigation measures, reliance on such measures would be illusory at best.

D. NCCPA Requirements

The most basic requirements of the NCCPA are to provide conservation for natural communities, CESA listed species, and other covered species. Moreover only through a valid NCCP can any take of fully protected species (including golden eagle, Yuma clapper rail and others) be authorized. These issues are more fully explored in the comments from Defenders of Wildlife and we incorporate that aspect of those comments herein.

Unfortunately, the draft DRECP does not meet these requirements. As just two key examples: the draft DRECP relies on "step down" BGOs not anticipated in the statute (see more on this issue below) and provides no clear or firm funding source for the needed conservation acquisitions or management and enforcement actions on public lands.

E. FLPMA Requirements for Plan Amendments and Other Actions

FLPMA contains several provisions related to BLM's planning and management of the public lands including those within the DRECP plan area. To protect and conserve the public lands and resources, FLPMA requires that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C § 1732(b). FLPMA also requires that BLM prepare and maintain a current inventory of all public lands and their resources. 43 U.S.C. §1711(a).

In addition, as part of FLPMA, Congress designated 25 million acres of southern California as the California Desert Conservation Area ("CDCA"). 43 U.S.C. § 1781(c). Congress declared in FLPMA that the CDCA is a rich and unique environment teeming with "historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources." 43 U.S.C. § 1781(a)(2). Congress found that this desert and its resources are "extremely fragile, easily scarred, and slowly healed." *Id.*

FLPMA also contains planning requirements. FLPMA mandates "public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use." 43 U.S.C. 1711 (a) (8). The BLM must also "give priority to the designation and protection of areas of critical environmental concern" and "weigh [the] long-term benefits to the public against short-term benefits" (43 U.S.C. 1712 (c)(3 & 7)). Importantly, "areas of critical environmental concern" should be given priority in planning. According to statute, these are:

> Areas within the public lands where special management attention is required … to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

43 U.S.C. § 1702. FLPMA also contains a multiple use mandate requiring BLM "observe the principles of multiple use and sustained yield." 43 U.S.C. 1712 (c)(1). Balancing these requirements is a key part of the planning process and must be transparent and fully analyzed in any proposed plan amendment.

Unfortunately, the draft DRECP does not provide sufficient information to show that BLM's proposed plan amendments meet the FLPMA standards to prevent unnecessary and undue degradation of our public lands or to appropriately protect key resources including ACECs in balance with other multiple uses in the planning area. This is particularly troubling as the draft DRECP proposes plan amendments that would completely restructure the CDCA plan and would lock in recreational use, primarily for motorized recreation, over millions of acres of the plan area.

II. The Draft DRECP and EIS/R Fail to Adequately Identify and Analyze the Impacts of the Proposed Plan Amendments Under NEPA or CEQA.

A. Baseline and environmental setting information is inadequate, and unstable and the Draft provides inadequate information on proposed conservation rollbacks

A primary flaw in the Draft EIR/EIS is that the agencies have not properly identified the baseline, particularly as to existing conservation. This information is necessary to determine the direct and indirect impacts of the project, as required under NEPA and CEQA. The baseline or environmental setting is critical to identification and analysis of impacts. In order to assess the impacts of a project the agencies must have detailed and specific information regarding the resources of the project site and the baseline should reflect the project's real-world physical setting and management designations and prescriptions.

Under NEPA the agencies must "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. Establishing baseline conditions of the affected environment is an essential requirement of the NEPA process. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit stated that "without establishing…baseline conditions...there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." Without a clear understanding of the current status of resources and existing conservation management designations at issue in the draft DRECP on public lands the agencies cannot make a rational decision regarding proposed plan amendments. *See Center for Biological Diversity v. U.S. Bureau of Land Management, et al*., 422 F. Supp. 2d 1115, 1166-68 (N.D. Cal. 2006) (holding that it was arbitrary and capricious for BLM to approve a project based on outdated and inaccurate information regarding biological resources found on public lands).

Similarly, under CEQA agencies must identify the "real conditions on the ground"—rather than "hypothetical situations." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121, 125; *see also Woodward Park Homeowner's Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-09.) The environmental setting or baseline information must be fair and accurate and cannot understate the value of the environmental resources or other baseline conditions so as minimize the significance of the impacts of the proposed project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 725 [finding that failure to adequately describe habitat "understates the significance of" the resources and avoiding discussion of those resources "precluded serious inquiry into or consideration of" potential impacts of the project.].)

Detailed comments regarding the lack of adequate information for existing conservation areas including ACECs is provided in the chart below in Section V (which also details significant conservation rollbacks from the baseline that are proposed but not explained in the draft). As just one example of the mapping inaccuracies, the boundaries of California's Red Rock Canyon Desert State Park provided in the draft and on the databasin site are inaccurate . The maps and GIS layers fail to reflect the Congressionally mandated transfer of lands to the

State of California for inclusion in Red Rock Canyon Desert State Park in the CDPA in 1994[2] which also mandated that the lands within the Park boundaries shall be managed to "provide maximum protection for the area's scenic and scientific values" if title to some of the lands are not transferred to the State. 16 USCA § 410aaa–71, (CDPA Section 701). The BLM also ignores the Interior Department's Public Land Order withdrawing these lands from mineral entry and requiring BLM "to protect the park resources of the lands until they can be conveyed to the State of California as mandated by Congress." Public Land Order # 7260, 62 Fed. Reg. 26324 (May 13, 1997); *see also* MOU BLM-CDPR, 1995. BLM's existing (largely unfulfilled) commitments to work expeditiously to transfer the lands within this area to the State is also relevant to the question of whether BLM's proposed commitments to provide conservation under the Draft DRECP are likely to be fulfilled.

The No Action Alternative used in the draft DRECP to formulate the baseline for analysis of plan impacts ignores much of the existing conservation including wildlife allocations and MUC class overlays that currently restrict activities inconsistent with conservation in many areas without any explanation.

> The existing management of the ACECs on BLM-administered lands under the No Action Alternative is described in Section II.2.2. Desert Wildlife Management Areas (DWMAs) are included as ACECs here. Existing BLM land use plans have other designations, including *wildlife allocations*, Special Recreation Management Areas (SRMAs), Extensive Recreation Management Areas (ERMAs), Cultural Districts, *eligible Wild and Scenic Rivers*, grazing allotments, *and lands with wilderness characteristics that, combined with the BLM multiple use class overlays, determine BLM land management decisions and provide for resource management in these areas;* however, these designations are *not* specifically included as biological conservation under the No Action Alternative.

(Draft DRECP at II.2-4). This makes no sense and appears to be an attempt by BLM to reduce the appearance of the existing baseline conservation and management restrictions, particularly within the CDCA, in order to make the proposed DRECP appear to have far more new conservation "gains" than it actually does.

The Center is also concerned that while the initial plan boundaries included the Algodones Dunes area (also known as Imperial Sand Dunes Recreation Management Area ("ISDRA")) on BLM managed public lands, later plan boundaries were gerrymandered to exclude this area. This has two results that undermine the plan: 1) the draft DRECP plan does

[2] The Center was shocked that no one at the California State agencies reviewing the draft DRECP noted this clear discrepancy (and many others). On inquiry, we were informed that many of the most experienced staff at State agencies were given only a week to review the administrative draft of the draft DRECP—a document containing over 8,000 pages. This may help explain the pervasive mistakes throughout the document. Certainly, a stitch in time saves nine—in the rush to get the document out for comment the DRECP agencies ignored this common sense tenant. We urge the DRECP agencies to revise and recirculate the draft, and *first provide ample time for staff at each of the affected agencies to review the administrative draft.*

not include one of the key important habitat areas in the landscape being considered; and 2) the draft DRECP fails to acknowledge or account for changes in management at the Algodones Dunes by BLM since the planning agreement was signed that significantly reduce conservation for many rare and imperiled species and key natural communities within the DRECP plan area. This issue was raised repeatedly with the BLM as well as in an open letter to the Secretary of the Interior (*see* Attachment 4) before the most recent ISDRA plan amendment was adopted; unfortunately, it was ignored.

The draft DRECP also contains inadequate baseline and environmental setting information regarding migratory birds (particularly migration pathways) which is needed to analyze impacts of the proposed development of both wind and solar projects under the MBTA, bats, invertebrates, rare plant populations (as distinguished from natural communities), surface and groundwater resources and current quantity and quality, and soil resources among others.

B. The Draft DRECP provides inadequate identification of conservation rollbacks and virtually no analysis of impacts of conservation rollbacks (including changes in mitigation ratio) on species survival and recovery.

Baseline conservation established in the CDCA and its amendments (including but not limited to the West Mojave Plan, Northern and Eastern Colorado Plan and Northern and Eastern Mojave Plan) is not accurately or readily presented in the Draft EIS/R and appendices. The DEIS/R has no table or description that distills the existing conservation investments in the proposed plan area. Appendix L describes the existing ACECs (which are not all of the existing conservation areas) but there are many inaccuracies in the most basic descriptions of these conservation areas including the amount of acreage included in them. For example, the ACECs adopted in the West Mojave plan for desert tortoise conservation and critical habitat protection shrunk over 55,000 acres in the baseline description of these same ACECs in Appendix L (see comment below). The DEIS/R has no discussion of these conservation rollbacks including no analysis of impacts to the resources for which they were established.

C. DFAs are too big and unclear, impacts by technology remain unanalyzed, and the inclusion of extensive "undesignated" areas undermines the planning.

As explained in many comments from other stakeholders and environmental organizations, the DFAs are too big and the impacts within those areas from proposed development remain largely unanalyzed. In addition, the draft DRECP fails to refine the existing DFAs, including Riverside East, and variance lands within the plan area to clarify what areas may actually be developable. Similarly, the inclusion of large areas within the planning area that are "undesignated" undermines the ability to analyze either the sufficiency of development areas or impacts. Rather the draft largely "kicks the can down the road" and leaves these critical questions to be sorted through on a case by case basis—as a result, many of the anticipated benefits of planning would not be realized. In addition, the draft DRECP fails to address impacts of the various renewable energy technologies in a detailed way (including particularly impacts to avian species--migratory birds and golden eagles—and invertebrates). Because the draft DRECP fails to move forward in analyzing and hopefully resolving such conflicts remaining from earlier planning it fails to fulfill its goals. We suggest that, as one step forward, the agencies should

carefully review the comments submitted by Alliance for Desert Protection et al. (including SCWildlands Analysis of a portion of one DFA) and consider using a similar methodology to refine any proposed areas open for development in a revised draft DRECP. In addition, the agencies should ensure that the next revised draft of the DRECP is developed in concert with local counties and cities planning efforts to ensure that the DRECP is consistent and truly meets the stated goals for both development and conservation.

While the draft DRECP modeling relies heavily on vegetation modeling in the plan area and in modeling habitat and proposed conservation for various species, it fails to integrate much of the species-specific information about how habitat is used by the covered species and analysis of threats (even basic information in the recovery plans and biological opinions developed by FWS regarding habitat and threats and impacts to listed species within the plan area are not integrated into the analysis). When revising this aspect of the proposed DRECP we urge the agencies to go back to basics and review the existing literature and new literature on these critical aspects of species conservation. It is not sufficient to simply list reference documents, the agencies must show that they actually reviewed and analyzed the issues and incorporated data and recommendations from those scientific references and recovery plans. Ongoing and new research should also be considered and incorporated into the revised draft plan to provide the needed robust analysis. *See, e.g.*, Jennings and Berry 2015 ("Desert tortoises track seasonal flowering plant patters of preferred food plants"); Abella and Berry 2015 ("Synthesizing Best Management Practices for Habitat of Agassiz's Desert Tortoise"); Germano et. al. 2015 (Mitigation-driven translocations: are we moving wildlife in the right direction?).

D. Little to No Identification and Analysis is Provided of the Impacts of Various Solar and Wind Technologies on Avian Species

In addition to well-documented impacts at Ivanpah SEGS, recent information from Crescent Dunes Project in Nevada (see information about recent bird kills from testing of that project at http://www.basinandrangewatch.org/CrescentDune.html), shows impacts to bird is significant from power towers of different designs. Potential "lake effect" impacts is still little understood for both large scale PV and power towers but is causing sensitive species mortalities. Evidence from a large PV solar project – Desert Sunlight - and a solar trough project – Genesis documented many water bird mortalities[3]. Indeed, Desert Sunlight reported a state and federally endangered species bird mortality – the Yuma clapper rail (*Rallus longirostrus yumanensis*)[4], despite the fact that on-site surveys never identified this species as occurring on the site, nor was habitat present on site. The Ivanpah Solar Electric Generating System site has also reported the mortality of the fully protected peregrine falcon (among many other migratory birds) on its project site[5]. Few if any of the bird species that died on the project sites were recorded as

3 http://www.kcet.org/news/rewire/solar/water-birds-turning-up-dead-at-solar-projects-in-desert.html ; http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-08C/TN200657_20130930T120056_August_2013_Monthly_Compliance_Report.pdf

4 http://www.kcet.org/news/rewire/solar/water-birds-turning-up-dead-at-solar-projects-in-desert.html

5 http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-05C/TN200642_20130930T090221_Avian_Mortality_Report_912013.xlsx

occurring on site in the pre-construction avian surveys. These large solar projects may in fact be attracting migratory birds to them, through the birds mistaking the project infrastructure as water – the "lake effect".[6]

D. The Draft DRECP Fails to Provide A Range of Alternatives That Would Avoid Significant Impacts of Many of the Components of the Proposal.

Because the draft DRECP does not utilize an accurate baseline, the analysis of impacts and the formulation of alternatives is inadequate at the outset as a matter of law under both NEPA and CEQA.

Putting that critical failing aside for the moment, the Center notes that the alternatives analyzed are inadequate as well. One example of an unexamined alternative is that there is no alternative that would eliminate the proposed sweeping changes to the CDCA plan structure, keep the existing designations in place, and stop all conservation rollbacks while still allowing for development in the plan area. As mentioned in earlier comments, there is also the glaring omission of any alternative that would take into account distributed renewable energy development in the plan area and in the primary energy markets in California (particularly the LA Basin and inland empire) in order to reduce some or all of the burden of meeting energy targets on natural lands in the California desert.

III. The Draft DRECP fails to Meet the Requirements of California's NCCPA or the Federal ESA.

A. The Draft DRECP does not adequately address the NCCPA standards.

As noted above and in other comments, there is simply no provision for "step down BGOs" under the NCCPA. In Appendix N2 there is a very short discussion of the "proportionality" and the "approach" the draft DRECP utilized. However, the draft DRECP completely fails to explain how the percentage for each step down BGO was reached or provide any analysis of how the rest of the BGO would be met.

At minimum, if some kind of "step down" framework for this NCCP continues to be considered, the agencies must explain in detail how the percentages are derived and how the "remaining BGOs" (so to speak) would be met. Here, the draft DRECP provides no such information and is woefully inadequate. As a result the draft DRECP cannot meet the most basic NCCPA standards and CDFW cannot make the needed findings.

Specific examples of inadequacies with the analysis of impacts to species and habitats in formulating the BGOs are provided below in the chart in Section V and in comments from other environmental organizations. These relate to the NCCPA standards as well as ESA, MBTA, and other legal standards.

[6] http://www.kcet.org/news/rewire/solar/water-birds-turning-up-dead-at-solar-projects-in-desert.html

Another significant issue regarding the NCCP aspect of the plan is that how the agencies identified the so-called "Conservation Priority Areas" is never clearly explained in the draft DRECP. When the Center inquired about how these areas were selected we were informed it was done by various contractors and staff in a process of overlaying various mapping layers and making choices and that in order to understand it "you had to be in the room." The NCCPA, NEPA and CEQA all require far more explanation and transparency from the agencies regarding key aspects of this important planning proposal. The draft DRECP is intended to be based on science and, at the very least, this requires the agencies to be able to actually *explain* the proposal and the conclusions reached regarding key conservation issues such as priorities for future acquisitions on private lands.

B. Inadequate information or analysis to issue a GCP or HCP.

The draft DRECP describes the proposed GCP as follows:

> The GCP component of the DRECP is *a programmatic type of HCP* that the USFWS has prepared to fulfill the federal mandatory requirements in Section 10(a)(1)(B) of the ESA and *support applications for* incidental take permits covering renewable energy development on nonfederal lands.

I.2-20 (emphasis added). Any statements by FWS staff that specific levels of "take" would actually be authorized under the proposed GCP are clearly erroneous. The GCP can support applications for an HCP but cannot itself authorize any take.

Appendix M which ostensibly provides the GCP application materials is riddled with general statements and conclusions and provides virtually no analysis of impacts to conservation (including recovery) for listed species and insufficient information about baseline conservation status and the future needs of other covered species. The many charts included in Appendix M, while helpful, do not fill the significant gap in providing the needed identification and analysis of these key conservation components required under the ESA §10 and §7. For example, most of the alternatives propose reducing required mitigation for desert tortoise critical habitat throughout the CDCA from as high as 5:1 currently, down to 1.5:1 or 2:1 (except for transmission which will remain at 5:1); nowhere does FWS address how significant reductions in mitigation ratios for critical habitat will affect this imperiled and declining species' recovery in the future—this is a glaring omission.

The draft DRECP also indicates that:

> According to Section 10(a)(2)(A) of the ESA, the CEC and the California State Lands Commission (CSLC) *are submitting to the USFWS separate applications for incidental take permits under the GCP for renewable energy projects under CEC jurisdiction on nonfederal lands and within CSLC's existing land ownership.* In addition, the USFWS also would consider issuance of future Section 10(a)(1)(B) permits to individual applicants or local jurisdictions that apply for incidental take authorization for renewable energy projects on nonfederal lands that are consistent with the USFWS proposed GCP.

I.2-21 (emphasis added). Those "separate applications" (ostensibly HCP applications) were not included in the draft DRECP or appendices. In attempting to apply a GCP that has not even been fully developed to support HCP applications that have not even been submitted, the reach of the FWS in the draft DRECP as to this legal framework has clearly exceeded its grasp. The Center looks forward to reviewing a more fully formed GCP proposal and any separate applications for HCPs as part of the required public review process in a revised draft DRECP.

As also explained above, in order for FWS to issue an GCP for the DRECP plan or an HCP to any of the state agencies or commissions that are participating in the planning, specific standards contained in ESA § 10 must be met and the FWS must make the required findings. The draft DRECP does not meet these standards as just a few examples clearly show.

First, as noted above, there baseline conservation is not adequately identified such that a meaningful analysis can be made of conservation roll backs, impacts from development and any additional conservation efforts. Second, the draft DRECP fails to provide the needed background information on the current status of listed species and critical habitats in the context of each of the species' survival and recovery goals. Third, there is no assurance that funding will be available for the needed conservation actions; perhaps most importantly, there is no assurance that BLM will provided the needed management and enforcement on public lands that are intended to be used to offset impacts to species from private, state, and local activities and to actually provide the needed conservation for covered species. Moreover the structure for management is unworkable—there needs to be professional staff dedicated to this NCCP/HCP if it will go forward. Other comments from members of the public who have worked closely on functioning NCCPs and HCPs highlight many of these issues as well.

FWS cannot rely on good will and empty promises in issuing a GCP for the DRECP plan or an HCP to any of the state agencies or commissions that are participating in the planning. Much more needs to be done to bring the draft DRECP in line with the ESA § 10 requirements; we look forward to a revised draft that addresses these and other issues.

IV. The Analysis of the Proposed Land Use Plan Amendments in the Draft DRECP fail to adequately address NEPA, FLPMA, Executive Orders, and Regulations.

A. Sweeping Proposed Changes to the CDCA Plan including to all MUC Classifications Are Unclear, Unexamined, and Beyond the Scope of the Proposed Plan Amendments

Instead of building on the existing CDCA Plan and its strong conservation focus, the draft DRECP proposes to sweep away much of the core structure of the CDCA Plan without explanation or rationale. In the Center's scoping comments we specifically urged the BLM to build on the CDCA Plan (September 12, 2011 at page 13):

> **Planning Area**: The DRECP planning area should include the California Desert Conservation Area (CDCA), and *build upon the significant conservation designations and policies for public and private lands across the entire CDCA.*

> For BLM managed lands, the CDCA Plan, as amended (amendments include those for the Northern and Eastern Colorado Desert, Western Colorado Desert, Northeastern Mojave Desert, Western Mojave Desert, and Coachella Valley) should be used as a foundation to build a strong DRECP for multiple species on an ecosystem or landscape level that includes conservation strategies to assure the long term survival and viability of biological diversity on both federal and private lands with significant biological resources and values.

Unfortunately, the BLM appears to have ignored those scoping comments from the Center along with many of the other public comments.

The baseline MUC classifications are mentioned briefly but not clearly explained in the No Action alternative, and the proposed sweeping changes to the existing MUC classifications in the proposed plan amendments for the CDCA in the draft DRECP are also unclear, unexamined and beyond the scope of the proposal. The Executive Summary provides conflicting information regarding the purpose of the plan stating variously that it will the multiple use mandate (ES at 11) and that *only in areas outside the DRECP plan area but within the CDCA* it will make "land use allocations *to replace multiple-use classes*" (*Id.*; emphasis added).

However, in the Preferred Alternative the section on Multiple Use Classifications appears to state that all MUC classifications within the CDCA will be replaced by new land use allocations. In Section II.3.2.4.1 Multiple-Use Classes, the draft text discusses changes in the classification of "non-designated land" cherry-stemmed within wilderness and to other "non-designated lands" from current MUC classes to two new "land use allocations" called "standard focus" and "conservation focus". Draft DRECP at II.3-424. The accompanying Table II.3-5, however, includes all lands within the DRECP implying that under the preferred alternative BLM is proposing to remove the MUC classification from *all* lands in the CDCA not just "non-designated lands". As a result, the draft DRECP does not properly explain the proposal which appears to completely restructure the CDCA Plan without any rationale given or need shown.

Moreover, although Table II.3-5 states that it provides a "crosswalk" between the current MUC classes and the proposed area designations in the preferred alternative— it does not, it only provides information about the multiple uses that may be allowed in various areas under the proposed preferred alternative. At minimum this entire section must be revised to provide a clear proposal and the needed comparison between the current MUC classes and what is being proposed as the new "land use allocations."

MUC classifications provide management direction for lands that are being retained in federal ownership (and not suitable for disposal from the federal estate) in order to ensure proper administration of such lands. (*See* 43 C.F.R. § 2420.2; classification criteria.) If the draft DRECP intended to undertake a project of replacing all of the MUC classification in the CDCA with other "land use allocations," then to comply with NEPA, BLM would have had to notify the public of that purpose in scoping, it did not. Moreover, BLM would need to explain how these proposed changes would affect public lands management, it did not.

The purpose of this sweeping change to the CDCA Plan in the proposed DRECP is baffling. Moreover, BLM has failed to provide even the most basic information or analysis about what is gained or lost by replacing MUC classes that were designated in accordance with specific regulatory criteria for retained land and other core CDCA frameworks that have been in place for over 30 years with a new set of "land use allocations" in the DRECP.

B. The Proposed SRMA and ERMA Designations Is Beyond the Scope of the Proposed Plan Amendments In Violation of NEPA and the NEPA Analysis Is Inadequate.

The draft DRECP creates over three (3) million acres of new Special Recreation Management Areas ("SRMA") and Extensive Recreation Management Areas ("ERMA") that create a new paradigm for recreation throughout the California deserts and promote neither the conservation goals nor facilitate renewable energy development, which are the only stated purposes of the DRECP. Because BLM failed to notify the public that designing a new recreation paradigm could be part of the proposed plan amendment process in the Notice of Intent, proposing these designation changes at this time is a violation of both NEPA and FLPMA. The BLM's Notice of Intent for the proposed Plan Amendments states:

> *The DRECP will advance State and Federal conservation goals in the desert regions of California while also facilitating the timely permitting of renewable energy projects under applicable State and Federal laws, and is intended to complement the Solar Programmatic EIS, which is currently under environmental review as well.* Thus far, the agencies have identified the need to: provide conservation and management of identified species in the planning area, along with the natural communities and ecosystems that support these species, build on the Competitive Renewable Energy Zones identified by the State's Renewable Energy Transmission Initiative, while identifying the most appropriate locations in the planning area for development of utility scale renewable energy projects that will not burden existing resources, standardize mitigation and compensation requirements for energy activities in the planning area, and to streamline the permitting process of energy projects that results in greater conservation values than current methods.
>
> The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives for the RMP areas and to guide the process for developing the Draft EIS/PA. The BLM has identified the following preliminary issues: special status species, mitigation measures for special status species, vegetation communities, cultural resources, special area designations, and areas of high potential for renewable energy development.

77 Fed. Reg. 20409, 20410 (April 4, 2012); *see also* 74 Fed. Reg. 60291, 60292 (Nov. 20, 2009)7. The CEQ regulations implementing NEPA clearly require to reinitiate the scoping

[7] "the planning goals for the DRECP include, but are not limited to, the following:

process "if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts." 40 C.F.R. § 1501.7(c). FLPMA requires that plan amendments be developed with public input. Moreover, for any designation of recreation areas BLM's own regulations, the "Designation procedures" for recreation areas, require "Public notice of *designation or redesignation*" in a scoping process. 43 C.F.R. §8342.2(b) (emphasis added).

Certainly, it is appropriate that BLM would consider impacts *to* recreation (among many other things) from the proposed plan amendments that would be designed to support conservation and the development of large scale renewable energy projects in the planning area--the stated purposes of the DRECP ("to advance State and Federal conservation goals in the desert regions of California while also facilitating the timely permitting of renewable energy projects under applicable State and Federal laws"; 77 Fed. Reg. 20409, 20410). However, in this draft DRECP BLM has unlawfully *turned the process on its head* and, instead, re-structured the proposed Plan Amendments to lock-in new designations for recreation areas (the vast majority of which allow for motorized recreation) on over 3.6 million acres of the planning area without any public notice of this sweeping change of focus or that such designations would be part of the plan. Rather than promoting renewable energy development and protecting conservation goals, the vast areas included in the proposed SRMA and ERMA designations in the draft Plan Amendments appear to be most concerned with protecting motorized recreation at the expense of conservation goals and renewable energy development.

Detailed information about the conflicts between the proposed SRMAs and ERMAs and other resource values that are not clearly identified in the draft DRECP and not analyzed under the minimization criteria. Just a few examples include, but are certainly not limited to: the proposed El Paso/Rand, Red Mountain and Superior/Rainbow SRMAs in the Western Mojave which all overlap with federally designated critical habitat for the desert tortoise, ACECs/DWMA established for desert tortoise conservation and recovery under the West Mojave Plan amendment to the CDCA and the Desert Tortoise Research Natural Area. (Appendix L_BLM Worksheets – SRMA-ERMA_Part29). In the Eastern Mojave, the proposed

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• Provide for the long-term conservation and management of identified species in the planning area;

• Preserve, restore, and enhance natural communities and ecosystems that support identified species in the planning area;

• Build on the Competitive Renewable Energy Zones identified by the State's Renewable Energy Transmission Initiative that depict areas where renewable energy generation project permitting may be expedited;

• Identify the most appropriate locations in the planning area for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species, sensitive natural communities, and cultural resources;

• Coordinate and standardize mitigation and compensation requirements for renewable energy activities in the planning area; and

• Develop an efficient process for authorizing renewable energy projects in the planning area that results in greater conservation values than the process provided by project-by-project or species-by-species reviews."

Ivanpah Valley ERMA overlaps with federally designated critical habitat for the desert tortoise, ACEC/DWMA established for desert tortoise conservation and recovery under the Northern and Eastern Mojave Plan amendment and the Shadow Valley ERMA overlaps key connectivity corridors for desert tortoise and bighorn sheep. (Appendix L_BLM Worksheets – SRMA-ERMA_Part37). These glaring conflicts are not identified much less analyzed in the DEIS/R.

B. The Draft DRECP is Inadequate Because it Fails to Address FLPMA Standards or the Minimization Criteria in Executive Orders and Regulations for the Proposed SRMA and ERMA Designations.

FLPMA contains several provisions related to BLM's planning and management of the public lands including those within the DRECP plan area. To protect and conserve the public lands and resources, FLPMA requires that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C § 1732(b).

In 1972 and 1978 President Nixon and Carter respectively issued Executive Orders which sought to control the growing use of ORVs and their attendant environmental damage by mandating BLM to only allow ORV use on public lands if certain conditions were met. 37 Fed. Reg. 2877 (1972); 42 Fed. Reg. 26959 (1978). Both Executive Order 11,644 and 11,989 are binding on BLM and enforceable as law. *Conservation Law Foundation v. Clark*, 590 F.Supp. 1467, 1477 (D. Mass. 1984) *aff'd, Conservation Law Found. v. Sec'y of the Interior*, 864 F.2d 954 (1st Cir. 1989) (finding that Executive Orders 11,644 and 11,989 are both "invested with the status of law" since they are in furtherance of the requirements of NEPA); *see also Utah Shared Access Alliance v. Carpenter*, 463 F.3d 1125 (10th Cir. 2006); *National Wildlife Federation v. Morton* 393, F.Supp. 1286 (D.D.C. 1975). Executive Order 11,644 mandates that the Secretary of the Interior issue regulations which require the designation of specific *areas and trails* on public lands to which ORV use will be limited.

After an initial set of regulations were overturned in *National Wildlife Federation v. Morton*, 393 F.Supp. 1286, 1292 (D.D.C. 1975), in 1979, BLM re-issued the ORV regulations in force today. 43 C.F.R. §§ 8340-42. Following the requirements of the EOs, the regulations requires that:

> Subpart 8342—Designation of Areas and Trails
>
> § 8342.1
>
> Designation criteria.
>
> The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. *All designations* shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:
>
> (a) *Areas* and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.
>
> (b) *Areas* and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to

protect endangered or threatened species and their habitats.

(c) *Areas* and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(d) *Areas* and trails shall not be located in officially designated wilderness areas or primitive areas. *Areas* and trails shall be located in natural areas *only if* the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.

(Emphasis added). These requirements are generally referred to as the "minimization criteria" and clearly apply to the designation of "areas" for motorized recreation on public lands as well as to designation of specific motorized routes.

Under the draft DRECP BLM proposes (in the preferred alternative) to designate approximately 2,724,000 acres in 31 SRMAs (or 33, the draft and Appendix L do not agree) and approximately 879,000 acres in eight (8) ERMAs in the Eastern Mojave area managed by the Needles Field Office (draft DRECP at II.3-303, II.3-367). The vast majority of these proposed new area designations would allow at least some motorized vehicle use in the recreation management area (*See* Appendix L SRMA-ERMA Parts 1-41). Therefore the proposed designation or redesignation of these areas as SRMA or ERMA are required to address and apply the minimization criteria. 43 C.F.R. § 8342.1.

The BLM's failure to address the minimization criteria is not just a technical flaw, it is a substantive violation of law and could significantly undermine biological conservation and other key resource values within the DRECP planning area. The proposed new recreation designations appear to lock-in area designations allowing motorized recreation in over 3 million acres of the plan area for the life of the plan (at least 25 years) because BLM has attempted to wrongly frame these designations as part of "mitigation" for impacts of renewable energy development on recreation, primarily motorized recreation. There is no showing in the draft DRECP or elsewhere that scope of the proposed SRMA and ERMA designations bears *any rational relationship* to the extent of the alleged "impacts to" recreation.

The proposed SRMA and ERMA long-term area designations will clearly impact the resources of these areas and allow significant impacts from ORV use to continue and most likely increase over the term of the plan with no analysis of alternatives to avoid such impacts, or minimization and mitigation measures to protect other public lands resources for ORV damage. In sum, the proposed SRMA and ERMA designations are inadequately analyzed under NEPA (as discussed below) and *the draft DRECP does not provide any analysis of how or whether these designations meet the required minimization criteria* in clear violation of BLM's own regulations and the executive orders.

The Draft states that for the SRMAs "SRMAs are proposed throughout the plan area, including as an overlapping land allocation on all existing "open" and "limited" use OHV areas." (Draft DRECP at II.3-366.) In discussions, BLM staff have implied that the overlap with areas

that have existing motorized recreation designations means that BLM did not need to analyze the overlay of the SRMA designation on these areas. However, even if *some* of the proposed SRMA that allow motorized recreation overlay existing "L" designation for motorized use (and that these SRMA designations were not clearly "redesignations" at minimum, as they are) there is no evidence that those older designations were made utilizing the minimization criteria . Perhaps more importantly, there is clearly *significant new information* regarding the status of species and other resources (including vegetation communities, soils, riparian, and water resources) in the planning area that must be considered (much of this information gathered as part of the draft DRECP process itself) and additional *significant new information* regarding the on-the–ground impacts to species and habitats from ORVs, route proliferation, that requires full consideration of the minimization criteria at this time. (See also detailed below discussion of impacts of ORVs on resources that should have been considered under both FLPMA, NEPA and the ESA). Moreover, there are changed circumstances since any earlier recreation area designations were made prior to including the threat of climate change and the expansion of industrial-scale renewable energy in the DRECP planning area that were required to be considered in any proposal to designate or redesignate recreation areas allowing motorized use on these public lands.

If BLM wants to move forward with sweeping new proposals for new recreation area designations on public lands in the DRECP plan area, it must provide public notice and a draft EIS that addresses all of the minimization criteria as well as analyzing alternative designations and mitigation impact to other resources due to these designations.

The proposed SRMA and ERMA designations should be removed from the proposed DRECP. If, however, BLM wants to propose sweeping changes to the current recreation management of these public lands, a new scoping notice must be provided to the public and a new draft EIS must be prepared that addresses all of the issues needed in proposing to designate or redesignate recreation areas on public lands including, but not limited to, all of the minimization criteria.

C. The Analysis of the Proposed SRMA and ERMA Plan Amendments Is Inadequate.

The draft DRECP contains virtually no environmental analysis of the impacts of the proposal to designating over 3.6 million acres of recreation areas on resources such as rare and common species, their habitats, key habitat connectivity, water resources, soils, air quality, etc. However it is well documented that motorized recreation impacts on fragile desert habitats is significant. Off-road vehicles (ORVs) recreation is one of the fastest growing outdoor activities and continues to increase in popularity. In California, ORV use has increased especially rapidly.

It has long been recognized that ORVs damage desert ecosystems and pose a significant threat to wildlife (Webb and Wilshire 1983; Brattstrom and Bondello 1983; Bury et al. 1977; Bury 1980; Bury and Luckenbach 1983; Busack and Bury 1974; Luckenback and Bury 1983; Lovich and Bainbridge 1999; Luckenbach 1975; Vollmer et al. 1976; McGrann et al. 2005; Ouren et al. 2007).

Numerous studies have investigated the effects of ORVs on lizards by comparing lizard abundance in areas with limited ORV use to areas with heavy ORV use. In most cases, lizard abundance was significantly lower in areas with high ORV use (Luckenbach 1975; Bury and Luckenbach 1983; Luckenbach and Bury 1983; Busack and Buyr 1974; Knauf 2001; Wright 2002; McGrann et al. 2006). Luckenbach and Bury (1983) surveyed multiple lizards in the Algodones Dunes area and found there was 1.8 times more species, 3.5 times as many individuals, and 5.9 times higher lizard biomass on control plots free of ORV use as compared to ORV plots. Similar results were found for mammals, arthropods (Luckenback and Bury 1983; Bury and Luckenback 1983), and native plants (Luckenback and Bury 1983; Vollmer et al. 1975; McGrann et al. 2005). Busack and Bury (1974) hypothesize that lizards are negatively affected due to reduced plant cover resulting in reduced invertebrate food sources, which in turn causes reduced food resources for lizards.

Other studies have specifically addressed ORV impacts to desert tortoise and its habitat. *See, e.g.*, Bury et al. 2002 (finding "An unused, natural plot had 1.7 times the number of live plants, 3.9 times the plant cover, 3.9 times the number of desert tortoises, and 4 times the active tortoise burrows than a nearby area used heavily by off-road vehicles (ORVs); these differences between the plots were all statistically significant.") A recent paper comparing areas in the West Mojave that had no ORVs to those with ORV routes found significant conservation improvements for the tortoise and its habitat in areas with no ORV routes. (*See, e.g.*, Berry et al. 2014; Berry et al. 2015 (abstract of ongoing research).)

Despite all of the available information, the draft DRECP completely fails to address these impacts – not as direct or indirect impacts of designation of SRMAs and ERMAs and not even as cumulative impacts along with impacts from renewable energy development (as they clearly are at minimum).

Large areas of the federal public lands within the DRECP plan area are currently designated as "limited" use areas for off-road vehicles where motorized vehicles can only be used on designated routes—these limited areas include Desert Wildlife Management Areas ("DWMAs") and Areas of Critical Environmental Concern ("ACECs") where conservation is currently identified to be a priority. However, BLM's own survey and monitoring work in the West Mojave shows that off-route travel is the norm, not the exception, in these areas. Information collected by the BLM in monitoring the motorized route network in the WEMO plan area shows very high levels of non-compliance and use of closed routes. In September 2012, the BLM provided the results of its "baseline monitoring" within the WEMO plan area. These baseline data focused on whether closed or otherwise unauthorized routes intersecting open routes were receiving motorized use. This monitoring data demonstrated that non-compliance with the route designations is extremely widespread. The BLM's Monitoring Results table establishes that of 1952 unauthorized or closed routes initially assessed, 1898, or 97%, were documented to have received some degree of unauthorized motorized use. (*See* Attachment 1.) Of those, 49% were documented to have received "heavy route use," defined as 26 tracks or more. (*Id*.) Of particular concern to the desert tortoise and other listed species such as the Lane Mountain milk-vetch, several areas which overlap with critical habitat and Desert Wildlife Management Areas ("DWMAs"), which are current ACECs had extremely high rates of non-compliance (including, but not limited to, Coolgardie [TMA-5], Rands, El Paso, Red Mountain

[TMA-7]). In 2003, BLM did a "pilot test" repeat monitoring in the Black Mountain subregion. This test showed that the number of illegal routes or "incursions" and unlawful use had risen significantly in only one year. (*See* Attachment 2 at 8-9.)[8]

Moreover, it is well known that BLM has neither the staff nor the funding to adequately enforce the existing limitations on ORVs on these public lands and the DRECP proposes no new funding for BLM. A recent BLM Enforcement Report confirms widespread illegal ORV use over the 2014 Thanksgiving holiday weekend on fragile desert public lands in the west Mojave desert. According to the report, BLM rangers documented and in some cases cited illegal and destructive incursions into wilderness and "limited use" areas as well as "heavy illegal OHV use" in many areas. The BLM rangers admitted they do not have the resources to protect both public safety and the natural resources of the public lands from the destructive and illegal ORV activity. (*See* Attachment 3 (12/1//2014 Enforcement Report, Chief Ranger Chassie).

In light of this information the draft DRECP needed to analyze these foreseeable impacts of the actual ORV activity that will occur in the proposed SRMAs and ERMAs on conservation including the likely impacts to many listed species and designated critical habitat, and other sensitive resources from motorized off-road vehicle use in these areas. The agencies can not simply turn a blind eye to this reality and assume that off-road motorized use would only use the designated routes. This information shows that such assumptions are factually inaccurate and that non-compliance is significant and pervasive.

A 2009 GAO report found widespread habitat damage from reckless riding, mounting enforcement challenges and evidence of conflicts with other users on public lands. Their survey of federal land managers from across the country found:

> - ORV damage has occurred on almost 20% of federal lands and in some areas as much as 80%.
> - Conflicts are occurring with other trail users, private land owners, and irresponsible ORV users.

[8] Shockingly, even with this information in hand, BLM has done nothing to protect the conservation areas that are being severely impacted as shown in these report, although BLM clearly has the authority and the duty to do so. The regulations also require BLM to close areas to ORVs where ORVs are causing or will cause negative impacts to soil, vegetation, wildlife, wildlife habitat, cultural resources, wilderness suitability, or threatened and endangered species. 43 C.F.R. § 8341.2(a). An area closed to ORVs under this provision can only be reopened to such vehicles if BLM "determines that the adverse effects have been eliminated and measures implemented to prevent recurrence." *Id.* Unfortunately, BLM's demonstrated lack of commitment to protect conservation areas calls into question one of the core mitigation strategies under the DRECP – the reliance on mitigation actions on public lands and conservation of key reserve areas and connectivity corridors on public lands. Without clear evidence that BLM will in fact protect such areas the draft DRECP's reliance on such future action by BLM is unwarranted and unfounded.

- Enforcement is the top challenge to ORV management. Nearly 3/4 of field unit officials cited staff resources for enforcement as a great challenge; nearly 2/3 cited enforcement as a great challenge.
- Current penalties do not deter reckless riding.
- A majority of land managers said they cannot sustainably manage ORVs, citing lack of human and financial resources.

The GAO recommended examining current penalty structures, as well as implementing better planning at BLM and USFS, and enhancing communication with the public. (full report available at http://www.gao.gov/assets/300/291861.pdf)

In addition, the Center recently compiled information about impacts of ORVs in other areas of the desert particularly the Flat-Tailed Horned Lizard Conservation Areas which are ostensibly managed by BLM to conserve this imperiled species. (Center 2014) which has continued to decline and is now a candidate species under CESA).

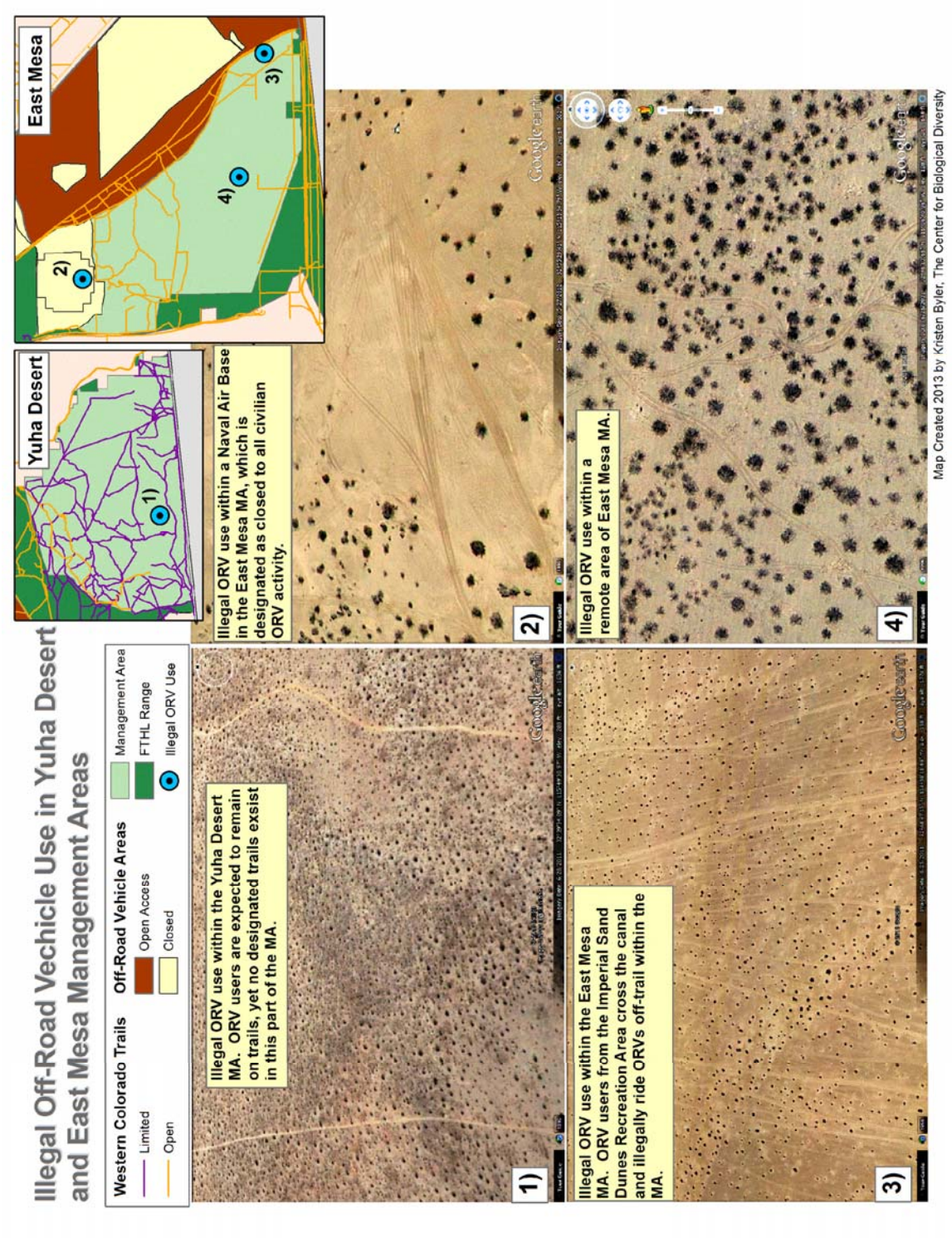

Figure 15. Illegal off-road vehicle use in Yuha Desert and East Mesa Management Areas. Images obtained from satellite imagery via Google Earth. Images were captured between 2008 and 2012 depending on the region.

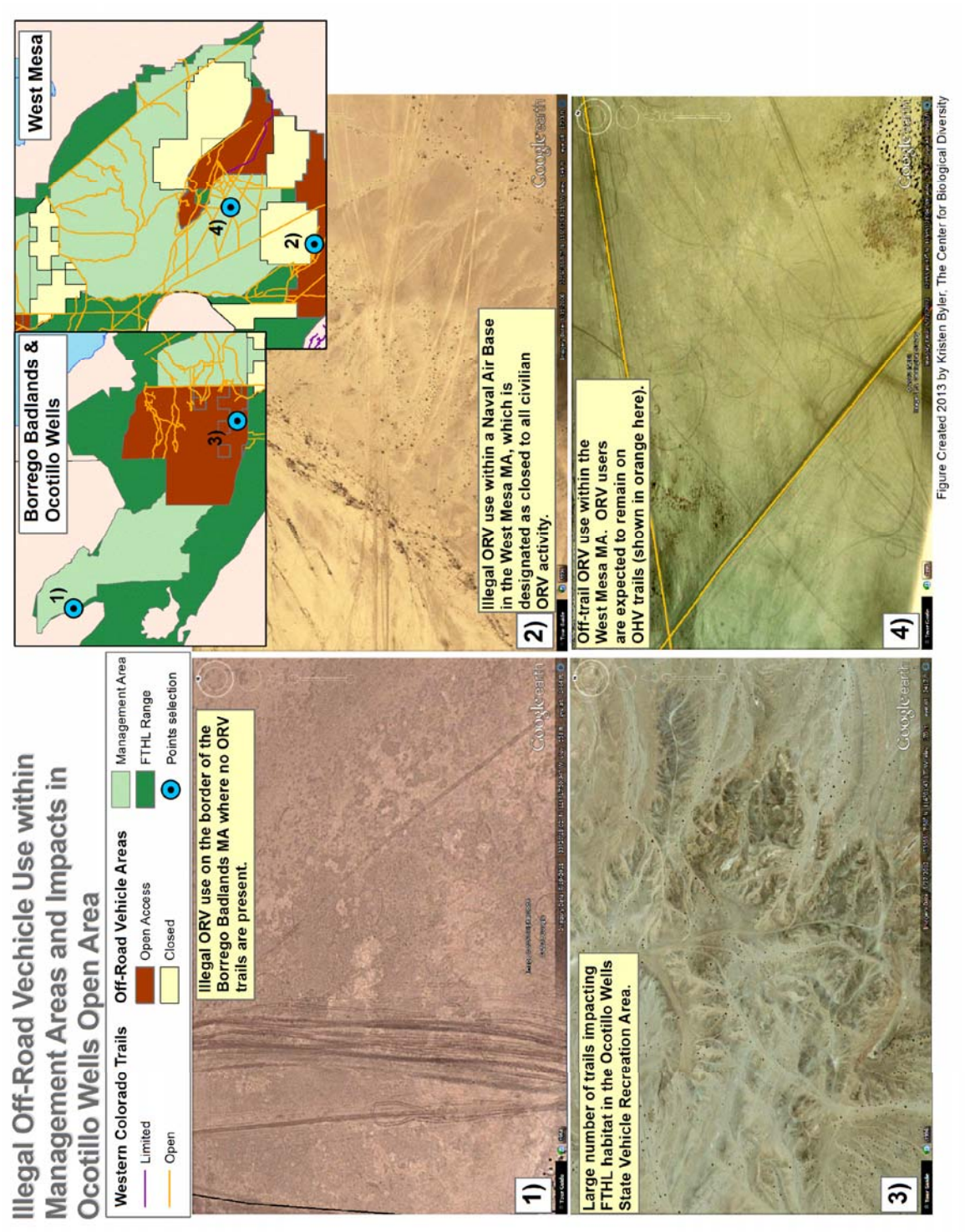

Figure 16. Illegal off-road vehicle use within Management Areas and impacts in Ocotillo Wells Open Area. Images obtained from satellite imagery via Google Earth. Images were captured between 2008 and 2012 depending on the region.

(Center 2014; FTHL CESA Petition. Figures 15 and 16.) The draft DRECP should have considered ways to support existing conservation commitments and efforts to reign in ORVs and

effectively put resource protection in place. For example, reducing ORVs access to conservation areas would allow BLM rangers to actually patrol them rigorously and enforce compliance. The Draft DRECP should also have considered closing sensitive habitat areas to ORV use and a funding mechanism to provide needed revenues for coordinated federal, state, and local law enforcement to enforce the conservation promised in the draft plan. Unfortunately, the draft DRECP plan as written completely fails to address needed changes in ORV management and misses the opportunities to truly enhance conservation on public lands in the California desert.

Nothing in the DRECP draft shows that this situation regarding lack of on-the-ground implementation and enforcement of limitations on ORV use would improve under the proposed plan and specifically in light of the proposed addition of sweeping new SRMAs and ERMAs. The unlawful but pervasive route proliferation by ORV recreation causes habitat destruction, extreme habitat fragmentation, soil destruction, and impairs air and water quality throughout the plan area already—nothing in the draft DRECP shows that this situation would improve rather than continuing to deteriorate under the proposals.

The Draft also contains no alternatives to the proposed SRMA designations and the only alternative to the ERMA designation is not to designate these areas under Alternative 1. This clearly fails to meet the NEPA requirements that a range of alternatives be considered (as well as the FLPMA requirements that alternatives to proposed plan amendments be considered).

D. The Durability MOU and Proposed Use of Additional "Tools" To Provide Mitigation On Public Lands are Inadequate and the draft DRECP Ignores Key Opportunities for Conservation Created by Omnibus Legislation Allowing Permanent Termination of Grazing Allotments in the CDCA

As detailed in early comments and above, the Durability MOU and the commitments therein are far too vague to provide the needed mitigation certainty for the NCCPA or the ESA §10. Unfortunately, to date the BLM has provided little more than hollow promises of conservation without firm commitments to the needed monitoring and enforcement actions for the alleged "conservation management actions" on public lands. Moreover, without dedicated funding even the best of intentions are unlikely to be fulfilled. The draft DRECP should have looked at creative ways to increase enforcement on public lands including an independent fund to hire fish and wildlife enforcement officers and personnel who could be deputized by both state and federal agencies to ensure protections for species and habitats are enforced across the DRECP plan area on both public and private lands.

The draft DRECP also completely ignores significant conservation opportunities that could be gleaned from permanent termination of grazing allotments within the CDCA under the 2012 legislation. 43 USCS § 1781a. (P.L. 112-74). While such actions could not provide all of the needed conservation, they can provide significant gains and the Center appreciates the work done by BLM to prepare a revised Instruction Memorandum regarding these donations and terminations. IM No. CA-2015-009. This IM is a vast improvement on earlier guidance although the Center continues to be concerned that there remain some areas in which BLM's treatment of various terminated, relinquished and retired allotments is uneven and confusing, and disagrees with the use of partial terminations that go beyond the statutory language.

The draft DRECP should have looked at ways to advance such relinquishments and development of for an independent agency to manage the NCCP/GCP/HCP or mitigation bank that could realize these conservation gains as quickly as possible. While some relinquishments have been accomplished to date, the Center is concerned where the termination has benefits for multiple species these are not being fully realized due to the case by case use of the allotment retirements as mitigation for individual projects and impacts to only a limited number of listed species—the DRECP could provide a method for capturing the additional conservation benefits and its failure to address this question is baffling. In addition, while BLM has stated that it is committed to managing the forage on the relinquished allotments for wildlife as required under the statute, it has to date failed to show that it will affirmatively do so and will appropriately designate and map these areas to ensure compliance. Because the forage is *permanently* allocated to wildlife, BLM will need to ensure that activities that would destroy or impair the forage allocated to wildlife do not occur in the future. An independent DRECP agency and/or mitigation bank may be a far more efficient way to ensure these key conservation gains are garnered and lasting than simply noting them in future BLM plan amendments and mapping. The Center urges the agencies to further consider how to integrate the conservation gains from permanent grazing allotment terminations in the CDCA into the DRECP conservation strategy.

V. Detailed Chart of Specific Comments

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						As part of the DRECP's Biological Goals and Objectives Recovery Plan goals for federally listed species that occur within the DRECP plan area and that have Recovery Plans need to be incorporated including: • California condor • Inyo California towhee • Least Bell's vireo • Southwestern willow flycatcher • Yuma clapper rail • Desert tortoise • Arroyo toad • Desert slender salamander • Desert pupfish • Mohave tui chub • Owens pupfish • Owens tui chub • Amargosa niterwort • Ash Meadows gumplant • Bakersfield cactus • Carbonate plants

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
	Exec. Summary					Table 3. Numerous species are known to occur in areas in and around the DFAs and some of them are already being impacted by renewable energy projects. Yet they are missing from the covered species table including: • Arroyo toad • Barefoot banded gecko • Coast horned lizard • American peregrine falcon • Bald eagle • Bank swallow • Elf owl • Gilded flicker • White-tailed kite • Hoary bat • Tehachapi pocket mouse • Western mastiff bat • Western red bat • Desert kit fox • All the carbonate endemic plants • Parish's alkali grass • Parish's phacelia • Tracy's eriastrum • White margined beardstongue These species had previously been considered as covered species in the planning area, and it is unclear why they are no longer being considered as covered species.
	II.3.1.2. 5.3			II.3-39-40		The CMA addresses only a subset of linkages & connectivity areas and only in the Riverside-East SEZ area. Based on Figure H-2 in Appendix H, the connectivity areas and linkages are actually much larger than noted in the text, covering dozens of miles. In addition Figure H-2 in Appendix H identifies dozens of connectivity areas and linkages located throughout the DRECP Plan area, yet they do not seem to be included in the CMA. An improved CMA for linkages and connectivity, needs to be more clearly identified and applied to other areas where key connectivity and linkages are located.
				II.3-40-41		The CMAs for Aeolian processes come up short; it proposes idealistic solutions to impacts to these

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						important processes that have yet to be proven feasible and caveat protections with "to the extent feasible". These CMAs therefore provide no assurances that important Aeolian processes are retained. For example, "Buildings and structures within the site will take into account the direction of sand flow and *to the extent feasible* build and align structures to allow sand to flow through the site unimpeded. Fence will be designed to allow sand to flow through and not be trapped." *Emphasis added*. Evidence suggests that fences designed to provide security for projects also prevent sand flow http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-07C/TN201075_20131029T171844_Exh_3064_Chain_Link_Sand_Fence_photo.JPG
				II.3-42		The CMAs state "Siting and designing Covered Activities will avoid high bird and bat movement areas" yet these areas are not identified nor is "high bird and bat movement areas" defined spatially or temporally. Vague statements fail to provide necessary assurances to protect aerial habitat for these species. Indeed little information is provided on migratory pathways, and the DRECP ignores Important Bird Areas identified by Audubon Society as a metric for evaluating avian use.
				II.3-48		Table II.3-6 Riparian and Wetland Avoidance and Setbacks – It is unclear how the setbacks were determined. This CMA also fails to address the fact that upstream impacts affect the downstream reaches of the sensitive linear features. It also fails to address conservation of the effects of "sheet flows" on the braided structure of some of the plant communities included in the Riparian Natural Communities
	Appendix C		.03	C-23		The flat-tailed horned lizard (FTHL) Plan-Wide Biological Goals and Objectives are incomplete for the following reasons: • **Improvements needed in the Goals and Objectives**. The DEIS/R basically adopts the Range-wide Management Strategy (RMS) for the FTHL which was first adopted and implemented in 1997 and revised in 2003. Despite 18 years of implementation, the FTHL

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						populations continue to decline. In response to data in our petition, this year, the California Fish and Game Commission accepted the FTHL as a Candidate species under the California Endangered Species Act based on habitat losses, threats and population declines. Clearly the RMS as implemented is inadequate to avoid population declines much less recover populations. Therefore the Plan-Wide Biological Goals and Objectives and the Step-down Biological Goals and Objectives are inadequate to assure further population declines. Additional measurable goals and objectives need to be included that address increased protection of habitat including o **Utilize standardized monitoring techniques capable of detecting population trends throughout FTHL range.** Monitoring for FTHL has been inconsistent and methodologies have been diverse, making data sets incomparable. Currently resources are being devoted to survey efforts that are unable to accurately determine population trends. Only methods capable of developing useful trend data should be employed, meaning demographic surveys sites should be more numerous and randomly distributed. The original survey methods described in the RMS (FTHLICC 2003) are likely to yield more powerful results than current methods. The Objectives need to address a common and regular monitoring scheme to detect changes in the population levels. o **Further limit off-road vehicle use within Management Areas.** All of the FTHL MAs within California border an ORV open area, indicating there is already a large amount of land

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						available for ORV recreation. Given the considerable threats that ORVs and vehicles pose to FTHLs, ORV use should be prohibited within some or all of the MAs. Since illegal route proliferation and trespass of ORVs is common, better enforcement also required to ensure FTHLs, and the harvester ant populations they rely on, are not negatively impacted by ORV use. o **Explore using appropriate fencing to keep FTHLs off of roads and limit ORV trespass.** FTHL fences are already used to keep lizards off of construction sites and access roads (FTHLICC 2003, Appendix 7), and additional fencing could be applied to existing roads and highways. Additional research should be devoted to developing strategies, potentially including fences, to limit illegal ORV trespass. In any case where fences are used, care should be taken to maintain connectivity and eliminate negative impacts to species. Road underpasses have been used successfully for desert tortoise and other species and may be appropriate for FTHL (and other species) to minimize road mortality while ensuring connectivity. Properly constructed fencing may also alleviate some of the edge effects associated with development. o **Prohibit further development in the MAs.** According to the ICC, some of the MAs are nearing the one-percent development cap, and this does include the footprint of the edge effects of these developments. FTHL habitat in the MAs is already severely fragmented and degraded, and further development should not be permitted,

Comment Number	Comments					
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						including renewable energy development and overhead transmission lines Indeed additional route closures and proper restoration need to be implemented to reduce densities and alleviate effects from habitat fragmentation. o **Reduce edge effects by burying transmission lines.** While the burial of transmission lines causes temporary surface disturbance, it reduces perching sites for avian predators which are a documented mortality factor for FTHL. o **Conduct additional research to understand the effectiveness and most appropriate design of highway culverts in natural FTHL populations; based on this research, modify existing culverts and install new culverts to increase gene flow between occupied habitat areas.** Culverts may provide essential genetic connectivity between populations separated by heavily trafficked, multi-lane highways. To our knowledge, no studies have investigated the effectiveness of culverts under natural conditions (see ADOT 2007 for controlled, *ex situ* study). o **More aggressive actions should be taken to control nonnative plants and restore damaged ecosystems.** Control procedures and restoration efforts should be explored (see Steers and Allen 2010). o **Management efforts should continue to: acquire private lands where possible, especially within the matrix of public lands.** o **Eliminate pesticide spraying within FTHL range to protect food sources.**

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						o **Monitor Argentine and other invasive ant populations along FTHL habitat boundaries to prevent potential invasions.** Although there is no evidence that Argentine ants have invaded FTHL habitat currently, other horned lizards in the regions have been negatively affected (Suarez and Case 2002) and expanding land use changes increase the risk of invasion (Barrows et al. 2006). Minimize water availability along the edges of development/FTHL habitat to reduce Argentine ant populations. o **Limit use of off-road vehicles in border area where possible.** Use of remote video surveillance systems (RVSS) to monitor illegal activity along the U.S.-Mexican border, may have the capacity to effectively monitor more land while reducing off-road vehicle use by Border Patrol. Care should be taken to prevent any increase in predation to FTHL that may be associated with the construction of surveillance towers and use of those structures by predators, i.e. potentially installing anti-perching devices. (Avery and Genchi 2004; Seamans et al. 2007). o **Efforts should be taken to improve lizard translocation success while exploring alternative mitigation techniques capable of reducing mortality associated with development.** Relocating FTHLs results in poor survivorship (FTHLICC 2007), thus more research is needed o **Better coordination with Counties and adjacent HCPs.** While the DRECP could provide a forum for tracking management and population dynamics of FTHL on public and private lands in

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						California including the counties of Imperial, San Diego and Riverside, representation from the CVMSHCP and the FTHLICC. It also provides the opportunity for cooperation, to share "lessons learned", range-wide monitoring, range-wide enhancements and other range-wide activities would be more efficiently implemented with all interested parties at the same "table". o **Expansion of current and establish new Management Areas for Connectivity.** Currently only 36 percent of the FTHL's current range within California is protected by four management areas (MAs). Suitable occupied habitat occurs outside of the current MAs, and needs to be protected. In addition to the proposed expansion areas mentioned in the DRECP (East Mesa Expansion, West Mesa, Yuha North Expansion – see below comments). Because the FTHL would benefit from addition MAs and connectivity areas the DRECP needs to incorporate additional areas: o The area between West Mesa MA and Yuha Desert MA northern expansion. This region is currently predominantly public lands managed by the BLM as the Plaster City Open Area. A connectivity corridor is crucial to maintain genetic connectivity and integrity throughout the western population. Therefore the DRECP needs to establish a portion of this area needs to be managed for FTHL benefit by

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						protecting habitat for FTHL occupancy and connectivity. o Portions of the Ocotillo Wells State Vehicular Recreation Area (OWSVRA) Research Area (RA). Currently the Borrego Badlands MA in the southern portion of Anza Borrego State Park is isolated from the rest of the FTHL populations by the OWSVRA, which is an open area, which is in the current FTHL range. Part of the RA needs to be established as a connectivity corridor and is crucial to maintain genetic connectivity and integrity throughout the western population. • Objective FTHL1.2 proposes the Yuha basin expansion, but that expansion area is not addressed in Appendix L, so it is impossible to identify what the expansion proposal actually is – area-wise as well as management-wise. The West Mesa Expansion is not mentioned in the Objective, however it is identified in Appendix L, but as with the Yuha Basin Expansion, the West Mesa Expansion is not actually described in Appendix L.
	Appendix C					For those species with recovery plans, the recovery objectives and criteria need to be incorporated into the Biological goals and objectives. For example, on the biological goals and objective for the Yuma clapper rail (page C33-34) fall woefully short of that this highly imperiled bird needs to prevent further population declines. While the most recent revision of the Recovery Plan9 is draft, the recommendations in it should be modified to address issues within the California part of the rails' range and includee in the

9 http://www.gpo.gov/fdsys/search/citation.result.FR.action?federalRegister.volume=2010&federalRegister.page=6697&publication=FR

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						DRECP as part of the Biological Goals and Objectives as follows: o Documentation of a stable or increasing trend for numbers of rails in the DRECP as shown through annual rail surveys based on maintaining a statistically secure minimum population size determined by USFWS in conjunction with species experts. o Protection of sufficient breeding and wintering habitat to support the desired population size from identified threats and allow for connectivity of habitat. o Evaluation of potential migration pathways between the Colorado River, Salton Sea, and other habitat within the plan area that provide for connectivity and that supports population viability. o identification and implementation of management strategies to protect stop-over habitats. o Protect and secure for the long-term adequate water supplies to support rail habitat at current levels throughout the plan area. o Completion of an assessment of the degree of threat from all the renewable energy technologies to rails and implementation of management actions to reduce or eliminate this threat at all project sites.
	IV		7	243		Table IV.7-49 Plan Wide Impact Analysis for Mohave Ground Squirrel Important Areas Preferred Alternative. The "Total Impact Area" do not add up for each "Mohave Ground Squirrel Important Area Type".
	IV		7	243		We could not locate a description of the four types of "Mohave Ground Squirrel Important Areas" referenced in Table IV.7-49 or how they were determined or identified. No maps are provided as to where these areas actually are. Indeed Table IV.7-49 shows a substantial reduction in conservation lands for the

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						Mohave ground squirrel from the existing MGS Conservation Area established under the West Mojave Plan (see comment below).
	Appendix H					One key flaw of the connectivity and linkage "design" in Figure H-2, Appendix H is that it fails to connect the Mojave Desert in California to conservation in Nevada or the Colorado Desert in California to Mexico, and apply CMAs to assure that these important connections are retained – wildlife do not recognize state and national boundaries.
	Appendix H			H-27		Table H-1 Potential Available Golden Eagle Take. The DRECP has vastly miscalculated the allowable take for golden eagles. Under the presented scenario – the take of 15 eagles per year over the life of the plan would allow more eagle mortalities (15 eagles annually over 25 years = 375 eagle mortalities) than the number of eagles that are estimated to occur in the plan area (230)! And that's just mortalities from NEW covered activities and not the cumulative impacts to golden eagles from other mortality sources including existing projects. Under this proposed scenario, the DRECP is an extinction plan for golden eagles in the California deserts.
				H-31		The "Advanced Conservation Practices"(ACPs) are a step towards avoidance of eagle mortalities, but are unproven. Because the DRECP is a conservation plan, it needs to identify, set aside and manage areas specifically for eagles that eliminate the hazards known to cause mortalities in eagles.
				H-42		If eagles mortalities are being caused by powerlines or the powerline is "high risk", it is the responsibility of the company that owns the powerline to retrofit the powerline. Powerline retrofit is not a mitigation measure to offset impacts to eagles from other development.
				H-45		Exhibit H-2 Conceptual Eagle Take Authorization Process is unreadable.
				H-58-59		Table H-4a Compensation Ratios for the Impacts1 of DRECP Covered Activities in DFAs and Table H-4b Compensation Ratios for the Impacts1 of Transmission Covered Activities in the DRECP Plan-Wide Reserve Design Envelope. It is unclear what is meant by

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						Mohave ground squirrel Key population Centers and expansion areas, and why there are different mitigation ratios. If they are key areas, 5:1 mitigation is requisite. For desert tortoise is it unclear why only the areas around Ord-Rodman and federally designated critical habitat would have higher mitigation ratios – all occupied habitat for tortoise should have increased mitigation requirements in light that animals will be displaced.
				H-61-62		We disagree with the proposal that "Conceptually, resources that are well conserved by the Plan-wide reserve design would require less compensation for impacts within Development Focus Areas (DFAs) to meet their Plan-wide Biological Goals and Objectives (BGOs) than less well-conserved resources." The plan-wide reserve design does not assure that resources have durable conservation or are protected from non-covered activities in the "conserved" areas. It inaccurately assumes that existing conservation is available to offset new impacts – this is a net loss of conservation and at odds with the goals of creating a conservation plan. To reduce the mitigation ratios based on the illusion of conservation in Table H-5 Base Compensation Ratio Scaled by Plan-Wide Species Habitat Conservation is not acceptable.
				H-65		H.3.3 Compensation for the Impacts of Covered Activities Operations on Covered Birds and Bats – this whole strategy is half-baked. It appears that "compensation" at best is 1:1, which results in a net reduction in species/nesting habitat. However, Table H-7 Population Debt in Comparison to Compensatory Restoration Credits for Covered Birds is unclear and confusing. It is also confusing how the "debt" would be calculated based on monitoring (no monitoring scheme is provided).
	Appendix I					Key to any successful HCP/NCCP is the funding. Appendix I fails to clarify how the anticipated costs were calculated. Because of that, it appears they are woefully inadequate. For example in the **Table I-24 NPV of Mitigation Cost Estimates Using Preferred Alternative Acreage and Lowest Cost First Compensation Acreage Selection Criteria**

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						1) the high and low cost columns are switched – just as an editing note. 2) the table fails to identify the timeline for the activity cost – is that per year, per decade, for the life of the plan. 3) The cost for desert tortoise range-wide population monitoring is $3.6 million. If this cost is for the life of the 25 year plan, that is only $144,000 per year – wholly inadequate. Real costs for desert tortoise population monitoring was documented at $1.5 million *per year* [10] in 2002 – granted that was over the whole range of the listed species, however, the California deserts are a major portion of the species range and 13 years have passed since this fact-based cost estimate was produced**.**
	Appendix I					The appendix completely underestimated desert tortoise range-wide population monitoring is the most expensive monitoring to be noted in Table I-24. It is most likely that the actual costs of monitoring other species/landscape and ecological processes and natural communities, as required by the DRECP are equally as underestimated and therefore will be underfunded.
	Appendix I					Even with the significant underestimation of costs of monitoring, Appendix I – entitled Cost and Funding - fails to identify how the plan implementation costs, including monitoring, will actually be funded.
	Appendix L					Appendix L identifies that the preferred alternative proposes numerous new Areas of Critical Environmental Concern (ACECs). However it fails to provide information on a number of proposed new ACECs including the following: • Crater Mountain • Chuckwalla Extension • Chuckwalla Mountains Central • Chuckwalla to Chemihuevi Linkage • Joshua Tree to Palen Corridor • Ivanpah Expansion • Shadow Valley Expansion • Lake Cahuilla Expansion

10 http://www.gao.gov/new.items/d0323.pdf

Comment Number	Comments					
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						• West Mesa Expansion • Yuha Basin North Expansion • Cadiz Corridor • Chemehuevi Expansion • Pisgah Expansion • Piute-Fenner Infill • Horse Canyon Expansion • Jawbone Expansion No maps or acreages, much less management scenarios are provided. Therefore it is impossible to evaluate if indeed appropriate conservation is proposed.
	Appendix L					The description of Existing ACECs in the preferred alternative do not accurately reflect the existing conditions. The following ACECs as designated under previous plans are larger than the Preferred Alternative (or the "No Action" alternative) and no rationale is provided as to why the ACEC have been reduced:

Existing Area of Critical Environmental Concern (ACEC)	DRECP ACEC (acres)[11]	CDCA + Plan Amend-ments (acres)	Reduction in existing ACEC (acres)
Christmas Canyon	3400	3444	44
Fossil Falls	1600	1667	67
Last Chance Canyon	5100	5913	813
Rose Spring	800	859	59
Alligator Rock	6800	7726	926
Chuckwalla Valley Dunes	2200	2273	73
Halloran Wash	1700	1743	43
Kingston Range	18900	19620	720
mesquite Lake	6700	6731	31
Mountain Pass Dinosaur Raceway	600	628	28
San Sebastian March	6500	6565	65
Black Mountain	51200	61806	10606
Calico Early Man Site	800	898	98
Cronese Basin	8500	10266	1766
Denning	400	465	65

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						Springs Mesquite Hills/Crucero 5000 5002 2 Parish's Phacelia 500 898 398 Red Mountain Spring 700 717 17 Salt Creek Hills 2200 2205 5 Carbonate Endemic Plants 5000 5155 155 Juniper Flats 2400 2528 128 Mojave Monkeyflower 2600 36424 33824 Upper Johnson Valley Yucca Rings 300 353 53 Dead Mountains 27200 28559 1359 Whipple Mountains 2800 3154 354 Dos Palmas 8300 15157 6857 Whitewater 14000 16381 2381 Amboy Crater 600 679 79 Mojave Fringe-toed Lizard 22190 28193 6003 Bendire's Thrasher 9900 11700 1800 DTRNA 22000 25695 3695 Jawbone/Butterbredt 153,200 187486 34286 Mojave fishhook cactus 600 628 28 Fremont – Kramer 311500 257400 54100 Superior - Cronese 404800 403800 1000 Mohave Ground Squirrel Conservation Area 1669000 1726712 57712 TOTAL 219640
	Appendix L					Management Areas have already been established for the flat-tailed horned lizard (FTHL), including East and West Mesas, Yuha Desert and a Research Area in Ocotillo Wells State Vehicular Recreation Area. The preferred alternative proposes designation of ACECs for the East and West Mesa, Yuha Desert and undescribed Yuha Basin North Expansion (see above comments).

Comment Number	Comments					
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						The preferred alternative also proposes a 1% development cap in these proposed ACECs. However it fails to identify that the existing Management Areas already have a 1% development cap. Some of the Management Areas very close to achieving that maximum development and all Management Areas have had development in them. The DRECP needs to clarify that the previous acres of development that has occurred since the establishment of the Management Areas need to be included as part of the "baseline" development and is included in the newly proposed 1% development cap.
	Appendix L Part 7_6					The Algodones Dunes is not apart of the DRECP, yet it is the North Algodones Dunes is included as an ACEC with a 1% development cap. However, the area of the ACEC is all federally legislated Wilderness, so no development can occur here anyway.
	GIS layer					Within the FTHL Research Area which links the West Mesa and the Borrego Badlands Management Areas, occurs a checkerboard of DFA lands and undesignated lands. In order to keep the remaining FTHL habitat connected, conservation set asides need to be established in this Research Area.
	Appendix L					The existing ACECs established for desert tortoise under CDCA plan amendments have an existing 1% development cap (See WEMO, NEMO, NECO). While we recognize that the preferred alternative would lower the development cap to 0.5% , the DRECP needs to clarify that the development of acres of desert tortoise habitat that have occurred since the establishment of the ACECs need to be included as part of the "baseline" development and is included in the newly proposed 0.5% development cap. Without this clarification is it impossible to identify
	Appendix L					For several existing ACECs including Bendire's thrasher, the Mule McCoy Linkage and other, there are different development caps proposed for different parts of the ACEC – anywhere from 1% to 0.5% to 0.1%. However, no maps are provided that show the boundaries of these different development cap areas, nor do the tables provided in Appendix L provide the acreages for the different development cap areas. Therefore it is

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						impossible to determine where the caps would be applied and how many acres of development would be allowed in these ACECs.
	GIS layer					1) The Preferred Alternative DFA in the Riverside East SEZ still fails to identify the two north-south wildlife connectivity corridors required in the Solar PEIS. It fails to incorporate the existing corridor established under NECO – Desert Tortoise Connectivity Wildlife Habitat Management Area. 2) The GIS layers have the wrong boundaries for Red Rock Canyon State Park
	Appendix L 11_7					The maps for the existing Mojave fringe-toed lizard ACEC are the wrong maps (Marble Mountains Fossil Bed Maps are included instead). As noted above, the ACEC is proposed to be reduced from the ACEC established under WEMO without any explanation, and it is unclear where the habitat will be excised from the existing ACEC.
						Conservation for the Mojave fringe-toed lizard needs to include additional ACECs that protect habitat outside of the ACEC establishe in WEMO. As part of that additional protection, the necessary sand transport corridors/dune systems need to be identified and designated as ACECs as well. The proposed DFA in the Riverside East SEZ fails to safeguard the existing sand transport corridor and dunes systems that originate in the Pinto Basin in Joshua Tree National Park and sweep across the Chuckwalla Valley to the edge of the agricultural area near Blythe. These systems are all associated dune and blowsands are habitat for the Mojave fringe-toed lizard.
	Appendix L					The Desert Tortoise Research Natural Area ACEC is proposed to be reduced, and in fact the GIS layer indicates that certain areas of the ACEC are included in DFAs. We strongly oppose this conservation rollback for the following reasons 1) the DTRNA has been a long-term conservation investment through public and private efforts to secure important habitat for desert tortoise, including through mitigation acquisitions for previous development projects; 2) the DTRNA is the only location reported to have increasing populations of desert tortoise12 throughout the listed populations

Comment Number	Comments					
	Volume	Chapter	Section #	Page #	Paragraph	Comment
						range. Therefore, the management of this area is the blueprint for desert tortoise recovery. No impacts to this existing conservation area should be allowed.
	Appendix L 12_9					Two ACECs established for desert tortoise recovery in the West Mojave - Fremont Kramer and Superior-Cronese are both proposed to be reduced collectively by 55,100 acres from their existing size although no justification for the reduction is provided. It also is not clear on the maps where the reduction in the ACEC is proposed. We oppose reductions in any of the existing conservation areas including in these two critical recovery areas for the declining desert tortoise. In addition these areas also include some of the southern parts of the existing Mojave ground squirrel conservation area.
	Appendix L 12_1					The Big Rock Creek Wash is proposed as an ACEC, yet most of the proposed ACEC is covered by a proposed DFA, which obviously defeats the purpose of the ACEC.
	Appendix L 12_2					Brisbane Valley Mojave Monkey Flower Expansion is of benefit not only to the Monkey flower, but also the robust desert tortoise population. We note however that Appendix L does not include the existing Mojave Monkey Flower ACEC which was established under WEMO and is much more extensive than the Bristol Valley.
	Appendix L 12_3					The proposed Caliente Creek area is identified for "wildlife allocation", yet there are no real protections through development caps or other mechanisms to assure this allocation.

VI. Conclusion

The Center appreciates the opportunity to provide these comments in the draft DRECP. We will continue to remain actively involved throughout all phases of the planning effort. Our goal in this regard is to assist the DRECP in developing the best possible plan in a timely manner that provides effective, long-term protective policies for preserving our biological resources in the California deserts while streamlining the permitting process for renewable energy projects that are proposed in environmentally suitable areas. Unfortunately the draft DRECP fails to meet many of these goals. It also fails to provide sufficient identification and analysis of impacts of the proposed alternatives as part of the environmental review under NEPA and CEQA, the

proposed plan amendments fail to meet the requirements of FLPMA, and fails to explain how, and whether, the proposed conservation plans would meet the legal requirements of the NCCPA and ESA. We look forward to reviewing a substantially revised draft DRECP in the future that cures these significant shortcomings.

If you have questions or concerns about our comments please do not hesitate to contact us.

Sincerely,

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Attachments:

Attachment 1: BLM, West Mojave (WEMO) Plan Route Monitoring Results, December 2012 (also available at http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/cdd/west_mojave_plan_upda

tes.Par.39996.File.dat/Exhibit%20B%20-%20WEMO%20Route%20Monitoring%20Results%20Filed%2012_21_12.pdf)

Attachment 2: BLM, Pilot Test Summary, West Mojave Plan Area Off-Highway Vehicle Monitoring Protocol, April 29, 2013 (also available at http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/cdd/west_mojave_plan_updates.Par.57813.File.dat/Pilot_Test_Summary_062813.pdf)

Attachment 3: FIELD REPORT from Chief BLM Ranger Patrick Chassie, Barstow Field Office, Dec. 1, 2014 (also available at http://www.biologicaldiversity.org/programs/public_lands/off-road_vehicles/pdfs/Field_Report_From_Chief_BLM_Ranger_Patrick_Chassie.pdf)

Attachment 4: Letter to Secretary Jewell re Algodones Dunes.

West Mojave (WEMO) Plan Route Monitoring Results – December 2012 1/												
Subregion - TMA	Miles of Open Route 7/	Non-designated Routes 2/	Light Route Use 5/	Moderate Route Use 5/	Heavy Route Use 5/	Truck Routes	Motorcycle Routes	Quad Routes	Routes Naturally Rehabilitating 3/	Routes not Naturally Rehabilitating	New Routes 4/	Old Routes
TMA-1												
Afton Canyon	117	6	1	0	5	2	1	3	6	0	6	0
Broadwell Lake	198	20	8	12	0	20	0	0	0	N/A	17	3
Barstow East	0.1	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TMA-2												
Sierra	234	23	11	5	7	23	0	0	13	10	0	23
Darwin	98	11	6	3	2	11	0	0	5	6	0	11
North Searles	120	14	2	9	3	13	0	1	1	13	0	14
South Searles	132	17	1	9	7	11	4	2	1	16	1	16
TMA-3												
Juniper Flats	98	215	61	115	39	38	126	51	73	142	142	73
Rattlesnake Canyon	214	16	7	5	4	7	1	8	0	5	5	11
Morongo Valley	8	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Joshua Tree	138	88	46	25	17	56	2	30	0	N/A	41	47
Needles South	73	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Wonder Valley	89	45	2	12	31	43	0	2	0	0	35	10
Needles South	73	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TMA-4												
Jawbone	264	135	51	31	53	29	38	68	21	114	0	135
Middle Knob	88	22	3	4	15	10	9	3	3	19	0	22

West Mojave (WEMO) Plan Route Monitoring Results – December 2012 1/												
Subregion - TMA	Miles of Open Route 7/	Non-designated Routes 2/	Light Route Use 5/	Moderate Route Use 5/	Heavy Route Use 5/	Truck Routes	Motorcycle Routes	Quad Routes	Routes Naturally Rehabilitating 3/	Routes not Naturally Rehabilitating	New Routes 4/	Old Routes
TMA-5												
Cronese Lake	205	35	7	10	18	20	1	14	0	N/A	30	5
Calico Mountain	91	102	23	54	25	26	9	67	0	102	80	22
Mitchel Mountain	58	22	7	14	1	17	2	3	0	0	22	0
Coolgardie	180	274	61	157	56	108	79	87	0	0	274	0
Harper Lake	121	10	10	0	0	10	0	0	0	0	10	0
Black Mountain	202	54	22	18	8	14	10	30	0	0	54	0
Fremont Peak	238	64	14	28	22	35	18	11	0	N/A	59	5
TMA-6												
El Mirage	105	43	19	15	9	17	15	11	0	N/A	42	1
Kramer Hills	249	52	14	24	14	28	10	14	0	N/A	52	0
Iron Mountain	79	20	5	11	4	15	3	2	0	N/A	20	0
TMA-7												
Rands	132	109	32	30	47	41	42	26	5	104	0	109
El Paso	316	344	35	48	261	302	29	13	15	329	0	344
Ridgecrest	187	273	0	4	269	125	15	133	0	273	0	273
Red Mountain	316	322	18	145	159	90	141	91	43	279	2	320
TMA-8												
Stoddard Valley 6/	142	5	0	0	5	5	0	0	0	N/A	5	0
Ord Mountain	177	18	1	5	12	1	9	8	0	N/A	18	0
Johnson Valley 6/	24	8	6	2	0	1	4	3	0	N/A	0	0
Pisgah Crater	39	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

West Mojave (WEMO) Plan Route Monitoring Results – December 2012 1/												
Subregion - TMA	Miles of Open Route 7/	Non-designated Routes 2/	Light Route Use 5/	Moderate Route Use 5/	Heavy Route Use 5/	Truck Routes	Motorcycle Routes	Quad Routes	Routes Naturally Rehabilitating 3/	Routes not Naturally Rehabilitating	New Routes 4/	Old Routes
Newberry Rodman	150	7	4	5	3	0	4	0	4	N/a	5	2

1/ The units in the columns are in number of routes.

2/ The number of non-designated routes is the total number of routes that intersect a designated route. The number is based on field observations. It includes some routes that are authorized for use (specific purposes), e.g., right-of-way or other authorized use, but are not open to public motorized vehicle use. The routes with authorized uses will be removed from this total after checking for all authorized use files.

3/ A trail was considered to be naturally rehabilitating if vegetation is growing back into the trail tread.

4/ A trail was considered new if the trail did not appear to be well established and a substantial amount of natural vegetation was present and the tracks appeared to have been recently traveled across.

5/ Non-designated routes evaluated for level of use: Light (1-10 tracks); Moderate (11-26 tracks); Heavy (26 track or more)

6/ Open Areas

7/ Routes in the Lancaster area were not designated in the West Mojave Plan, consistent with the CDCA Plan, but existing routes are available for public use. Consequently, there are no miles of designated routes. These subregions are not shown on this table.

Attachment 2

PILOT TEST SUMMARY

Bureau of Land Management
West Mojave Plan Area Off-Highway Vehicle Monitoring Protocol
April 29, 2013

Task 4 – Pilot Test Results and Recommendations

Pilot Test Field Implementation

The WEMO OHV Monitoring Protocol pilot test was conducted by BLM between April 8, 2013 and April 16, 2013. BLM tested the monitoring protocol variables over a total of 60 miles within the Black Mountain subregion. The 60 miles represent a statistical sample of the 202.55 total miles of designated routes in the Black Mountain subregion (the total sample size was adjusted to account for a finite population). The size of the sample is intended to provide results with an 80 percent confidence level and a 10 percent sampling error (i.e., if a sample of Black Mountain designated routes was selected 100 times, 80 of the samples would provide results that are within +/- 10 percent of the true population value). Table 1 provides a summary of the key statistical parameters from the 2012 baseline data that were used to calculate the sample size. The randomly selected routes that were part of the pilot test within the Black Mountain subregion are listed in Appendix 1[1].

Table 1. Black Mountain Statistical Parameters

Total # of Routes	155
Total Miles	202.55
Confidence Level	80%
Sampling Error	10%
Mean (incursions/mile)	0.21
Pop Standard Deviation	0.358
Total Incursions	42
Percent of Routes with Incursions	20%

BLM staff conducted field testing of monitoring protocol variables by driving the routes listed in Appendix 1 and stopping at every incursion to record data related to the monitoring variables using a Trimble Global Positioning System (GPS) unit. Appendix 2 includes the Trimble GPS unit's data dictionary, which displays the monitoring variables for which field staff recorded data at each incursion. The Trimble GPS unit used by staff in the field was loaded with and showed previous monitoring data so that staff could

[1] Routes to be monitored were re-randomized after the 2/28/13 list of routes to be monitored was developed due to refinement of GIS data and selection of confidence level and sampling error. In addition, monitoring identified route numbering errors that were corrected. Thus, routes listed in Appendix 1 are different than those in the 2/28/13 list of routes.

stop at previously recorded incursions and record information and also allowed staff to record information for new incursions. No information was recorded for previous incursions that were no longer considered incursions. Monitoring efforts were conducted by BLM staff members over 7 days. Data was downloaded from the GPS unit on a daily basis. After data was downloaded, it was post-processed by BLM (for additional corrections to positional accuracy), converted to GIS data, and assembled in a geodatabase.

The data dictionary focused on variables needed to address: (1) public compliance with route closures, and (2) the creation of new illegal routes. These variables are listed in Table 2. Field staff also collected information on several other variables (e.g., GPS locations of incursions, type of use, route mileage, etc.) that help contextualize the field data and increase its usefulness for decision-making purposes. Appendix 2 includes the full list of variables included in the pilot test data dictionary.

Table 2. Monitoring Parameters and Variables

Monitoring Parameter	Variables
Public Compliance with Route Closures	• Incursion Usage • Incursion Width • Closure Type
Creation of New Illegal Routes	• Incursions

The variables were similar (and in many cases identical) to many of the 2012 baseline variables, were not cumbersome to collect in the field, and resulted in data that could be used for analysis purposes. Overall, BLM staff felt that the variables included in the data dictionary worked well in the field and captured the information that was needed to determine use of closed routes and creation of illegal routes.

Issues identified by BLM field staff during the pilot test included:

1. Two errors in route numbering where different routes had the same route number.

2. A few routes (BM7469 and BM7410) were duplicated in the baseline GIS data and thus mileages for these routes were doubled in the original list of routes to monitor. When corrected, removing the duplicate routes reduced the mileage to be monitored and required addition of route mileage to total 60 miles for the pilot test.

3. Typos in route numbers in GIS: BM7498 should be BM7490, BM6344 should be BM6364, and BM6355 was designated on two different routes. The shorter route was assigned route number BM6335.

4. On the ground, routes were not the same length as they were shown to be in GIS. In the field, the difference in route mileage between GIS and what was recorded by the Trimble GPS unit sometimes varied by 0.03 or 0.04 miles.

5. Some routes that were designated as open in GIS were not locatable on the ground or had been naturalized and were not visible on the ground anymore.

6. Routes that were less than 0.01 miles were hard to find in the field.

7. The ends (generally) of some routes were not passable by vehicle (Jeep or ATV) due to terrain. The route was monitored as far as staff felt was safe to drive. This generally meant that the end of the route as shown in GIS was within visual line of sight by direct ocular or binocular means (less than 0.03 miles).

The first three issues identified are related to errors within the baseline data in GIS. It is likely that similar minor GIS errors will continue to be identified during future monitoring efforts. Protocol changes to resolve these issues include:

- Selecting a slightly larger sample of routes than is required to provide some additional routes that would be used every year to address any route mileage issues that are identified;

- Converting GPS data to GIS data yearly and making corrections to baseline data (and GTLF) as needed;

- Identifying GIS data issues in the Year 1 and 2 memos and Year 3 monitoring report;

- Updating the list of routes to be monitored in the current year as issues arise and corrections are needed; and

- Reviewing the list of routes to be monitored in GIS in advance of monitoring activities to identify possible duplicate routes.

The issue regarding route length was resolved in the pilot test by adding a variable to the data dictionary that tracked the length of the route being monitored and also provided documentation of the routes that had been monitored. Because the statistical validity of the monitoring program is based on route mileage, it is important to have an accurate as possible mileage of each route. Though the route length differences between GIS and field measurements was not significant, the route length variable would establish correct mileages for each route over time and would therefore provide additional long-term value and is recommended for retention in the protocol. It should be noted that recording the route length on the Trimble GPS unit is more complicated than recording information for the other variables because the variable has to be started and

stopped after recording data for each incursion. Thus, using this variable will require some additional staff training prior to field work.

The issue regarding designated open routes that were not locatable on the ground or had been naturalized was resolved in the pilot test by adding a variable to the data dictionary that recorded a point where the route should have been and allowed staff to record the on-site conditions and the designated route number of the route that was not locatable on the ground. A designated open route that was not locatable or had been naturalized was reviewed at the expected beginning of the route, at the end of the route, and where it would be expected to cross another route. If, at all of these locations, there was no evidence of the route, it was determined that the route was no longer in use or had been naturalized. Due to the history of how routes have been converted into GIS over time, this error could arise in the future in other areas. Therefore, it is recommended that the variable for routes not present be retained in the protocol. In addition, the information regarding routes that were not locatable in the field, but were designated as open, could then be relayed to the BLM manager for evaluation and potential redesignation of the route as closed.

BLM staff had difficulty in the field with identifying routes that were less than 0.01 miles in length as often these were very short connector routes or pullouts. Typically these short connector routes are not signed or are developed as maintenance components of rights-of-way facilities and it can be difficult to pinpoint their beginning and end from the main route. Pullouts on the other hand, terminate a short distance (under 0.1 mile) and are not true routes in the sense of providing access and/or travel opportunities. Therefore, it is recommended that routes less than 0.01 miles in length be removed from the population of routes to be monitored in the protocol.

The last issue deals with drivability of routes. Text should be added to the protocol requiring staff to stop monitoring if the route is not passable. At the point that the route becomes impassable, staff should record a point as part of the route not present variable and a description of the on-site conditions.

In addition to adding variables for routes not present and route length, modifications to two variables were also made when the final data dictionary was developed for the pilot test. These modifications included additional types of incursion use and using a list of specific types of closure actions rather than requiring staff to write a description of closure actions.

The additional types of incursion use were added because, in the future, routes may be limited to certain types of uses, such as motorized and biking use, and monitoring could identify if non-allowable uses are occurring on incursions off of the route. Therefore, it is recommended that the types of incursion use listed in the data dictionary be retained in the protocol.

The variable for describing the closure action in place on an incursion was changed from a text variable where staff would write-in a description, to a list variable where staff would choose a closure action from a drop-down list, providing more consistency over

time and facilitating analysis. BLM staff felt the drop-down list used was an appropriate list of potential closure actions and was used successfully during field testing. Therefore, it is recommended that the drop-down list of closure actions be retained in the protocol rather than an open-ended text field where staff describe the closure action in writing.

In addition to the variables discussed above, two other variables were added to the pilot test: incursion use comment and photos. The incursion use comment variable allowed BLM staff to note anything regarding the incursion that may require further action or specific comment, such as vandalism or dumping. Therefore, it is recommended that this variable be retained in the protocol and information from this variable be relayed to management for further action.

Regarding photos, the ease of recording photos depends on the type of GPS unit used in the field. Juno GPS units have a built-in camera that can associate the photo with the incursion and will upload the photo as part of the GPS data recorded. GeoXM GPS units do not have built-in cameras and thus BLM staff using these units had to take photos with a separate camera. The variable for photos on the GPS unit allowed staff to record the photo number from the camera (subvariable Comment) as well as an auto-generated date, time, and location, in case there was a discrepancy later on and the date and time were needed to identify the correct photo for the incursion. BLM staff felt that photo documentation was helpful in recording how conditions have changed over time and felt that, despite the added burden of recording photos when a GeoXM unit was used, photos should be taken where conditions have changed from previous monitoring efforts. Therefore, it is recommended that the protocol stipulate that photos should be taken at new incursions and at existing incursions where conditions have changed from previous monitoring efforts. Staff that conducted monitoring activities recommended using Juno GPS units in the future due to ease of use and reduced chance for error with photo numbering. It should be noted that using Juno GPS units would require some additional staff training.

BLM staff also recommended that certain routes may necessitate the use of vehicles other than four-wheel-drive vehicles for monitoring. In the future, routes may be designated as limited to certain vehicle types (e.g., motorcycles, ATVs) and thus the appropriate vehicle will need to be used for monitoring. It is recommended that the protocol state that the appropriate vehicle should be used for monitoring each route.

BLM staff conducting monitoring activities also recommended using teams of two people when minor route maintenance, authorized implementation activities, and incursion response activities were going to be conducted in the field in conjunction with OHV monitoring activities.

Although, during the pilot test, BLM staff did not record any data at incursions identified in the baseline data that did not appear to be incursions now, future monitoring efforts should record data at previously identified incursions even if no use is currently occurring at that incursion. If this was the case, “none” should be selected under the incursion usage variable and “no” or “none” selected for subsequent required variables

in the data dictionary. This will require adding “none” to the incursion width and type of incursion use variables, which are currently not options under these two variables in the data dictionary. It is important to track the lack of use on existing incursions over time to help gauge the success of the BLM’s efforts to encourage responsible route usage (e.g., through route closures, education and information efforts, etc.).

Analysis of Pilot Test Data

The BLM post-processed all of the data from the Trimble GPS units, converted the data to GIS data, and combined the monitoring GIS data with baseline data in one geodatabase. AECOM then took this geodatabase and converted the GIS data into a Microsoft Excel spreadsheet for analysis. Data analysis consisted of reviewing monitoring data for any inconsistencies or missing data, as well as comparing monitoring data to baseline data.

The monitoring data contained expected information regarding the monitoring variables and only contained a few inconsistencies in the subregion name field (Red Mountain was selected instead of Black Mountain). In addition, a few incursions with no closure actions did not have a response for closure action description (should be “none”). Therefore, it is recommended that text be added to the protocol describing data checks that should be performed once the GPS data has been converted to GIS data, including checking for the correct subregion (compared to the route subregion code) and checking to make sure “no” for closure action is accompanied by “none” for description of closure action. Also, the “route not present” variable is used for both routes that are not locatable on the ground and portions of routes not passable by vehicle. Therefore, it is recommended that once GPS data is converted to GIS data, the GIS specialist review any “route not present” points to determine which points are for routes not locatable versus which points are for where routes become impassable, and adjust baseline data as necessary.

In order to compare monitoring data to baseline data, re-attributing of some baseline data was necessary, which was expected due to changes in the monitoring variables between baseline data collection and monitoring. Baseline data for width, frequency (now usage), and past management (now closure action and description of closure action), need to be reattributed. For consistent reattribution of data, it is recommended that the protocol provide specifics on how to reattribute these fields.

When analyzing the monitoring data in Excel, it was difficult to correlate incursions within the monitoring data to incursions in the original baseline data. Based on their location, most of the incursions were easily identified as new; however, those in close proximity to baseline incursions were reviewed against aerial imagery to see if they were baseline or new incursions. To avoid this issue in the future, it is recommended that baseline incursions be given Incursion ID numbers that begin with the same 2 letter subregion code as the route they are on, followed by 4 numbers. After monitoring data is converted to GIS data, new incursions can be given Incursion ID numbers. In addition, it is recommended that a required variable be added to the data dictionary

(Incursion ID) to allow staff to enter the ID number for existing incursions that are re-visited as part of monitoring activities.

As much of the analysis is based on comparing baseline incursion information and monitoring information for the 5 variables (see Section 5, Year 3 Monitoring Results Report outline in the protocol), there needs to be a way to identify results for baseline incursions that were re-visited and results for new incursions. It is recommended that after GPS data is converted to GIS data, a field be added in GIS titled “Origin” and attributed as “Baseline” for incursions that are in the baseline data that were not part of monitoring, “Baseline/New” for incursions that are in the baseline data that were re-visited and “New” for incursions that are new and were not part of the baseline data. The analysis can then exclude “Baseline” incursions and review results for “Baseline/New” and “New” incursions.

After some modifications to the data were made, including reattributing baseline data and adding fields for Incursion ID and Incursion Origin, pivot tables of the data were created in an Excel spreadsheet to determine if this would be an acceptable way to analyze the data for reporting or if a different program or medium was necessary. The pivot tables were determined to provide the data in a format conducive to conducting the analysis necessary to complete the tables located within the outline for the Year 3 Monitoring Results Report (in the protocol document), particularly after adding another four fields to the data to show level changes in width and usage of baseline data compared to monitoring data. This was done by converting the usage and width categories to numbers and calculating the difference between monitoring and baseline values. The pivot tables were easy to both create and manipulate to show the data needed to fill in each table and should facilitate analysis and report preparation.

The data collected from the pilot test provided anticipated information on incursion width, usage, type of use, and closure actions. For instance, after a brief review of the data for new incursions, it was easily identified that 1) Over 50% of identified incursions were new, 2) The majority of the new incursions were likely from motorcycles as they were single track routes of motorcycle width, and 3) Closed routes with closure actions in place were still being used and increasing in width. Therefore, the pilot test demonstrated that, regardless of the level of statistical validity, the monitoring variables will provide the information needed to evaluate the monitoring objectives of public compliance with route closures and the creation of new illegal routes, as well as provide site specific information for management decision-making related to enforcement, education, and closure action implementation.

Summary of Pilot Test Data

As noted previously, about 60 miles of designated routes were randomly selected in the Black Mountain subregion. The primary purpose of the pilot monitoring was to test the efficacy of the field variables from a field collection perspective. That said, the pilot monitoring effort yielded data that are summarized below for the primary variables of interest of the monitoring protocol.

Creation of New Illegal Routes

The creation of new illegal routes is measured through monitoring incursions on each sample route. The Black Mountain sample included 53 designated routes that were monitored both during the 2012 baseline and 2013 pilot study. Table 3 summarizes incursion data (both 2012 baseline and 2013 pilot study) from the sample of Black Mountain designated routes. In general, the number of incursions, percent of sample routes with incursions, and incursions per mile of route all were higher during the 2013 pilot study compared to the 2012 baseline data.

Table 3. Black Mountain Sample Incursion Summary

	2012 Baseline	2013 Pilot
Number of Incursions	16	40
Percent of Sample Routes with Incursions	18.9%	24.5%
Incursions per Mile of Route	0.26	0.66

In total, field staff identified and recorded 24 new incursions on the sampled routes in the Black Mountain subregion. Of the sampled routes, two that previously had incursions (identified during the 2012 baseline) no longer had incursions, while five (which previously had no incursions) had new incursions. The number of incursions also went up on six sampled routes and stayed the same on two sampled routes.

Public Compliance with Route Closures

Public compliance with route closures is measured primarily through three variables: 1) closure action, route width, and route usage. In general, increasing width and/or usage is indicative of continued non-compliance, which is readily apparent as soon as it occurs. Decreasing width and/or usage is indicative of increased compliance that has been sustained over a substantial period of time, so that it shows evidence of repair. As the monitoring protocol is implemented over time, these two variables (width and usage) may be aggregated by closure action to determine the efficacy of specific closure actions on public compliance. Only two of the existing incursions had previous closure actions so an assessment of the efficacy of these closures is generally not feasible at this time.

Figure 1 displays route width (estimated based on the type of vehicle that could access the incursion) and Figure 2 displays estimated usage levels (light, moderate, high) for the incursions present on sampled routes in the Black Mountain subregion during the 2012 baseline and 2013 pilot study. Most of the new incursions (from the 2013 pilot study) had narrower widths (i.e., more incursions with estimated motorcycle widths than truck widths) compared to the 2012 baseline data (more incursions with estimated truck widths than motorcycle widths). Both the baseline and pilot study monitoring pointed to more incursions with light use compared to heavy use.

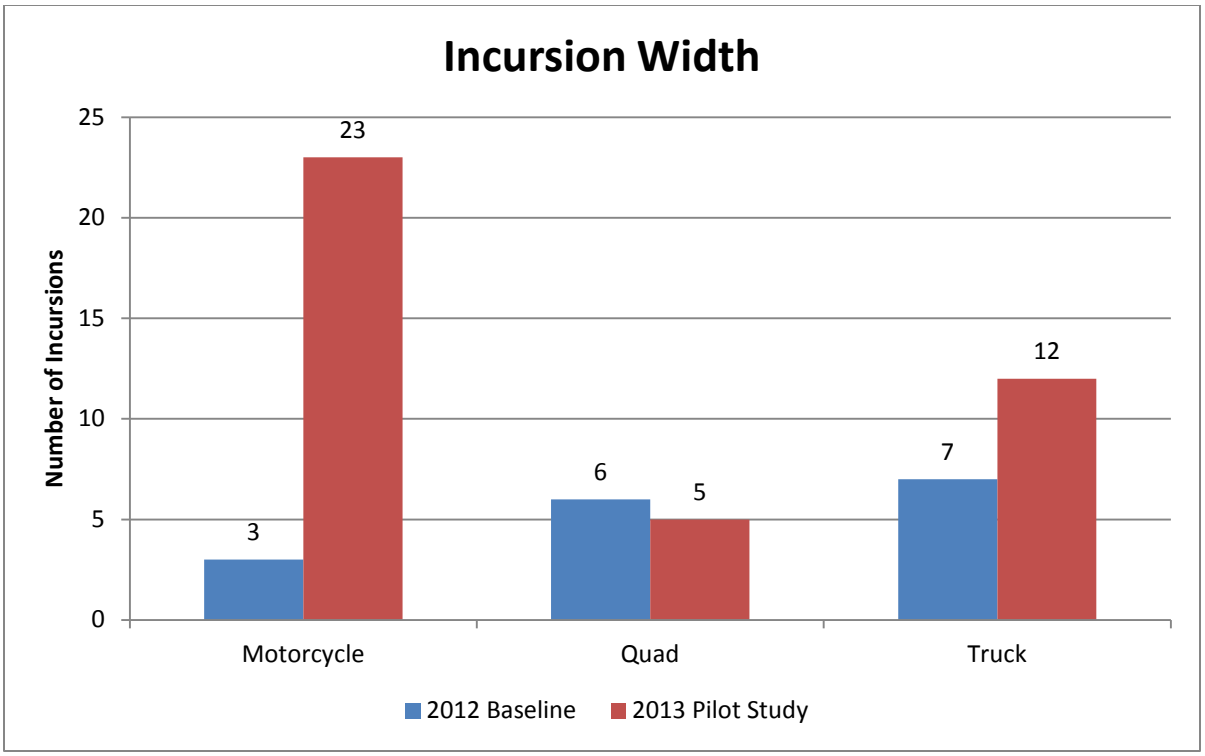

Figure 1. Estimated Incursion Width

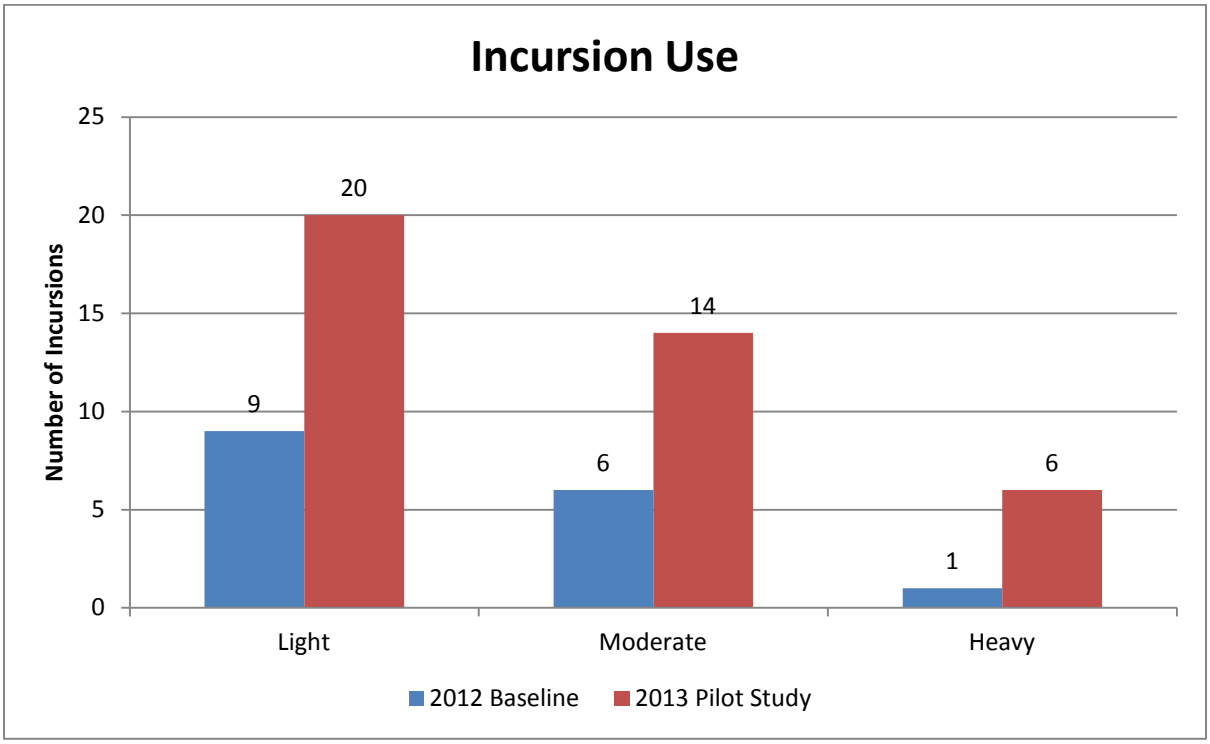

Figure 2. Estimated Incursion Use Level

Summary of Recommended Changes to the Monitoring Protocol

Based on issues identified during the pilot test, recommended changes to the monitoring protocol are:

- Select a slightly larger sample of routes at the beginning of the monitoring cycle than is required to provide some additional routes that could be used every year to compensate for any route mileage issues encountered in the field.
- Convert GPS data to GIS data yearly and making corrections to baseline data (and GTLF) as needed (route numbering, route line features, route length, etc.).
- Identify GIS data issues in the Year 1 and 2 memos and Year 3 Monitoring Results Report;
- Update the list of routes to be monitored in the current year as issues arise and corrections are needed.
- Review the list of routes to be monitored in GIS in advance of monitoring activities to identify possible duplicate routes.
- Add the route length variable as shown in the revised data dictionary and ensure BLM staff are trained on how to record this variable on the GPS unit prior to field work.
- Add the route not present variable as shown in the revised data dictionary.
- Exclude routes 0.01 miles or less in length from the population of routes to be monitored.
- Include text in the protocol document requiring staff to stop monitoring if the route is not passable and record a point for the route not present variable at the location where the route becomes impassable and provide a description of the on-site conditions.
- Use the list of types of incursion use as shown in the revised data dictionary.
- Replace the open-ended description of closure action text variable with the list of closure actions as shown in the revised data dictionary.
- Add the incursion use comment variable as shown in the revised data dictionary.
- Add the photos variable as shown in the revised data dictionary.

- Encourage use of the Juno (or other location-linked photo) GPS units if available and require photos of new incursions and existing (i.e. previously identified) incursions where conditions have changed from previous monitoring efforts.
- Use appropriate vehicles for monitoring of each route (four-wheel-drive, ATV, or motorcycle).
- Use teams of two for monitoring activities when other minor route maintenance, authorized implementation activities, and incursion response activities will also be conducted.
- Consistently record information for all new incursions AND all previously identified incursions. If there is no use of a previously identified incursion, “none” should be selected for the incursion usage variable and “no” or “none” selected for remaining required variables in the data dictionary.
- Add text to the protocol describing data checks that should be performed once the GPS data has been converted to GIS data, including checking for the correct subregion (compared to the route subregion code), checking “no” for closure action is accompanied by “none” for description of closure action. Also, review any “route not present” points to determine which points are for routes not locatable versus which points are for where routes become impassable, and adjust baseline data as necessary.
- Add text to the protocol describing how to reattribute the width, frequency and past management variables from baseline data for the Barstow Field Office.
- Give Incursion ID numbers to incursions within the baseline data that begin with the same 2 letter subregion code as the route they are on, followed by 4 numbers. After monitoring GPS data is converted to GIS data, new incursions can be given Incursion ID numbers.
- Add a required variable to the data dictionary (Incursion ID) to allow staff to enter the ID number for existing incursions that are re-visited as part of monitoring activities.
- After GPS data is converted to GIS, add a field titled “Origin” and attribute as “Baseline” for incursions that are in the baseline data that were not part of monitoring, “Baseline/New” for incursions that are in the baseline data that were revisited and “New” for incursions that are new and were not part of the baseline data
- Add text to the protocol describing how to convert width and usage categories to numbers and calculate level changes between baseline and monitoring data.

Appendix 1 – Routes Monitored in Pilot Test

Designated Route ID	Route Mileage
BM5395	1.16
BM6237	1.78
BM6241	1.66
BM6241C	2.93
BM6251	3.74
BM6265c	0.41
BM6321	0.48
BM6327	0.77
BM6330	1.10
BM6335	0.67
BM6337	0.72
BM6343A	0.10
BM6344	1.73
BM6355	3.81
BM6357	0.11
BM6362	1.25
BM6366	3.83
BM6367	0.19
BM6368	2.33
BM6375	0.85
BM6384	0.86
BM6443C	0.04
BM7153	11.29
BM7153B	0.06
BM7227	0.68
BM7401A	0.27
BM7410	0.98
BM7410A	0.06
BM7414	1.35
BM7417A	0.24
BM7468	1.08
BM7469	0.65
BM7474	1.21
BM7477	4.80
BM7483	0.66
BM7490	4.66
BM7495	0.86
BM7497	0.51
CG7223	0.14
CG7225	0.15
FP6237	0.26
TOTAL	**60.43**

Appendix 2 – Pilot Test Trimble GPS Unit Data Dictionary Used


```
Monitoring Sampling
Pilot Test 4_5_2013

Start Incursion        Point Feature, Label 1 = DesignatedNumber, Label 2 = StaffNames
                       Incursion Info
   DesignatedNumber    Text, Maximum Length = 8, DesignatedNumber
                       Required, Normal
   StaffNames          Text, Maximum Length = 50, StaffNames
                       Required, Normal
   Date                Date, Auto generate Create, Month-Day-Year Format, Date
                       Required, Normal
   Subregion           Menu, Required, Normal, Subregion
      Darwin
      Sierra
      North Searles
      South Searles
      Ridgecrest
      El Paso
      Jawbone
      Rands
      Red Mountain
      Middle Knob
      Fremont Peak
      Black Mountain
      Coolgardie
      Harper Lake
      El Mirage
      Kramer Hills
      Iron Mountain
      Mitchel Mountains
      Calico Mountains
      Cronese Lake
      Afton Canyon
      Broadwell Lake
      Barstow
      Stoddard Valley
      Ord Mountains
      Newberry/Rodman
      Johnson Valley
      Pisgah Crater
      Juniper Flats
      Rattlesnake Canyon
      Morongo Valley
      Wonder Valley
      Joshua Tree
   Usage               Menu, Required, Normal, Incursion Usage
      None
      Light
      Medium
      Heavy
   Width               Menu, Required, Normal, Incursion Width
      Truck
      Quad
      Motorcycle
   Type                Menu, Required, Normal, Type of Incursion Use
      Single Track
      Two Track
      Multi-Track
      Hiking
      MtnBiking
      Equestrain
      Animal
      CampingStaging
      Other
   ClosureAction       Menu, Required, Normal, BLM Closure Action in Place?
      Yes
      No
   DescribeClosure     Menu, Normal, Normal, Describe Closure Action
      Fencing
      Boulders
      Vegetation
      Closed Sign
      Natural
      None
   TypeUseComment      Text, Maximum Length = 25, IncursionUseComment
                       Normal, Normal
```

```
Photo                Point Feature, Label 1 = Comment, Label 2 = Date
                     Photo
   Comment           Text, Maximum Length = 50, Comment
                     Normal, Normal
   Date              Date, Auto generate Create, Month-Day-Year Format, Date
                     Normal, Normal
   Time              Time, Auto generate Create, 24 Hour Format, Time
                     Normal, Normal

LinearSample         Line Feature, Label 1 = RouteID
                     Lenght of Open route driven
   RouteID           Text, Maximum Length = 10, Designated Open Route ID
                     Required, Normal

RouteNotPresent      Point Feature, Label 1 = Describe Conditions, Label 2 = Designated RouteID
                     RouteNotPresent
   Describe Conditions      Text, Maximum Length = 40, Describe Conditions
                     Normal, Normal
   Designated RouteID Text, Maximum Length = 8, Open Route Number
                     Normal, Normal
```

Attachment 3

FIELD REPORT from Chief BLM Ranger Patrick Chassie , Barstow Field Office, Dec. 1, 2014 via email – 760.252-6070

All
During this holiday weekend, BLM experienced high OHV use within the Barstow Field Office. Law Enforcement Rangers conducted over 1000 contacts and reported above average holiday use in Johnson Valley, Stoddard Valley, El Mirage, Dumont Dunes, and Razor OHV areas. The Barstow Field office estimates OHV visitor use at 33,300 this holiday weekend based on vehicle count.

Law Enforcement also experienced incursions into several wilderness areas and DWMA's that contain sensitive sites and cultural resources. Law Enforcement Rangers cited OHV users in the Cleghorn Wilderness and discovered off route incursions into limited use areas. Sunfair dry lake was estimated at 300 people on private and public lands riding OHV's and or conducting other recreational activities. Wonder Valley was estimated at 150 OHV users. Post Homestead saw off route travel. Giant Rock and the Marine Corp expansion area also saw heavy illegal OHV use.

Evidence suggest the 29 Palms MCLB expansion with associated reduction of Johnson Valley OHV area, has lead to an increase of OHV use into other non-traditional riding areas to include sensitive biological and cultural sites. Based on the increased OHV use within the areas mentioned above and the limitied law enforcement resources available, Barstow BLM Law Enforcement needs to adjust the placement of law enforcement Rangers to balance the protection of natural resources and public safety. Barstow BLM has WEMO enforcement strategies that place biological and cultural resources as a high priority. As BLM Law Enforcement Rangers are available, BLM Barstow will focus our enforcement to address biological and culturally sensitive areas.

BLM's primary mission is resource protection. BLM law enforcement can enforce Federal rules and regulations. We do not currently have peace officer authority to enforce county laws, rules or regulations. This poses some difficulties when attempting to enforce OHV use in urban interface environments like Wonder Valley or Sunfair Dry Lake. The BLM, CHP and San Bernardino County continue to coordinate and develop law enforcement strategies to address OHV use. This coordination is critical in addressing the OHV use with in the urban interface environment. Continued cooperation is expected and necessary to balance enforcement within the areas mentioned above. Respectfully, Patrick

Attachment 4

Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
Feedback@ios.doi.gov

Open Letter to Secretary of the Interior Sally Jewell

Dear Secretary Jewell,

Congratulations on your new position. We are writing regarding the Bureau of Land Management's anticipated decision on management of the Imperial Sand Dunes Recreation Area in the California Desert Conservation Area which includes the Algodones dunes which covers over 160,000 acres and is the largest dunes ecosystem in the United States. Over 23,000 acres of this area was designated as the Imperial Sand Hills National Natural Landmark in 1966.

On behalf of our hundreds of thousands of members we ask that you do not simply adopt the Bureau's recommendation, but turn your attention to careful consideration of the impacts and affects of adopting the proposed decision. ***The Bureau's preferred alternative would open an additional 40,000 acres of the dunes complex, including over 6,000 acres of rare microphyll woodlands, to uncontrolled destruction by off road vehicles.***

Our groups have engaged in the administrative process and protested the proposed decision and fully recognize the need to balance some recreational use with conservation. We oppose the proposed Bureau decision because it would cause unnecessary and undue destruction of the resources of our public lands including listed and rare plants and wildlife, lands with wilderness characteristics, and increase particulate emissions further impairing air quality in the Imperial air basin which is already one of the most impaired air basins in the country.

Of great concern is that the proposal completely fails to acknowledge the increasing need to conserve rare sand dunes, desert washes, and microphyll woodland habitats in the California desert to off-set and mitigate for impacts from renewable energy development on public lands which are a high priority for this administration as a key part of the clean energy initiatives in the

face of climate change. As a result, adopting the Bureau's preferred alternative in a final decision would significantly undermine ongoing planning for renewable energy development in the Desert Renewable Energy Conservation Plan process which the Fish and Wildlife Service and the Bureau have both committed countless hours and significant resources to support.

We urge you to please take the time to consider how the proposed Imperial Sand Dunes Recreation Management Plan would undermine other Department of Interior priority projects including the development of renewable energy in the California deserts ***before*** a decision is issued.

We would welcome the opportunity to discuss this timely and important issue further with you at your convenience.

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