

February 23, 2015

VIA E-MAIL: docket@energy.ca.gov

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



Re: Comments to Desert Renewable Energy Conservation Plan and Associated
Environmental Impact Statement/Environmental Impact Report

To Whom It May Concern:

This office represents Castle Mountain Mining Company ("Castle Mountain") with regard to its ongoing mining operation located in the historic Hart Mining District at the southern end of the Castle Mountains in eastern San Bernardino County, California ("Castle Mountain Mine"). The Castle Mountain Mine is a permitted gold-mining operation currently holding approved Mining Permit/Reclamation Plan approvals from San Bernardino County, currently effective through December 31, 2025. (CA Mine I.D. 91-36-0015; Reclamation Plan 90M-013). The Castle Mountain Mine holdings consist of approximately 7,458 acres, including 1,298 acres of patented claims/fee lands and approximately 6,168 acres of unpatented mining claims located on federal land under the jurisdiction of Bureau of Land Management ("BLM").

We appreciate the opportunity to review and comment on the Proposed Desert Renewable Energy Conservation Plan ("DRECP") and associated Environmental Impact Statement/Environmental Impact Report ("EIS/EIR"). However, based on our review, Castle Mountain has significant concern regarding the Plan's regulatory effect. Although the stated goal of the DRECP is to provide an efficient and effective biological mitigation and conservation program providing renewable project developers with permit timing and cost certainty, while preserving and restoring national communities and related ecosystems, the regulatory impacts to the DRECP stretch far beyond renewable energy projects. The DRECP and EIS/EIR fail to adequately consider and analyze the plan's impacts on non-renewable projects, such as mineral resource development projects authorized under federal law. As stated in detail below, as currently drafted the DRECP (1) conflicts with the *General Mining Law*

Since 1910

SAN BERNARDINO 550 East Hospitality Lane, Suite 300 • San Bernardino, California 92408

RIVERSIDE 3750 University Avenue, Suite 250 • Riverside, California 92501

SAN DIEGO 550 West C Street, Suite 1810 • San Diego, California 92101

LOS ANGELES 333 South Hope Street, 35th Floor • Los Angeles, California 90071

GreshamSavage.com

of 1872 by impairing unpatented mining claimholders' existing rights, (2) improperly assigns the designation of Area of Critical Environmental Concern ("ACEC") to the Castle Mountain area without appropriate justification and findings as required by the *Federal Land Policy Management Act* ("FLPMA"), and the EIS/EIR fail to adequately analyze potential consequences of removing areas within San Bernardino County from future mineral production with regard to air quality, traffic and mineral resource impacts.

Initially, the characterization of the current status of Castle Mountain Mine (i.e., Viceroy Mine) is inconsistent in the document. In one area, the DRECP characterizes the Castle Mountain Mine as a historical operation rather than an approved mining operation. In describing the Castle Mountain Mine, the EIS/EIR states "remnants of the rail road, ranching and mining history of the old west are scattered throughout the national conservation lands in this alternative, including the historic Bardwell Rail Road grade (now inactive), the historic town of Heart, and Heart and Viceroy Mines in the Castle Peak area." However, Castle Mountain Mine mining area is shown on Figure III. 15-2: *Existing High Priority Mineral and Energy Locations Within the Plan Area*. Castle Mountain is identified on Figure III.15-2 as an existing High Priority Mineral Operation. As indicated above, Castle Mountain Mine is fully permitted through December 31, 2025, by the County of San Bernardino and also holds a valid right-of-way for access from the California BLM. Current efforts by Castle Mountain mining to reactive operations are ongoing. Additional exploration activities, as well as a preliminary economic assessment, hydrologic and hydro-geological studies indicate project feasibility. In fact, indicated and inferred gold resources is estimated at over 4.2 million ounces. Therefore, to the extent that the BLM Land Use Plan Amendment relied on the inactivity of the Castle Mountain Mine in formulating applicable land use regulations for the area, the DRECP and associated analysis in the EIS/EIR is inaccurate.

The Land Use Plan Amendment improperly creates an ACEC covering the Castle Mountain Mine area. The proposed Castle Mountain ACEC is located within the Providence and Bullion Mountains subarea. The proposed ACEC, as reflected in the Preferred Alternative, encompasses approximately 22,800 acres of land currently under the management of the BLM. The ACEC encompasses the area currently covered by Castle Mountain's unpatented mining claims. After our review of the DREC and associated EIS/EIR, the Proposed Castle Mountain ACEC does not meet the applicable criteria for designation.

ACEC designations highlight areas where special management attention is needed to protect and prevent irreparable damage to important historical, cultural, and scenic

values, fish or wildlife resources or other natural systems or processes; or to protect human life and safety from national hazards. (BLM Manual 1613-Areas of Critical Environmental Concern) In order to be designated an ACEC, proposed lands must meet certain Relevance and Importance Criteria. The DRECP does not provide sufficient discussion of Relevance and Importance Criteria to support the conclusion that designation of the area as an ACEC is appropriate.

With regard to Relevance and Importance Criteria, the DRECP merely states that “the area is critical for Big Horn Sheep containing the Castle Mountain deme and providing habitat connectivity between Castle Peaks to the north and the Paiute Range to the south. The area supports an excellent representative population of Joshua Tree woodland and has a unique plant assemblage of desert grasslands.” There is absolutely no discussion in the DRECP as to why the biological characteristics are of such import to require special management considerations. For instance, Castle Mountain Mine is located within a “notch” in the existing Mojave National Preserve. In fact, the Castle Mountain Mine is surrounded to the west, to the south and to the east by the Preserve. There is no discussion of why the area currently within the preserve under the management of the National Park Service in the area of the Castle Mountain Mine is not already sufficient to protect the movement of Big Horn Sheep, as well as the identified biological resources. As such, the Castle Mountain area does not meet the relevant criteria necessary for designation as an ACEC.

Additionally, there is no discussion of how conservation of the resources found within the Castle Mountain area, through application of an ACEC designation, would promote conservation of sensitive biological and cultural resources in the context of the DRECP. In other words, considering the Castle Mountain area is not within a Developed Focus Area permitted for renewable energy development, it is unclear how preservation of Castle Mountain area is a necessary component of the Land Use Plan Amendment. The plan and associated EIS/EIR is simply unclear on justifying the need for inclusion of the Castle Mountain area within a new ACEC as proposed. In any event, linkages between the Piute and New York Mountains has been extensively studied. Mapped, mitigated and monitored. Conditions of approval in existing permits and approvals contain sufficient mitigation obligations so as to not justify further regulation. Castle Mountain is currently working closely with regulatory agencies and NGO's to enhance wildlife habitat in the area. Reclamation and revegetation activities conducted at the site and universally recognized as a template for reclamation and habitat restoration.

Notwithstanding the above, the DRECP conflicts well-established federal mining law. Under the *General Mining Law of 1872* (30 USC Section 22 *et seq.*) the holder of valid

unpatented mining claims has the right to develop the mineral estate. The rights granted through an unpatented mining claim are property rights in the truest sense and may not be impaired. Although a claimant's right to develop the mineral estate may be reasonably regulated through the application of properly enacted regulations, the rights may not be impaired entirely.

The DRECP indicates that the regulations shall not impair existing mining claims and the claimholders shall continue to have the right to develop the mineral estate consistent with existing law. The proposed ACEC indicates that the area will remain open to mineral entry with stipulations. In fact, a stated objective of the ACEC is to "manage mineral resources to accommodate appropriate economic development consistent with NLCS/ACEC objectives." However, the practical impact of the DRECP, and particularly the creation of the Castle Mountain ACEC, will be to preclude future mineral development, thereby impairing Castle Mountain's rights as unpatented mining claimholders. The Draft EIS/EIR even acknowledges the practical impact by noting that "Impacts on mineral resources within designated Areas of Critical Environmental Concern [ACECs] . . . would likely be adverse because of the access restrictions and disturbance caps that are designed to conserve and protect resources." (EIS/EIR Vol. IV p. IV.15-4.) The DRECP implements a one percent (1%) disturbance cap within the Castle Mountain ACEC. Considering the entire ACEC comprises approximately 22,800 acres, the stated disturbance cap would allow for the development of only 228 acres, which comprises only 3.7% of area covered by existing valid unpatented mining claims held by Castle Mountain mining. As a result, the creation of the ACEC effectively precludes development of the unpatented mining claims in any appreciable manner. As a regulatory action, the DRECP cannot amend federal mining law, which is precisely the effect of the Plan.

The DRECP and associated EIS/EIR also fail to consider potential impacts arising from the loss of mineral development opportunities in regards to indirect air quality, and traffic impacts. The EIS/EIR concludes that the implementation of the Preferred Alternative will result in a significant unavoidable impact due to loss of mineral resources. (EIS/EIR Vol. IV p. IV.15-26.) This conclusion is based solely on an analysis of the loss of mineral reserves through implementation of the Preferred Alternative and does not adequately discuss the foreseeable indirect effects of this impact such as additional vehicle miles traveled due to loss of resources to proximate to the marketplace resulting in additional air quality and traffic impacts. Such impacts need to be analyzed and quantified in the EIS/EIR to adequately inform the public and decision makers.

California Energy Commission
Dockets Office, MS-4
February 23, 2015
Page 5

Based on the foregoing, Castle Mountain respectfully requests elimination of the Castle Mountain ACEC. This designation is not justified based on currently available information and would impermissibly inhibit the development of important mineral resources on valid unpatented mining claims. The Castle Mountain area is currently subject to adequate regulatory requirements conserving the ecological and cultural values of the area, and as such, no additional special management is required.

Very truly yours,



Donovan C. Collier, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

DCC:djb