

Via Electronic Mail (with Hard Copy to follow)

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Re: Comment on DRECP NEPA/CEQA



Dear Commissioner Douglas, Director Bonham, Director Kenna and Director Lohofener,

Please accept and fully consider these comments submitted on behalf of the Natural Resources Defense Council (NRDC). NRDC has over 1.2 million members and online activists nationwide, including more than 250,000 in California. NRDC uses law, science and the support of its members and activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. NRDC has worked to protect wildlands and natural values on public lands and to promote pursuit of all cost effective energy efficiency measures and sustainable energy development for many years.

NRDC strongly supports the development of responsibly sited and mitigated renewable energy projects to meet the challenge of climate change by reducing cumulative greenhouse gas emissions. However, renewable energy development is not appropriate everywhere and must be managed in such a way that, to the maximum extent possible, protects wildlife, wildlands and other natural resources while ensuring full compliance with all applicable laws. The Desert Renewable Energy Conservation Plan (DRECP) concept includes key elements of the smart from the start approach that NRDC has advocated for years: a landscape level approach to planning, guided development, identification of low conflict areas and areas that should be excluded from development, and strategic regional mitigation that will result in enduring protections for sensitive areas. In order to continue to advance the smart from the start approach to renewable energy development, we believe it is critical that the DRECP build on and refine the landmark Solar Energy Program created by the Department of the Interior. The DRECP provides a unique opportunity to do this as it expands the

landscape level planning enshrined in the Solar Energy Program¹ to include private lands and wind and geothermal technologies.

In our review of the draft DRECP we have identified some key concerns that we believe the agencies must address in order to develop and adopt a final DRECP that meet the needs of industry and provide for critically needed conservation. We greatly appreciate the hard work that has been invested in this complex process to date and believe that the issues identified in these comments can be resolved through a revised Supplemental DEIS.

Energy and Transmission Planning and Coordination

The DRECP needs to be well coordinated with state and local planning processes for electricity generation and transmission to ensure that the state is planning for future renewable energy and transmission build out in the desert in a way that meets multiple goals (e.g., least impact to species, grid services, types of renewable technology). The draft plan provides no clarity on where transmission is most needed, where opportunities exist to utilize open lines or poles, and no guidance on how to prioritize proposed new transmission.

While outside the immediate scope of the DRECP, we encourage on-going and active collaboration and communication regarding California's renewable energy goals and strategies between the State's energy planning agencies—the California Public Utility Commission (CPUC), the CEC, the California Independent System Operator (CAISO) and the DRECP's governing entity. Specifically, the information in the DRECP should be used to inform the CEC's and CPUC's resource portfolio development under the Long Term Procurement Plan process which is then recommended for study in the CAISO's Transmission Planning Process.

NRDC and our conservation partners are submitting detailed comments on the Transmission section of the DRECP which are provided under separate cover.

Durability of Conservation

NRDC has been engaged in the dialogue around durability of conservation on public lands for several years now and recognizes the critical importance of this issue to the success of the DRECP. In order to ensure lasting protections for natural resources covered under the DRECP, the plan and its implementing agreement(s) must provide for enduring and durable conservation on public and private lands. In particular, the issue of durability of conservation designations on public lands needs to be adequately resolved for the DRECP to meet the standards of the NCCP Act. As currently drafted, the conservation designations on BLM lands are not consistent in the nature or duration of protections; and do not provide clear, measurable commitments as to either necessary durability or as to the specific contributions areas make to the conservation strategy and/or the mitigation actions.

¹ See the Record of Decision for the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States

Together with our conservation partners, NRDC submitted comments on the Durability Memorandum of Understanding (MOU) between the State of California's Department of Fish and Wildlife (CDFW) and the Department of the Interior on February 12, 2015. This second MOU between state and federal agencies addressing the topic of durability moved the conversation forward, however additional detail is needed both in the MOU and in the draft DRECP itself if the BLM is going to be able to provide the enduring protections needed to meet the NCCP standard.

Conservation Strategy

The DRECP conservation strategy, which is intended to meet state and federal endangered species requirements, is vague and does not appear to provide the level of conservation for covered species upon which endangered species permits may be issued. In order to improve the conservation strategy, in general, we recommend that the agencies: 1) supplement covered species biological information with updated data and information on population levels and on-the-ground impacts; 2) incorporate specific and measurable biological goals and objectives for each species; 3) clarify direct linkages between the biological goals and objectives for each species and management actions and mitigation efforts prescribed by the Plan; 4) prioritize effectiveness monitoring to ensure that objectives are being met; and 5) delineate a fully transparent adaptive management process that incorporates specific triggers for management actions and new information as it becomes available. A species-specific example of needed improvements to the conservation strategy is detailed in our golden eagle comments below.

In addition to the above, we strongly recommend that the agencies fully consider the detailed recommendations regarding the conservation strategy that have been submitted by the Audubon Society, the California Native Plant Society, the Center for Biological Diversity, Defenders of Wildlife et al, and The Nature Conservancy.

Golden Eagles

In coordination with several partner organizations, including National Audubon Society, Sierra Club and Defenders of Wildlife, NRDC has been deeply engaged in eagle conservation efforts and particularly as related to renewable energy development. We support many of our partner's comments addressing golden eagle conservation in the DRECP and urge consideration of their detailed comments in conjunction with the issues highlighted below. Rather than restate issues already explored, we are also incorporating by reference our previous joint comments on the Draft Eagle Conservation Plan Guidance, the proposed revisions and changes in the regulations governing eagle permitting, wind energy in the Desert Renewable Energy Conservation Plan (DRECP), and the Draft Environmental Assessment (DEA) and programmatic eagle take permit application for the Shiloh IV Wind Project.²

² Audubon, et al., Joint Comments on the Draft Eagle Conservation Plan Guidance (May 19, 2011); Audubon, et al., Joint Comments on Advance Notice of Proposed Rulemaking, Docket No. FWS-R9-MB-2011-0094 (July 12, 2012); National Audubon Society, Natural Resources Defense Council and Sierra Club, Joint Comments on Eagle Management and Permitting, Docket No. FWS-R9-MB-2011-0094 (September 22, 2014); Defenders of Wildlife, et al., Joint Recommendations on Wind Energy

We appreciate the significant effort undertaken thus far to address eagle conservation efforts in the DRECP and acknowledge the complex legal, biological and policy-oriented issues that must be addressed to ensure the preservation of golden eagle populations in the California desert and set forth a workable permitting program. Despite this notable effort and early coordination, the framework for golden eagle conservation under the draft DRECP continues to suffer from many of the same deficiencies as previous eagle conservation efforts, and similar issues pervade other species-specific inclusions in the DRECP.

To construct a workable permitting structure for golden eagles that ensures conservation of the species in the plan area, we recommend that the agencies:

- Immediately incorporate an overarching conservation plan for golden eagle conservation and management in the DRECP that incorporates measurable biological goals and objectives and a delineated process to incorporate new research and baseline data as it is available;
- Take a conservative approach to golden eagle take authorization until updated baseline data demonstrates that the desert eagle population is in fact stable and until we have proven Advanced Conservation Practices (ACPS) and a full suite of mitigation options;
- Incentivize upfront avoidance measures and development of low risk projects;
- Establish a structured process for approving and selecting ACPs, and describe ACPs that will be required in the interim;
- Address disturbance and loss of foraging habitat, and sources of impacts to eagles besides wind energy in mitigation requirements and the approach to allocate take; and
- Release the golden eagle research framework and population-wide monitoring plan for public comment and finalize concurrent with the DRECP.

Our previous eagle conservation comments detail the need for a more comprehensive, conservation-driven and fully transparent approach to eagle permitting—this includes safeguards against potentially unmitigable impacts, meaningful analysis and management beyond a project-specific scale, and guaranteed opportunities for the public to understand and engage on monitoring, mitigation and adaptive management prescriptions. These comments are equally applicable to and needed in the DRECP. Fundamental to a conservation-driven approach is adhering to an overarching conservation management plan, with carefully defined and measurable goals and objectives as well as explicit adaptive management prescriptions. The DRECP has a significant opportunity to put in place a conservation strategy for golden eagles that will be a model for other areas, inform the ongoing USFWS’ eagle permitting revisions and demonstrate a path forward for ensuring preservation of the species. Unfortunately, the draft

Development in DRECP (August 24, 2012); Audubon California, et al., Joint Comments on the eagle permit application for the Shiloh IV Wind Project (November 29, 2013).

DRECP proposes to delay construction of an overarching conservation strategy and leaves construction of “a broader desert eagle conservation strategy”³ until additional research and study is completed.

We strongly urge the agencies to set forth a detailed golden eagle conservation plan now, based upon the best available information, and to institute a transparent process for updating it as new information becomes available. The draft DRECP focuses almost exclusively on estimating take allocations and compensating for eagle mortality at wind farms, while assuming that generalized habitat protections and a no net loss strategy will ensure preservation of the species—unfortunately this is not a conservation plan or credible strategy. More detail is needed regarding:

- updated baseline information on eagle demographics and behavior within the plan area,
- links between specific management actions and population-oriented outcomes, or
- overall conservation goals in the form of numeric targets for eagles within the plan area.

Without this type of context provided for in an overarching conservation plan, it is impossible to determine if the desert eagle population is currently stable or whether the proposed take allocation is sustainable and can be mitigated for without jeopardizing the local area population—analyses that the Endangered Species Act, Bald and Eagle Protection Act (Eagle Act) and NCCP Act require.

While we understand and the draft DRECP acknowledges that “additional research is needed to identify effective measures to offset impacts at a population scale” and this is an “interim structure,”⁴ we believe that this uncertainty justifies a more conservative approach towards eagle permitting based on the best available science. A more conservative approach would include greater clarity and specificity for the biological goals and objectives and other management prescriptions, as well as a firm commitment to transparency and open processes guaranteeing monitoring for effectiveness of ACPs and other mitigation efforts. A more conservative approach would also decrease the take benchmark of 5% of the local area population because 5% is “at the upper end of what may be considered appropriate under the Eagle Act’s preservation standard.”⁵

One of the best strategies for conserving eagles will be to incentivize the siting of development projects and other impacts away from areas where they have the highest risks for eagles and towards areas with the least potential for impacts, *before* any such impacts occur. The draft DRECP states that “[i]n the event that multiple applications are submitted that collectively would exceed the amount of available take...[p]rojects that have a low risk of eagle take and a high generation capacity will be given the highest priority.”⁶ This is an extremely important and welcome concept that should be applied to all eagle permit applications, regardless of whether multiple applications are submitted or if applications exceed available take, in order to ensure that impacts to eagles are being minimized.

³ Draft DRECP, Appendix H at H-20.

⁴ *Id.*

⁵ *Id.* at H-26.

⁶ *Id.* at H-28.

Similarly, upfront avoidance measures should be incentivized and accounted for, such as relocation and curtailment of turbines. A suite of ACPs, experimental and/or approved, should be required concurrent with the issuance of any take permit (and *prior* to eagle injury or mortality) to ensure that take is minimized and “unavoidable.” As ACPs will be adaptively implemented based on ongoing research and considering that USFWS has yet to formally approve any ACPs, it will be critical to define and delineate an open and transparent process by which ACPs are required, approved and incorporated into new and operating projects.

In the agencies consideration of new ACPs, as well as in the calculation and prioritization of take issuance, eagle take from sources other than wind energy projects and take other than mortality should also be considered and accounted for. Currently, there is a significant focus on eagle fatalities at wind turbines; however, as the draft DRECP rightly acknowledges “impacts from DRECP Covered Activities are anticipated to result in the loss of foraging habitat, breeding territories, and both breeding and non-breeding birds,” and “the loss of foraging habitat can reduce reproductive output and survival of eagles.”⁷ The agencies should therefore address disturbance as well as loss of foraging habitat from all covered activities, in addition to direct mortality, throughout the conservation strategy, approach to allocate take and mitigation requirements.

Given the high level of uncertainty surrounding the baseline population status, risk factors, impacts, and efficacy of mitigation measures for golden eagles, it is understandable that significant weight will be placed on an adaptive management approach to conservation measures and monitoring. To allow for a truly open and transparent process, the agencies should release the golden eagle research framework for guiding research needs and allocations, as well as the population-wide monitoring plan⁸ for public comment as soon as possible. These documents will be cornerstone to a successful adaptive management approach and should be finalized concurrent with the DRECP.

Coordination with the Las Vegas RMP Revision

The DRECP provides the BLM a unique opportunity to demonstrate its commitment to plan at a landscape scale, particularly in light of the planning effort underway through the Las Vegas Resource Management Plan (RMP) revision. Our groups support proposed conservation designations in the region adjoining the Nevada border, but remain concerned that linked and cumulative effects of development have not been analyzed and addressed. To the east of the DRECP, the Las Vegas RMP will establish land use designations for conservation, renewable energy development and recreation—these are all actions that will affect resources in the DRECP plan area. For overall species conservation across their entire range, the two plans should make every effort to align conservation designations so that development on either side of the plan would not undermine conservation on the other side.

Refine DFAs, SSAs, FAAs and Undesignated Lands

⁷ *Id.* at H-25.

⁸ *Id.* at H-46.

Creating appropriately sited low conflict Development Focus Areas (DFAs) with meaningful incentives for developers is a key element of success for the DRECP. In order to achieve this goal the agencies need to refine the DFAs, Future Assessment Areas (FAAs), Special Study Areas (SAAs), and Undesignated Lands to remove inappropriate areas and to resolve inconsistencies with local land use plans. Many of the DFAs currently proposed are inconsistent with regional and local land use designations and fail to exclude conservation lands or other designations within the DFAs and therefore it is unclear which lands are actually available for development. In order to provide a more accurate picture of lands open for development and to ensure that development in the DFAs will not undermine the biological goals and objectives for covered species, the DRECP must do the following:

- Refine DFAs to eliminate designated the following categories of lands:
 - Lands with Wilderness Characteristics (LWC), including BLM and citizen-inventoried LWC.
 - Important biological resources: wildlife conservation organizations, including The Nature Conservancy and Defenders of Wildlife, have identified significant areas of importance to Covered Species and natural communities and processes in the planning area that should be evaluated for exclusion from DFAs and added to the BLM Conservation Designations to meet the DRECP biological goals and objectives.

We would like to provide specific recommendations for two proposed SSAs in particular: Silurian Valley and the West Mojave. As NRDC has previously stated, we do not believe that Silurian Valley is appropriate for renewable energy development and recommend that the area be removed from consideration as an SAA and the lands identified and managed for conservation. Regarding proposed development in the West Mojave, west of the 395 Corridor, we believe there is the potential for low-conflict development within this general vicinity and recommend that further analysis be done to determine what the appropriate boundaries would be for that development.

More detail is also needed regarding other SSAs, FAAs, and Undesignated Lands. There are 1.3 million acres of Undesignated Lands under the Preferred Alternative, including 709,000 acres of public lands. The criteria for establishing these lands are unclear and many of the areas in this category include important biological, scenic, recreational and cultural resources. The DRECP must conduct further analysis on these lands and determine whether they are suitable for inclusion into the conservation reserve, renewable energy development, or other designation.

Special Recreation Management Areas

The DRECP creates over three (3) million acres of new “Special Recreation Management Areas” (SRMAs) and “Extensive Recreation Management Areas” (ERMAs). We request that the BLM:

- Clarify/emphasize that in the event of overlap, the more protective management prescriptions apply (e.g., ACEC or NCL provisions over SRMAs).

- Address the need for stronger recreation/travel management prescriptions at the DRECP Plan level to ensure that conservation goals and other resource protection goals are met and impacts from recreation are minimized in the SRMA and ERMA areas. These prescriptions will also help to guide revisions to future Travel Management Plans and/or Recreation Area Management Plans.
- Ensure that the Desert Tortoise Natural Area is maintained for conservation purposes, and not recreation. It should therefore be removed from any proposed SRMAs.

Groundwater

The groundwater resource protection provisions in the draft DRECP (including Conservation Management Action (CMA) standards) are insufficient—they are unclear and appear to be largely optional. As such, the conclusion in the DRECP Executive Summary⁹ that there will be less than significant impacts to groundwater from solar energy development in all but the no action alternative is incorrect. Renewable facilities will invariably rely on groundwater pumped from stressed aquifers that support vital desert springs and wetlands.

The final DRECP must clearly state mandatory requirements to protect groundwater-dependent resources to ensure that flows are maintained and that critical aquatic and riparian resources will survive, especially over the long term. These requirements must include imposing modeling, stringent monitoring, triggers based on modeled impacts and compensation conditions on groundwater use by renewable energy facilities. In places that support vital groundwater-dependent resources and where groundwater is already over-utilized, net reductions in basin water use must be required. If net reductions cannot be assured, the DRECP should avoid development (including elimination of DFAs, FAAs, SAAs, variance areas and undesignated lands) in these areas.

NRDC strongly recommends that the agencies consider the detailed groundwater comments that have been submitted by The Nature Conservancy.

County Engagement

Implementation of the DRECP is dependent on the counties agreeing to designations for both conservation and development on private land that the DRECP establishes through its planning process. Without county participation, the permits and assurances for development under the DRECP will be limited to public lands, thus missing opportunities to incentivize renewable energy development on disturbed and degraded private lands. While we anticipate that a majority of conservation will occur on public land to meet the DRECP's conservation strategy, we believe that the DRECP will need to identify some private lands as a part of the conservation strategy to meet specific species' conservation goals. Thus, it is critical that, depending upon the location of development and conservation areas, the DRECP secure legally-binding commitments from

⁹ Draft DRECP, Executive Summary at 48.

specific counties in order for CDFW to make the appropriate legal findings regarding implementation of the DRECP.

Governance and Funding

DRECP will be one of the most complicated NCCP/GCPs in California, which will require a very detailed and clear implementation and governance plan over the decades in which the DRECP is in place. Most importantly, the decision making process and governance structure must be clearly articulated so the public can understand how the plan will be managed and how decisions will be made. The public must have a means to provide input into the plan as it evolves as well, both through some kind of advisory committee and through public reports, meetings, comment processes and other relevant mechanisms.

Since the adaptive management program in this plan will need to be very robust in order to address complex issues as new information about specific species and impacts come to light, it is critical that this plan have a reliable mechanism for ongoing scientific input from independent science advisors in addition to a clear line of authority for decision-making. Further, given the fact that the plan will rely extensively on public land management for the conservation strategy, it is critical that there be a robust, stable and reliable funding plan along with transparent accounting of funds so that the public and private companies alike know where the DRECP is spending both public funds and the fees paid by the developers. Finally, the plan should also have clear triggers for initiation of any plan amendments.

Conclusion

In conclusion, we would like to reiterate our continued support for this complex planning effort. The task at hand is monumental, and we appreciate the tremendous amount of work that is being done by the agencies and their staff to develop a plan to balance renewable energy generation with conservation of pristine landscapes and species' habitats. We continue to believe the DRECP can help California transition to renewable energy without sacrificing our state's rich and diverse ecosystems and wildlife. As a stakeholder to the DRECP, we intend the comments in this letter to assist in strengthening the credibility of the DRECP as a plan to guide appropriately sited development and meaningful and lasting conservation. We look forward to working with you to ensure that the above recommendations are incorporated into a final DRECP.

Sincerely,



Helen O'Shea
Director, Western Renewable Energy Project
NRDC

cc: Ken Alex, Senior Policy Advisor
Elizabeth Klein, Associate Deputy Secretary