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**Re: DRECP NEPA/CEQA
Comments of Backcountry Against Dumps and Donna Tisdale on the Desert
Renewable Energy Conservation Plan and Environmental Impact
Report/Environmental Impact Statement**

Pursuant to the National Environmental Policy Act (“NEPA”), 42 United States Code section 4321 *et seq.*, and the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.*, Backcountry Against Dumps and Donna Tisdale (collectively “Backcountry”) submit the following comments addressing the September 2014 Draft Desert Renewable Energy Conservation Plan (“DRECP”) and Draft Programmatic Environmental Impact Report / Environmental Impact Statement (“Draft PEIR/PEIS”) (collectively, “DRECP”) prepared by the California Energy Commission (“CEC”), the California Department of Fish and Wildlife (“CDFW”), the United States Bureau of Land Management (BLM), and the United States Fish and Wildlife Service (“FWS”) (collectively, “Renewable Energy Action Team,” or “REAT”).

INTRODUCTION

The DRECP and Draft PEIR/PEIS are confusingly conflated into a single document. As a consequence, it is impossible to discern which statements are part of the DRECP and which statements are part of the Draft PEIR/PEIS. Under applicable state and federal law, these are two fundamentally different documents and should be disaggregated so the public and the decision-makers can tell them apart. Although this comment necessarily refers to quotations and pages from this erroneously conflated document by its assigned title, “DRECP,” where necessary to the analysis these comments attempt to distinguish between the very different purposes of and requirements applicable to each of these different components.

The DRECP admittedly impacts “the California Mojave and Colorado/Sonoran desert region[, which] is a remarkable place, home to an impressive array of sensitive species and their habitats, a robust cultural heritage, and recreational opportunities for residents and visitors.” DRECP 6. Because this plan is intended to be used so broadly – to aid agencies in creating renewable energy plans, land use plans and policies, renewable energy development projects, and “other private development and public infrastructure projects, as well as identifying conservation priorities” and “appropriate mitigation areas for the impacts of locally approved projects” – on such important lands, the accuracy, integrity, and completeness of the DRECP and its Draft PEIR/PEIS are of paramount importance.

Under all the action alternatives examined, the DRECP would streamline the creation of 20,000 megawatts of energy generation (even with no projected demand for this amount of energy) and to that end, allow the wholesale destruction of vast swaths of the California Mojave and Colorado/Sonoran desert regions. Despite the presence of urban, developed, and disturbed areas in the DRECP Project area, the DRECP and its Draft PEIR/PEIS omit these lands from consideration for renewable energy development, preferring instead to push development onto open and undeveloped areas farther from users and existing transmission infrastructure. Further, the DRECP’s No-Action Alternative does not actually contemplate “no action” as it includes similarly unnecessary renewable energy developments, but omits all of the conservation elements that the DRECP presents to offset the harms of renewable energy development, impermissibly skewing the analysis in favor of the DRECP.

The DRECP purports to mitigate most biological resource impacts to less than significant levels under all action alternatives, despite a lack of detailed information regarding the locations that the DRECP will make available for renewable energy development. In addition, the DRECP vastly underestimates the water demand of non-geothermal renewable energy projects, and fails to properly mitigate renewable energy development water supply impacts. Its analysis of the Project’s impacts on biological resources, scenic and cultural values, noise, EMFs, fire ignition and suppression, agriculture and outdoor recreation, as well as its cumulative impacts, likewise ignores the potentially significant impacts of the action alternatives. Thus, the DRECP fails to inform decisionmakers of the impacts of its approval.

The DRECP’s acknowledged and overlooked significant and unmitigable impacts to biological resources, groundwater supply, agriculture, visual resources, cultural resources, tribal resources, outdoor recreation and others should not be overridden based on speculative energy benefits that can be found elsewhere at less cost and with less impacts.

I. Scope of Analysis

Although its objectives were ostensibly laudable, the DRECP falls far short of the requirements of both NEPA and CEQA because, simply put, the scope of analysis exceeds the

proponent “REAT” agencies’ data and analysis. The DRECP fails to present sufficient facts and analysis to support the planning designations assigned to over 22,000,000 acres of federal and non-federal lands within the DRECP planning area. In short, the proponent agencies’ reach exceeded their grasp, violating both CEQA and NEPA. As the Ninth Circuit explained in *State of California v. Block*, (“*Block*”) 690 F.2d 753 (9th Cir. 1982), a programmatic EIS must contain a “‘reasonably thorough discussion of the significant aspects of the probable environmental consequences’” of a large-scale land use planning decision. *Id.* at 761, quoting *Trout Unlimited, Inc. v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974). The EIS must be sufficiently detailed to “‘foster both informed decision-making and informed public participation.’” *Id.*, citing *Warm Springs Dam Task Force v. Gribble*, 565 F.2d 549, 552 (9th Cir. 1977) and *Trout Unlimited, Inc.*, *supra*, 509 F.2d at 1283. Careful analysis and hard decisions cannot be postponed just because small-scale implementing decisions may require their own additional environmental reviews in the future, because “NEPA requires that the evaluation of a project’s environmental consequences take place at an early stage in the project’s planning process.” *Block, supra*, 690 F.2d at 761, citing *Friends of the Earth, Inc. v. Coleman*, 518 F.2d 323, 327 (9th Cir. 1975).

Where, as here, the programmatic EIS purports to approve a “‘critical decision’” allowing future development of sensitive areas, then the line is crossed and more detailed analysis is required at the programmatic stage in order to assure that analysis of important environmental consequences takes place sufficiently early in the project’s planning process to enable informed public and agency allocation of the significant public resources that will be allocated by the programmatic decision. Here, as in *Block*, the long-term planning decisions being made represent a “‘decisive allocative decision” that “‘must therefore be careful scrutinized now and not when specific development proposals are made” in the future. *Block*, 690 F.2d at 763. As the following comments explain, the DRECP’s critical “‘allocative decisions” should accordingly be – but in many instances, are not – based on sufficiently detailed data and analysis to enable the public and decision-makers to fully comprehend the environmental impacts of the planning decisions being made, and to thoroughly understand the comparative environmental costs and benefits of selecting alternatives other than the “Preferred Alternative” that would reduce the DRECP’s significant environmental impacts while promoting greater energy efficiency and vastly reduced economic costs.

II. The Purpose and Need Statement Is Inadequate

NEPA forbids an agency from “defin[ing] the objectives of its action in terms so unreasonably narrow that only one alternative among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a

foreordained formality.” *National Parks & Conservation Assn v. Bureau of Land Management (NPCA)* (9th Cir. 2010) 606 F.3d 1058, 1070; *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 812 (9th Cir. 1999) (same). So does CEQA. Remy, *et al.*, *Guide to CEQA* (11th ed. 2007) at 589 (“The case law makes clear that . . . overly narrow objectives may unduly circumscribe the agency’s consideration of project alternatives”).

Here, the DRECP’s statement of purpose and need impermissibly ends the inquiry before it begins. It is exceptionally narrow and wedded to the unwaivering and wholly unwarranted premise that the DRECP’s planning area must develop at least 20,000 MW of electrical generation capacity. DRECP I.1-1 to I.1-10. The federal objectives are essentially to develop 20,000 MW of industrial-scale renewable energy plants. DRECP I.1-1 to I.2-2 (BLM goal of 20,000 MW of electricity generation¹), I.1-6 (USFWS purpose is “to identify and prioritize specific locations best suited for large-scale production of solar energy on public lands”). The state objectives are virtually identical. DRECP I.1-9 (objective is to “plan[] for approximately 20,000 MW[] of renewable energy generation and associated transmission capacity in the Plan Area by 2040”). The DRECP chose this extremely narrow objective despite the fact that the *DRECP itself admits* that “California’s need for electricity may be lower over the next 10 years than . . . anticipated” and, as a result, “development of new renewable energy capacity in the DRECP could fall well below the 20,000 MW planned in the DRECP if regulations and policies remain unchanged.” DRECP I.3-50.

Having pre-selected the preemptively narrow objective of developing 20,000 MW of renewable energy – even though it may not be needed, and as shown below, can be obtained at far less environmental and economic cost through roof-top solar and other forms of distributed energy – the DRECP proceeds to reject numerous alternatives on the pre-ordained ground that they fail to meet the action agencies’ narrow objectives. For example, as discussed more fully below, the DRECP dismisses a distributed generation alternative because it does not respond to the action agencies’ objective of creating industrial-scale renewable power plants. *E.g.*, DRECP II.8-9 (distributed generation alternative “would not meet the interagency goal because it does not provide a streamlined process for the development of utility-scale renewable energy”).

¹ BLM may claim that its goals are broader, but the DRECP makes clear that both the state and federal action agencies see their objective as promoting 20,000 MW of energy development. *See, e.g.*, DRECP I.3-38 to I.3-39 (“the following planning assumptions . . . were used to . . . guide development of the DRECP alternatives. 1. Plan for 20,000 megawatts (MW) of new renewable energy resources in the Plan Area by 2040. . . . The [action] agencies decided to . . . plan for the development of up to 20,000 MW of new renewable electricity generation and associated transmission capacity”), I.3-50 (“The [action] agencies agreed that 20,000 MW was an appropriate capacity for DRECP planning purposes”).

In essence, the DRECP deliberately sets a numeric electricity generation figure so high that actual demand is likely to “fall well below” it, and then uses this inflated figure as a means to dismiss every alternative that might lead to a decision other than the predetermined one to adopt the DRECP’s Preferred Alternative. DRECP I.3-50. This is precisely the strategy that courts have routinely condemned. *NPCA*, 606 F.3d at 1070; *Alaska Survival v. Surface Transp. Bd.* (9th Cir. 2013) 705 F.3d 1073, 1084 (“A purpose and need statement will fail if it unreasonably narrows the agency’s consideration of alternatives so that the outcome is preordained”).

III. The Scope of the Project Is Unknown; the Project Description Is Inadequate.

“A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193; 40 C.F.R. § 1502.15 (“The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration”); *Sierra Club v. Babbitt* (E.D.Cal. 1999) 69 F.Supp.2d 1202, 1217 (project description was inadequate to satisfy NEPA because it lacked sufficient detail about the scope of the project to enable meaningful public review).

The DRECP’s project description is inadequate to enable the public to meaningfully review the scope and environmental impacts of the Project. Indeed, the action agencies mislabel the DRECP as a “*conservation strategy* for the Plan Area,” and downplay the “inclu[sion of] a *streamlined process for the permitting of renewable energy and transmission development* on both federal and nonfederal lands.” DRECP II.3-1 (emphasis added). The DRECP conflates these two very different actions – conservation and development. Indeed, the DRECP falsely claims that it “would create a framework to streamline renewable energy permitting *by planning for the long-term conservation of threatened and sensitive species and other resources.*” DRECP 6. Not so. The DRECP’s “streamlining” of energy development does *not* “conserv[e] threatened and sensitive species and other resources.” To the contrary, it *reduces* the habitat available for these species, and thereby impairs – rather than conserves – the natural resources needed for their survival: It is the “streamlining” of energy development projects that creates significant impacts *requiring* mitigation. This streamlining of energy development projects will have greater, more significant, and more harmful impacts on the surrounding environment than the DRECP’s secondary and feeble efforts at conservation. Obfuscating these two distinct and opposing actions – development and conservation – violates the DRECP PEIR/PEIS’ obligation under CEQA and NEPA to provide an accurate view of the Project and hence, its impacts.

Further, the DRECP states that the “Plan Area covers approximately 22,585,000 acres” (DRECP I.0-15), yet the DRECP also amends rules applicable to lands *outside* the Plan Area but *within* the California Desert Conservation Area (“CDCA”). DRECP II.3-424 (“Portions of the CDCA are outside of the DRECP boundary. The following decisions apply to the full CDCA. . . . The following components are appropriate both within and outside of the Planning Area under all action alternatives to allow consistency in land management”). By defining the Plan Area as a smaller area and then approving an action whose effects will extend *outside* that artificially circumscribed area, the action agencies violated NEPA and CEQA both by failing to provide an “accurate, stable and finite project description” and thereby preventing meaningful public review, and also by arbitrarily imposing geographic limits on the scope of its analysis. *County of Inyo*, 71 Cal.App.3d at 192-193; *Save Our Sonoran, Inc. v. Flowers* (9th Cir. 2004) 408 F.3d 1113, 1121-1123 (agency “improperly constrained its NEPA analysis” by limiting its review to impacts within the desert washes under its jurisdiction rather than the entire property proposed for development).

A similar flaw exists with the DRECP’s treatment of “Special Analysis Areas” (“SAAs”) which have “high value for renewable energy development, and also high value for ecological and cultural conservation.” *E.g.*, DRECP IV.6-31. The Preferred Action Alternative could designate the SAAs as appropriate for industrial-scale power plants or as ecological reserves, in the Final DRECP. *Id.* The public is given no indication which choice will be made and is thereby precluded from providing meaningful comments and making an informed decision about the relative costs and benefits of the Project. That violates both NEPA and CEQA. *Sierra Club v. Babbitt*, 69 F.Supp.2d at 1217; *County of Inyo*, 71 Cal.App.3d at 192-193.

IV. The DRECP Fails to Present a Reasonable Range of Alternatives

Both NEPA and CEQA require that agencies consider a reasonable range of alternatives to a proposed course of action. 42 U.S.C. §4332; 40 C.F.R. § 1502.14: *Western Watersheds Project v. Abbey*, (9th Cir. 2013) 719 F.3d 1035, 1046 (“Council on Environmental Quality regulations require an EIS to . . . consider a reasonable range of alternatives”); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 556. Under NEPA, “[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008). Under CEQA, an agency may not approve a Project where there are “feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects” of that Project. Public Resources Code § 21002; 14 C.C.R. § 15091.

As discussed above, the DRECP’s objectives unreasonably narrowed the range of alternatives studied in the DRECP. *Every* alternative, including the No-Action Alternative, assumes the development of 20,000 megawatts of renewable energy projects in the DRECP Project area. The DRECP does not present a reduced megawatt alternative, or a conservation-

only alternative. In addition, the No-Action Alternative merely omits conservation measures, and alters the sites of renewable energy development, as compared to the action alternatives. As such it does not examine an alternative of no renewable energy development in the DRECP plan area. Further, the PEIR/PEIS rejected an alternative focused on distributed energy because its authors claimed – without adequate supporting data and analysis – that it could not meet the pre-ordained 20,000 megawatt objective (even as the PEIR/PEIS falsely claimed that “sensitive desert habitats would not be disturbed by large, utility-scale solar facilities”). DRECP II.8-9 to II.8–10. None of these decisions pass muster under CEQA or NEPA.

By contrast to the PEIR/PEIS’ Preferred Alternative, the California Energy Efficiency Strategic Plan (“CEESP”) alternative – using existing brownfield sites, energy efficiency mandates, and distributed generation together – is a far less impactful and more efficient alternative to the DRECP’s stated options for renewable energy development. By directing renewable energy development to disturbed lands and lands close to existing infrastructure and energy consumers, and by reducing energy demands, many of the existing alternatives’ significant and unmitigable impacts can be avoided, including impacts to cultural, tribal, agricultural and visual resources. The PEIR/PEIS should include detailed analysis of this feasible alternative. 42 U.S.C. §4332; 40 C.F.R. § 1502.14; *Friends of Yosemite Valley*, 520 F.3d at 1038. When compared to the impacts of the DRECP’s existing alternatives, its superiority will become clear.

V. The PEIR/PEIS Fails to Examine and Disclose the DRECP’s Significant Impacts

A. The Project’s Impacts Are Obfuscated by the PEIR/PEIS’ Organization

As noted, the DRECP and its Draft PEIR/PEIS are impermissibly conflated. Necessarily, they are referenced in these comments as a unitary document, “DRECP.” But that error is only the beginning of a long list of organizational errors and their progeny. For example, the broad, vague and technical presentation of the baseline in DRECP Volume III is difficult to compare to the DRECP’s impacts discussion in Volume IV. Further, the DRECP’s discussion of No-Action Alternative distorts its consideration of the action alternatives’ impacts. The DRECP purports to establish a baseline condition of October 2013 but when analyzing the Project’s impacts, the DRECP instead looks to its flawed No-Action Alternative as the baseline. This violates NEPA and CEQA. 40 C.F.R. § 1502.15; *Western Watersheds Project v. BLM* (D. Nev. 2008) 552 F.Supp.2d 1113, 1126-1127; 14 Cal. Code Regs. [“CEQA Guidelines”] § 15125; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (“*CEB v. SCAQMD*”) (2010) 48 Cal.4th 310, 315.

B. Groundwater, Water Supply and Water Quality

When discussing a project's water supply impact under CEQA, an EIR must "address[] the reasonably foreseeable *impacts* of supplying water to the project." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (Vineyard)* (2007) 40 Cal.4th 412, 434 (emphasis in original). If an agency cannot "confidently identify the future water sources, [its] EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives . . . and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact." *Id.* NEPA requires that an EIS present sufficient detail to allow decisionmakers to consider the environmental impacts of the decision. *Oregon Environmental Council v. Kunzman* (9th Cir. 1983) 714 F.2d 901, 904. The DRECP does not provide sufficient information under NEPA or CEQA to assess the reasonably foreseeable impacts to water supply resources associated with the action alternatives. Further, the DRECP does not provide a firm commitment to mitigate impacts as required by CEQA. These deficiencies are addressed in detail below.

1. The DRECP Fails to Properly Mitigate Water Supply and Water Quality Impacts

a. Groundwater Use for Renewable Energy on State and Private Lands

The DRECP relies upon Conservation and Management Actions ("CMAs") to mitigate any adverse water supply impacts for any renewable energy development. DRECP IV.6-32. Yet the DRECP admits that "CMAs were developed for BLM lands only," and that it merely "assumes that all CMAs would be applied" to non-federal lands, with no commitment that this would occur. *Id.*, see also DRECP II.3-1 (CMAs are "for resources . . . on BLM-administered lands" as part of the LUPA). Indeed, the CMAs for groundwater resources specifically refer to "the NEPA analysis and Record of Decision," but not any CEQA documents or approvals. DRECP IV.6-36. Thus the DRECP lacks a clear guarantee that the CMAs will mitigate impacts to a less-than-significant level on non-federal lands.

CEQA requires that "mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments." CEQA Guidelines § 15126.4(a)(2). The DRECP provides no commitment to adopt the terms of the CMAs to mitigate the groundwater impacts of renewable energy development on the approximately 971,000 to 1,730,000 acres of non-federal lands within the action alternatives' development focus areas, including the 1,633,000 acres of non-federal lands in the Preferred Alternative's development focus area. See E.S. Table 7, p. 40 (amounts summed from non-federal public and private lands columns). Yet the DRECP admits that, but for the CMAs and mitigation measure GW-2a (a requirement that projects minimize water use through the best available technology) "the adverse

impacts would be significant for all technologies.” DRECP IV.6-44. The DRECP must incorporate and modify the CMAs for groundwater resources as binding CEQA mitigation measures in order to claim that the CMAs will prevent significant impacts regardless of jurisdiction.

The DRECP does include additional mitigation measures. However, none are sufficiently detailed or thorough to address the Project’s groundwater impacts absent the CMAs. First, mitigation measure GW-2a does nothing to address whether the Project’s remaining groundwater use will have environmental impacts. Second, mitigation measure GW-2b requires each project to have a mitigation action plan for when a well drawdown occurs at a level that meets undefined drawdown thresholds. DRECP IV.6-39. This action plan for surrounding wells can include “compensation for increased power costs, modification and repair and well replacements.” *Id.* It also calls for unspecified “actions to protect wetlands, surface waters and vegetation.” *Id.* Finally, the mitigation action plan “can also include pumping reduction or cessation, and providing an alternative water supply.” *Id.* But these measures are so vague as to be meaningless. Moreover, these cryptic measures do nothing to protect groundwater-dependent habitat or long-term water supplies, as these actions all come *after* the impact to neighboring wells and habitat has *already* occurred. *Id.* Third, while mitigation measures GW-3a and GW-3b at least develop a subsidence monitoring plan to work in conjunction with a subsidence action plan, with the goal of “prompt detection and mitigation” to “limit the permanent loss of storage capacity to a small fraction of the total capacity” they do not repair the deficiencies of GW-2b. DRECP II.6-40. Last, mitigation measure GW-4a, like GW-2a, contemplates actions to mitigate impacts to groundwater quality *after* the impact is detected. DRECP IV.6-40. These actions include compensation to adjacent landowners or restrictions on project water use after water quality changes. They do not include measures to *predict* or *prevent* (through pumping limits) a change from occurring in the first instance. *Id.* Yet the DRECP claims that its mitigation measures will reduce to less than significant any impacts to groundwater supplies. DRECP IV.6-44.

b. The DRECP Allows Exceptions to the CMAs

The Preferred Alternative makes clear that exceptions to the groundwater resources CMAs’ “may be granted by the authorized officer” – the BLM representative who is authorized to enforce the terms and conditions of BLM right-of-way (“ROW”) grants. DRECP II.3-405. Thus, in addition to the CMAs’ lack of binding mitigation for non-federal lands, the DRECP allows exceptions to the protections that the CMAs provide on BLM-administered lands. Exceptions may be granted by this BLM representative, apparently after a specific renewable energy project is approved, if the renewable energy operator’s plans show that (1) impacts are temporary, (2) impacts “can be adequately mitigated” or “are minimal” *and* (3) when critical resources are fully protected. DRECP II.3-405. These exceptions, however, prevent public scrutiny and public participation regarding the adequacy of mitigation measures. Further, they

leave decisions regarding critical resource protection to the authorized agent even when threatened and endangered species are being harmed. All of this renders the CMAs' claims regarding groundwater resource protection illusory.

c. Groundwater Contamination from Geothermal Projects

The DRECP relies upon the California Division of Oil, Gas and Geothermal Resources to “closely” review and monitor any geothermal projects’ compliance with best management practices during water injection, instead of providing any mitigation measure to address the risk of potable water supply contamination. DRECP II.6-40. This agency, however, has come under recent scrutiny for inconsistent monitoring of potable water supplies in its sister oil and gas injection program. *See e.g.* December 22, 2014 Letter from US EPA to Department of Conservation and State Water Resources Control Board, <http://www.epa.gov/region9/mediacenter/uic-review/pdf/ca-class-ii-uic-letter-2014-12-22.pdf> Reliance upon best management practices that are enforced by an agency that is not party to the DRECP, and that are *not* incorporated as mitigation, is insufficient. CEQA Guidelines § 15126.4(a)(2).

2. Groundwater, Water Supply and Water Quality Impacts of Renewable Energy Development on SAAs Remain Unclear

The Preferred Alternative has declined to determine at this time whether two SAAs would be conserved or developed. DRECP IV.1-14. Of these 42,000 acres, the 26,000 acres west of Highway 395 are within a stressed groundwater basin. Both SAAs provide habitat to important special status species that should preclude their use in development focused areas. Yet the DRECP fails to adequately address the impacts of renewable energy development that could potentially occur here. *See* DRECP IV.6-70 (impacts deemed similar to other development areas with no further discussion). Instead the DRECP relies upon the insufficient mitigation measures discussed above. This must be remedied, and the SAAs must not be designated as Development Focus Areas.

3. The DRECP Ignores Wind Energy’s Water Impacts

The DRECP does not discuss groundwater conditions underlying all of the action alternatives’ proposed wind energy development regions, nor does it consider whether wind energy could have any water supply impacts. However, wind turbine maintenance often includes quarterly washing, in order to maintain the turbine blades’ aerodynamics. Without additional information, the DRECP does not allow for careful consideration of the potential groundwater impacts of wind energy development. It is possible that the Preferred Alternative’s wind development in the Imperial Borrego Valley area and in the Pinto Lucerne Valley area could impair existing overdrawn water basins. Further, wind turbines have the potential to leak

chemicals into groundwater aquifers. For example, turbine gearboxes require oil, which has the potential to leak and contaminate ground and surface waters. The DRECP's failure to consider, discuss, or mitigate wind-energy impacts to the groundwater supply must be corrected.

4. The DRECP Fails to Discuss Significant Construction-Stage Impacts for All Types of Renewable Energy

In a vast understatement, the DRECP mentions that “the water volumes used during the construction period, particularly for dust control, are greater than the annual water use required for operations.” DRECP IV.6-8, *see also* DRECP II.3-175, II.3-183, IV-2.15, W-38, W-41 (need for fugitive dust control, use of water for suppression). Yet the DRECP makes no attempt to further explain the potential significance of the Preferred Alternative's construction-stage water demands on the 14 stressed or overdrawn groundwater basins where solar or geothermal development could occur. *See* DRECP IV.6-24 to IV.6-25 (Preferred Alternative); *see also* DRECP IV.6-12 to IV.6.13 (No-Action Alternative). Further, the DRECP omits any discussion of wind-energy's demands for water, even during construction.

Of the 14 stressed or overdrawn water basins where the Preferred Alternative would allow solar or geothermal development, two would fall outside the jurisdiction of BLM's LUPA. DRECP IV.6-41. As such, the CMAs designed to minimize groundwater impacts on BLM-administered lands – including construction-stage groundwater drawdowns – do not apply absent modifications. Yet the DRECP makes no attempt to otherwise quantify, project, or mitigate for these significant impacts.

To present an accurate account of the DRECP's potentially significant impacts, the DRECP must attempt to address the reasonably foreseeable construction-stage water demands of each of the alternatives it presents. Renewable energy projects, and the energy infrastructure associated with such projects, have construction-stage water demands that include concrete mixing and hydrating soils graded for onsite re-filling, in addition to dust control. In the dry desert climates within the DRECP Project area, compacting and hydrating graded soil can take a considerable amount of water, as evaporation losses make hydration more difficult. For example, San Diego County's East County Substation Project required over 276 acre feet of water just the earthwork needed for site preparation, because the dry climate and dry soil required 45 gallons of water for each cubic yard of soil that was graded and compacted. *See* East County Substation Project Modification Request 8, available at http://www.cpuc.ca.gov/environment/info/dudek/ecosub/MPR_8_Request.pdf. The environmental documents for the Ivanpah Solar Electric Generating System projected water demand at approximately 171.6 acre feet of water for site preparation. The Ocotillo Wind Energy Project in Imperial County required at least 50 acre feet of water for concrete mixing and dust control.

5. The DRECP Fails to Address Global Warming's Impacts on Water Supply

A recent NASA study published in the journal *Science Advances* finds that, even if greenhouse gas emissions are no longer increasing by 2050, the risk of a multidecadal drought in the Project area in the second half of the 21st century will be approximately 60%. See Cook, *Unprecedented 21st century drought risk in the American Southwest and Central Plains* Sci. Adv. 12 Feb. 2015 available at <http://advances.sciencemag.org/content/advances/1/1/e1400082.full.pdf>; see also <http://www.nasa.gov/press/2015/february/nasa-study-finds-carbon-emissions-could-dramatically-increase-risk-of-us/>. The recharge rate of aquifers underlying the DRECP Project area will face dramatic stresses in future drought conditions. In order to responsibly plan for the future, the DRECP should avoid further development in overdrawn and stressed water basins, or more clearly address how increased development will not contribute to scarce water conditions. By deferring any discussion to the renewable energy project stage, the DRECP does not take a hard look at whether its development focus areas will force unneeded groundwater impacts onto stressed and overdrawn aquifers.

By failing to address the significant water demands and contamination risks associated with the construction and operation of 20,000 MW of renewable energy projects, and the infrastructure needed to connect these projects to the energy grid, the DRECP fails to take a hard look at the environmental consequences of Project approval.

C. Biological Resources

The DRECP's discussion of biological resources and the Project's impacts on them is also inadequate. DRECP Sections III.07, IV.07. Not only is it unclear and inaccurate, but its proposed CMAs and mitigation measure are speculative and fail to mitigate the impacts of streamlining development across such a broad and environmentally significant area.

1. The DRECP's Discussion of Biological Resources Is Unclear and Inaccurate

The DRECP's discussion of biological resources is unclear and inaccurate in at least three ways. First, the baseline discussion is confusing, vague, and fails to establish an accurate environmental setting to inform the decisionmakers and the public about the Project's impacts. 40 C.F.R. § 1502.15; *Western Watersheds Project v. BLM*, 552 F.Supp.2d at 1126-1127; CEQA Guidelines § 15125; *CEB v. SCAQMD*, 48 Cal.4th at 315. Section III.07 purports to "serve[] as the affected environment/existing setting for biological resources." DRECP III.7-1. Yet, that

section only provides generic discussions about species, their habitat, and population trends. DRECP III.7-95 to III.7-172. Such vague information is insufficient to set an accurate baseline against which to analyze the impacts and mitigation measures of each alternative.

Second, Backcountry notes that since the development of the DRECP, CDFW has altered the regulatory scheme for the flat-tailed horned lizard. DRECP III.7-125 to III.7-126, III.7-128, III.7-131. While the flat-tailed horned lizard was previously listed as a California species of special concern, it has now become a candidate for a listing under the California Endangered Species Act.² The final DRECP must be amended to reflect this change and address the Project's impact on the species as it is currently listed under both state and federal law.

Third, both the Preferred Alternative and Alternative 4 fail to specify how certain lands will be used - conservation or development. DRECP IV.1-14, III.7-33. Designation of the land for conservation will have significantly different impacts to the areas' biological resources than developing energy projects. Indeed, the purpose of conservation is to preserve these resources, while streamlining development of energy projects does the opposite. Without any information about which of these two conflicting uses will be implemented, the DRECP cannot accurately and clearly analyze the Project's impacts, in violation of both CEQA and NEPA. Backcountry strongly urges that these lands be used for conservation and preservation of the areas' pristine natural and biological resources.

2. The DRECP's Discussion of Impacts to Biological Resources Fails

The DRECP's discussion of impacts also fails for numerous reasons. First, the entire discussion is colored by the inaccurate baseline. As noted above, without an adequate baseline, the impacts of the Project cannot be understood. This failure is highlighted by the DRECP's comparison of the Preferred Alternative to the No Action Alternative, which assumes that energy development will occur with or without implementation of the DRECP. DRECP IV.7-467 to IV.7-492. By comparing the Preferred Alternative to an alternative that assumes that there will be continued development with no conservation, rather than to the existing conditions, the DRECP fails to accurately represent the Project's impacts. *Western Watersheds*, 552 F.Supp.2d at 1126-1127.

The DRECP then goes on to compare the remaining alternatives to the Preferred Alternative, which has already been distorted by comparison to the No Action Alternative. IV.7-

² Center for Biological Diversity, *Rare Desert Lizard in California Protected by State*, February 12, 2015, available at: http://www.biologicaldiversity.org/news/press_releases/2015/flat-tailed-horned-lizard-02-12-2015.html

730 to IV.7-753, IV.7-995 to IV.7-1019, IV.7-1260 to IV.7-1283, IV.7-1518 to IV.7-1541. The failure to establish an accurate baseline, and the subsequent comparison of the alternatives against the No Action Alternative – which assumes development – violates both NEPA and CEQA.

The DRECP also fails to adequately address the impacts to the many sensitive, protected, and biologically diverse species that inhabit the area including but not limited to the flat-tailed horned lizard, bighorn sheep, desert tortoise, avian species, and the burrowing owl. Without site specific information on the status of these species, as well as information about what and where development will be proposed, the impacts analysis cannot suffice.

3. The Proposed CMAs and Mitigation Measures Are Speculative and Ineffective

The DRECP relies heavily on the CMAs to lessen the significant impacts of the Project, assuming without any support that these CMAs will be applied to *all* Project activities. DRECP IV.7-277 (“Covered Activities under the [DRECP] would be required to implement CMAs to avoid and minimize impacts inside and outside the DFAs and CMAs to compensate for the impacts of Covered Activities”). Indeed, the DRECP admits that “[f]or all Covered Activities throughout the Plan Area,” avoidance and minimization plan-wide, and resources-specific CMAs, will be necessary, and then erroneously assumes that these measures would be implemented on all Project lands. DRECP IV.7-278. However, the DRECP itself makes clear that the CMAs are proposed within the BLM LUPA and are only applicable to “resources throughout the Plan Area *on BLM-administered lands.*” DRECP II.3-1 (emphasis added). This is not merely an internal typographical inconsistency: This inconsistency undermines the DRECP’s entire assumption that Project impacts will be minimized through implementation of the CMAs.

Furthermore, the CMAs provide only a broad list of standards that are typically implemented in many development projects, including allowing wildlife “to leave the construction area unharmed” if a species is encountered (DRECP II.3-38), “implement[ing] a vehicle speed limit” (DRECP II.3-43), and “compliance with all applicable laws and regulations” (DRECP II.3-49). Beyond these broad and standard requirements that only apply on BLM-administered lands, the DRECP only recommends one single deferred mitigation measure to minimize the “significant impacts [that] would still result after implementation of the CMAs.” DRECP IV.7-277 to IV.7-279 (Preferred Alternative), IV.7-549 to IV.7-550 (Alternative 1), IV.7-814 to IV.7-815 (Alternative 2), IV.7-1077 to IV.7-1078 (Alternative 3), IV.7-1343 (Alternative 4). The DRECP calls for preparation of a “Rare Natural Community Avoidance and Mitigation Plan that specifically addresses how rare natural communities would be avoided or mitigated.” DRECP IV.7-278 to IV.7-279 (Preferred Alternative), IV.7-549 to IV.7-550

(Alternative 1), IV.7-814 to IV.7-815 (Alternative 2), IV.7-1077 to IV.7-1078 (Alternative 3), IV.7-1343 (Alternative 4). However, the DRECP fails to provide specific guidelines for the implementation of this measure, making any analysis of the measure speculative.

The DRECP's reliance on measures that do not pertain to the entire Plan Area, are broad and vague, and speculative fails under both NEPA and CEQA.

4. The DRECP's Conclusions Are Unsupported By Fact

Even if the biological resources discussion were otherwise adequate, the DRECP's conclusions regarding the significance of impacts and the effectiveness of CMAs and mitigation measure are not supported. The DRECP admits that it does not have site specific information about the biological resources in the area, nor about any specific energy development projects, yet it purports to conclude that the Project's impacts will be less than significant with the implementation of the CMAs and mitigation measure. DRECP 48, IV.7-215 to IV.7-463 (Preferred Alternative impacts discussion), IV.7-463 to IV.7-467 (Preferred Alternative CEQA significance determination), IV.7-493 to IV.7-730 (Alternative 1), IV.7-755 to IV.7-995 (Alternative 2), IV.7-1021 to IV.7-1260 (Alternative 3), IV.7-1285 to IV.7-1518 (Alternative 4). Without site specific information, the significance of the Project and the effectiveness of the CMAs and mitigation measure cannot be determined.

The DRECP's assumption that renewable energy development will occur over the entire plan area and will destroy biological resources if this plan is not implemented is flawed. DRECP 48. While it is true that without the DRECP, renewable energy projects may still be proposed and built, the assumption that those projects will destroy biological resources colors the DRECP's entire analysis. Furthermore, the lack of site-specific information makes it impossible to truly understand the Project's impacts or the effectiveness of proposed mitigations and CMAs – which are not even ensured on all lands. For these reasons, and others, the DRECP's analysis of impacts to biological resources is wholly inadequate.

D. Agricultural Resources

The DRECP aims to develop 20,000 MW in industrial-scale electrical generation (and transmission) capacity that “would convert 56,000 acres of Important Farmland.” DRECP IV.12-14. That would remove from production at least “8% of the total” agricultural land within the Plan Area, which includes some of the most fertile farmland in California. *Id.* The DRECP rightfully recognizes that even with implementation of the proposed mitigation measures, this “conversion of Important Farmland to nonagricultural use would still be a significant and unavoidable impact.” DRECP IV. 12-21. Yet the DRECP still underestimates the overall agricultural impacts of plan implementation by ignoring several critical impacts and consequences. The DRECP's analysis of agricultural impacts fails to “provide public agencies

and the public in general with [the] detailed information” required by CEQA and NEPA for at least five reasons. PRC § 21061 (quote); *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016, 1020 (9th Circ. 2006) (“The Supreme Court has identified NEPA’s ‘twin aims’ as ‘plac[ing] upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action[, and] ensur[ing] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process’” (quoting *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983))).

First, the DRECP assumes a shorter impact duration than is reasonable. The primary purpose of the plan is to reduce global warming through construction of industrial-scale renewable energy generation and transmission facilities, while at the same time minimizing the regional impacts of those developments, particularly the impacts to threatened and sensitive species. DRECP ES-6, ES-16. Reducing global warming, however, requires a *permanent* reduction in greenhouse gas emissions, not just the putative reduction achieved over the “typical[]” 30-year operating life of the “generation projects.” *Id.* at IV.12-4. Therefore, if the goal of the DRECP is to effectuate a permanent rather than temporary reduction in greenhouse gases, it should assume that the impacts of plan implementation – including elimination of agriculture on at least 56,000 acres – will likewise be permanent.

Second, the DRECP fails to analyze the cumulative impact on regional and statewide agricultural production from the elimination of farming on at least 56,000 acres and the impairment of operations on adjacent farmland. The DRECP would require mitigation “for the loss of farmland through permanent preservation of off-site farmlands,” but it fails to discuss how it would compensate for the lost production of essential food and fiber products currently grown on that farmland. DRECP IV.12-28. Indeed, the DRECP does not even attempt to quantify the crop losses caused by plan implementation.

Third, while the DRECP notes that the “construction and operation of renewable energy facilities may cause a variety of impacts on adjacent agricultural lands,” it ignores numerous major impacts and erroneously concludes that the aggregate adverse effect on “adjacent agricultural operations” would be “less than significant.” DRECP IV.12-13. For example, the DRECP fails to analyze the likely increase in ambient temperature and reduction in ambient humidity caused by utility-scale solar energy generation facilities, which would necessitate additional irrigation on adjacent farmland while likely reducing efficiency and crop productivity. This is due to both greatly reduced evapotranspiration on converted farmland and the inherent heating effect of utility-scale solar facilities. *See, e.g.,* Fthenakis and Yu, “Analysis of the Potential for a Heat Island Effect in Large Solar Farms,” *presented at 39th IEEE Photovoltaic Specialists Conference, Tampa, Florida, June 17-23, 2013* (attached hereto as Exhibit 1). “Both [Fthenakis and Yu’s] field data and . . . simulations show that the annual average of air temperatures in the center of a [photovoltaic] field can reach up to 1.9°C above the ambient

temperature,” and only begin “approaching (within 0.3°C) the ambient [temperature] at about 300 m [from] the perimeter of the solar farm.” Exhibit 1 at 1.

The DRECP also overlooks the significant risk posed to crop dusting pilots from the planned electrical generation facilities, particularly the monstrous wind towers and turbines as well as many of the taller solar energy facilities. These projects would not only make it more dangerous for crop-dusting pilots to access the land (due to, *e.g.*, increased risk of collision with project components like transmission lines, wind towers and taller solar photovoltaic or concentrated solar photovoltaic panels, and glare from the solar panels), they will increase the likelihood of the planes inadvertently spraying the adjacent electrical generation facilities and causing complaints and pressure for the farmers to cease or restrict operations. The DRECP notes that “transmission towers” could “pose a risk to aircraft.” DRECP IV.12-12. And even then it erroneously assumes that the transmission facilities would always be far enough apart so that “crop dusters [could] avoid poles, towers, and wires.” *Id.* These facilities are often clustered so closely together – as can be seen in southwestern Imperial County – that it can make it almost impossible to access the remaining farmland isolated within those industrial clusters.

Fourth, the DRECP fails to analyze how the planned developments would affect even non-adjacent farmers. As these massive projects convert more and more agricultural land to non-agricultural uses, more and more agriculture-serving businesses will be forced to close, due to both declining revenues and logistical problems. And as the quantity and quality of agriculture-service businesses decrease, more and more farmers will find it uneconomical or impractical to keep farming and be forced to sell, lease or use their lands for non-agricultural purposes.

Fifth, the DRECP sweeps under the rug some critical inconsistencies between the plan’s proposed electrical generation and transmission facilities and the applicable local land use restrictions on the farmland on which the DRECP assumes many of those facilities would be built. For example, the DRECP entirely ignores Imperial County’s explicit prohibition on most non-agricultural uses of land designated as “Agriculture” in the County General Plan. DRECP III.12-7 to III.12-8 (discussing the land use policies applicable to agricultural lands in Imperial County, but omitting any mention of the General Plan’s Land Use Element). The Land Use Element of the County General Plan states in pertinent part as follows:

1. Agriculture.

This category is intended to preserve lands for agricultural production and related industries including aquaculture (fish farms), ranging from light to heavy agriculture. Packing and processing of agricultural products may also be allowed in certain areas, and other uses necessary or supportive of agriculture. . . .

Where this designation is applied, agriculture shall be promoted as the principal and dominant use to which all other uses shall be subordinate. Where questions of land use compatibility arise, the burden of proof shall be on the non-agricultural use to clearly demonstrate that an existing or proposed use does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations. No use should be permitted that would have a significant adverse effect on agricultural production, including food and fiber production, horticulture, floraculture, or animal husbandry. . . .

Imperial County General Plan, Land Use Element (Revised 2008), page 48 (emphasis added). This prohibition undermines the DRECP's assumed feasibility of developing utility-scale renewable energy projects on agricultural land since more than three-quarters (43,000 acres) of the agricultural land planned for development are in Imperial County. DRECP IV.12-7. CEQA and NEPA demand that this inconsistency – and threat to the viability of the DRECP's core model – be analyzed, including by “describ[ing] the extent to which the agency would reconcile its proposed action with the plan.” 40 C.F.R. § 1506.2 (quote); CEQA Guidelines § 15125(d) (“The EIR shall discuss any inconsistencies between the proposed project and the applicable general plans, specific plans and regional plans.”).

The DRECP asserts that “[w]ithout proposals for renewable energy projects using specific technologies on specific tracts, it is not feasible (and would be speculative) to identify potential conflicts between the projects and the underlying land use designations and applicable plans and policies.” DRECP IV.11-4 to IV.11-5. That is simply not true. Large-scale electrical generation projects generally displace and prevent all agricultural use on the subject lands, which is plainly inconsistent with Imperial County's prohibition on uses of agricultural land that would “conflict with agricultural operations” or “result in the premature elimination of such agricultural operations.” Imperial County General Plan, Land Use Element (Revised 2008), page 48. Indeed, the DRECP itself affirms that “[a]gricultural activities would be *excluded* from areas developed for utility-scale solar and geothermal energy production,” which would constitute the vast majority – if not the entirety – of the developments planned in Imperial County. *Id.* at IV.12-1 (quote; emphasis added), ES-41 (Exhibit 10 showing that at least 700,000 acres of the approximately 725,000-acre Development Focus Area in Imperial County would be developed with geothermal, solar or solar and geothermal facilities). It is thus clear without any more project-specific information that implementing the DRECP in Imperial County would be inconsistent with the County General Plan. The DRECP must analyze this inconsistency and any other inconsistencies with local land use plans and regulations.

E. Growth Inducement

Both CEQA and NEPA require agencies to consider the extent to which their proposed projects will indirectly induce population growth. CEQA Guidelines § 15126.2(d) (EIRs shall

“[d]iscuss the ways in which the proposed project could foster economic or population growth”); *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 (CEQA requires preparation of an EIR considering the ‘most probable development patterns’); 40 C.F.R. § 1508.8(b) (“Indirect effects may include growth inducing effects”); *Davis v. Coleman* (9th Cir. 1975) 521 F.2d 661, 674-677 (growth-inducing impacts of highway interchange required EIS); *Western Land Exchange Project v. Bureau of Land Management* (D.Nev. 2004), 315 F.Supp.2d 1068, 1090 (“even though development may not be a direct effect of privatization, NEPA clearly requires analysis of all foreseeable direct and indirect impacts”).

The DRECP admits that its approval is likely to induce population growth, and this concern is particularly acute in light of the rural and undeveloped nature of the area. The DRECP “will bring workers to the communities” in the vicinity including though the “temporary in-migration of construction workers” which “would result in the greatest population increases,” but also by requiring staff for the operation and maintenance of utility-scale renewable energy facilities and transmission lines. DRECP IV.23-46 to IV.23-47. The DRECP *concedes* that it is possible that “temporary worker in-migration would significantly increase the population in smaller rural desert communities.” *Id.* Moreover, future development “facilitated and streamlined by the Preferred Alternative may require the removal of housing” (DRECP IV.23-47), which would tend to cause the construction of replacement housing.

But the DRECP’s analysis of this impact is entirely conclusory and fails to provide information sufficient to allow the public and decisionmakers to make an informed judgment about the Project’s impacts. There is no attempt to quantify the number of “temporary” construction employees that might be needed. There is no attempt to discern the duration of construction, which in light of the vast scope of the DRECP could be ongoing in various locations in one form or another for decades. Nor does the DRECP attempt to ascertain the extent to which development will lead to the removal and reconstruction of residential housing. And there is no attempt to ascertain whether the “hotels or rental houses or rooms” that are supposed to house temporary employees in “smaller rural desert communities” actually exist. CEQA and NEPA demand that this information be provided in order to allow the public to ascertain whether the DRECP’s conclusory assertions have any factual basis. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (“The EIR must contain facts and analysis, not just the bare conclusions of a public agency” in order to allow “the public and decision-makers to make an independent, reasoned judgment”).

The mitigation measures for growth-inducing impacts are also flawed and insufficient to mitigate the Project’s impacts. Mitigation Measure SE-1a and SE-1b, which are supposed to “reduce potential adverse impacts” from “significant[] increase[s in] population in smaller rural desert communities,” are empty promises: the former merely requires the commission of future studies to “identify and minimize potential . . . impacts”; the latter only requires developers to “consider the feasibility of providing on-site temporary housing” for construction workers, not

actually provide it. DRECP IV.23-38 to IV.23-39. This is unlawful. *E.g., Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 (“The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA”).

F. Visual Resources

The action alternatives all site renewable energy development on BLM land currently considered Visual Resource Inventory (“VRI”) Class II. DRECP IV.20-14. VRI “Classes I and II represent the highest visual value.” DRECP III.20-2. Despite this high visual value, the DRECP process would allow BLM to manage these lands as Visual Resource Management (“VRM”) Class IV, which is the VRM Class with the *worst* level of visual disturbance. *E.g.* DRECP IV.20-36, IV.20-58. The objective of Class IV is *facilitate* management activities that cause *major* modification to the existing character of the landscape. DRECP III.20-3.

The DRECP again relies upon CMAs to “reduce the impacts” of renewable energy development on visual resources on BLM-administered lands and “assumes that all CMAs would be applied to nonfederal lands as well.” DRECP IV.20-41. These CMAs, as the DRECP admits, cannot mitigate the visual resource impacts to less than significant levels. DRECP IV.20-53. But the DRECP again presents no assurance that the CMAs will be applied outside of BLM’s jurisdiction. *Id.* Lastly, the DRECP did not develop *any* mitigation measures to its admittedly significant visual resource impacts, even as it states that the CMAs would lessen these impacts. DRECP IV.20-44. This is insufficient. Public Resources Code § 21002; CEQA Guidelines § 15126.4(a)(2).

G. Noise Impacts

The Draft PEIR/PEIS’ analysis of noise impacts fails in at least two key respects. It entirely ignores the infrasound produced by wind turbines, and it omits any analysis of impacts from inaudible infrasound and low-frequency noise (“ILFN”).³ DRECP Section IV (failing to analyze any impacts from inaudible noise), III.21-10 to III.21-12 (“Noise Fundamentals” discussion focusing exclusively on audible noise). In so doing, the Draft PEIR/PEIS overlooks

³ The range of normal human hearing is generally considered to be from 20 hertz (“Hz”) to 20,000 Hz. The lower end of that range, from 20 Hz to 200 Hz, is usually regarded as “low-frequency” sound. And “infrasound” is commonly defined as sound energy at all frequencies below 20 Hz. *See* Moller, H. & C.S. Pedersen, 2004, “Hearing at low and infrasonic frequencies,” *Noise and Health*, 6:37-57, available at: <http://www.noiseandhealth.org/article.asp?issn=1463-1741;year=2004;volume=6;issue=23;spage=37;epage=57;aulast=Moller>

the significant impact that both audible and inaudible wind turbine-generated ILFN can have on human health and wellbeing.

The Draft PEIR/PEIS erroneously implies that wind turbines only “generate broadband noise with frequency components from 20 hertz to 3.6 kilohertz.” DRECP IV.21-15. But the literature is clear that “wind turbine noise [is] dominated by infrasound components.”⁴ Indeed, a recent study of the ILFN produced by the Ocotillo Wind Energy Facility in Imperial County and the Kumeyaay Wind Farm in San Diego County measured substantial wind-turbine-generated indoor sound pressure levels (up to 69 decibels (“dB”) at 1.2 miles away) with peaks centered around 1 hertz (ranging from 0.39 hertz to 2.4 hertz) at homes included in the study.⁵ And as research increasingly demonstrates, this inaudible wind-turbine-generated ILFN can harm humans.

According to a group of researchers who reviewed the literature on the impacts of wind turbine-generated noise in 2010, “there is increasingly clear evidence that [both] audible and [inaudible] low-frequency acoustic energy from [wind] turbines is sufficiently intense to cause extreme annoyance and inability to sleep, or disturbed sleep, in individuals living near them.”⁶ Further, besides sleep disturbance and intense annoyance, there is evidence that both audible noise and inaudible ILFN may also create visceral vibratory vestibular disturbance, vertigo, headaches, dizziness, unsteadiness, tinnitus, ear pressure or pain, external auditory canal sensation, fatigue, irritability, memory and concentration effects, loss of motion, cardiac arrhythmias, stress and hypertension, among others. Exhibit 4 at 20-31.⁷ While very little research had been done on ILFN impacts until recently, the evidence of these impacts and their

⁴ Salt, Alec & Timothy Hullar, 2010, “Responses of the Ear to Low Frequency Sounds, Infrasound and Wind Turbines,” *Hearing Research*, 268: 12-21, at p. 19 (attached hereto as Exhibit 2).

⁵ Carman, Richard & Michael Amato, February 28, 2014, “Kumeyaay and Ocotillo Wind Turbine Facilities Noise Measurements,” at pp. 23, 26-27 (attached hereto as Exhibit 3)

⁶ Punch, Jerry, Richard James & Dan Pabst, 2010, “Wind-Turbine Noise: What Audiologists Should Know,” *Audiology Today*, July/August 2010, p. 24 (attached hereto as Exhibit 4).

⁷ See also Paller, Claire *et al.*, 2013, “Wind Turbine Noise, Sleep Quality, and Symptoms of Inner Ear Problems,” Poster Presentation (attached hereto as Exhibit 5; finding a statistically significant correlation between distance from operating wind turbines and vertigo, and a correlation approaching statistical significance between tinnitus and proximity to wind turbines).

causal pathways is now burgeoning. *See* Exhibits 2-5.⁸ As Drs. Alec N. Salt and Jeffrey T. Lichtenhan concluded in a recent journal article, “the time has come to acknowledge the problem and work to eliminate it.” Exhibit 6 at 27. The Draft PEIR/PEIS must do the same to satisfy CEQA and NEPA. Public Resources Code § 21061; *San Luis Obispo Mothers for Peace*, 449 F.3d at 1020.

Furthermore, in analyzing the impacts from wind-turbine-generated ILFN, the REAT agencies must consider wind turbine sensitive receptor setbacks much greater than the “[t]ypical” “1,800-foot setback” mentioned in the Draft PEIR/PEIS. DRECP IV.21-20. It is primarily because of ILFN’s ability to spread its significant health impacts so broadly that Dr. Nina Pierpont recommends setbacks from large wind projects of *at least* 1.25 miles (approximately 2 kilometers).⁹ As Claude-Henri Chouard explained in his report for the French National Academy of Medicine:

The harmful effects of sound related to wind turbines are insufficiently assessed The sounds emitted by the blades *being low frequency, which therefore travel easily* and vary according to the wind, . . . constitute a permanent risk for the people exposed to them. . . . The Academy recommends halting wind turbine construction closer than 1.5 km from residences.¹⁰

These setback recommendations are bolstered by a recent peer-reviewed study of the health impacts on local residents of both ILFN and audible noise generated by a pair of wind energy facilities in Maine, the Mars Hill and Vinalhaven projects.¹¹ The study compares the

⁸ Salt, Alec & Jeffrey Lichtenhan, 2014, “How Does Wind Turbine Noise Affect People?,” *Acoustics Today*, 10:1, pp. 20-28 (attached hereto as Exhibit 6; describing the “many ways by which infrasound and low-frequency sound from wind turbines could distress people living nearby”); Alec Salt, September 18, 2013, Letter to Martti Warpenius (attached hereto as Exhibit 7); Salt, Alec & James Kaltenbach, 2011, “Infrasound from Wind Turbines Could Affect Humans,” *Bulletin of Science, Technology and Society*, 31(4): 296-302, at p. 299 (attached hereto as Exhibit 8).

⁹ Pierpont, Nina, 2009, *Wind Turbine Syndrome: A Report on a Natural Experiment*, K-Selected Books: Santa Fe, NM.

¹⁰ Chouard, Claude-Henri, 2006, *Rapport: Le Retentissement du Fonctionnement des Éoliennes sur la Santé de l’Homme*.

¹¹ Nissenbaum, Michael, Jeffery J. Aramini & Christopher D. Hanning, 2012, “Effects of Industrial Wind Turbine Noise on Sleep and Health,” *Noise & Health*, 14(6): 237-243 (attached hereto as Exhibit 9).

general health, sleep quality and daytime sleepiness, as assessed via validated questionnaires and established sleep and health indices, of a group of residents living within 1.4 kilometers of at least one wind turbine to a group of residents living between 3.3 and 6.6 kilometers from a turbine. The authors found that “[p]articipants living [within 1.4 kilometers of an industrial wind turbine] had *worse* sleep” and “*worse* mental health” than those living at least 3.3 kilometers away. Exhibit 9 at 239 (emphasis added). Furthermore, they found statistically significant “dose-response relationships [between proximity to wind turbines and] important clinical indicators of health including sleep quality, daytime sleepiness, and mental health” – something that no other peer-reviewed, published study to date had even attempted to analyze. *Id.* at 240. Their findings “suggest[] that adverse effects are observed at distances *beyond 1 km.*” *Id.* at 242 (emphasis added). The data did not permit the authors to “construct a dose-response curve” for ILFN or audible noise levels and adverse impacts, but they did demonstrate that “this value will be less than an average hourly LAeq of 40 dBA” for audible noise. *Id.*

H. Electromagnetic Radiation and Stray Voltage

The Draft PEIR/PEIS fails to mention, let alone analyze, the significant risks to both humans and wildlife from the electromagnetic radiation and stray voltage (collectively, “EMF”) produced by electrical generation and transmission facilities. The REAT agencies must rectify this failure to comply with CEQA and NEPA. Recent studies, such as those by Dr. Samuel Milham and Dr. Magda Havas, have linked EMF exposure with an increase in ailments such as diabetes, fibromyalgia, chronic fatigue syndrome and attention deficit disorder, among others.¹² Similarly, as reported in Jeffrey Lovich’s and Joshua Ennen’s recent *BioScience* article, Doctor

¹² See, e.g., Samuel Milham, “Attention Deficit Hyperactivity Disorder and Dirty Electricity,” *Journal of Developmental and Behavioral Pediatrics*, September 2011 (attached hereto as Exhibit 10); Samuel Milham, “Historical Evidence That Electrification Caused the 20th Century Epidemic of ‘Diseases of Civilization,’” *Medical Hypotheses*, 74:337-345, 2010 (attached hereto as Exhibit 11); Samuel Milham and L. Lloyd Morgan, “A New Electromagnetic Exposure Metric: High Frequency Voltage Transients Associated With Increased Cancer Incidence in Teachers in a California School,” *American Journal of Industrial Medicine*, 2008 (attached hereto as Exhibit 12); Magda Havas, “Dirty Electricity Elevates Blood Sugar among Electrically Sensitive Diabetics and May Explain Brittle Diabetes,” *Electromagnetic Biology and Medicine*, 27:135-146, 2008; Magda Havas, “Electromagnetic Hypersensitivity: Biological Effects of Dirty Electricity with Emphasis on Diabetes and Multiple Sclerosis,” *Electromagnetic Biology and Medicine*, 25:259-268, 2006, available at: http://www.next-up.org/pdf/Magda_Havas_EHS_Biological_Effets_Electricity_Emphasis_Diabetes_Multiple_Sclerosis.pdf; The National Foundation for Alternative Medicine, “The health effects of electrical pollution,” available at: http://d1fj3024k72gdx.cloudfront.net/health_effects.pdf.

Alfonso Balmori (in a 2010 article) found the “possible impacts of chronic exposure to athermal electromagnetic radiation” on mammal species to include “damage to the nervous system, disruption of circadian rhythms, changes in heart function, impairment of immunity and fertility, and genetic and developmental problems.” Exhibit 13 at 987. Furthermore, even though there remains some disagreement over the impacts of EMF, many “authors suggest that [this] . . . should not be cause for inaction. Instead, they argue that the precautionary principle should be applied in order to prevent a recurrence of the ‘late lessons from early warnings’ scenario that has been repeated throughout history.” *Id.*

I. Global Warming

The Draft PEIR/PEIS’s Meteorology and Climate Change section is inadequate. DRECP III.3-1 to III.3.12. The County of San Diego’s Climate Action Plan was invalidated in *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152. The Court of Appeal found that the Climate Action Plan failed to “provide detailed deadlines and enforceable measures to ensure that [greenhouse gas] emissions will be reduced.” 231 Cal.App.4th at 1176. The Draft PEIR/PEIS fails to take this ruling into account, and fails to provide detailed deadlines, enforceable measures, and significance thresholds to ensure that greenhouse gas (“GHG”) emissions will be reduced as a result of its provisions. Without an accurate picture of the greenhouse gas emissions contemplated under the Draft PEIR/PEIS, global warming impacts cannot be mitigated or offset.

The problems with the Draft PEIR/PEIS’s Meteorology and Climate Change section are manifold. First, this section’s management objectives and policies are unreasonably biased towards industrial scale energy projects. Second, climate impacts on the use of sole-source desert groundwater should be studied more thoroughly and prohibited because of the increased likelihood of drought conditions. DRECP III.3-3 (increased “risks to scares [sic] water resources” from global warming”). Third, this section fails to adequately address potential sources of GHG emissions, such as the release of stored carbon or the manufacture of renewable energy components. Fourth, the DRECP fails to ascertain whether the electricity produced by contemplated alternative energy facilities would actually supplant fossil fuel-based systems. DRECP III.3-12. Finally, this section fails to adequately address the increased release of particulate matter generated by the conversion of naturally occurring vegetation and landscapes that will occur due to facilitated industrial-scale energy development.

2. Climate impacts on the use of groundwater.

As the Draft PEIR/PEIS acknowledges, climate could have a significant impact on the availability of groundwater for activities in the DRECP area. DRECP III.3-3. Yet no analysis is conducted of exactly what those impacts will be, or whether those impacts will necessitate limitations to development in the area. The Draft PEIR/PEIS must analyze these impacts and

restrict development accordingly.

3. *Unaccounted for GHG emissions.*

Despite the Draft PEIR/PEIS's admission that alternative energy projects generate GHGs during "construction, operation and maintenance, and decommissioning," it fails to thoroughly evaluate the substantial GHG emission potential in the DRECP area. DRECP III.3-11; *see* DRECP Appendix R1.3 (Existing project's GHG emissions). The production of the materials used to construct alternative energy projects, such as photovoltaic panels and wind turbines, cause significant GHG emissions. DRECP III.3-7 (admitting that "[p]erfluorocarbons such as tetrafluoromethane are used primarily in aluminum production and semiconductor manufacture," but failing to evaluate the use of these GHGs in the construction of alternative energy facilities).

Furthermore, typical analysis of construction-stage GHG emission calculations involves spreading those emissions calculations out over the life of the facility. This is not an appropriate way to calculate whether the facility will violate California's time-sensitive GHG reduction goals. Amortizing these construction-stage impacts hides the significant increase in emissions that facility construction can cause. Construction emissions will actually occur *during construction*, not 30 years later. AB 32 mandates 1990 levels by 2020, not more than a decade later. That the gas emitted will linger after emission does not alter its existence upon emission. The Draft PEIR/PEIS recognize that GHG emission calculations in the plan area may not so amortize construction emissions.

Any disturbance to the desert soil generates GHG due to sequestration that occurs particularly in desert ecosystems. *See* DRECP III.3-7 (cursory mention of change "in land cover" as a source of GHG). Though the Draft PEIR/PEIS admits that past alternative energy facilities failed to adequately study GHG emissions from ground disturbance, it makes no effort to remedy past omissions or to ensure that such omissions do not occur again. DRECP III.3-11 to III.3-12 ("Projected carbon sequestration losses from the loss of vegetation and land use conversion from [past] projects were shown to be either minimal or were not quantified in the analyses. Losses in the capacity of carbon sequestration on the part of soil microbes affected by the land use conversion were not taken into account").

4. *Alternative energy facilities will not supplant fossil fuels.*

The Draft PEIR/PEIS must ascertain whether the electricity produced by contemplated alternative energy facilities would actually either (1) supplant electricity currently generated by fossil fuel-based systems, or (2) meet a future energy demand that would otherwise be met with fossil fuel-based generation. DRECP III.3-12. No reasonable justification is given for the assumption that, were these particular renewable energy facilities not built, they would be replaced with fossil fuels.

5. *Unaccounted for particulate matter.*

Particulate matter is generated by the disturbance of desert soils, chaparral, and farmland. This particulate matter has meteorological and climate impacts, yet no substantial analysis is conducted to evaluate what these impacts might be. The Draft PEIR/PEIS must evaluate these impacts and restrict development to limit them.

J. Cumulative Impacts

The Draft PEIR/PEIS's analysis of cumulative impacts is too conclusory to adequately inform the public and decisionmakers about the environmental impacts of the DRECP. It accordingly violates both NEPA and CEQA. *Kings County Farm Bureau v. City of Hanford* (1989) 221 Cal.App.3d 692, 729-730; CEQA Guidelines § 15130; *Neighbors of Cuddy Mountain v. U.S. Forest Service* (9th Cir. 1998) 137 F.3d 1372, 1379-80; 40 C.F.R. §§ 1508.25(a)(2), 1508.25(c).

The Draft PEIR/PEIS's cumulative impacts analysis violates CEQA in two respects. First, it contains only the bare opinions of the action agencies and fails to disclose the basis of those conclusions. For example, it admits that the Project will disturb the desert pavement and that "[s]imilar types of impacts to desert pavement would [occur] for the cumulative projects listed," but it then inexplicably concludes without any analysis that because mitigation measures would be required "[a]s such, cumulative impacts would be less than significant." Draft PEIR/PEIS IV.25-41. The Draft PEIR/PEIS does not quantify the loss of pavement expected from the cumulative projects, relate that to the amount of pavement that will be lost under the Project, or explain why the combined amount of likely loss of pavement is insignificant. "An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." *Kings County Farm Bureau*, 221 Cal.App.3d at 736. The failure of the Draft PEIR/PEIS to disclose the basis of its conclusions about cumulative impacts prevented the public from doing so here.

Second, the Draft PEIR/PEIS's cumulative impacts analysis is further inadequate under CEQA because it wrongly assumes that a small contribution to a cumulative impact is not cumulatively considerable. Under CEQA, however, "the guiding criterion on the subject of cumulative impacts is whether any additional effect caused by the proposed project should be considered significant given the existing cumulative effect." *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 118 (rejecting proposed regulatory "de minimis contribution" exemption to cumulative impact analysis requirement as "contraven[ing] the very concept of cumulative impacts"). Indeed, many cases have held that even a minor contribution to an existing degraded environmental condition can be "cumulatively considerable" within the meaning of Guidelines section 15130(a). For example, in

Kings County Farm Bureau, the court stated as follows:

The DEIR concludes the project's contributions to ozone levels in the area would be immeasurable and, therefore, insignificant because the plant would emit relatively minor amounts of precursors compared to the total volume of precursors emitted in Kings County. The EIR's analysis uses the magnitude of the current ozone problem in the air basin in order to trivialize the project's impact. In simple terms, the EIR reasons the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.

The point is not that, in terms of ozone levels, the proposed Hanford project will result in the ultimate collapse of the environment into which it is to be placed. The significance of an activity depends upon the setting. (Guidelines, § 15064, subd. (b).) The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

221 Cal.App.3d at 718.

It therefore violates CEQA to conclude that a project does not make a cumulatively considerable contribution to a cumulative impact merely because the absolute size of the additional incremental impact is small. *Id.* But that is *exactly* what the Draft PEIR/PEIS does. For example, it states that the operational “emissions from the DRECP in conjunction with the similar projects listed in the tables . . . would . . . result[] in a significant cumulative impact,” but it states that “[g]iven the scale of the operational emissions caused by the DRECP renewable energy projects and the mitigation required for these projects . . . , the contribution of these projects would be less than cumulatively considerable.” Draft PEIR/PEIS IV.25-35. But the “relevant question . . . is not the relative amount of [emissions] emitted by the project when compared with preexisting emissions, but whether any additional amount of . . . emissions should be considered significant in light of the” Draft PEIR/PEIS’s conclusion that there will be a “significant cumulative impact” from the combined emissions of the DRECP and the cumulative projects identified. 221 Cal.App.3d at 718. Because the Draft PEIR/PEIS fails to answer this question, it violates CEQA.

The Draft PEIR/PEIS’s cumulative impacts analysis also fails to comply with NEPA. 40 C.F.R. § 1508.25(c). “To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing [a federal agency’s] decisions, can be assured that the [it] provided the hard look that it is required to provide. . . . General statements about “possible” effects and “some risk” do not constitute a “hard look” absent a justification regarding why more definitive information could not be

provided.” *Neighbors of Cuddy Mountain v. U.S. Forest Service* (9th Cir. 1998) 137 F.3d 1372, 1379-80. Here the Draft PEIR/PEIS makes conclusory statements that lack the detailed information required. For example, its determination that cumulative impacts to desert pavement “will be less than significant” fails to explain the cumulative acreage of desert pavement disturbance and destruction, or explain the ratio of impacted and preserved desert pavement resources. DRECP IV.25-41. Indeed, the Draft PEIR/PEIS does not quantify areas of desert pavement within the development focus areas because none of the action agencies have determined where they are. DRECP IV.25-40. By assuming that these impacts will be mitigated to a less-than cumulatively significant level without determining the extent and degree of impacted land, the Draft PEIR/PEIS does not take a hard look at the DRECP’s cumulative impacts and it therefore violates NEPA.

K. CDCA-Wide Changes

While the DRECP purports to apply only to the Plan area, it actually modifies the entire California Desert Conservation Area (“CDCA”) Plan. DRECP II.3-424; *see also* DRECP Figure II.3-6 (CDCA Plan boundaries compared to DRECP boundaries). This increased scope is not reflected in the description of the DRECP. *See, e.g.*, Multiple Use Classifications (MUCs) under the CDCA Plan (DRECP II.2-26 (limitation on the installation of wind energy facilities in certain classifications under the no action alternative); *see also* DRECP Table II.2-12 (acreage of each MUC). MUCs in particular are very important to the regulatory setting in the CDCA and have been the subject of litigation and negotiation. *See, e.g., Quechan Tribe of Ft. Yuma Indian Reservation v. U.S. Dept. of the Interior* (S.D. Cal. 2013) 927 F.Supp.2d 921, 937 n.10, 942, n.12; *Desert Protective Council v. U.S. Dept. of the Interior* (S.D. Cal. 2013) 927 F.Supp.2d 949, 975-976; Defenders of Wildlife, Natural Resources Defense Council, & the Wilderness Society, *Genesis Solar Protest Negotiation Letter* (October 22, 2010) and *Genesis Solar Record of Decision* (Nov. 2010).¹³ For instance, under the proposed alternative, alterations have been proposed to Wilderness designations and moderate and intensive classifications have been proposed to be combined into one “standard focus” designation that only uses the moderate guidelines. DRECP II.3-424; *see also* Table II.3-50.

VI. The DRECP’s Streamlining of the Endangered Species Act Incidental Take Permitting Process Fails to Protect Listed Species And Their Environment

The Fish and Wildlife Service prepared the proposed General Conservation Plan (“GCP”) “as the permitting process to authorize incidental take resulting from Covered Activities on non-

¹³ Both the Protest Letter and the Record of Decision are *available at* http://www.blm.gov/pgdata/content/ca/en/fo/palmsprings/Solar_Projects/Genesis_Ford_Dry_Lake.html.

Federal lands under the interagency Draft [DRECP].” DRECP M-1, II.3-444 (GCP “provides the framework for a streamlined permitting process for renewable energy development”). However, that process fails to protect the environment and species protected under the ESA, in direct contradiction to the ESA’s main purpose – to protect endangered species and their habitat. 16 U.S.C. §§ 1531(b), 1539(a); *Tennessee Valley Authority v. Hill* (1978) 437 U.S. 153, 174 (“Congress intended endangered species to be afforded the highest of priorities”).

For example, a “streamlined permitting process for renewable energy development” that will “authorize incidental take of Covered Species in conjunction with DRECP Covered Activities on nonfederal lands” will allow the issuance of incidental take permits without the appropriate and necessary protections for endangered or threatened species. Indeed, FWS’ “Habitat Conservation Plan Assurances (‘No Surprises’) Rule” declares that “no additional land use restrictions or financial compensation will be required of the permit holder with respect to species covered by the permit, *even if unforeseen circumstances arise after the permit is issued* indicating that additional mitigation is needed for a given species covered by a permit.” 63 Fed.Reg. 8,859 (February 23, 1998) (emphasis added). By limiting the role of the permit holder, and advancing the timeline for issuing permits through this streamlined permitting process, the GCP will create a reckless and destructive policy – in violation of the Endangered Species Act – that might be relied on for years to come and therefore must be remedied.

Similarly, the lack of site-specific project information also undermines the reliability and accuracy of this streamlined development permitting process. It is nearly impossible to determine the impacts of a project without site-specific information, as discussed above. This lack of information also defers any conclusions as to the proposed takings caused by each project. The GCP’s assumption that “about 650 birds and 130 bats” will be subject to incidental take through 2040 is speculative and unsupported. DRECP M-2. As admitted by FWS, these incidental take calculations are “*initially estimated* by the *surrogate* of ground-disturbance to modeled habitat for each Covered Species.” DRECP M-4 (emphasis added). However, this cursory analysis based on speculative impacts does not suffice under the ESA’s strict incidental take standards. 16 U.S.C. § 1539(a).

Additionally, the GCP relies on “acquisition from willing sellers” of available land to mitigate the impacts under the ESA. DRECP II.3-3, II.3-239 to II.3- 240, II.3-444, M-32. However, there is no guarantee that any private party will be willing to sell land as mitigation, leaving “equivalent non-acquisition mitigation measures,” which are typically compensatory and ineffective, as the only option. DRECP M-32. The GCP’s streamlined development permitting process will therefore issue permits prior to *any* assurance that mitigation can be accomplished.

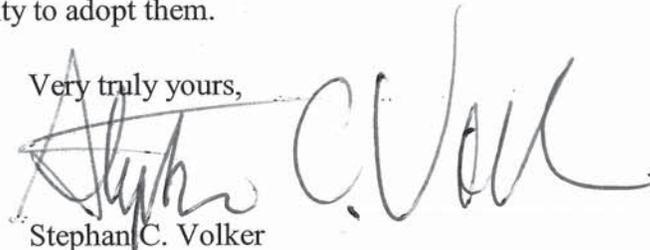
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For these reasons, and others, the DRECP should not allow streamlined development permitting. Rather, the DRECP should focus on ensuring environmental conservation if and when such projects arise. Endangered and special-status species need help protecting their environment, project applicants do not.

CONCLUSION

For each of the foregoing reasons, the DRECP and its PEIR/PEIS violate CEQA, NEPA and the ESA. Moreover, this Project is a rule-making under both state and federal law, and does not as yet comply with the procedural and substantive requirements of either the state or the federal Administrative Procedure Acts. Many of the Project's features are *ultra vires* as they exceed the REAT agencies' authority to adopt them.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stephan C. Volker', written over a horizontal line.

Stephan C. Volker
Attorney for Commentors
Backcountry Against Dumps and Donna Tisdale

SCV:taf

LIST OF EXHIBITS

1. Fthenakis, Vasilis & Yuanhao Yu, "Analysis of the Potential for a Heat Island Effect in Large Solar Farms," *Presented at 39th IEEE Photovoltaic Specialists Conference*, Tampa, Florida, June 17-23, 2013;
2. Salt, Alec & Timothy Hullar, 2010, "Responses of the Ear to Low Frequency Sounds, Infrasound and Wind Turbines," *Hearing Research*, 268:12-21;
3. Carman, Richard & Michael Amato, February 28, 2014, "Kumeyaay and Ocotillo Wind Turbine Facilities Noise Measurements;"
4. Punch, Jerry, Richard James & Dan Pabst, 2010, "Wind-Turbine Noise: What Audiologists Should Know," *Audiology Today*, July/August 2010;
5. Paller, Claire *et al.*, 2013, "Wind Turbine Noise, Sleep Quality, and Symptoms of Inner Ear Problems," Poster Presentation;
6. Salt, Alec & Jeffrey Lichtenhan, 2014, "How Does Wind Turbine Noise Affect People?," *Acoustics Today*, 10:1, pp. 20-28;
7. Alec Salt, September 18, 2013, Letter to Martti Warpenius;
8. Salt, Alec & James Kaltenbach, 2011, "Infrasound from Wind Turbines Could Affect Humans," *Bulletin of Science, Technology and Society*, 31(4):296-302;
9. Nissenbaum, Michael, Jeffery J. Aramini & Christopher D. Hanning, 2012, "Effects of Industrial Wind Turbine Noise on Sleep and Health," *Noise & Health*, 14(6):237-243;
10. Milham, Samuel, September 2011, "Attention Deficit Hyperactivity Disorder and Dirty Electricity," Letter to Editor, *Journal of Developmental and Behavioral Pediatrics*;
11. Milham, Samuel, 2010, "Historical Evidence That Electrification Caused the 20th Century Epidemic of 'Diseases of Civilization.'" *Medical Hypotheses*, 74:337-345;
12. Milham, Samuel & L. Lloyd Morgan, 2008, "A New Electromagnetic Exposure Metric: High Frequency Voltage Transients Associated with Increased Cancer Incidence in Teachers in a California School," *American Journal of Industrial Medicine*;
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