

Director's Protest Resolution Report

**Desert Renewable Energy
Conservation Plan Proposed
Land Use Plan Amendment
& Final Environmental
Impact Statement
(DRECP PLUPA/FEIS)**

September 14, 2016



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CA-DRECP-15-120-10
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

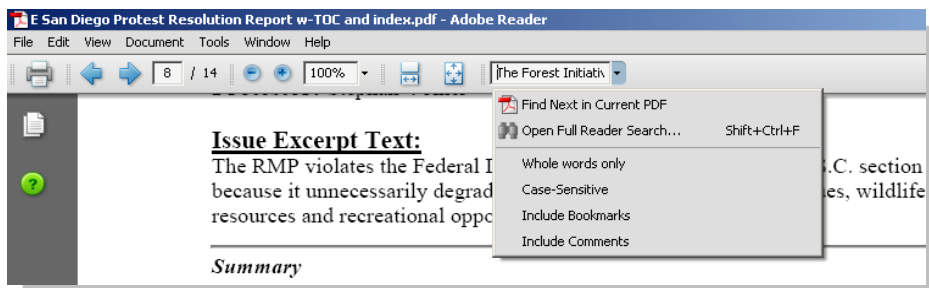
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

Summary
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized by case file number (numbered as received).
2. In Adobe Reader search the report for your name, organization or submission number (do not include the issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	HCP	Habitat Conservation Plan
ACHP	Advisory Council on Historic Preservation	IB	Information Bulletin
ACP	Advanced Conservation Practice	IM	Instruction Memorandum
APE	Area of Potential Effects	KOP	Key Observation Points
BA	Biological Assessment	LUPA	Land Use Plan Amendment
BLM	Bureau of Land Management	MOU	Memorandum of Understanding
BMP	Best Management Practice	NAE	Native American Element
BO	Biological Opinion	NEPA	National Environmental Policy Act of 1969
CAA	Clean Air Act	NHPA	National Historic Preservation Act of 1966, as amended
CDCA	California Desert Conservation Area	NLCS*	National Conservation Lands*
CEQ	Council on Environmental Quality	NOA	Notice of Availability
CFR	Code of Federal Regulations	NOI	Notice of Intent
CMA	Conservation and Management Actions	NRHP	National Register of Historic Places
COA	Condition of Approval	NSO	No Surface Occupancy
CSP	Concentrated Solar Power	OHV	Off-Highway Vehicle
CSU	Controlled Surface Use	PA	Programmatic Agreement
CWA	Clean Water Act	PLUPA	Proposed Land Use Plan Amendment
DLUPA/EIS	Draft Land Use Plan Amendment and Environmental Impact Statement	PPA	Power Purchase Agreement
DFA	Designated Focus Area	REAT	Renewable Energy Action Team
DM	Departmental Manual (Department of the Interior)	RFDS	Reasonably Foreseeable Development Scenario
DOI	Department of the Interior	RMP	Resource Management Plan
DWMA	Desert Wildlife Management Area	ROD	Record of Decision
EA	Environmental Assessment	ROW	Right-of-Way
EIR	Environmental Impact Report	SO	State Office
EIS	Environmental Impact Statement	T&E	Threatened and Endangered
EO	Executive Order	TCA	Tortoise Conservation Area
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VPL	Variance Process Land
FLPMA	Federal Land Policy and Management Act of 1976	VRM	Visual Resource Management
FO	Field Office (BLM)	WA	Wilderness Area
FWS	U.S. Fish and Wildlife Service	WEMO	West Mojave Route Network Project
GIS	Geographic Information Systems	WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

**National Conservation Lands – This new name replaces BLM’s “National Landscape Conservation System” as well as the acronym “NLCS”. There is no acronym. BLM’s summaries and responses reflect this change; protest citations reflect terminology as originally submitted.*

Protesting Party Index

Protester	Organization	Submission Number	Determination
Gerry Newcombe	San Bernardino County	PP-CA-DRECP-15-01	Denied – Issues & Comments
Laura Cunningham and Kevin Emmerich	Basin and Range Watch	PP-CA-DRECP-15-02	Denied – Issues & Comments
Joshua Hart	Inyo County Board of Supervisors	PP-CA-DRECP-15-03	Denied – Issues & Comments
David Hubbard	Gatzke, Dillon, and Ballance, for Off-Road Business Association (ORBA)	PP-CA-DRECP-15-04	Denied – Issues & Comments
Kathleen Hayden	Coyote Canyon Caballos d’Anza	PP-CA-DRECP-15-05	Dismissed – No Standing
Irene Fisher	Shield F Ranch (Owner)	PP-CA-DRECP-15-06	Denied – Issues & Comments
Rebecca Watson	Welborn, Sullivan, Meck, and Tooley, for Eagle Crest Energy Company	PP-CA-DRECP-15-07	Denied – Issues & Comments
Helen O’Shea, Garry George	NRDC, Audubon California	PP-CA-DRECP-15-08	Denied – Issues & Comments
Lori Lamson	Town of Apple Valley (CA)	PP-CA-DRECP-15-09	Granted in Part / Denied – Issues & Comments
Ed Stovin	Friends of Ocotillo Wells	PP-CA-DRECP-15-10	Dismissed – Comments Only
Tom Budlong	(individual)	PP-CA-DRECP-15-11	Denied – Issues & Comments
Donovan Collier	Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture	PP-CA-DRECP-15-12	Denied – Issues & Comments
Thane Somerville	Morisset, Schlosser, Jozwiak, and Somerville, for Quechan Indian Tribe	PP-CA-DRECP-15-13	Denied – Issues & Comments
John Stewart	California Four Wheel	PP-CA-DRECP-15-14	Denied – Issues & Comments

	Drive Association		
(group)	Alliance for Desert Preservation, et al.	PP-CA-DRECP-15-15	Granted in Part / Denied – Issues & Comments
Anitra Kass	Pacific Crest Trail Association	PP-CA-DRECP-15-16	Denied – Issues & Comments
Greg Suba, Garry George	California Native Plant Society, Audubon California	PP-CA-DRECP-15-17	Denied – Issues & Comments
Ileene Anderson and Lisa Belensky	Center for Biological Diversity	PP-CA-DRECP-15-18	Denied – Issues & Comments
Laurens Silver	California Environmental Law Center, for Desert Protective Council	PP-CA-DRECP-15-19	Denied – Issues & Comments
Kim Delfino, Barbara Boyle	Defenders of Wildlife, Sierra Club	PP-CA-DRECP-15-20	Denied – Issues & Comments
Betty Munson	Scenic 247 Committee	PP-CA-DRECP-15-21	Denied – Issues & Comments
Sophia Anne Merk	National Public Lands News	PP-CA-DRECP-15-22	Denied – Issues & Comments
Danielle Murray	Conservation Lands Foundation	PP-CA-DRECP-15-23	Denied – Issues & Comments
Dennis Patch	Colorado River Indian Tribes	PP-CA-DRECP-15-24	Denied – Issues & Comments
Randy Banis	Public Lands Roundtable of Ridgecrest	PP-CA-DRECP-15-25	Denied – Issues & Comments
Amy Granat	California Off-Road Vehicle Association	PP-CA-DRECP-15-26	Granted in Part / Denied – Issues & Comments
Randy Banis	(individual)	PP-CA-DRECP-15-27	Denied – Issues & Comments
Sophia Anne Merk	Eastern Kern County Resource Conservation District	PP-CA-DRECP-15-28	Denied – Issues & Comments
Bill Lembright	(individual)	PP-CA-DRECP-15-29	Denied – Issues & Comments
Jillian Estrada/Ron	Desert Tortoise Preserve	PP-CA-DRECP-15-30	Denied – Issues &

Berger	Committee		Comments
Edward Waldheim	Friends of Jawbone	PP-CA-DRECP-15-31	Denied – Issues & Comments
James Kenney	(individual)	PP-CA-DRECP-15-32	Granted in Part / Denied – Issues & Comments
Nada Culver and Sally Miller	The Wilderness Society	PP-CA-DRECP-15-33	Denied – Issues & Comments
Nada Culver and Sally Miller, Ryan Henson	The Wilderness Society, California Wilderness Coalition	PP-CA-DRECP-15-34	Denied – Issues & Comments
David Lamfrom	National Parks Conservation Association	PP-CA-DRECP-15-35	Denied – Issues & Comments
Erica Brand	The Nature Conservancy	PP-CA-DRECP-15-36	Denied – Issues & Comments
Michael Garabedian	Committee for 245 Million Acres	PP-CA-DRECP-15-37	Denied – Issues & Comments
Juan Perez	County of Riverside	PP-CA-DRECP-15-38	Dismissed – Comments Only
Chuck Bell	Lucerne Valley Economic Development Association	PP-CA-DRECP-15-39	Denied – Issues & Comments
Col. Christopher Conlin	California Department of Parks and Recreation	PP-CA-DRECP-15-40	Denied – Issues & Comments
Mark Algazy	Desert Advisory Council	PP-CA-DRECP-15-41	Granted in Part / Denied – Issues & Comments
Jora Fogg	Friends of the Inyo	PP-CA-DRECP-15-42	Denied – Issues & Comments
Stephan Volker	Law Offices of Stephan Volker, for Backcountry Against Dumps, and Donna Tisdale	PP-CA-DRECP-15-43	Denied – Issues & Comments

Issue Topics and Responses

NEPA – Range of Alternatives

Issue Number: PP-CA-DRECP-15-02-4

Organization: Basin & Range Watch

Protestor: Laura Cunningham

Issue Excerpt Text: A focus on the point-of-use energy efficiency/solar energy alternative, developed by the California Public Utilities Commission and investor-owned utilities and known as the California Energy Efficiency Strategic Plan (CEESP), is preferable to the current draft alternatives in the DRECP. The CEESP Alternative most effectively addresses the climate crisis that drives the renewable energy development the DRECP is intended to accommodate. Our additional response to the DRECP’s failure to consider this in the FEIS: The CEQ regulations direct that an EIS “... shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13). The NEPA directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources...” (NEPA Sec 102(2)(E)).

The Final BLM EIS fails to acknowledge the requirements of the National Environmental Policy Act to “include reasonable alternatives not within the jurisdiction of the lead agency.”

Issue Number: PP-CA-DRECP-15-02-5

Organization: Basin & Range Watch

Protestor: Laura Cunningham

Issue Excerpt Text: The Distributed Generation Alternative was not adequately analyzed with current up-to-date information...

In Vol. II.S-5, Alternatives Considered But Not Carried Forward, the FEIS states:

“Integration and reliability concerns were highlighted due to local renewable generation being sent to the grid through power lines and equipment that were primarily designed to transport energy in the opposite direction. Unless managed appropriately, the integration of local renewable energy can impact the safe and reliable operation of distribution grids. Integration is hindered by a lack of information about the capacities and constraints of existing distribution grids”.

Our response is that the KEMA Inc. Study commissioned in 2011 by CEC and CAISO (Corfee, K., D. Korinek, C. Hewicker, M. Pereira Morgado, H. Ziegler, J. Zillmer and D. Hawkins, KEMA. 2011. Distributed Generation in Europe. California Energy Commission. Publication Number: CEC-400-2011-011. Sacramento, Calif., at [http://www.energy.ca.gov/2011publications/CEC-400-2011-](http://www.energy.ca.gov/2011publications/CEC-400-2011-011/CEC-400-2011-011.pdf)

011/CEC-400-2011-011.pdf, accessed December 8, 2015) concluded that no sweeping changes to the California grid are required to accommodate back-flow although a few secondary measures, many of which are already well underway (smart grids, storage) may be required as penetration increases. Additionally, in most cases, some or all of the power is consumed onsite, reducing the amount that would flow into the distribution grid, and why can this not be managed appropriately?

Issue Number: PP-CA-DRECP-15-11-2

Organization: Individual

Protestor: Tom Budlong

Issue Excerpt Text: This protest concerns my February 19, 2015 comment, copy enclosed, titled “All Reasonable Alternatives” which noted that distributed generation was omitted from the Draft DRECP. Response F96-3 of the Final DRECP addressed this comment. It said:

1. ‘The distributed generation alternative does not meet BLM’s purpose and need.’
2. ‘Text has been added to Section II.8.2.1 regarding distributed generation.’

The DRECP includes utility-scale solar, wind and geothermal sources of renewable energy. Distributed generation as a source is absent. The absence contradicts discussion of its importance included in the Final DRECP, page 11.8-4, (within Section II.8.2.1), third paragraph. Excerpts from that paragraph:

...current analysis indicates that development of both distributed generation and utility-scale renewable energy will be needed to meet California’s RPS and climate change goals ...Ultimately, both utility-scale and distributed generation renewable energy development will need to be deployed at increased levels, and the highest penetration of solar power overall will require a combination of both types (NREL 2010). This paragraph also implies that distributed generation would be expected to carry the full burden of DRECP’s renewable generation goals:

For a variety of reasons ... distributed energy generation alone cannot meet the goals for renewable energy development. That distributed generation can be a part of the solution appears rejected, since it can’t be the whole solution.

The DRECP has an unexplained bias against distributed generation.

Response F96-3: The distributed generation alternative does not meet BLM’s purpose and need.

Issue Number: PP-CA-DRECP-15-11-4
Organization: Individual
Protestor: Tom Budlong

Issue Excerpt Text: Section 11.8.2.1 of the Final DRECP states: “Distributed generation on private land and in particular rooftop generation is outside of the ELM’s authority so would not be a feasible alternative and is outside the scope of this Final EIS”. This question was covered in my February 19 comment letter. The letter quoted the answer to Question 2b from the President’s Council on Environmental Quality 40 Questions: “An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable”. The Question 2b answer is absolute- the only exception is reasonableness. The Question 2b answer does not mention purpose and need. BLM’s response does not discuss reasonableness - it does not claim distributed generation is unreasonable. BLM’s refusal to consider distributed generation, in violation of the CEQ, is unsupported and arbitrary.

Issue Number: PP-CA-DRECP-15-15-11
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: The FEIS explicitly does not consider reasonable alternatives that depart in any way from the constrictively-defined purposed and need. Rather, each alternative which the FEIS does consider proceeds from the assumption that enough acreage of BLM land must be selected to support 8,175 MW of new renewable energy development; each alternative then arrays the DFA’s and unallocated lands in different ways to get this predetermined result, and each of the alternatives contains similar types of

conservation management actions. Because of these defects in the articulation of purpose and need, the preferred alternative is not consistent with FLPMA, which requires the Secretary in her management of public lands to “take any action necessary to prevent unnecessary or undue degradation of the land.” 43 U.S.C. §1732(b).

Issue Number: PP-CA-DRECP-15-15-12

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Many commenters on the Draft DRECP joined with the EPA in pointing out that an Alternative emphasizing that development of utility-scale renewable energy projects on brownfields has clear common sense appeal, and was consistent with a policy framework developed by the premier Federal agency with responsibility for protection of the nation’s environment. Despite all this, the Proposed LUPA and FEIS elect not to consider the EPA’s energy siting criteria as a basis for a Brownfields Alternative, or even as a framework for modifying the Alternatives which are considered. This is a violation of the BLM’s obligation under 40 CFR 1502 to “rigorously explore and objectively evaluate all reasonable alternatives”, including an alternative that is “practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

Issue Number: PP-CA-DRECP-15-15-13

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA says that “[d]istributed generation on private land and in particular rooftop generation is outside of the BLM’s authority so would not be a feasible alternative and is outside the scope of this Final EIS.” [Section II.8.2.1/p. II.8-3]. It summarily dismisses a Distributed Generation (“DG”) alternative on the ground that it “would not meet the interagency goal because it does not provide a streamlined process for development of utility-scale renewable energy and does not provide the long-term conservation and management of special-status species and other physical, cultural, scenic and social values within the DRECP;” [Section II.8 - 7]. It further rejects consideration of a Distributed Generation-only alternative on the ground that it “would not respond to the BLM’s purpose and need for agency action in the EIS because it would not advance the federal orders and mandates that compel the BLM to evaluate renewable energy projects on federally administered land” and would not “respond to the BLM’s purpose to Stated more simply, BLM’s rationales for dismissing a Distributed Generation alternative are, in essence, that (i) BLM land doesn’t have rooftops and so DG is irrelevant, (ii) BLM has orders to evaluate renewable energy projects on federally administered land and DG doesn’t relate to those orders, and (iii) DG does not relate to the BLM’s purpose to conserve environmental values. These three rationales constitute a willful putting on of blinders. The purpose of an EIS is to take the blinders off, not to put them on.

Issue Number: PP-CA-DRECP-15-15-14

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Since a Distributed Generation only alternative is never

considered by the FEIS, the “informational purposes” discussion which the FEIS does devote to such an alternative is largely devoid of the study and comparative analysis required under NEPA. It briefly catalogues (in a single sentence) the benefits of DG (II.8-4), but then concludes, without any supporting data, analysis or discussion, that, due to what it calls Distributed Generation’s “limitations” (purported upper limits on integrating it into the grid, cost, lack of storage and the conclusory assertion that most buildings will remain dependent on the grid), Distributed Generation alone will not be sufficient to meet our energy needs. It states -- again without any supporting data, analysis or discussion -- that a “major shift from centralized power plants to distributed generation will require a fundamental re-working of California’s electricity grid,” (ii.8-5), but it does not provide any evaluation as to what this so-called “fundamental re-working” might cost or what it would entail in terms of system upgrades and/or new transmission, and it does not compare that cost with the costs associated with developing 8,175 MW of utility-scale renewables (and associated new transmission and transmission upgrades), nor does it factor in the environmental savings from a Distributed Generation alternative. It concludes – again without any data or analysis – that, even though California has programs in place that “promote widespread development of customer-side systems,” the vast majority of individuals and businesses are unable or unwilling to buy Distributed Generation equipment despite incentives like Net Energy Metering (II.8-5).

Issue Number: PP-CA-DRECP-15-15-15

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS identifies, as another reason to disregard a DG alternative, the purported lack of local codes by “some cities and counties” regarding Distributed Generation, resulting (the FEIS says) in slow implementation of DG (II.8-5). Again, no studies or other supporting data are cited for this conclusion, rendering the FEIS deficient. This deficiency is worsened by the fact that there is no consideration of data suggesting that counties in the Plan Area, including San Bernardino County, have participated in or are participating in CEC-funded programs aimed at revising the existing renewable energy elements of their general plans. The FEIS also fails to consider or compare the costs to local governments of reviewing applications for utility-scale projects, or the environmental and economic impacts on those communities of such large scale projects.

Issue Number: PP-CA-DRECP-15-15-18

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Many of NRDC v. Morton’s holdings are ensconced in rules interpreting and implementing NEPA. An example is 40 CFR 1502, which require that an agency must “rigorously explore and objectively evaluate all reasonable alternatives.” Further, the Council on Environmental Quality has stated that: “In determining the scope of alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.” The

CEQ has also stated: “An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA’s goals and policies”. 46 Fed. Reg. 18026 (March 23, 1981). The FEIS points to the “goals” in the federal Energy Policy Act, passed in 2005, and a subsequent presidential order, as the main sources of its “mandate”. This violates NEPA, and it runs directly contrary to the holding in NRDC v. Morton, because it selects only a couple of policy goals out of a web of more complex and interdependent statutes and regulations pertaining to the reduction of GHG. Further, the “goal” (not a mandate) in the Energy Policy Act is now ten years old, and it reflects none of the sea changes that have taken place in the technologies and economics of renewable power generation, efficiencies, storage and transmission. In fact, even if implementation of Distributed Generation-based alternatives would require enactment of new legislation or a revision of the Executive Order, consideration of such alternatives would nevertheless be required by NEPA in the FEIS. (NRDC v. Morton, p. 837)

Issue Number: PP-CA-DRECP-15-15-19
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: Finally, the holding in NRDC v. Morton demonstrates that the

FEIS is flawed in dismissing Distributed Generation alternatives on the ground that they only partially address the FEIS’s stated “purpose and need.” As held in NRDC v. Morton, “[i]f an alternative would result in supplying only part of the energy that the lease sale would yield, then its use might possibly reduce the scope of the lease sale program and thus alleviate a significant portion of the environmental harm attendant on offshore drilling.” (NRDC v. Morton, p. 837) The Distributed Generation alternative rejected by the FEIS would likely reduce the scope of utility-scale renewables (and related new transmission) required, thereby alleviating a significant part of the environmental impacts to be considered by the FEIS.

Issue Number: PP-CA-DRECP-15-15-20
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: The point is not that the DG alternative is the best alternative, but rather that it is a reasonable alternative that should have been considered in the FEIS.

Issue Number: PP-CA-DRECP-15-18-22
Organization: Center for Biological Diversity
Protestor: Ileene Anderson

Issue Excerpt Text: The proposed ERMA’s include only two alternatives – no action and preferred. Failing to provide a range of alternatives when considering a proposed action is a violation of NEPA. In addition, a number of the proposed SRMA analyses provide alternatives that are identical in acreage and landscape layout – inadequate alternatives under NEPA.

Issue Number: PP-CA-DRECP-15-24-6

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP fails to identify any alternative that avoids or significantly reduces significant impacts to cultural resources and Native American interests. DRECP at IV.27- 8 to -9 (all alternatives designate at least 700 acres of Native American Element lands and lands with thousands of cultural resources as DFAs). Decision-makers therefore are presented with a false choice: according to the DRECP, all mechanisms for developing renewable energy in the California desert will automatically result in significant and unavoidable impacts to cultural resources important to area tribes. Given the perceived inevitability of these impacts, it is likely that no effort will be expended to develop or implement an alternative that could have lessened impacts.

Issue Number: PP-CA-DRECP-15-24-8

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP fails to consider an alternative that combines distributed generation, disturbed site redevelopment, and energy efficiency to meet the state and federal climate change and domestic energy goals. As NEPA mandates that lead agencies consider feasible alternatives that would reduce the project's significant environmental impacts (E.g., Alaska Wilderness Recreation & Tourism Ass'n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995)), and as the current range of DRECP alternatives present no options that would reduce significant

impacts to Cultural Resources and Native American interests, this approach is unlawful.

Issue Number: PP-CA-DRECP-15-24-9

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: An alternative that would reduce significant impacts to the aforementioned resources and interests has been robustly developed by Basin and Range Watch in coalition with other environmental organizations, yet instead of seriously considering this alternative, the DRECP blithely brushes aside such ideas. E.g., DRECP at 11.8-4 (“distributed energy generation alone cannot meet the goals for renewable energy development”), 11.8-7 (alternative ideas do “not meet the interagency goal because [they do] not provide a streamlined process for the development of utility-scale renewable energy and [do] not provide for the long-term conservation and management of special-status species and other physical, cultural, scenic and social values within the DRECP.”). By artificially parsing non-utility scale renewable technologies into individual components and by refusing to link conservation and management objectives to alternative technologies, the DRECP agencies claim that these alternate strategies cannot meet their goals. NEPA and CEQA do not countenance such artifices. The DRECP must be revised to include an alternative that incorporates distributed generation, disturbed site redevelopment, and energy efficiency together with the beneficial conservation and management objectives set forth in existing alternatives. Only then will the public and agency decision makers have a full suite of viable alternatives available for consideration.

Issue Number: PP-CA-DRECP-15-29-2
Organization: Individual
Protestor: Bill Lembright

Issue Excerpt Text: I have read several times throughout the final EIS that the distributed generation alternative does not meet BLM's purpose and need, that distributed generation on private land and in particular rooftop generation is outside of the BLM's authority, so would not be a feasible alternative and as such is outside the scope of this Final EIS. However, to quote from the President's Council on Environmental Quality 40 Questions: "An Alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable".

Issue Number: PP-CA-DRECP-15-29-3
Organization: Individual
Protestor: Bill Lembright

Issue Excerpt Text: Much has changed since the DRECP was conceived. Solar wasn't competitive with conventional electrical power. Now it's on par and becoming cheaper. The BLM's position that distributed energy generation alone cannot meet the goals for renewable energy development implies that distributed generation would be expected to carry the full burden of the DRECP's renewable energy goals. Before we begin to irreparably damage our precious natural resources, do the reasonable, responsible thing and see how much can be achieved! At very least distributed generation should be part of the solution. Do not reject the alternative without proper consideration of how it can play a role in the whole solution.

Issue Number: PP-CA-DRECP-15-43-4
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The DRECP's objectives unreasonably narrowed the range of alternatives studied in the FEIS. Every alternative, even the No-Action Alternative, assumes that 20,000 megawatts of renewable energy projects will be built in the DRECP Project area. BLM did not study 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.

Issue Number: PP-CA-DRECP-15-43-5
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS continues to reject an alternative focused on distributed energy. FEIS II.8-3 to II.8-7. The FEIS cited the distributed generation alternative's "conflict[] with the DRECP's goals and [] BLM's purpose and need" as the rationale for eliminating this alternative from further consideration. FEIS II.8-7. Yet distributed generation would satisfy the DRECP's conservation goals. While the FEIS also discussed the costs to modernize the electrical grid to work with distributed generation, it failed to consider the costs in relation to the costs of new transmission lines required for the Preferred Alternative. FEIS II.8-5 to II.8-6.

Summary:

The DRECP PLUPA/FEIS violates NEPA and FLPMA because it fails to analyze an adequate range of alternatives, particularly with regards to:

- point-of-use energy efficiency and distributed generation;
- acreage of BLM land available to renewable energy development;
- megawatts of future renewable energy development;
- renewable energy development on brownfields;
- ERMA's and SRMA's;
- avoiding impacts to cultural resources and Native American interests; and
- an alternative with no renewable energy development in the DRECP plan area.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a range of reasonable alternatives that meet the purpose and need of the DRECP PLUPA/FEIS and that address resource issues identified during the scoping period. The DRECP PLUPA/FEIS analyzed in detail six alternatives, which are described in Section II.1.1. In addition to the Preferred Alternative/Proposed LUPA and the No Action Alternative, the alternatives analyzed in the DRECP PLUPA/FEIS cover the full spectrum as described: "Alternative 1 emphasizes low biological resource conflict areas as requested by environmental non-governmental organizations and local communities. Alternative 2 emphasizes siting and design flexibility as requested by industry representatives. Alternatives 3 and 4 are variations on the themes of Alternatives 1 and 2 with additional consideration of ways to represent and consider BLM Variance Lands as identified in the Western Solar Plan. All of the action alternatives (the Preferred Alternative and Alternatives 1-4) were designed to avoid or substantially lessen one or more significant effects of the Proposed LUPA" (DRECP PLUPA/FEIS, p. II.1-2).

As described in the DRECP PLUPA/FEIS, "for planning purposes, the DRECP assumes that there could be a demand for up to 20,000 MWs of renewable energy generation within the term of the DRECP to 2040", regardless of the amount of BLM-administered lands available for renewable energy development in the DRECP planning area (DRECP PLUPA/FEIS, p. I.3-21, 22). The BLM used this estimate as a planning tool to predict demand for renewable energy development in the California desert. This estimate did not represent a target that the BLM was trying to achieve in the DRECP PLUPA/FEIS (DRECP PLUPA/FEIS, p. I.3-15). More information related to renewable energy generation assumptions can be found in Appendix F. The BLM does not have the authority to determine the level of renewable energy development in the DRECP planning area. Rather, the BLM has the authority, as described in the purpose and need, to identify areas of public land that are suitable and available for utility-scale solar, wind,

and geothermal energy development and transmission, and where development can be focused and streamlined (i.e. Development Focus Areas, or “DFAs”), as well as allowable uses, management actions, stipulations, best management practices, and mitigation measures to reduce or avoid impacts associated with large ground disturbing activities, including renewable energy and transmission projects on public lands. The BLM considered a range of alternatives of lands available for renewable energy development (i.e. DFAs), which would result in a range of energy production (as measured in MW) occurring on BLM –administered lands. For example, under Alternative 1 the BLM would designate 81,000 acres of DFAs, while under Alternative 4, the BLM would designate 258,000 acres of DFAs (DRECP PLUPA/FEIS, Executive Summary, Table 4).

NEPA requires the BLM to develop alternatives to address “unresolved conflicts concerning alternative uses of available resources” (NEPA Section 102). Recreational use was not an unresolved conflict that was identified during the scoping period or the public comment period of the Draft DRECP LUPA/ EIS. Therefore, there was no need to examine a wide range of alternatives for recreation management. In each alternative, the BLM included recreation management areas to better manage recreation where it is currently occurring.

Likewise, the BLM did not analyze an alternative that was centered on Native American interests and cultural resources. Numerous executive orders, regulations, and statutes, such as the National Historic Preservation Act (NHPA), require the protection of cultural resource and consideration of Native American interests. As such, all alternatives sought to avoid and minimize impacts to Native American interests and cultural resources. The BLM sought to include DFAs in areas that avoid impacts to Native American interests and cultural resources, and established many CMAs to minimize impacts that could occur (for example, see Section II.3.2.3.3.2 of the Preferred Alternative). Additionally, the BLM conducted extensive outreach and consultation with Native American tribes, which included identification of areas important to those tribes. (DRECP PLUPA/FEIS, page V-9). This information was used to develop Conservation Areas, including identification of National Conservation Lands and designation of Areas of Critical Environmental Concern (ACECs) (see DRECP PLUPA/FEIS, page I.3-5 for more information).

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if: it is determined not to meet the proposed action’s purpose and need; it is determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook H-1790-1, Section 6.6.3). The agency must also briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14).

The BLM did not consider an distributed generation alternative in detail because “...the Distributed Generation Alternative conflicted with the DRECP goals and with the BLM’s purpose and need, the alternative did not advance for further analysis. Rooftop distributed generation is outside the BLM’s authority and beyond the scope of this EIS. Utility-scale distributed generation has been incorporated into each of the DRECP alternatives. Substantial development of additional local distributed renewable energy generation was assumed in

estimating the 20,000 MW of renewable energy development that would be reasonably expected to occur in the DRECP area through 2040” (DRECP PLUPA/FEIS, p. II.8-7).

The BLM did not consider a brownfields alternative in detail because “the Private and Previously Disturbed Lands Alternative would locate all renewable energy development streamlined by the DRECP on private lands that have been previously disturbed. Renewable energy development on federal or other public lands would not be streamlined under the DRECP and would be addressed on a case by case basis by the agencies with jurisdiction over the project. Private lands are outside of BLM’s authority; the Private and Previously Disturbed Lands Alternative would locate all renewable energy development streamlined by the DRECP on private lands that have been previously disturbed. Renewable energy development on federal or other public lands would not be streamlined under the DRECP and would be addressed on a case by case basis by the agencies with jurisdiction over the project. Private lands are outside of BLM’s authority” (DRECP PLUPA/FEIS, p. II.8-14,15).

The BLM did not consider an energy efficiency alternative in detail for the follow reason, as documented in the DRECP PLUPA/FEIS: “Other alternatives suggested in public comments were either not described in sufficient detail to be considered or were outside of the scope of the DRECP, which is to provide for the long-term conservation and management of special-status species in the DRECP area and to provide a streamlined approval process for renewable energy projects within the DRECP area. Examples include an energy efficiency-only alternative” (DRECP PLUPA/FEIS, p. II.8-2)

The BLM did not consider an alternative that would not allow any renewable energy development on BLM-administered lands in the DRECP planning area. FLPMA mandates the BLM to manage the public lands on the basis of multiple use and sustained yield. In addition, resource conditions did not warrant planning area-wide prohibition of any particular use. An alternative that would eliminate all renewable energy development, where resource conditions did not justify such measures, are not reasonable and would also not meet the DRECP PLUPA/FEIS purpose and need, which in part is to “promote renewable energy and transmission development, consistent with federal renewable energy and transmission goals and policies, in consideration of state renewable energy targets” (DRECP PLUPA/FEIS, p. I.1-2).

The DRECP PLUPA/FEIS provides for the balanced management of the public lands in the planning area. In developing the DRECP PLUPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The DRECP PLUPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM does not consider activities that comply with applicable statutes, regulations, and BLM policy—and include appropriate mitigation measures—to cause unnecessary or undue degradation.

The DRECP PLUPA/FEIS will not result in “unnecessary or undue degradation of the lands” as set forth in Section 302(b) of FLPMA.

NEPA – Best Available Information

Issue Number: PP-CA-DRECP-15-15-54

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Draft DRECP did not mention, and certainly did not summarize the conclusions of, the Allen/McHughen study, as it relates to the critical issue of carbon sequestration and the true net effect of the long term destruction of desert soils needed to build large-scale renewable energy facilities and associated transmission facilities. This prompted a detailed comment by these Protesting Parties in their February 20, 2015 letter. The Proposed LUPA and FEIS ignores the most authoritative studies. Table IV.3-1 simply reprints Table IV.3-1, which relies on studies pertaining to completely different biomes, i.e. forests and grasslands. The Proposed LUPA and FEIS also repeat the statement, without citing any basis for it, that desert biomes are less valuable CO₂ sinks than “forests” or “grasslands”. This refusal to consider and analyze the most pertinent and authoritative data on an issue which is critical to the health of the ecosystem is a violation of FLPMA, which requires the Secretary in her management of public lands to “take any action necessary to prevent unnecessary or undue degradation of the land.” 43 U.S.C. §1732(b).

Issue Number: PP-CA-DRECP-15-20-6

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The projection of future customer-sited generation from

rooftop solar has been greatly increased in the recent forecast, rendering all prior assumptions in the DRECP model obsolete. The DRECP Acreage Calculator’s baseline assumption was 10,000 MW of rooftop solar self-generation by 2040, with a mid-case scenario of 15,000 MW and a “High DG” scenario of 20,000 megawatts by 2040. However, the CEC’s new draft forecast is projecting between 12,000 MW and 14,000 MW of rooftop solar self-generation by 2026 not 2040, with nearly all of this (other than about 700 megawatts) being added since 2010. Even assuming a sharp turn away from growth that leads to flat annual demand after 2026 results in a minimum of 30,000 MW of rooftop solar by 2030. This is something the DRECP analysis never even considered a possibility. Correcting and updating the projections for electricity demand and rooftop solar in conformity to the most recent California forecast has major implications for the assumption of a 20,000 MW target for the DRECP, and shows a need for only 11,200 MW utility scale renewable generation from the Plan area to achieve California’s 2040 GHG goals.

Issue Number: PP-CA-DRECP-15-26-1

Organization: California Off-Road Vehicle Association

Protestor: Amy Granat

Issue Excerpt Text: We contend that response E 62-15 is inconsistent with CEQ Secs. 1502.24, Methodology and Scientific Accuracy, which states: “Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any

methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.” Section II.3.4.2 provides a description of the CMA’s and how they are to be applied, but it does not provide explicit references by footnote to the scientific and other sources relied upon for conclusions in the section. The references in Section II.9, “Literature

Cited, Volume II”, for example, do not discuss nor do they mention the concept of the surface disturbance caps that are to be utilized in CMA’s for NLCS areas and ACECs. (See Sections II.3.4.2.3, NCLS-DIST-1; and II.3.4.4, ACEC-DIST-1 of the CMA’s) . We contend that this section and the response is, therefore, inconsistent with CEQ Sec. 1502.24

Summary:

The DRECP PLUPA/FEIS violates NEPA and Department of Interior (DOI) requirements related to high-quality and best-available information because:

- it does not consider the Allen/McHughen study as it relates to carbon sequestration and the effect of the long term destruction of desert soils;
- it does not use the latest forecast of renewable energy demand; and
- it does not reference the scientific and other sources relied upon for the conclusions drawn regarding Conservation Management Actions (CMAs).

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

- The BLM uses the California Climate Action Registry and the California Emissions Estimator Model and the Environmental Protection Agency’s (EPA) energy resources to help estimate the loss of carbon sequestration from land use conversion in the DRECP PLUPA/FEIS. This was addressed in comment response E58-26 which states, “*the loss of carbon sequestration capabilities due to land use conversion and development-related construction emissions is described in Chapter IV.3. The analysis discloses that while the loss of carbon sequestration or absorption potential, which would have a comparable effect as the potential for ground disturbance to trigger a release of soil-based carbon dioxide, is quantifiable within a range, the actual amount of this loss is uncertain* (DRECP PLUPA/FEIS, p. E58-219). The DRECP PLUPA/FEIS includes a bibliography (DRECP PLUPA/FEIS, Literature Cited – Volume III, p. III.25-1 - III.25-90 and

Literature Cited - Volume IV, p. IV.28-1 - IV.28-28), which lists information considered by the BLM in preparation of the DRECP PLUPA/FEIS.

- The 2011 paper by Michael F. Allen and Alan McHughen, “Solar Power in the Desert: Are the current large-scale solar developments really improving California’s environment?” was not cited in the Draft DRECP or DRECP PLUPA/FEIS because its assumptions were out of date and it did not provide any new information, thereby did not constitute the best available data. The BLM re-reviewed the Allen and McHughen paper in 2015 when it was submitted as part of comment letter E58, and determined, again, that the assumptions were out of date and information was not new or substantially different than the data already considered and cited in the Draft DRECP LUPA/EIS, and therefore revising Section IV.3 in the PLUPA/FEIS was not necessary.
- The DRECP 2040 scenario is intended to provide a reasonable estimate of potential future development in the DRECP area for the purposes of scaling the environmental analysis in the DRECP. It is not intended to advocate for a specific set of policy measures or to influence the future development of energy policy.
- The BLM used the California Energy Commission’s (CEC) biennial ten-year forecast for electricity demand in California as well as other assumptions (DRECP PLUPA/FEIS, Appendix F, p. F-1 - F-8) to come up with energy projections for 2040. The CEC compared its assumptions of electricity demand for the DRECP with its most recent ten-year electricity demand forecast (adopted by the Energy Commission in January 2015) for consistency. Extrapolation of the ten-year forecast, adjusted downward to account for the slower rate of population growth expected over 2025 – 2040, yielded 2040 estimated values comparable to those assumed for the DRECP. There are numerous uncertainties, such as how many alternative fuel vehicles are assumed to be operating in California in 2040, which mean that the 2040 estimate is a scenario (i.e., one possible future) and not a forecast.
- In completing the DRECP PLUPA/FEIS, the BLM was in close coordination with the California Energy Commission. The California Energy Commission released its 2015 Draft Integrated Energy Policy Report (released on October 12, 2015), after the BLM had concluded its work on the DRECP PLUPA/FEIS. The BLM has reviewed information in the 2015 Final Integrated Energy Policy Report (released February 2016) to determine if the information is substantially different than the information considered. The California Energy Commission’s updated forecast for self-generated photovoltaic solar (e.g. rooftop solar), as presented in the 2015 Final Integrated Energy Policy Report (February 2016), while different does not provide significant new information outside of the range of effects already discussed in the DRECP effort, and would not change the alternatives analyzed or the analysis. As stated in the Draft DRECP and DRECP PLUPA/FEIS (DRECP PLUPA/FEIS Volume I.3.3, p. I.3-12 and Appendix F), the megawatt assumption was a planning and analysis tool only, and is not meant to predict actual renewable energy development, nor be used as a, minimum or maximum, development target.

- The BLM, in the DRECP PLUPA/FEIS Chapter IV.7, documents the methods and sources used to analyze the Alternatives, including the Conservation Management Actions in the Preferred Alternative. The methods of the analysis are documented in the DRECP PLUPA/FEIS Chapter IV.7.1, p. IV.7-1 - IV.7-22. The sources that were used for this analysis are in the DRECP PLUPA/FEIS's bibliography (Literature Cited - Volume IV, p. IV.28-1 - IV.28-28). The analysis in Chapter IV of the DRECP PLUPA/FEIS provides the rationale for the surface disturbance caps that are set for Areas of Critical Environmental Concern (ACECs) and National Conservation Lands in the preferred alternative.

The BLM relied on high quality information and the best available data in preparation of the DRECP PLUPA/FEIS. The BLM adequately discloses the methodology and sources used to support the analysis in the DRECP PLUPA/FEIS.

NEPA – Purpose and Need

Issue Number: PP-CA-DRECP-15-02-3

Organization: Basin & Range Watch

Protestor: Laura Cunningham

Issue Excerpt Text: Purpose and Need Statement is Too Narrow: As drafted, the DRECP errs by positioning a single means, utility-scale desert renewable energy, to be an end unto itself.

Issue Number: PP-CA-DRECP-15-09-6

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The failure of the FEIS to include the valley floor of Upper Lucerne Valley in the Lucerne Valley Wildlife Linkage ACEC and the decision to maintain a DFA in an area with the highest habitat potential for desert tortoise is in direct conflict with recommendations made by the Desert Tortoise Linkage Evaluations and the FEIS Biological Resource Goals.

Issue Number: PP-CA-DRECP-15-09-7

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The BLM Land Use Planning Handbook says on page 21 that “All components of an individual alternative must be complementary. Desired outcomes, allowable uses, and management actions can (and probably will) conflict from one alternative to the next. However, they must not conflict within any one alternative.” The FEIS land use allocations (ACEC and DFA) described above, in the Preferred Alternative, are in conflict with the

document’s Biological Resource Goals and Objectives for desert tortoise and do not achieve the BLM’s goal to “maintain functional linkages between Tortoise Conservation Areas” or achieve the objectives to “protect and manage intact habitat on BLM land within the Fremont-Kramer to Ord-Rodman Linkage” and “augment Tortoise Conservation Areas, such as Ord-Rodman, with conservation designations, implementation of the CMAs, restoration and acquisition of high value contiguous habitat to satisfy population viability parameters in the Recovery Plan.” This fact appears to violate the above section of the Land Use Planning Handbook, since the two components—Land Use Allocations and Goals and Objectives—are not complementary, but rather contradict each other. The FEIS cannot be approved while the linkage is incomplete and there are DFAs sited in key linkage areas, limiting the long-term viability of the linkage and its associated Tortoise Conservation Areas.

Issue Number: PP-CA-DRECP-15-15-10

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: One primary question, in terms of examining this “purpose and need,” is whether the FEIS’s 20,000 MW goal (and the related GHG reduction goal) have already been accomplished, i.e., whether the posited amount of new renewable generation is still required to meet those objectives. According to the BLM’s website, these goals have already been met: “[a]pprovals since 2009 [on public lands] have included 9,763 MWs of

solar energy, 4,767 MWs of wind energy, and 605 MWs of geothermal, for a total of 15,134 MWs of additional approved capacity.” (This is set forth in a table entitled “Renewable Energy Projects Approved Since the Beginning of Calendar Year 2009, a copy of which is included as Exhibit C in the Appendix to this Protest) Nowhere in the FEIS does it address – or even disclose that the new renewables on public lands substantially exceed the 8,175 MW goal and nearly meet the overall Plan-wide goal, nor does the FEIS examine the implications of this in terms of assessing whether the stated “purpose and need” has any efficacy, all of which renders the document fundamentally deficient from the outset.

Issue Number: PP-CA-DRECP-15-15-17

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: In its discussion of purpose and need, the Proposed LUPA and FEIS states (at I.1.2.1.1) that the BLM joined with two California State agencies, and the Department of Fish and Wildlife, to “participate with other agencies, and implement State renewable energy goals”. However, the FEIS’s articulation of purpose and need ignores the policy goals of the two State agencies involved in this “cooperative” effort, and the policy goals of California as a whole, to the extent they don’t emphasize utility-scale renewable energy development. And to a great extent, California statutes and regulations emphasize energy policies that conflict or compete with utility scale renewable energy. AB 32 is not a utility-scale statute, it is a greenhouse gas statute. It acknowledges a diverse suite of tools to address climate change, including energy efficiency, demand response, storage

solutions and protection of our ecosystems and water sources to bolster resilience, in addition to generation of renewable energy by any means. California Executive Order S-14-08 says that “fostering greater and more timely renewable energy development means California energy agencies must establish a more cohesive and integrated statewide strategy” that involves, among other things, “encouraging technically and economically feasible distributed energy opportunities.” This order uses technology-neutral language, stating that “[s]tate government agencies are hereby directed to take all appropriate actions to implement this target [33% renewable energy by 2020] in all regulatory proceedings . . . No California utility scale “mandate” can be found in the order. Similarly, California Public Utilities Code Section 454.5(b)(9)(C) does not enshrine the 33% RPS as the sole means of achieving energy efficiency. Rather, this Section requires that an electrical corporation “shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.” To the same effect is the “loading order” established by the CPUC and CEC. The loading order for electricity procurement is:
First Priority: Energy Efficiency and Demand Response.
Second Priority: Remote Procurement of Renewables, if needed.

Issue Number: PP-CA-DRECP-15-15-8

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS’s definition of “Purpose and Need” violates NEPA, because it is phrased too narrowly, with the result that it considers no reasonable

alternative based on anything other than centralized, large-scale renewable energy generation in the California desert.

Issue Number: PP-CA-DRECP-15-15-9

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Citing various such mandates (FEIS Section I.1-1) calling for the reduction of the emission of greenhouse gases (“GHG”) in the production of electricity, the FEIS used what it called its “July 2012 scenario” to posit that 17,163 MW (which was rounded upward to 20,000) of renewable generating capacity is to be developed in the DRECP area as a whole by 2040 (Appendix F-4). Thus the paramount impetus for expediting and incentivizing renewable energy is its capacity to greatly reduce the emission of GHG. This, then, must be at the core of the “purpose and need” statement.

Issue Number: PP-CA-DRECP-15-18-12

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The proposed sweeping changes to the existing MUC classifications in the proposed plan amendments for the CDCA in the final DRECP LUPA are also unclear, unexamined and beyond the scope of the proposal.

Issue Number: PP-CA-DRECP-15-18-13

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The Executive Summary provides conflicting information regarding the purpose of the plan stating variously that it will adhere to the multiple use mandate and that only in areas outside the DRECP plan area but within the CDCA it will make “land use allocations to replace multiple-use classes” (*Id.*; emphasis added) (ES at pg. 9).

Issue Number: PP-CA-DRECP-15-18-17

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The FEIS provides no rationale for the designations of SRMAs in the Chapter I.1 – Purpose and Need. While it mentions Special Recreation Management Areas (at I.1-5) as part of the decisions to be made, it fails to provide any justification for why SRMAs need to be designated. It does not mention Extensive Recreation Management Areas (ERMAs) at all, much less provide rationale as to the need for designation.

Issue Number: PP-CA-DRECP-15-18-2

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The BLM’s designation of special recreation management areas (SRMAs) and Extensive Recreation Management Areas (ERMAs) in the DRECP and restructuring of the CDCA Plan overall by eliminating the MUC classifications entirely, are all actions that are well beyond the scope of the DRECP which was intended to focus on conservation planning and renewable energy development.

Issue Number: PP-CA-DRECP-15-20-5

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: As a consequence of multiple compounding errors and omissions, the DRECP LUPA fails to reveal to the reviewer how little of the calculated need for large scale renewable development in the Plan area actually remains. To summarize, some major factors (among others) that have been ignored in the DRECP LUPA's analysis of the relevant state policy needs are:

1. That the calculation of California's need for renewable energy in the Draft DRECP was measured from a baseline of 2010, and 7,790 MW of projects that have been built or are under construction in the Plan area contribute directly to reduce California's energy "target" for DRECP;
2. That correcting the erroneous assumptions in the DRECP Acreage Calculator would significantly reduce the need for utility scale renewable capacity in the Plan area;
3. That since the need estimates in the Draft DRECP were calculated, the CEC has issued a new draft forecast in 2015 that updates historical data, and extends the forecast out to 2026. This forecast follows an historical pattern, once again making a significant downward (trend); and
4. The new estimates of rooftop solar adoption in the CEC's 2015 draft Energy Demand forecast further reduce the need for utility scale renewables.

Issue Number: PP-CA-DRECP-15-36-3

Organization: The Nature Conservancy

Protestor: Erica Brand

Issue Excerpt Text: BLM did not sufficiently address the protection of key ecological resources from renewable energy

development] The basis for protection of ecologically significant lands is captured in Section 1.1.1 of the Proposed LUPA and FEIS under BLM's statement of purpose and need and corresponding goals and objectives for the proposed LUPA and FEIS. BLM states that it intends:

"...to provide a streamlined process for the development of utility-scale renewable energy generation and transmission consistent with federal and state renewable energy targets and policies, while simultaneously providing for the long-term conservation and management of special-status species and vegetation types as well as other physical, cultural, scenic and social resources within the DRECP Plan Area with durable and reliable regulatory assurances (emphasis added)."

BLM further confirms the need to protect ecologically significant lands in Section 1.3.2, which summarizes BLM's Biological Conservation Planning Process:

"This section describes the DRECP biological conservation planning process used to develop the DRECP biological conservation strategy, which forms the biological foundation for the BLM LUPA. The California Desert Biological Conservation Framework is the approach for conserving Focus Species and vegetation types, and the landscape and ecological processes that support them, within the DRECP Plan Area (emphasis added)."

Issue Number: PP-CA-DRECP-15-43-2

Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: 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, 606 F.3d 1058, 1070 (9th Cir. 2010) ("NPCA"); Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 812 (9th Cir. 1999) (same)). Here, the DRECP's statement of purpose and need is wedded to the unwavering and wholly unwarranted premise that the lands within the DRECP's planning area must develop at least 20,000 MW of electrical generation capacity. Indeed, the FEIS states that the DRECP will allow up to the full 20,000 MW of generating capacity in the DRECP planning area, even if BLM does not expect that to happen (FEIS III.7-1, I.3-15). Thus, BLM's objective of "promoting renewable energy and transmission development, consistent with federal renewable energy and transmission goals and policies, in consideration of state renewable energy targets" must be read in the context of this inflexible goal.

Issue Number: PP-CA-DRECP-15-43-23

Summary:

The DRECP PLUPA/FEIS' purpose and need statement violates NEPA because:

- it focuses too narrowly on utility-scale desert renewable energy development and specific renewable energy development goals and ignores available data;
- it fails to consider that the stated need for renewable energy development has already been met;
- it ignores certain policy goals for the State of California and its agencies;
- it fails to include the need to reduce greenhouse gas emissions, which is the paramount impetus for expediting and incentivizing renewable energy;
- the proposed sweeping changes to the existing MUC classifications and the designation of SRMAs and ERMAs are outside the scope of the purpose and need statement;
- the project is not limited to the DRECP Plan Area, despite the FEIS' implications to the contrary;
- the Executive Summary provides conflicting information regarding the purpose of the plan; and

Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The project is not limited to the DRECP Plan Area, despite the FEIS' implications to the contrary. FEIS I.0-2, I.0-3 (Figure I.0-1 showing CDCA Plan boundaries compared to DRECP boundaries), II.3-79 (Figure II.3-6 showing same), I.0-5, II.3-1, II.3-3 to II.3-5, 11.3-15 to II.3-18, II.3-145, II.3-263 to 11.3-265. Indeed, the DRECP actually modifies the entire CDCA. *Id.* BLM's response to Backcountry's concerns regarding the extent of these modifications is irrelevant. FEIS E85-28, E85-206 (Response E85-56, directing reader to Response E21-8). That response discusses BLM's approach to "public outreach, scoping, and stakeholder involvement." FEIS E21-17 (Response E21-8). BLM's discussion in that response has no bearing on the failure to illuminate the significant changes and subsequent impacts outside the DRECP but within the CDCA.

- it fails to adequately protect key ecological resources, including desert tortoise habitat and linkage corridors; specifically, Upper Lucerne Valley in the Lucerne Valley wildlife habitat linkage to ACEC as well as Fremont-Kramer to Ord-rodman linkage.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). Meeting needs for energy is fully in line with the multiple use mandate of the BLM.

The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome, and may not be so broad that an infinite number of possibilities could accomplish the goals of the project. As stated in the footnote in page 1.1-2, the purpose and need accommodates for a holistic consideration and management of all resources in the planning area.

The BLM established the purpose and need for the DRECP, which is described at page 1.1-1 through 1.1-5 to meet its land use planning mandate under FLPMA. The purpose and need provided the appropriate scope to allow the BLM to analyze a range of reasonable alternatives for managing the public lands in the planning area. The decision to be made by the BLM is whether to approve the DRECP PLUPA/FEIS and under what conditions within the legal framework on NEPA. Please note that 20,000 MW is a planning assumption for future demand, not a planning goal nor a purpose. See Appendix F, Section I.3 of the Draft DRECP LUPA/EIS for a more detailed explanation of the state's policy goals. Furthermore, objectives on page I.1-2, which includes: "Comply with all applicable federal laws, including the BLM's obligation to manage the public lands consistent with the Federal Land Policy and Management Act's (FLPMA) multiple-use and sustained yield principles, unless otherwise specified by law." Please also refer to objectives on page I.1-2, which includes: "Make some land use allocation decisions outside the DRECP area but within the CDCA, including Visual Resource Management Classes, land use allocations to replace multiple-use classes, and National Conservation Lands designation.

The BLM disagrees with the assertion that the DRECP PLUPA/FEIS violates its own purpose and need and goals and objectives. In fact, analysis in IV.7 documents how ecological resources were protected, one of the goals/objectives of the DRECP PLUPA/FEIS. These changes were necessary to address impacts of renewable energy, and meet BLM's multiple use and sustained yield principles.

The BLM properly considered and established the purpose and need for the DRECP PLUPA/FEIS consistent with the established regulation and land use planning mandate.

NEPA – Impacts Analysis - General

Issue Number: PP-CA-DRECP-15-02-6
Organization: Basin and Range Watch
Protestor: Laura Cunningham

Issue Excerpt Text: Using remote sensing and maps to delineate DFAs without ground-truthing may have resulted in substantial errors of significant impacts that were overlooked. As an example, the Preferred Alternative in the FEIS maps out Koehn Dry Lake as a DFA, northeast of California City in the West Mojave (see Figure II.3-1).

In Vol. III.4-5 the FEIS lists 23 dry lakes in the Plan Area, but fails to list Koehn Dry Lake. We have experience with this playa, which is unusual in that it has a deep soft mud layer underlying a hard thin surface crust. Vehicles that have driven onto the dry lake bed have broken through the thin crust and become stuck in the soft mud layer underneath, requiring towing with long tow straps. This is not a safe place to build solar projects, but the FEIS apparently designates it as a DFA. In Appendix G of the draft DRECP, this area is labeled on maps (such as Figure G.1- 1a, Preferred Alternative) as a light gray color, “Impervious and Urban Built-up Land.” But Koehn Dry Lake is neither, it is a soft playa and not urbanized, but has natural habitat. Developing this playa could actually be dangerous to personnel and equipment.

Issue Number: PP-CA-DRECP-15-09-10
Organization: Town of Apple Valley
Protestor: Lori Lamson

Issue Excerpt Text: In addition, Phase II of the DRECP LUPA and FEIS and the Town’s MSHCP/NCCP are concurrent planning efforts within the boundaries of the same planning area. These are termed “connected actions” under NEPA (see Section 6.5.2.1 of the BLM NEPA Handbook). Connected actions include, but are not limited to, actions that automatically trigger other actions that may require an EIS or if the actions are interdependent parts of a larger actions and depend upon the larger action for their justification. It appears that both Phase II of the DRECP and the Town’s MSHCP/NCCP are also connected actions. Their implementation, which is foreseeable, may require an action by the BLM—preparing an EIS to amend the proposed LUPA. Therefore, these actions and how the BLM will accommodate them need to be addressed in the LUPA and FEIS.

Issue Number: PP-CA-DRECP-15-09-16
Organization: Town of Apple Valley
Protestor: Lori Lamson

Issue Excerpt Text: The Proposed LUPA and FEIS did not provide any baseline information regarding the amount of private lands within each of the various federal land use designation nor discuss the socioeconomic impacts and CEQA implications of including these lands within the federal land use designations, especially because the FEIS continues to promote acquisition of private lands as a major mitigation measure. This was done without proper coordination with local jurisdictions and without adequate analysis of the socioeconomic impacts.

Issue Number: PP-CA-DRECP-15-15-34

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS dismiss without discussion consideration of environmental impacts of the Proposed LUPA on private lands outside the Plan Area, for the stated reason that the Proposed LUPA covers only BLM land. This is a violation of the BLM's obligation under NEPA to assess "past, present and reasonably foreseeable future actions" and the incremental impact of the proposed activities when added to that baseline, whether those actions and activities are private or governmental (40 CFR Sec 1508.07). Such an analysis requires "some quantified or detailed information" (Neighbors of Cuddy Mountain v. US Forest Service, 137 F.3d 1372, 1379 (9th Cir. 1998)).

For example, in the Pinto Lucerne region, the preferred alternative under the Proposed LUPA places DFA's and Unallocated Lands at locations which in many cases are very near private land where people live, and/or which have high conservation values. The impact on these lands is left unaddressed.

Another example is the fairly clear intent of the BLM in its design of DFA's and Unallocated Lands to aggregate BLM land with adjacent private land in order to support utility scale renewable energy projects. In the State Lands Swap Appendix (App Y), the FEIS explicitly discusses pursuing a program, already memorialized by a Memorandum of Understanding, by which BLM lands are swapped to the State of California, which will then develop these lands with renewable energy projects and other income producing uses. These lands

amount to many tens of thousands of acres, yet the impact of development are ignored in the Cumulative Impacts analysis.

Issue Number: PP-CA-DRECP-15-15-40

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Connectivity Project, which gave rise to the Desert Linkage Network, reflects "boots on the ground" studies of each of the linkages and corridors and the species using them. It provides, as it were, a four-dimensional model of the actual environmental baseline for the Plan Area (the fourth dimension being what happens over time), and as such it can be much more useful as a baseline metric than static studies (or even worse, extrapolations or guesses) of a particular species in a particular location at a particular moment.

However, having identified an excellent source of baseline information, the FEIS and the Proposed LUPA's do little to analyze the impact of the Preferred Alternative – and of the DFAs declared by the Preferred Alternative – on these vital and sensitive corridors and linkages.

This shortcoming is particularly obvious with respect to the north-facing slopes of the San Bernardino Mountains in what the FEIS calls the Pinto Lucerne and Eastern Slopes-1 Ecoregion. As to this area in particular, the same main author of the Connectivity Project, Kristeen Penrod, prepared a detailed critique of the Draft DRECP (the "Penrod Comment Letter"), and filed it as a comment to the Draft DRECP (said critique can be found in the FEIS in its Appendix AA (Sub-Appendix E58 (part 3) to ADP's February 20, 2015 comment on the Draft DRECP

(Appendix AA (Sub-Appendix E58 (part 1)).

Issue Number: PP-CA-DRECP-15-15-43

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS’s unexplained insistence on sticking with the Draft DRECP’s analytical approach runs counter to the BLM’s acknowledgment (FEIS, Appendix C-1) of just how important “Landscape and Habitat Connectivity” are to achieving the BLM’s Biological Resources and Goals and Objectives (“BGOs”). In that regard, the FEIS’s “Goal 1” states that “[a]s part of a desert-wide landscape design, on BLM land provide a mosaic of vegetative types with habitat linkages that is adaptive to changing conditions and includes temperature and precipitation gradients, elevation gradients, and a diversity of geological facets that provide for movement and gene flow and accommodate range shifts and expansions in response to climate change.” In Section III.7.8, the FEIS describes in great detail the nature and purpose of “Landscape Habitat Linkages and Wildlife Movement Corridors.” But the FEIS does not assess whether or to what extent the above-quoted BGO would be compromised by the BLM’s deviation from the Desert Linkage Network in the framing of its ACECs, or by the BLM’s siting of DFAs and unallocated lands within that linkage network¹⁰, and the FEIS provides no basis whatsoever upon which the reader can determine the degree to which any such assessments were correct.

Issue Number: PP-CA-DRECP-15-15-45

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS used the same criteria for siting the DFAs as did the Draft DRECP, without having engaged in any biological study or analysis to justify its decision to hold to that criteria, and the FEIS paradoxically places “multi-species linkages” in the middle of, or right next to, Solar Energy Zones (See, e.g., Appendix H (Conservation Management Actions), Figure H-1). These so-called Connectivity Corridors in fact appear to lead nowhere. The FEIS provides no analysis of how development of the Riverside-East DFA’s will impact on the connectivity corridors; certainly it looks like they will destroy the corridors.

Issue Number: PP-CA-DRECP-15-15-55

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS acknowledges that “cumulative” renewable energy, transmission and other development listed in Tables IV.25-1 through IV.25.4, as well as the development projected in county General Plans (summarized in section IV.25.2), would, under the No Action alternative, cause a significant loss of listed and sensitive plants and wildlife, as well as of habitats for them, habitat linkages and wildlife movement corridors (IV.25-47 through 52). When the Proposed LUPA and FEIS turn to cumulative impacts of the Action Alternatives, they find very limited cumulative impacts, and they find that said cumulative impacts would be confined to very small areas with relatively low conservation values.

This finding is not supported. The existing land use system, employing MUC’s, and a

system of ACEC's, NCL's and Wilderness Areas, and a variety of monitoring and mitigation tools, is, according to the BLM, helpless to stop substantial damage to species, habitats and linkages from individual renewable energy projects, yet the Proposed LUPA, combined with CMA's which are for the most part vaguely worded and anodyne, will be able to strictly limit any environmental damage, and confine it to very small pockets of land.

Issue Number: PP-CA-DRECP-15-15-56

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS's conclusion that the cumulative impacts of the Action Alternatives would be very limited in magnitude and geographic scope find no support in the landscape-level approach to modeling the existing biological resources or in the proposed vague and broad-brush CMA's. The habitat assessments, pre-construction surveys and biological monitoring, among other things, that the Proposed LUPA and FEIS leaves to a project by project future should be undertaken now.

Issue Number: PP-CA-DRECP-15-15-57

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

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

Protesting Parties' February 20, 2015 comment letter. One can assume that needed transmission for 8,175 MW would be smaller but, obviously, still extremely significant.

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

Issue Number: PP-CA-DRECP-15-15-58

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The fact that the Proposed LUPA and FEIS have not attempted exact specification of location of transmission lines does not excuse its failure to examine the impacts of what would likely be hundreds of miles of disturbance of soils on any of the Covered Species. The approximate corridors are known, within a couple of miles.

Issue Number: PP-CA-DRECP-15-18-16

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: BLM has failed to provide even the most basic information or analysis about what is gained or lost by replacing MUC classes that were designated in accordance with specific regulatory criteria for retained land and other core CDCA frameworks that have been in place

for over 30 years with a new set of “land use allocations” in the DRECP.

Issue Number: PP-CA-DRECP-15-20-40

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The risks of Valley Fever (coccidiomycosis) exposure to workers and the general public from construction in the Mojave Desert are very serious. This pathogen causes severe respiratory distress, including pneumonia, as well as many other symptoms and can lead to death; there is no vaccine or known cure. Solar construction has led to dust storms and outbreaks of Valley Fever in workers in the Antelope Valley. The mitigation measures listed are weak and inadequate to prevent exposures and must be significantly strengthened.

The DRECP LUPA did not respond in any substantive way to the need to analyze and address likely impacts related to Valley Fever and thus fails to meet the requirements of NEPA.

Issue Number: PP-CA-DRECP-15-20-8

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: There was no detailed analysis of the environmental and economic impacts of transmission corridors to serve DFAs on BLM lands, and no comparison of the effects from different transmission options across BLM lands in different alternatives. While it is true that transmission may extend beyond BLM lands, nonetheless any and all transmission necessitated by development of DFAs on BLM land is a major federal action with significant impacts on federal lands that has not been analyzed in the EIS.

The “transmission planning context” section does not provide an effects analysis that is sufficient for NEPA purposes. The transmission conceptual plan by the Transmission Technical Group (“TTG”) (Appendix K in the DEIS, the TTG report, to which the FEIS refers) does not provide any effects analysis comparing environmental impacts from transmission buildout in different alternatives that include different DFAs, different lines and routes, mixes of technologies and other factors. Based on estimates of likely transmission system additions for each alternative, transmission impacts from the various alternatives were measured only by a rough calculation of acres impacted, with no analysis of where transmission additions may intersect sensitive habitats and species, potentially conflict with areas to be conserved in the DRECP LUPA, impact air quality, etc. Further, the rough analysis, such as it was, was based on prior versions of the DFAs and does not reflect a detailed analysis of transmission for the Final EIS’s Preferred Alternative as opposed to other alternatives.

This does not fulfill the requirement for a “hard look” at comparative impacts required by NEPA, even at the Programmatic level. In addition, it may lead to an overestimation of the conservation benefits of the DRECP LUPA conservation designations by failing to consider impacts from transmission development.

Issue Number: PP-CA-DRECP-15-24-10

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP should be revised to better understand where transmission corridors will have the fewest impacts and to direct development to those

areas. CRIT is particularly concerned that a number of “conceptual” transmission line corridors near Interstate I 0 are designated to cross existing ACECs, Legally and Legislatively Protected Areas and proposed NLCS lands. The DRECP appears to take a preliminary step in this direction by demarcating “conceptual transmission” lines for public review (DRECP at Figure II.3-6). The purpose of these designations is not entirely clear; however, to the extent the DRECP takes any preliminary steps towards their designation or construction, NEPA mandates that associated impacts be studied in this analysis (Metcalfv. Daley, 214 F.3d 1135 (9th Cir. 2000)).

Issue Number: PP-CA-DRECP-15-24-7
Organization: Colorado River Indian Tribes
Protestor: Dennis Patch

Issue Excerpt Text: Despite this significant change-which allows developers to secure right of way authorizations for projects in unallocated lands without meeting the more stringent standards previously imposed- the EIS does not analyze the associated environmental impacts. Indeed, neither the cultural resource nor Native American interest analysis sections even mention unallocated lands. This is a clear violation of NEPA and must be remedied before the DRECP can move forward.

Issue Number: PP-CA-DRECP-15-35-3
Organization: National Parks Conservation Association
Protestor: David Lamfrom

Issue Excerpt Text: NPCA questions the process developed to designate 800,000 acres as UL. We express concern that the

DRECP Agencies had the opportunity to make clear and decisive choices about the future of these public lands, and instead deferred and created a new level of process to govern them that relies on the 1980 California Desert Conservation Area plan- which is being amended and replaced by the DRECP. We believe that there has not been sufficient notice, opportunity for comment, impacts analysis presented, or discussion of natural and cultural values present in the UL to move forward with this new concept-one that could result in significant harm to public resources.

Issue Number: PP-CA-DRECP-15-35-6
Organization: National Parks Conservation Association
Protestor: David Lamfrom

Issue Excerpt Text: Unquestionably, the DRECP Agencies will be receiving multiple protests to amend the UL designations because they do not provide clarity about the broad discretion authorized to the BLM to make decisions about those lands. They represent a departure from the fundamental purpose of the DRECP, which was to 1) make final decisions about what places were appropriate for renewable energy development 2) to identify lands that hold special values that were in our collective interest to protect, and 3) to amend the CDCA after 35 years to ensure management of BLM lands reflects current science, population dynamics, threats, sustained-yield, and multiple-use.

DRECP Agencies have already created another category to deal with lands that may have resource values or may be appropriate for renewable energy development, the Variance Process Lands (VPL). It is unclear how developing another category with less analysis, guidance, or information improves

management of the significant public resources in the plan area.

To create another category for BLM lands in the DRECP PLUPA/FEIS that subjects them to development, disposal, or other impacts without analyzing that impact independently within the DRECP or presenting those specific findings to the public for understanding and comment is a plan deficiency. This is a cumulative impacts issue, as impacts that occur after the ROD will not be fully analyzed within this process. The Agency must not act against, and the public must understand what steps the Agencies have taken to uphold the FLPMA guidance “take any action necessary to prevent unnecessary or undue degradation of the land” (43 USC §1732(b)). The DRECP Agencies must provide transparent analysis on how those decisions were made.

Issue Number: PP-CA-DRECP-15-43-11
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: Without an adequate baseline, the project’s impacts on biological resources, including species and their habitat, cannot be understood. This failure is highlighted by the FEIS’ comparison of the Preferred Alternative to the No Action Alternative, which assumes that energy development will occur with or without implementation of the DRECP (FEIS IV.7-199 to IV.7-207). 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 FEIS fails to accurately represent, analyze, and mitigate the project’s impacts (Western

Watersheds, *supra*, 552 F.Supp.2d at 1126-1127).

Issue Number: PP-CA-DRECP-15-43-12
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The failure to establish an accurate baseline, and the subsequent comparison of the alternatives against the No Action Alternative – which assumes development – violates NEPA (40 CFR §§ 1502.14, 1502.15, 1502.16; Western Watersheds, *supra*, 552 F.Supp.2d at 1126-1127). Without an adequate basis for comparison, the project’s impacts cannot be understood.

Issue Number: PP-CA-DRECP-15-43-14
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS assumes that implementation of LUPA-wide CMAs will “ensur[e] appropriate biological conservation and management through implementation of avoidance and minimization for activities . . . throughout the entire LUPA Decision Area” (FEIS II.3-161 (Section II.3.3.2.1)). But these CMAs do not absolve the FEIS’ failure to examine in-depth whether the DRECP’s planned renewable energy development will harm biological resources. For these reasons, and others, the DRECP’s analysis of impacts to biological resources is wholly inadequate to allow a hard look at the DRECP’s impacts.

Issue Number: PP-CA-DRECP-15-43-18

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: While BLM added a cursory mention of wind energy's generation of low frequency sound to its noise impact section, the FEIS fails to address the environmental, health and safety impacts low frequency sounds, which were discussed in detail in Backcountry's February 23, 2015, comment letter from this office. Instead of making a DRECP-wide planning decision addressing the appropriate setbacks to prevent impacts to special status species as well as nuisance and health impacts to residences, the FEIS delays any careful consideration of these impacts to the project level (FEIS IV.21-12 to IV.21-14). This delay runs counter to NEPA's "twin aims" of "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 decision-making process." *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016, 1020 (9th Cir. 2006) (quoting *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983)).

Issue Number: PP-CA-DRECP-15-43-19

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: Electromagnetic Radiation and Stray Voltage. The FEIS entirely fails to address the risks

of electromagnetic radiation and stray voltage (collectively "EMF") produced by electrical generation and transmission facilities (e.g. FEIS IV.22 (Public Health, Safety, and Services)). Transmission lines are not efficient at carrying power; the energy is lost between generation and use. Further, these lines can be a serious source of non-ionized radiation. The FEIS mentions this radiation only in the context of wind turbines interfering with public safety communications (FEIS IV.22-10). The two sentences devoted to this topic in no way establish that BLM has taken a hard look at the environmental or human health consequences of this phenomenon.

Issue Number: PP-CA-DRECP-15-43-6

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: The DRECP purports to establish a baseline condition of October 2013 (FEIS III.11-4, III.20-21, IV.25-3) but when analyzing the Project's impacts, the DRECP instead looks to its flawed No-Action Alternative as the baseline. This violates NEPA (40 CFR § 1502.15; *Western Watersheds Project v. BLM*, 552 F.Supp.2d 1113, 1126-1127 (D. Nev. 2008) ("Western Watersheds")). The No-Action alternative assumes that development will continue to occur and does not serve as an accurate baseline, or snapshot, against which to compare the project. *Id.* Rather, NEPA requires that a baseline be established "to understand the effects of the alternatives" (40 CFR § 1502.15). None was established here.

Summary:

The DRECP PLUPA/FEIS violates NEPA because it fails to:

- establish an adequate baseline condition by relying on a flawed No Action Alternative that assumes development will continue to occur;
- address the environmental, health, and safety impacts of low frequency sounds, as well as by electromagnetic radiation and stray voltage produced by electrical generation and transmission facilities;
- ground-truth the siting of Development Focus Areas (DFA) in areas such as Koehn Dry Lake;
- examine in depth whether planned renewable energy development will harm biological resources;
- adequately analyze climate change impacts;
- adequately analyze the impacts associated with designating Unallocated Lands;
- analyze the environmental and economic impacts of transmission corridors;
- analyze and address the risks of Valley Fever to workers and the public;
- provide an analysis or explanation regarding what is gained or lost by replacing MUC classes with new land use allocations;
- justify the conclusion that the cumulative impacts of the Action Alternatives would be limited in magnitude and geographic scope;
- analyze the impacts of the Preferred Alternative and proposed DFAs on connectivity corridors and the Desert Linkage Network;
- analyze the environmental impacts of the PLUPA on private lands outside the Plan Area and within land use designations; and
- address Phase II of the DRECP and the Apple Valley Multispecies Habitat Conservation Plan/Natural Community Conservation Plan as connected actions.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of the DRECP PLUPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The FEIS provides a programmatic-level analysis of impacts on the human environment such as biological, cultural, social, scenic, and other environmental resources. Renewable energy projects, transmission projects, and other projects proposed within the DRECP PLUPA/FEIS area will require project-level environmental review of site-specific impacts on resources as a necessary part of the subsequent approval process. Actions proposed by Renewable Energy Action Team (REAT) agencies as part of the larger DRECP will be considered in subsequent environmental analyses (DRECP PLUPA/FEIS, Section I.0.3).

No Action Alternative

As stated in the Council on Environmental Quality NEPA's 40 Most Asked Questions, Section 1502.14(d) of NEPA requires the alternatives analysis in the EIS to "include the alternative of no action". For a land use plan amendment, ongoing programs initiated under existing legislation and regulations will continue even as new plans are developed. In these cases, "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan.

By including a No Action Alternative that reflects current management, in which development is allowed, the BLM established an adequate baseline for which to compare the effects of action alternatives.

Cumulative Impacts

An analysis of the cumulative effects of the DRECP PLUPA/FEIS can be found in Section IV.25 of the DRECP PLUPA/FEIS. "Because the analysis uses a broad geographic area of extent, the past, present, and future foreseeable projects and projections are the same for all alternatives. However, because the development focus areas (DFA) and conservation designations are different for each alternative, the analysis calls out distinctions by alternative as appropriate" (DRECP PLUPA/FEIS, Section IV.25.3.1).

Cumulative impacts of the No Action and Action alternatives are analyzed in detail in Section IV.25.3.7 of the DRECP PLUPA/FEIS. Under the No Action Alternative, which reflects current management, "existing laws and regulations would not require compensation for all loss of vegetation types in the DRECP Plan Area. Typical mitigation measures would not be expected to offset the magnitude and extent of all the impacts to vegetation types, and listed and sensitive plant and wildlife species, and bird and bat species. Project-by-project mitigation would not likely achieve large blocks of contiguous habitat in a connected system of conservation lands across the DRECP Plan Area and would lack the interagency coordinated management and monitoring of habitat lands for these species" (DRECP PLUPA/FEIS, p. IV.25-46). Due to DFAs, conservation designations, and conservation and management actions (CMA), the contribution to cumulative effects of the proposed action alternatives would be reduced in comparison to the No Action Alternative. These findings are adequately supported by the cumulative impacts analysis of the proposed action alternatives beginning on page IV.25-53 of the DRECP PLUPA/FEIS.

Climate Change

The DRECP PLUPA/FEIS took climate change impacts into account when developing the proposed conservation design. Appendix P of the DRECP PLUPA/FEIS is dedicated to a discussion of the climate change context and provides an overview of the current state of climate change science described in the plan amendment, as well as a summary of adaptation and resiliency considerations and contributions of the DRECP PLUPA/FEIS.

Section II.3.6 of the DRECP PLUPA/FEIS includes a discussion of monitoring and adaptive management for both project-level and land use plans, which would help to address climate change impacts as well. The BLM will develop more specific monitoring strategies, as warranted, as part of project and land use plan implementation.

Transmission Corridors

Section II of the DRECP PLUPA/FEIS provides revised descriptions and mapping for the range of alternatives considered in the plan amendment. As indicated in Section II, “transmission assumptions used in DRECP planning is conceptual for the purpose of programmatic analysis and is not intended to provide an analysis of siting, alignment, or right-of-way. The conceptual transmission for each alternative is based on the TTG Report (Appendix K), which was considered sufficient for a programmatic comparative analysis in the BLM LUPA and Final EIS” (DRECP PLUPA/FEIS, Appendix AA, Comment Letter D8, Record D8-17).

While the DRECP PLUPA/FEIS does not provide an analysis of siting, alignment, or right-of-way, Section IV of the FEIS does consider different technologies and locations to analyze a range of potential impacts from renewable energy generation and transmission for all alternatives (DRECP PLUPA/FEIS, p. IV.1-3). To use the biological resources section as an example, Table IV.7-20 shows the impact analysis of the preferred alternative for Focus Species Habitat. Here, the potential impact of renewable energy development and transmission is provided in acres for each focus species. A detailed description of impacts for biological resources is included in Section IV.7.3.2.1, Impacts of Renewable Energy and Transmission Development. In regards to economic impacts of transmission, as referenced by the protester, Section IV.23 provides the analysis of potential socioeconomic and environmental justice impacts associated with implementing the DRECP PLUPA/FEIS.

Valley Fever

The DRECP PLUPA/FEIS does address the risk of valley fever (coccidiomycosis). “The fungus that causes valley fever is present in soils within the LUPA Decision Area, particularly in the West Mojave area. Disturbance of these soils during construction and decommissioning could release dust contaminated with valley fever spores that could be inhaled by workers and others in the area, resulting in illness or, in severe cases, death” (DRECP PLUPA/FEIS, Section IV.22.2.1.1, p. IV.22-6). Further, the potential occurrence of valley fever is addressed in impact descriptions throughout the Public Health, Safety, and Services section of Section IV of the DRECP PLUPA/FEIS. Section IV.22.3.2.1, Impacts of Renewable Energy and Transmission Development – Preferred Alternatives states that “extensive movement of soil could lead to airborne transmission of valley fever spores” (DRECP PLUPA/FEIS, Section IV.22.3.2.1, p. IV.22-18). Additionally, the BLM will analyze and address impacts of valley fever as appropriate at the site-specific level.

Impacts to Health and Safety

Section IV.21 of the DRECP PLUPA/FEIS provides a programmatic analysis of potential noise impacts of the plan amendment associated with solar, wind, and geothermal energy development and associated transmission facilities. Impacts associated with low-frequency noise produced by wind energy, which would be common to all alternatives of the DRECP, are described in Section

IV.21.2.1.3, Impacts of Operations and Maintenance. "Wind turbines can produce low-frequency noise below 20 hertz, the typical threshold of human hearing. Although inaudible, this very low frequency noise has raised concerns related to potential effects on human health" (DRECP PLUPA/FEIS, p. IV.21.7). Further analysis of noise-related impacts of renewable energy and transmission development associated with the preferred alternative can be found under Section IV.21.3.2.1 of the DRECP PLUPA/FEIS.

The potential impacts to health and safety from renewable energy development are disclosed in Section IV.22 of the DRECP PLUPA/FEIS, and are adequate for the purpose of a programmatic land use planning effort. The plan amendment does not propose specific renewable energy and transmission development projects, and each project proposed must undergo site-specific analysis. Impacts associated with renewable energy and transmission development would be analyzed in greater detail at the site-specific level.

Siting of Development Focus Areas

The BLM fully vetted the Koehn Dry Lake area to determine the proposed allocation for this area. The Koehn Dry Lake has high solar resource values, is transmission aligned, is one of the largest, contiguous blocks of BLM land in the West Mojave area, is a desired area by the solar industry, does not provide sand sources for sand transport corridors and dune systems, and the wildlife values are protected with the RIPWET CMAs. The dry lakes listed in Section III.4-5 and III.7 of the DRECP PLUPA/FEIS provide important wildlife habitat or sand sources.

Given the programmatic nature of the DRECP PLUPA/FEIS, complete ground surveys were not specifically conducted for any areas in the plan amendment. Prior to approving any specific project, the BLM would conduct a site-specific NEPA analysis to determine whether to permit a project on a particular site. Habitat assessments would be required for all project-specific activities (LUPA-BIO-1 in the DRECP PLUPA; AM-PW-1 in the DRECP Draft LUPA/EIS) in addition to other project siting assessments. Furthermore, given that the DRECP PLUPA/FEIS planning horizon looks to the year 2040, a project site that may be infeasible for development now may become feasible with technological advances in the coming years.

Non-federal lands

In March 2015, the REAT agencies announced that the DRECP planning process would move forward in a phased manner to address public comments and the need to continue working with local governments on the non-federal portion of the plan focused on private lands. Phase I centers on completing a BLM LUPA for the DRECP planning area. The BLM DRECP LUPA/FEIS will amend existing land designations to create areas for renewable energy development, conservation areas, and recreation areas on federal public lands.

Phase II of the DRECP will focus on the renewable energy development and resource conservation opportunities on non-federal lands within the planning area. The BLM, CEC, USFWS, and CDFW will continue to work with the local governments within the planning area to determine the best options for aligning renewable energy development and conservation at the local, state, and federal levels (DRECP PLUPA/FEIS, Section I, p. 0-1). Local plans, such as the Apple Valley Multi-Species Habitat Conservation Plan/Natural Community Conservation Plan, are part of Phase II where non-federal actions are addressed.

Impacts to the Linkage Network

Section IV.7 of the DRECP PLUPA/FEIS provides a detailed analysis of the impacts to biological resources in relation to the preferred alternative. Table IV.7-26 of the DRECP PLUPA/FEIS contains the impact analysis for the Desert Linkage Network for the preferred alternative. A description of impacts to Desert Linkages as a result of siting, construction, decommissioning, and operational activities is included in Section IV.7 of the DRECP PLUPA/FEIS, beginning on page IV.7-149. The relationship between proposed DFAs and specific linkage networks is also detailed on this page.

The claim that any biological resource goal or objective would be compromised by the framework of the DRECP PLUPA/FEIS is false. Specific to landscape-scale conservation, Section IV.7 of the DRECP PLUPA/FEIS states, “Table IV.7-29 shows conservation of the desert linkage network under the Preferred Alternative for the BLM LUPA. Conservation of the desert linkage network totals more than 2.1 million acres (87%)” (DRECP PLUPA/FEIS, p. IV.7-163). Section IV.7.3.2.2 of the DRECP PLUPA/FEIS provides further analysis of the impacts to linkage networks as a result of conservation and recreation designation, including an assessment of the level of conservation for specific linkages.

Unallocated Lands

Section II.3.3.3.3 of the DRECP PLUPA/FEIS explains that within the DRECP Plan Area there are BLM-administered lands that do not have a proposed land allocation or designation. Unallocated lands within the planning area would be open to renewable energy development applications but would require a Plan Amendment. These lands are not needed to fulfill the DRECP biological conservation, or renewable energy strategy. These lands would be subject to LUPA-wide CMAs and the CMAs specific to unallocated lands. The BLM could reject a renewable energy development application if inconsistent with the LUPA-wide or specific unallocated lands CMAs. For all actions not covered by LUPA-wide or unallocated CMAs, existing land use plan decisions would continue to apply.” CMAs specific to Unallocated Lands are located in Section II.3.4.2.9 of the DRECP PLUPA/FEIS.

The protesters’ statement that right-of-way authorizations in Unallocated Lands could be granted without meeting “more stringent standards previously imposed” is untrue. As mentioned before, Unallocated Lands are BLM-administered lands that do not have an existing or proposed land allocation or designation. These areas would be open to renewable energy application, but would not benefit from streamlining or incentives (DRECP PLUPA/FEIS, Section II.3, p. 3-2). Right-of-way applications for Unallocated Lands would still be subject to site-specific analysis, including potential plan amendment(s). Additionally, the DRECP PLUPA/FEIS still includes management prescriptions for Unallocated Lands. As required in the DRECP PLUPA Section II.3.4.2.9 CMAs LUPA-UNA 1 through 5, “development on unallocated lands may not have an adverse effect on the biological and cultural conservation design, the recreation design, or the renewable energy design of the DRECP.”

For response to issues concerning public participation, please see the NEPA – Public Participation section of this report.

Impacts to biological resources

The BLM complied with NEPA's requirement to analyze the environmental impacts associated with renewable energy development on biological resources in the DRECP PLUPA/FEIS. A detailed analysis of impacts for biological resources for all alternatives of the DRECP PLUPA/FEIS can be found in Section IV.7, Biological Resources.

For additional response to protest issues regarding biological resources, see the Impacts Analysis – Wildlife section contained in this report.

Multiple Use Classifications (MUC)

Section II.3.5.1 of the DRECP PLUPA/FEIS provides a discussion of MUCs, as currently designated in the CDCA, and the reasoning for designating land use allocations in the action alternatives. Particularly, “because the LUPA identifies National Conservation Lands, Areas of Critical Environmental Concern (ACEC), Wildlife Allocations, Special Recreation Management Areas (SRMA), Extensive Recreation Management Areas (ERMA), and DFAs, and specific CMAs for those allocations, retaining the MUCs would create duplicative and potentially contradictory management. Many of the concepts of the MUCs were maintained, but with different names” (DRECP PLUPA/FEIS, Section II.3.5.1). Additionally, a crosswalk between MUCs under the No Action Alternative and proposed DRECP PLUPA/FEIS land use allocations is included in the same section. Similar to the allocations contained in the DRECP PLUPA/FEIS (National Conservation Lands, ACECs, Wildlife Allocations, SRMAs, ERMAs, and DFAs), the MUCs zone areas within the CDCA provide specific management actions and allowable uses for those zones. The underlying change to management of the CDCA comes from changing those management actions and allowable uses, and adoption of the CMAs. Current management under the MUCs is described throughout the No Action Alternative (DRECP PLUPA/FEIS, Section II.2), and impacts of the changing management are analyzed in Section IV of the DRECP PLUPA/FEIS.

NEPA – Impacts Analysis - Air

Issue Number: PP-CA-DRECP-15-15-38

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The County and its residents would be particularly exposed to soils, dust, air pollution and airborne fungus health problems that can arise from the construction and operation of utility- scale solar and wind projects constructed on BLM land. Therefore the County’s comment letter urged that the soils, wind erosion and geology analysis be updated, using data from both the County and the NRCS. The NRCS data in particular is important, because it provides a level of “on the ground” study of soils, and a level of specificity, lacking in much of the soils data relied on by the FEIS. The BLM’s response, however, is to “kick the can down the road”, stating that the comment “is not relevant to the LUPA and will be addressed in Phase II of the DRECP”. However, in fact the County’s comment is highly relevant to the LUPA, because the decision about where to encourage and incentivize new industrial-scale energy projects, as part of a balancing of competing land uses, will have a direct effect on the degree to which certain populations will be exposed to unacceptable dust and air contamination. Airborne particulate matter is no respecter of legal boundaries. By the time of consideration of individual projects, the die will already have been cast by the LUPA’s fixing of the location of the DFA’s and Unallocated Lands.

Issue Number: PP-CA-DRECP-15-18-42

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Proposing to designate SRMAs and ERMAs in the absence of analyzing how minimization requirements were applied in the areas and were met in the route designation process. Impact analysis should have included [the following] but did not: (1) the impacts to surface waters from the loss of natural washes and other features as well as increased erosion; and (2) significant but avoidable impacts to soils, surface hydrology and air quality, in violation of BLM’s mandates to protect these important public resources.

Issue Number: PP-CA-DRECP-15-18-44

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately address impacts to air quality from construction and ongoing operation particularly regarding any additional PM10 emissions in DRECP where all air basins are impaired.

Issue Number: PP-CA-DRECP-15-20-34

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: This section of the protest concerns responses to Comment Letter E75, Sierra Club, regarding Air Quality Impacts in response to the DRECP

DEIS. This comment letter laid out in detail numerous failures to comply with NEPA regarding air quality impacts from the proposed action. These included:

- failure to describe the full range of impacts to air quality and human health from related actions;
- failure to fully and quantitatively analyze and model emissions of numerous National Ambient Air Quality Standards (NAAQS) pollutants in addition to PM10;
- failure to analyze impacts of pollutants that may be in attainment now under federal or state law but could increase to be out of attainment as a result of DRECP LUPA-related development;
- failure to accurately characterize and model the full range of air quality impacts from the proposed range of technologies;
- unsupported claims that some emissions would be reduced to zero with Best Management Practices and/ or Conservation Management Actions; and
- failure to accurately describe potential health impacts from soil disturbance from Valley Fever or to include adequate mitigation measures to avoid such exposures.

Changes to the DRECP LUPA regarding air quality do not adequately respond to most issues raised in this comment letter as enumerated in more detail below.

Issue Number: PP-CA-DRECP-15-20-35
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA contains little to no information on the impacts to air quality and human health from the full range of emissions that would be caused by related renewable energy project and transmission development.

There is virtually no discussion of any pollutant's harm to people's health or what the added increment of pollution in areas already in moderate to extreme non-attainment for National Ambient Air Quality Standards might mean for people living, working or visiting in affected areas. There is little to no discussion of pollutants that are not currently in non-attainment and their potential impacts should development cause that to change. There is no meaningful discussion at all of Valley Fever, a fungal infection leading to serious health impacts and even death. It can be caused by ground disturbance in parts of the DRECP region and workers have been infected through ground disturbance at renewable energy site construction in Los Angeles County. Ozone (smog) non-attainment is severe to extreme throughout the region, making this location among the top five unhealthiest air basins in the country. Particulate matter non-attainment is moderate to serious, with direct and frequent impacts to human health. Impacts from these pollutants include asthma, lung disease, cancers, heart disease, heart attacks and premature deaths. The case for preventing any additive air quality impacts in the desert region is compelling-but one would not realize any of this from reading the entirety of the DRECP LUPA's air quality section or responses to comments on air quality.

Issue Number: PP-CA-DRECP-15-20-36
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Basically, the methodology used to identify likely air emissions in the DEIS was very crude, taking a small sample of renewable energy projects and then averaging their probable construction emissions. We recommended

that a much finer scale analysis including a review of equipment used, duration of use and resultant emissions for both construction and operation for each technology (including transmission, which was not included), as well as application of existing databases and modeling software from the California Air Resources Board and EPA, be utilized to create a much more complete and accurate picture of likely impacts. Further, we demonstrated that the methodology used to determine impacts, particularly the “averaging” of construction emissions from substantially dissimilar renewable energy facilities, was completely unsupported in numerous ways. This has not been corrected in the DRECP LUPA.

Issue Number: PP-CA-DRECP-15-20-37
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Impacts from at least three criteria pollutants currently in attainment-carbon monoxide, sulfur dioxide, and hydrogen sulfide-are not analyzed in any significant way, a NEPA violation. There is no analysis that shows that emissions from DRECP LUPA-related development would not increase them or cause an air basin to move into non-attainment of the standards, or what the related health impacts would be from increased emissions.

Issue Number: PP-CA-DRECP-15-20-39
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA fails to comply with NEPA in providing an accurate and detailed description of potential air quality impacts, fails to accurately model and analyze the potential air quality impacts

from renewable energy and transmission development in the DRECP region, fails to address impacts of several NAAQS pollutants, and makes unsubstantiated claims that BMPs and mitigation actions could reduce impacts to zero.

Issue Number: PP-CA-DRECP-15-43-20
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS fails to take a hard look that the Project’s global warming impacts. It declines to address the full life-cycle emissions from the DRECP’s planned renewable energy development, on the grounds that it “would be beyond the scope of analysis and beyond the ability of BLM to control” (FEIS E85-205, Response E85-44). It likewise declines to quantify the loss of carbon sequestration caused during construction (FEIS E85-25, E85-205 (Response E85-50), FEIS IV.3-5 to IV.3-6). Without considering these factors, however, BLM does not know whether the DRECP will be a net reducer or a net producer of greenhouse gas emissions, despite the DRECP’s goals of renewable energy production. Similarly, by amortizing the DRECP’s potential construction emissions, instead of accounting for them as one time spikes in emissions, the FEIS masks the DRECP’s global warming impacts. BLM assumes that an increase in renewable energy development would “displace electricity production from traditional resources,” but the FEIS contains no guarantees that any renewable energy produced by the DRECP would replace or supplant fossil fuel-based power. E.g. FEIS E85-205 (Response E85-45), FEIS E85-206 (Response E85-51), FEIS IV.27-8 (assumed amounts of greenhouse gas emissions avoided through use of renewables). Thus

the FEIS' discussion of the DRECP's global warming impacts fails to fully apprise decision-makers and the public of the Project's impacts.

Issue Number: PP-CA-DRECP-15-43-22
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS states that DRECP approval would "contribute to existing violations of the state ambient air quality standards for ozone and PM10" and PM2.5 due to construction activity (FEIS IV.25-32). Approval of the DRECP would also "contribute to an existing cumulative violation of air quality standards" during

operations (FEIS IV.25-34). But the FEIS merely states that future development approvals "would likely incorporate mitigation measures to reduce" long-term and short-term "air emissions" (FEIS IV.25-33, IV.25-34). There is no discussion of how many more days will exceed air quality standards, or how many more residents will get asthma, if the DRECP is approved. There is no discussion of the environmental impacts caused by the air quality standard violations the DRECP will cause. There is simply no detailed information at all. This violates NEPA. Neighbors of Cuddy Mountain, supra, 137 F.3d at 1379-1380; City of Carmel-By-The-Sea, 123 F.3d at 1160.

Summary:

The BLM did not take a hard look nor make a thorough analysis of impacts on air quality and global warming on the following:

- Data from county and NRCS, which could be better used in siting locations;
- Designation of SRMAs and ERMAs in the absence of analyzing how minimization requirements, which falls short of BLM's mandates;
- Impacts to air quality particularly regarding any additional PM10 emissions, PM2.5 and ozone;
- Methodology to identify likely air pollution impact, which is crude; and
- Analysis of impacts from at least three criteria pollutants carbon monoxide, sulfur dioxide, hydrogen sulphide, as well as NAAQS pollutants, which is inadequate.

Response:

The United States Environmental Protection Agency (EPA) sets and regulates the National Ambient Air Quality Standards to protect public health and is responsible for the implementation of the Clean Water Act (CWA), Clean Air Act (CAA) and pollution control standards, and the BLM observes that these regulations as well as State level regulations are followed in any of the BLM's Federal Actions.

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24). Additionally, FLPMA requires that when preparing land use plans, the BLM must "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards

or implementations plans”, such as the CWA (FLPMA, Section 202(c)(8)). While the BLM has no specific regulatory authority related permitting and enforcement the CWA and the CAA, DOI Secretarial Order 3289 and DOI Secretarial Order 3226 direct the BLM to “consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources.” The BLM has complied with these requirements in the preparation of the DRECP PLUPA/FEIS.

The State of California and the EPA have granted California primacy with regard to implementation of the CWA and CAA.

The DRECP PLUPA/FEIS does not authorize site-specific projects that impact air or water quality. All site-specific projects implementing the DRECP will be subject to implementation/operational planning decisions based on additional site-specific analysis of possible air, water, dust and soil pollution, as appropriate, and must comply with both the CWA and CAA. The BLM is not a regulatory agency for project-specific permits in situ. However, as a prerequisite for obtaining any BLM authorization the applicant must show compliance with all appropriate state and federal regulatory programs. As a result, the EPA, Army Corps of Engineers and/or the State of California must be consulted prior to seeking a BLM authorization. Additionally, the BLM NEPA Handbook directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM took a “hard look” at potential environmental impacts of all choices and of adopting the DRECP. The analysis focused on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. The bibliography and references lists and reflects the extensive breadth and depth of information considered by the BLM in preparation of the DRECP PLUPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. However, a land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. The EIS does not constrain the DRECP from data collection, monitoring and adaptive management.

The DRECP does not actually authorize any site-specific projects that impact water quality. All site-specific projects implementing the DRECP PLUPA/FEIS will be subject to additional site-specific analysis of possible water effects, as appropriate, by required by the appropriate regulatory agencies and there is room for using and supplementing site specific data with the data provided by the NRCS and other resources.

The designation of an area as a SRMA or ERMA does not require the consideration of designation criteria as per 43 CFR 8342.1. That regulation refers to designation of areas as open, limited or closed to off-road vehicles or off-highway vehicles (OHV). SRMAs and ERMAs in the DRECP PLUPA/FEIS do not make OHV area designations. SRMAs and ERMAs identify an area as having an emphasis on recreation values without authorizing any particular recreation use. (DRECP PLUPA/FEIS, Volume II.3.2.4.1 on page II.3-73, Volume II.3.2.4.2 on page II.3-74, and Appendix AA, Letter E65, p. E65-79). The OHV area designations within the planning area were made as part of previous land use planning efforts, and the DRECP PLUPA/FEIS does not propose any modifications to these existing OHV area designations.

The BLM relied on high quality information and the best available data in preparation of the DRECP and complied with NEPA's requirement to analyze the environmental consequences /impacts. The adoption of the DRECP PLUPA/FEIS does not violate the CAA, CWA and pollution control authority of the EPA or other Federal and State level regulating agencies as any future site-specific authorization will require compliance with all applicable environmental laws.

NEPA – Impacts Analysis - Soil

Issue Number: PP-CA-DRECP-15-18-42

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Proposing to designate SRMAs and ERMAs in the absence of analyzing how minimization requirements were applied in the areas and were met in the route designation process. Impact analysis should have included but did not:

1. the impacts to surface waters from the loss of natural washes and other features as well as increased erosion; and
2. significant but avoidable impacts to soils, surface hydrology and air quality, in violation of BLM’s mandates to protect these important public resources.

Issue Number: PP-CA-DRECP-15-18-43

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately assess the impacts to soils, including the loss of intact cryptobiotic soil crusts and other stable soils throughout the planning area and failing to adequately address specialized soils such as sand dunes and the impacts to sand sources and sand transport.

Issue Number: PP-CA-DRECP-15-37-2

Organization: Committee for 245 Million Acres

Protestor: Michael Garabedian

Issue Excerpt Text: The DRECP must be corrected before approval so that a primary

plan element is management of the impacts of renewable energy development on biological soil crusts (“BSC”). It is wrong that the proposal does not have a plan that protects, maintains, enhances, allows recovery where BSC has pioneering elements on disturbed lands, and restores it where feasible. It is wrong to think that all disturbed lands where BSC re-occupation is underway or possible should developed with renewable energy. The BSC management manual issued by Department of Interior, BLM, and the United State Geological Survey. “Biological Soil Crusts: Ecology and Management” (2001) demonstrates the need to create a manual to manage renewable energy impacts on BSC.

Issue Number: PP-CA-DRECP-15-43-21

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: No detailed information about cumulative impacts to desert pavement is provided. There is no discussion of how much desert pavement has been compromised by existing development, no information about how much desert pavement is threatened by reasonably foreseeable development, and no discussion of the extent to which approval of the DRECP will exacerbate past and future loss of this critical resource. To the contrary, all that a reader of the FEIS can glean from this meaningless discussion is that the DRECP is allowing development that could possibly damage desert pavement to an unknown degree in unspecified locations, so

mitigation measures might be required to reduce impacts to desert pavement an unspecified amount if in fact impacts resulted. This type of discussion is functionally identical to the “[g]eneral statements about ‘possible’ effects and ‘some risk’” that the Ninth Circuit held “do not constitute a hard look absent a justification regarding why more definitive information could not be provided” (Neighbors of Cuddy Mountain, supra, 137 F.3d at 1380). Neither the public nor the decision-makers can ascertain whether the cumulative effect of DRECP approval will be loss of our last desert pavement. BLM stated in response to Backcountry’s DEIS comment letter that it used “the best available data to provide a description of the effects of the project” (FEIS E85-206 (Response E85-55)). BLM thus asserted that the lack of existing maps of desert pavement excused it from quantifying impacts to desert pavement. Id. But this excuse is absurd. The lack of existing maps is not a “justification . . . why more definitive information could not be provided” by conducting a survey and creating maps (Neighbors of Cuddy Mountain, supra, 137 F.3d at 1380). NEPA contains detailed procedures for agencies to follow when relevant information is unavailable and BLM’s bare statement about the lack of existing maps does not suffice. 40 C.F.R. § 1502.22 (agency must including missing information unless the cost of obtaining it is exorbitant or the means of obtaining it are not known, in which case four findings must be made); Montana Wilderness Association v. McAllister, 666 F.3d 549, 560-561 (9th Cir. 2011) (agency’s failure to make findings under 40 C.F.R. §

1502.22 was unlawful). By failing to provide any detailed information about the DRECP and other past and present projects will cumulatively impact desert pavement, BLM violated NEPA. Neighbors of Cuddy Mountain, supra, 137 F.3d at 1379-1380; City of Carmel-By-The-Sea v. U.S. Department of Transportation, 123 F.3d 1135 (9th Cir. 1997) (“Missing, however, is any discussion of how these projects together with the proposed . . . project will affect the wetlands, Monterey pine and Hickman’s onion”).

Issue Number: PP-CA-DRECP-15-43-8
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS fails to appropriately address the risks of soil contamination from renewable energy operations, including chemical spills from wind turbines. See FEIS Chapter IV.6., addressing Impact-GW-6. Instead, the FEIS specifically addresses some solar project design guidelines, and relies upon groundwater quality monitoring to assure that there would not be impacts. None of this addresses methods to prevent contamination before it occurs. Thus BLM’s response to Backcountry’s comments – that wind energy’s water demands are small – is irrelevant and ignores reality (FEIS E85-202 (Response E85-20)). And, as discussed above, these monitoring requirements are among those that may be waived, and are thus illusory.

Summary:

The DRECP PLUPA/FEIS violates NEPA's "hard look" requirement in terms of analyzing the potential impacts on soil because:

- it fails to analyze the impacts on soils from the proposed SRMA and ERMA designations;
- it fails to include analysis of issues such as loss of intact cryptobiotic soil crusts and other stable soils; and
- it provides no detailed information about cumulative impacts to desert pavement.

Response:

The BLM is required to take a "hard look" at potential environmental impacts of adopting the DRECP PLUPA/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. Additionally, NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

Soils are addressed in the DRECP PLUPA/FEIS Volume III at III.7.3.3 (Page III.7-24) and in Volume IV at IB.4.2 and throughout IV.7 and Volume IV. 25-39. A land use planning-level decision is broad in scope and programmatic in nature. For this reason, analysis of land use plan alternatives is typically broad rather than focused on site-specific actions. However, the DRECP PLUPA/FEIS analysis addresses the direct, indirect, and cumulative impacts that could potentially result from the proposed actions on the ground. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. The baseline data provides the necessary basis to make informed land use plan-level decisions and a basis for monitoring and adaptive management of soil resources and desert pavements. Thus, a hard look was taken from a programmatic perspective. Both the beneficial and adverse impacts were considered.

In regards to recreation impacts to soil, designation of an area as a SRMA or ERMA does not require the consideration of designation criteria listed in 43 CFR 8342.1. That regulation refers to designation of areas as open, limited, or closed to off-highway vehicles (OHVs). The SRMAs and ERMAs proposed in the DRECP PLUPA/FEIS would not change OHV area designations from the No Action Alternative; rather, they identify an area as having an emphasis on recreation values (BLM Manual, Section 8320). These values are not exclusively motorized recreation, and may also include hiking or bird-watching (See Appendix L of the DRECP PLUPA/FEIS for SRMA Management Plans, which identify recreation uses). The DRECP PLUPA/FEIS would

not authorize new recreational uses, and is a planning tool to help manage existing recreation. Additionally, the DRECP PLUPA/FEIS does not propose any travel management decisions or affect existing route networks. Designation of routes is an implementation level decision, and will be subject to appropriate NEPA analysis and public involvement in a separate agency decision making process.

The DRECP PLUPA/FEIS analyzes and proposes mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses, and minimize other potential future impacts by restricting certain uses on the public lands. Avoidance, minimization, and compensatory mitigation principles guide the LUP level decisions. The BLM would also look at all appropriate effects, impacts, and mitigation measures as well as best management practices during the decision making process for future site-specific actions in the planning area..

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts on soils in the DRECP PLUPA/FEIS.

NEPA – Impacts Analysis – Prime Farmlands

Issue Number: PP-CA-DRECP-15-43-15

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: By segmenting the DRECP into BLM and non-BLM phases, the current phase of the DRECP no longer directly impacts 56,000 acres of Important Farmland. Yet the Preferred Alternative’ renewable energy development on BLM lands will still result in energy transmission development over and proximate to Important Farmland in the Imperial Valley

and Blythe areas (FEIS IV.12-5). The FEIS does not take a hard look at the consequences of this action, and instead minimizes the potential harms. For example, the FEIS implies that crop dusters will only face obstacles in the Central Valley, and will not have any difficulty avoiding new transmission lines because “crop dusting planes commonly work in these areas and avoid existing poles, towers, and wires” (FEIS IV.12-4 to IV.12-5). But the FEIS fails to address situations where multiple transmission lines isolate farmland, as raised in Backcountry’s previous comments (FEIS E85-17, E85-204 (Response E85-33)).

Summary:

The DRECP PLUPA/FEIS violated NEPA as a result of segmenting, or phasing the DRECP because the analysis does not include the consideration of the cumulative indirect effects that multiple new transmission lines would have on the Important Farmlands in the Imperial Valley and Blythe areas.

Response:

Cumulative actions are proposed actions which potentially have a cumulatively significant impact together with other proposed actions and “should be discussed” in the same NEPA document (40 CFR 1508.25(a)(2)). The BLM NEPA Handbook (H-1790-1 at 48) states that the agency must demonstrate that it considered the cumulative action in the NEPA document for the proposed action (40 CFR 1508.25). “‘Cumulative Impact’ is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions” (40 CFR 1508.7 and 1508.25).

The BLM complied with the NEPA requirements. Direct and indirect impacts are addressed at IV.12-3 in the No Action Alternative analysis, Impact AG-1: “Renewable energy development on BLM lands and resulting transmission lines would impair agricultural use of adjacent agricultural operations. Important Farmland designations do not apply to BLM lands; therefore, development of renewable energy projects under the No Action Alternative would not convert Important Farmland to nonagricultural use. Development of projects on BLM land could affect adjacent non-BLM lands designated as Important Farmland; so outside of BLM lands, transmission development could affect Important Farmland. Under the No Action Alternative, DRECP area potential impacts include (1) damage to equipment, crops, and livestock from

increased traffic on farm roads; (2) competition for water resources, including groundwater; (3) water and soil contamination; (4) suppression plant growth by fugitive dust; (5) soil erosion; (6) spread of weeds; and (7) shading of crops.” Analysis in the Preferred Alternative repeats Impact AG-1 and states: “Renewable energy and transmission development under the Preferred Alternative could adversely impact adjacent agricultural operations. Potential types of impacts would be the same as for the No Action Alternative. Similar to the No Action Alternative, existing laws and regulations will reduce certain implementation impacts. Relevant regulations are presented in Volume III, the Regulatory Setting.”

Further, in section IV.25, Cumulative Effects Analysis, the FEIS describes the methodology used by the BLM. Under NEPA, the approach for analyzing cumulative effects involves establishing a geographic scope and time frame for each cumulative effects issue (IV.25-1). This cumulative analysis uses a list of renewable energy and other large projects that could contribute to cumulative impacts, and projections from approved plans were used to identify impacts from other types of projects and activities in the area, as discussed below (see Tables IV.25-1 through IV.25-3). In this section, the term “cumulative projects” collectively refers to projects that appear in the cumulative project list and those captured in the planning projections from approved plans. Renewable energy projects on BLM lands approved after BLM adopts a DRECP Record of Decision (ROD) would be subject to the provisions of the DRECP (unless they fall under an existing application as described in Volume II, Section II.3.3.3.5, Existing Applications on BLM-Administered Land). *Because these projects are subject to DRECP decisions, the impacts from their development are included in the direct and indirect impacts analysis for the DRECP itself, and are not duplicated in the cumulative impacts. Renewable projects identified in Table IV.25-2 may fall under an existing application and are therefore considered cumulative projects rather than DRECP projects* (IV.25-2) (emphasis added).

Therefore, although the DRECP PLUPA/FEIS has been separated into two phases, for the BLM planning decision in Phase I, the FEIS considered and analyzed the cumulative actions and the effects to agricultural lands that are anticipated beyond Phase I, the BLM decision.

The BLM adequately analyzed the effects to important agricultural lands from ongoing energy transmission line development.

NEPA – Impacts Analysis – Cultural

Issue Number: PP-CA-DRECP-15-13-14

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: The Ninth Circuit discussed the required elements of a cumulative impacts analysis in *Te-Moak Tribe of Western Shoshone of Nevada v. United States Department of the Interior*, 608 F.3d 592 (9th Cir. 2010) (overturning and remanding for insufficient cumulative impacts analysis). The Court stated: “In a cumulative impact analysis, an agency must take a ‘hard look’ at all actions. An EA’s analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment” (Lands Council, 395 F.3d at 1028). 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*, 137 F.3d at 1380. ‘[S]ome quantified or detailed information is required. Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide (Id. at 1379. *Te-Moak*, 608 F.3d at 603).

The cumulative analysis in the LUPA/FEIS is exceptionally vague. The document offers no significant information about how implementation of the DRECP will cumulatively affect cultural resources and Native American values, other than generic

analysis that development of large-scale energy projects in this region will generally result in cumulative adverse effects. There is no substantive quantification or detailed analysis of how conversion of hundreds of thousands of acres of desert lands will impact the overall cultural and Native American values of the area.

Issue Number: PP-CA-DRECP-15-24-2

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP’s failure to conduct an adequate cultural resource analysis in advance of developing the Plan and proposing alternatives also results in an impermissible deferral of analysis. Over and over again, the DRECP highlights how BLM will eventually consider cultural resources at some later stage. See, e.g., DRECP at 11.3-195 (deferring identification of places of traditional cultural and religious importance and the design of activities to minimize impacts on such places 1 , 11.3-249 (deferring development of compensatory mitigation program to the programmatic Section 106 consultation process, which likewise defers to a later process), III.8-60 (claiming that deferred “‘identification, evaluation, and treatment” will comply with cultural resource regulations), IV.9-4 (deferring “additional research, consultation, and meaningful engagement with affected tribal communities” to a later time). Yet, as CRIT has repeatedly witnessed, deferral of cultural resource studies until after a project developer has submitted an application to develop a specific project

inevitably results in the destruction or removal of such cultural resources and landscapes.

Issue Number: PP-CA-DRECP-15-24-3

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: In response, BLM states that “[i]t is neither appropriate nor feasible for a planning document to identify

all cultural resource sites at this scale” (DRECP at 08-22 (emphasis added)). That may be true. But BLM could certainly do much more than it has currently done. Indeed, NEPA and the NHPA require it. E.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA requires agencies to take a “hard look” at environmental consequences, requiring the agency to gather “detailed information concerning significant environmental impacts.”).

Summary:

The DRECP PLUPA/FEIS has not adequately analyzed potential impacts to cultural resources and Native American values because:

- the document offers no significant information about how implementation of the DRECP will cumulatively affect cultural resources and Native American values; and
- it has failed to take a “hard look” and instead defers cultural resource studies to a later time.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the DRECP PLUPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

The prerequisite level of information necessary to make a reasoned choice among the alternatives is based on the scope and nature of the proposed action. In preparing the DRECP PLUPA/FEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is a result of Section 106 consultation and Section 110 inventories of the area and represents the volume of information available. Based on the BLM’s professional knowledge and experience, the BLM determined that sufficient information was available on the nature and extent of the direct, indirect, and cumulative effects associated with

the alternatives to form the basis of the analysis. In addition, substantive comments received concerning cultural resources were considered and addressed, as appropriate. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 and site-specific NEPA documentation.

The BLM has complied with Section 106 of the National Historic Properties Act, 54 USC § 306108. “Historic Properties” are, as described in the NHPA, those sites that have been determined eligible for the National Register of Historic Places. The BLM has conducted cultural resource work for the project in accordance with the BLM national Programmatic Agreement (national PA) (2012) with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers, and BLM Handbook 8100 for identifying Cultural Resources. Based on the size and complexity of the undertaking of the DRECP PLUPA/FEIS, the BLM determined that the development of a Programmatic Agreement (PA) as described at 36 CFR §800.14 (b) is the most appropriate manner to meet its responsibilities under Section 106 of NHPA. The DRECP PA was executed in February 2016 and addresses potential effects associated with adopting the DRECP PLUPA/FEIS regarding possible siting for future renewable energy projects on BLM land. This PA was agreed to and signed by the BLM State Director, the California State Historic Preservation Officer (ACHP), and the Chairman of the ACHP. All affected Indian Tribes were notified and invited to consult on the development of the PA and several tribes elected sign as concurring parties.

The PA outlines the actions that BLM, SHPO, the ACHP and Tribal representatives have agreed upon for assessment and analysis due to the number and variety of areas and projects involved. These parties agree that this approach makes the most sense in order to ensure all cultural resources analysis is complete and addresses all possible impacts. The BLM will ensure that any cultural resource studies which may not be included in the PA and that are on the project/implementation level, will receive complete consultation, agreement, analysis and impacts (See PA at Part IV, p. 14-17).

According to the PA, “The BLM will prepare a description and map(s) of the APE and provide them to the project-specific consulting parties for review and comment and will concurrently request SHPO review pursuant to Stipulation III(C)” (PA IV.A.2 at p. 15). Additionally, “The BLM will consult with the Tribes and Tribal Organizations to identify any resources that have cultural or religious significance to the Tribes or Tribal Organizations.

The BLM has also determined that its Land Use Plan decisions consistent with the DRECP PLUPA/FEIS are controversial and non-routine and because of this, the effects of the analysis may be regional in scope, and therefore, cannot be fully determined prior to plan approval. As such the DRECP meets the threshold of review by the Advisory Council on Historic Preservation (ACHP) under Component 5(b) and (c) of the national Programmatic Agreement.

Therefore, in accordance with BLM’s national Programmatic Agreement and 36 CFR § 800.6(a)(1)(c), the BLM notified the ACHP that some implementation actions identified in DRECP PLUPA/FEIS “have the potential for adverse effects and of the BLM’s intent to develop” a Programmatic Agreement (PA) for the DRECP undertaking.” The BLM also consulted with the California SHPO regarding effects of implementation on historic properties

and how these effects cannot be fully determined prior to the plan's approval. The BLM has assessed potential adverse effects and provided resolution for them through the PA, consistent with 36 CFR § 800.14(b)(3). The PA also specifies that "pursuant to the special relationship between the Federal Government and federally recognized Indian tribes (codified in Section 101(d)(6)(B) of the NHPA (54 USC § 302706) [the Historic Preservation's Eligibility for Inclusion on the National Register], 36 CFR § 800.2(c)(2)(ii) the American Indian Religious Freedom Act (AIRFA), Executive Orders 13007 and 13175, and Section 3(c) and Section 12 of the Native American Graves Protection and Repatriation Act (NAGPRA))" (PA at p. 4), the BLM is responsible for continuous government-to-government consultation with federally recognized tribes throughout the implementation process.

The BLM has taken numerous actions to formally notify, invite and involve federally and non-federally recognized Indian tribe that have interests in the land to consult on the DRECP PLUPA/FEIS (Appendix V) and the PA (Appendix A). The BLM has consulted and will continue to consult with Indian tribes and Tribal Organizations on the DRECP PLUPA/FEIS and throughout implementation regarding cultural resources and historic properties to which they attach cultural and religious significance. "The BLM will carry out its responsibilities to consult with Tribes and Tribal Organizations that request such consultation with the further understanding that, notwithstanding any decision by these Tribes and Tribal Organizations to decline concurrence, the BLM shall continue to consult with these Tribes and Tribal Organizations throughout the implementation of this Agreement, pursuant to Stipulation II" (PA at p. 4).

The BLM's cumulative impacts analysis presents a reasonable estimate of the incremental impact to cultural resources as a result of trends in renewable energy use. While these impacts are impossible to quantify, the DRECP PLUPA/FEIS presents what the BLM considers to be a realistic and qualitative forecast of the general types of impacts that may be expected from various uses. This forecast is comparative; for example, these kinds of impacts would increase or decrease more under one alternative than they would under another alternative. The DRECP PLUPA/FEIS has adequately analyzed potential impacts to cultural resources and Native American values. It has offered as much significant and specific information as possible taking into consideration the vast planning area and number of possible cultural resource areas. In agreement with the California SHPO, the ACHP and in consultation with participating Indian tribal representatives, the BLM has prepared and executed a Programmatic Agreement to comply with Section 106 responsibilities during the implementation of the DRECP Land Use Plan Amendment. The BLM will continue to perform government-to-government consultation in accordance with Section 106 at the project implementation level. As such, in accordance with NEPA, the BLM has taken a "hard look" at the reasonably foreseeable impacts. The NEPA documents associated with the DRECP PLUPA/FEIS concentrate on the issues that are truly significant to the action in question rather than amassing needless detail (40 CFR 1500.1(b)), and BLM established a Programmatic Agreement to ensure analysis on cultural resources is properly conducted as needed.

NEPA – Impacts Analysis – Livestock Grazing

Issue Number: PP-CA-DRECP-15-06-4

Organization: Shield F Ranch

Protestor: Irene Fisher

Issue Excerpt Text: Also in my reviews of both the DRECP DEIS and proposed BLM LUPA and FEIS, I can find no discussion or disclosure on what the expected impacts would be from adoption of this provision on the costs or the feasibility of permitting new rangeland improvements as authorized under 43 CFR 4120.3-1. I do not believe this current deficiency in the document is in compliance with the Council on Environmental Quality guidance provided at 40 CFR §1502.16.

Issue Number: PP-CA-DRECP-15-06-5

Organization: Shield F Ranch

Protestor: Irene Fisher

Issue Excerpt Text: Due to the lack of information in the proposed BLM LUPA and FEIS on the expected effects resulting from this provision on public land ranching, I am extremely concerned that this provision has the very real potential to adversely affect the future viability of my existing public land grazing permit and the source of my livelihood. This fear also extends to include my neighbors who also hold and depend on their public land grazing permits for their livelihoods. There is no information presented in the proposed BLM LUPA and FEIS that I can rely on that will help me determine if this concern represents a reality or not.

Summary:

The DRECP PLUPA/FEIS violates the NEPA regulation 40 CFR 1502.16 because:

- the FEIS does not disclose the effects to operators grazing livestock on public lands as the result of this action changing the way new range improvement projects are permitted as allowed in the grazing regulations 43 CFR 4120.3-1; and
- the FEIS does not disclose the effects to livestock operators who depend on the grazing use on public lands through grazing permits.

Response:

The environmental consequences analysis section forms the scientific and analytic basis for the comparisons of alternatives in the environmental impact statement (EIS) (40 CFR 1502.16). This section consolidates the discussions of those elements required by NEPA, which are within the scope of the EIS and as necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

The analysis requires a discussion of direct and indirect effects of implementing the alternatives and the proposed action and the significance of these actions (40 CFR 1508.8). Discussion also

needs to include the possible conflicts between the proposed action and the objectives of Federal, State, tribal, and local land use plans and policies (40 CFR 1506.2(d)).

The analysis also should consider energy requirements and conservation potential of various alternatives, the natural or depletable resource requirements, the urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures. The analysis also must include the means to mitigate adverse environmental impacts (40 CFR 1502.16).

The DRECP PLUPA/FEIS is a land use planning-level decision and is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM in the DRECP PLUPA/FEIS are programmatic in nature and would not result in on-the-ground project approvals or actions (e.g., the BLM is not approving an application to acquire or renew a livestock grazing permit), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources regardless of whether that change is beneficial or adverse. The precise impacts of individual future projects cannot readily be identified at this planning stage; additional NEPA documents will be prepared to address project-specific analyses when specific projects are proposed (DRECP PLUPA/ FEIS Executive Summary 1.4, page 28).

Livestock grazing on public lands is the main source of livelihood for some public land ranchers. Appropriate detailed socio-economic analysis would be conducted in project-specific NEPA reviews (DRECP PLUPA/FEIS Section IV.16-2 Livestock Grazing).

The Proposed LUPA would not amend existing goals and objectives in the current land use plans, including the relevant California Desert Conservation Area standards and guidelines listed in the Conservation Management Areas section of the Livestock Grazing section (Section II.3.4.2.1.6) (DRECP Proposed LUPA and Final EIS Section II.3-139 Preferred Alternative), but the PLUPA/FEIS does propose additional goals and objectives.

The BLM complied with NEPA's requirement to analyze the environmental consequences and impacts to livestock operators in the DRECP PLUPA/FEIS at the land use planning level. Specific project level environmental consequences will be analyzed in future NEPA documents prior to implementation.

NEPA – Impacts Analysis – Recreation

Issue Number: PP-CA-DRECP-15-04-2

Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: the EIS grossly under reports the impact by failing to disclose that, outside designated OHV Areas (e.g., Ocotillo Wells State Vehicle Recreation Area), most existing OHV routes would be subject to new NLCS and ACEC designations that have rigid surface disturbance caps. Because the more restrictive conservation management actions prevail, the NLCS and ACEC designations will trump those attached to recreational uses. This means that the OHV routes would have to meet the disturbance caps, which would be impossible. Thus, the new NLCS and ACEC designations would effectively render the existing OHV routes unusable. This impact is not disclosed or explained in the EIS, leaving the public and the federal decision-makers without the information required by NEPA.

Issue Number: PP-CA-DRECP-15-15-35

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA contains virtually no environmental analysis of the impacts of the proposal to designate over 3.5 million acres of new recreation areas on species, their habitats, habitat connectivity, water resources, soils, air quality, and so on. However, the impacts of OHV use on fragile desert habitats are significant and well documented.

It is also well documented, in some instances by the BLM itself that off-route travel is widespread in large areas of BLM land in the Plan Area which are designated as “limited” use areas for off-road vehicles. It is also well known that BLM lacks staffing and funding to enforce the existing limitations on ORVs on its lands.

Issue Number: PP-CA-DRECP-15-18-38

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: There is no analysis of how existing designated ORV route systems and actual use of ORVs in the DRECP area (including illegal use) already impact conservation on an ongoing basis.

Issue Number: PP-CA-DRECP-15-27-7

Organization: Individual

Protestor: Randy Banis

Issue Excerpt Text: Given that 89% of SRMA/ERMA lands are overlapped by conservation, there are no benefits to recreation and do not belong in the plan. By overlapping 89% of SRMA/ERMA’s with conservation, BLM is creating a designation that does nothing and is therefore extraneous to the plan. In fact, as written, the SRMA/ERMA designations are intended only to confuse the reader and obfuscate the issues.

Issue Number: PP-CA-DRECP-15-31-7

Organization: Friends of Jawbone Canyon

Protestor: Edward Waldheim

Issue Excerpt Text: When management actions conflict for overlapping designation, the more restrictive shall apply, however, there is no matrix of which management actions conflict. If the BLM purposefully

introduces conflicting management actions, these must be specifically disclosed and analyzed so that the public can form a reasonable expectation of the outcome of the decision.

Summary:

The DRECP PLUPA/FEIS analysis violates NEPA’s “hard look” requirement in terms of impacts to and from recreation because:

- it fails to analyze the impacts on recreation and OHV use from overlapping conservation designations; and
- it fails to adequately analyze the impacts of newly proposed recreation areas and OHV use on species, their habitats, habitat connectivity, water resources, soils, air quality

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Desert Renewable Energy Conservation Plan (DRECP) Proposed Land Use Plan Amendment/Final Environmental Impact Statement (PLUPA/FEIS).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Volume III.7 of the DRECP PLUPA/FEIS discusses the potential impacts of ongoing recreation on relevant species and their habitat. A specific analysis of the impacts of designated OHV routes is beyond the scope of this programmatic plan amendment.

Each chapter in Volume IV of the DRECP PLUPA/FEIS includes an analysis of the impacts of the BLM proposed land use allocations. The impacts of BLM proposed land designations and management actions on Outdoor Recreation are analyzed in Section IV.18. In developing the DRECP PLUPA, the BLM considered the requirements of FLPMA, including section 601 (establishing the CDCA), section 202(c)(3) (stating that in the development and revision of land use plans, the BLM shall “give priority to the designation and protection of areas of critical environmental concern,” and the Section 2002 of the Omnibus Bill (establishing the National Conservation Lands and directing that lands managed for conservation purposes within the CDCA be placed in that system) (DRECP PLUPA/FEIS, p. I.1-2 to 3).

Section IV.18.2.2 of the DRECP PLUPA/FEIS discusses potential impacts on recreational activities, and clearly recognizes that proposed ecological and cultural conservation designations and actions could preclude or limit disturbance on Special Recreation Management Areas (SRMAs) where Areas of Critical Concern (ACECs) overlap with existing SRMAs or Long-Term Visitor areas. In addition, the section recognizes that there would be impacts on several proposed SRMAs. These areas currently include a strong recreation focus for management activities. These SRMAs and Extensive Recreation Management Areas (ERMA) are described in current and proposed Plans in Appendix L of the DRECP PLUPA/FEIS. In overlap areas where ACEC and current or proposed SRMA guidance conflict, National Conservation Lands/ACEC guidance will prevail (DRECP PLUPA/FEIS, p. IV.18-4).

Section IV.18.2.2 of the DRECP PLUPA/FEIS also clearly acknowledges that organized and permitted recreational activities may be adversely affected because they may be limited or excluded within portions of ACECs and other National Conservation Lands, including some camping areas, rock hounding areas, and other recreational pursuits near sensitive locations or adjacent to sensitive routes. This may increase conflicts between different types of recreational activities, particularly between motorized and non-motorized uses. To control ingress and egress to conservation areas or in specific areas such as sand transport areas, riparian areas, and specific-species ACECs recreational destinations may not be readily accessible by motorized vehicles. Special Recreation Permits may be prohibited in certain sensitive areas; OHV recreational touring outside of designated OHV areas may be further limited in the future to meet ACEC and National Conservation Lands conservation goals, including the limitations expressed by the disturbance caps for these areas. Generally, non-motorized recreational pursuits would be less affected by adoption of the action alternatives. Additional access limitations and closures in the future within National Conservation Lands designations would adversely affect motor-dependent recreational activities (DRECP PLUPA/FEIS, p. IV.18-5).

Comprehensive Trails and Travel Management is discussed in Section II.3.4.1.2 of the DRECP PLUPA/FEIS. Designation of SRMA or EMRA does not increase the number or density of routes. They are used to help guide planning and management in OHV areas and surrounding areas. The management of SRMAs and ERMA is detailed in Sections II.3.4.2.6 and II.3.4.2.7 of the DRECP PLUPA/FEIS.

Route designation, travel planning, and restoration are implementation level decisions that will change based on the location of each individual SRMA and ERMA (DRECP PLUPA/FEIS,

Appendix AA, Letter E18, p. E18-111). For example, motorized use of an ACEC is restricted by implementation level Travel Management Plans associated with the West Mojave (WEMO) and Northern and Eastern Mojave (NEMO) Route Network Project Plan Amendments, and the Northern and Eastern Colorado Desert (NECO) Coordinated Management Plan. The DRECP PLUPA does not alter these plans, which is the reason it is not analyzed in the DRECP PLUPA/FEIS. As addressed in the DRECP PLUPA/FEIS, Appendix AA, Letter E66, p. E66-20, there is no change in management of these plans. Future travel management planning will be analyzed under NEPA, include appropriate public participation, and conform to the land use plan in effect on that date.

The BLM fully complied with NEPA's requirement to analyze environmental consequences and impacts to and from recreation in the DRECP PLUPA/FEIS.

NEPA – Impacts Analysis – Socioeconomics & Environmental Justice

Issue Number: PP-CA-DRECP-15-03-5

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: The socio-economic analysis conducted for the DEIS only used data for incorporated cities with more than 10,000 people. There is not a single community in Inyo County that fits this description. Therefore, Inyo County was not properly evaluated in the DEIS. Many communities located in Inyo County have lower income and minority populations and are frequently overlooked due to their unique population and geographic circumstances.

Issue Number: PP-CA-DRECP-15-03-6

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: The County protests the Socio-economic and Environmental Justice Analysis provided in the FEIS as it does not include a meaningful evaluation of Inyo County or other jurisdictions and communities that are not incorporated cities with populations over 10,000.

Issue Number: PP-CA-DRECP-15-03-7

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: As indicated in the record the County has repeatedly pointed out that the socio-economic and environmental justice evaluations prepared for the DRECP and DEIS/FEIS are virtually non-existent with regard to Inyo County. The DRECP and DEIS/FEIS criteria of incorporated

cities with a population of at least 10,000 completely leaves Inyo County out of the analysis as there are no communities within the County that meet this criteria. Again, this means that there is no real evaluation for Inyo County in the DRECP, DEIS or FEIS regarding socio economics; and therefore, decisions made based on this analysis are not realistic for Inyo County.

Issue Number: PP-CA-DRECP-15-04-3

Organization: Gatzke Dillon & Ballance, LLP., obo Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: These same analytical deficiencies render the EIS's economic impact assessment invalid. Without a full and accurate understanding of the DRECP's effects on motorized recreation, there is no way to properly calculate the enormous economic drag the plan will have on those businesses that rely, directly or indirectly, on clients and customers who engage in OHV recreation within the DRECP planning area.

Issue Number: PP-CA-DRECP-15-43-16

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: The FEIS likewise fails to address the socio-economic pressures that rural farmers face when land in their communities is converted from farmland, including conversion that occurs due to electrical transmission, and the environmental impacts that cascade from this conversion (FEIS E85-17, E85-204

(Response E85-34)). These omissions violate NEPA.

Summary:

The socioeconomic and environmental justice analysis in the DRECP PLUPA/FEIS fails to adequately address:

- pressures on rural farmers from the construction of electrical transmission lines and their associated environmental concerns, including conversion of farmland;
- effects on incorporated cities with populations under 10,000, including all of Inyo County;
- effects on lower income and minority populations in Inyo County; and
- effects on businesses that benefit directly or indirectly from those who engage in motorized OHV recreation within the DRECP planning area.

Response:

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential socioeconomic impacts of adopting the Desert Renewable Energy Conservation Plan.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

The decisions under consideration by the BLM for the DRECP PLUPA/FEIS are programmatic in nature and would not result in on-the-ground actions (e.g., the BLM is not approving any applications to site energy facilities). The scope of the EIS analysis for the DRECP was conducted at a regional, programmatic level. The analysis identifies socio economic impacts that may result in some level from changes to the resources, regardless of whether that change is beneficial or adverse.

The BLM complied with NEPA's requirement to analyze the consequences/ impacts to socioeconomic and environmental justice in the DRECP planning effort. As noted in the

response to comments section E68-4, these protest points are “not directed toward any specific discussion or the analysis presented in Draft DRECP and EIR/EIS Chapters III.23 or IV.23 (Socioeconomics and Environmental Justice). This is a general comment or opinion that BLM will consider during its LUPA decision process.”

Further, as noted in comment response C5-30, several of these protest points:

request an analysis beyond what is required and feasible within a programmatic National Environmental Policy Act (NEPA) socioeconomic and environmental justice analysis. As acknowledged and discussed in Volume IV, Chapter IV.23, Section IV.23.1.1, the social and economic effects from changes on BLM lands feasibly extend beyond the immediate vicinity of their location to nearby population. Therefore, Chapter IV.23 differs from others within this Final EIS by programmatically discussing potential socioeconomic and environmental justice effects to private lands. Phase II of the DRECP will specifically address DRECP effects to private lands.

As further noted:

A localized analysis at the scale requested is not feasible at a programmatic level covering millions of acres of land. As discussed in Volume II, the proposed LUPA is limited to streamlining environmental reviews of future renewable energy and other projects on BLM-administered lands within the DRECP only....However, the Final EIS includes adopted requirements of future analyses and typical mitigation strategies. Because site- and project-specific data is unavailable, as discussed in Section IV.23.1.1.3 (Future Project-Specific Analyses), each future renewable energy project (including transmission interconnection) would be required to conduct further project-specific environmental analysis under NEPA (where a federal lead agency has jurisdiction) or the California Environmental Quality Act (CEQA), consistent of the requirements contained within both (as applicable). Furthermore, a quantitative economic evaluation pertaining to conservation actions is not feasible or required at this programmatic level due to the difficulty in quantifying non-market values for BLM-administered lands within the DRECP (as further discussed in Section IV.23.1.1.2) and because any data would become outdated due to dynamic market forces.

While the SE analysis does not specifically consider communities with populations of less than 10,000, the affected environment chapter does include analysis on socioeconomic characteristics of Inyo County. See in particular subsections III.23.5.5 and 5.6 (p. III.23-18) as well as county-level socioeconomic data in multiple tables.

For these reasons, the decision in the DRECP PLUPA/FEIS to only include incorporated cities with a population of at least 10,000 is consistent with this approach and consistent with the principles of NEPA and its implementing regulations. In a similar manner, the EIS economic impact assessment of the effects on motorized recreation was prepared at a scale commensurate with the programmatic nature of the PLUPA.

NEPA – Impacts Analysis - Water

Issue Number: PP-CA-DRECP-15-04-6
Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association
Protestor: David Hubbard

Issue Excerpt Text: Under the preferred alternative, the DRECP will consume 44,000 acre feet of water per year which equates to 14.3 million gallons per year—nearly all of it from existing groundwater sources. This reflects an increase of at least 15,000 acre feet (4.8 million gallons) per year over the No Action alternative’s groundwater consumption. The EIS, however, provides a weak and incomplete analysis of this impact. The EIR’s data on existing groundwater levels and pumping demands, as set forth in Table III. 6-1, are exceedingly old and/or incomplete; do not reflect current conditions; and provide an unrealistic and unreliable foundation on which to base an impact analysis. In short, it does not allow one to conduct the kind of “hard look” assessment that NEPA requires.

Issue Number: PP-CA-DRECP-15-04-7
Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association
Protestor: David Hubbard

Issue Excerpt Text: The EIS makes no real attempt to address the DRECP groundwater demands in the context of the historic drought that has plagued California for the last six years; nor does the EIR demonstrate that the DRECP is consistent with the State of California’s emergency water conservation measures or the state’s long-range drought-management objectives.

Issue Number: PP-CA-DRECP-15-04-8
Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association
Protestor: David Hubbard

Issue Excerpt Text: In addition, the EIS fails to address the extent to which groundwater pumping from DRECP projects will affect the biological resources that depend on groundwater. If groundwater levels cannot be maintained at biologically-required levels, these resources will die and not return, causing a cascade of related impacts to plants and wildlife. The EIS likewise fails to evaluate whether and to what extent the DRECP will affect groundwater supplies available to local farmers.

Issue Number: PP-CA-DRECP-15-18-42
Organization: Center for Biological Diversity
Protestor: Ileene Anderson

Issue Excerpt Text: proposing to designate SRMAs and ERMAs in the absence of analyzing how minimization requirements were applied in the areas and were met in the route designation process. Impact analysis should have included but did not: (1) the impacts to surface waters from the loss of natural washes and other features as well as increased erosion; and (2) significant but avoidable impacts to soils, surface hydrology and air quality, in violation of BLM’s mandates to protect these important public resources.

Issue Number: PP-CA-DRECP-15-18-45
Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately address direct, indirect, and cumulative impacts to surface and groundwater resources in the planning area particularly from solar thermal technologies that use substantial amounts of water.

Issue Number: PP-CA-DRECP-15-18-46

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately address the impacts to surface waters from the loss of natural washes and other features as well as increased erosion. The FEIS fails to adequately assess impacts to surface hydrology (and thereby also fails to address many impacts to soils). Recent experiences with massive flooding and erosion at ISEGS, the Desert Sunlight and Genesis projects in California also show that this issue has been inadequately addressed by BLM in the past.

Issue Number: PP-CA-DRECP-15-18-48

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately address the impacts to surface waters from the loss of natural washes and other features as well as increased erosion throughout the planning area. This is particularly critical in that the failure to address this issue on a site-specific basis for at least one project in the East Riverside SEZ lead to flooding of the site. While all of the impacts of that event on the Genesis site have not yet been studied, a review of some materials available on the California Energy Commission website

clearly show that the grading on the site of this poorly-planned and sited project has most certainly caused extensive damage to soils down gradient.

Issue Number: PP-CA-DRECP-15-18-49

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Failing to adequately address impacts to groundwater resources of these federal lands and federal reserved water rights.

Issue Number: PP-CA-DRECP-15-39-3

Organization: Lucerne Valley Economic Development Association

Protestor: Chuck Bell

Issue Excerpt Text: Lucerne Valley is one of the 15 'over-drafted' groundwater basins mentioned in the Final DRECP where DFA's/Variance/Unallocated/Exchanged lands are designated. We are also an adjudicated basin with water rights currently apportioned. The EIS' analysis of groundwater in over-drafted basins doesn't reflect the reality of the water consumption required for large-scale solar construction and the net impact on the basin and its residents. As an example two recent solar projects with a total of @ 200 acres on private land in Lucerne Valley used approximately 50 acre' for construction purposes alone - with a construction supervisor admitting that the use should have been close to 70 acre' to avoid blowing dirt, visits from County Code enforcement and the Mojave Desert Air Quality Management District, plus any fines that were imposed. Most of the terrain designated for development in our region has similar soil and erosion characteristics as the two locations cited above - with similar

construction water requirements. The EIS should assess the ‘worst case’ analysis by (i.e.) dividing the designated DFA acreage by 200- and multiplying that by 50-70 acre’- to come up with at least an approximate amount of acre feet of water potentially required- just for construction- not even for panel washing, maintenance, dust control, etc. for operation. Bottom-line; even if a project obtains the necessary water from a local water rights holder- said consumption would contribute to the overdraft of our adjudicated basin.

Issue Number: PP-CA-DRECP-15-43-10
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: Opening Special Study Areas for Development Has Unstudied Water Resources Impacts. The Preferred Alternative designates 26,000 acres west of Highway 395 for renewable energy development. These acres fall within a stressed groundwater basin, and provide habitat to important special status species. By opting to open this area up for renewable energy development, and by allowing future

BLM actions that waive CMAs, BLM has failed to take a hard look at the impacts of renewable energy development in this area on groundwater resources and groundwater dependent species and habitat.

Issue Number: PP-CA-DRECP-15-43-9
Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The FEIS Does Not Address the Impacts of Climate Change on the Water Supply. The recharge rate of aquifers underlying the DRECP Project area will face dramatic stresses in future drought conditions if climate change models are accurate. 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 (FEIS E85-12, E85- 202 (Response E85-22)).

Summary:

The DRECP PLUPA/FEIS violates NEPA’s “hard look” requirements in terms of the impacts of on water resources because:

- the data on existing groundwater levels and pumping demands are exceedingly old and/or incomplete;
- it overlooks groundwater demands under potential drought conditions and underestimates the water consumption required for large-scale solar development;
- it fails to analyze the impacts of the proposed SRMAs and ERMAs on surface waters and the increased susceptibility to accelerated erosion; and
- it fails to adequately address direct, indirect, and cumulative impacts to surface and groundwater resources, massive flooding and erosion in the planning area.

Response:

Although the inventory process may occur in concurrence with a land use planning effort, it is a distinct and separate process. Public involvement requirements under Section 202 of FLPMA do not apply to BLM's inventory process, which is performed under Section 201 of FLPMA. The BLM is not required to coordinate with state or local governments, or seek comment from the general public, during its inventory process. The DRECP has taken a holistic look at the hydrologic change management including land water interactions related to SRMAs and ERMAs surface water, accelerated erosion and land-water interaction as a total package.

The BLM has no specific regulatory authority related to use of water or enforcement of water quality laws. The DRECP will be subject to additional analysis of possible water effects, as appropriate. But NEPA analysis in DRECP is objective and sufficient as to the proposed planning decision.

The public had the opportunity to comment on the data and facts and the DRECP does not actually authorize any specific project that impacts water quality. All specific projects implementing the DRECP will be subject to additional analysis of possible water effects, as appropriate, and must comply with the CWA. The DRECP makes no decisions regarding water use permitting and water rights.

Designation of an area as a SRMA or ERMA does not require the consideration of the criteria listed in 43 CFR 8342.1. That regulation refers to designation of areas as open, limited, or closed to off-highway vehicles (OHVs). SRMAs and ERMAs in the DRECP do not change OHV area designations from the No Action Alternative rather they identify an area as having an emphasis on recreation values (BLM manual section 8320). These values are not exclusively motorized recreation, and may also include hiking or bird-watching (See Appendix L of the PLUPA/FEIS for SRMA Management Plans, which identify recreation uses). The DRECP would not authorize new recreational uses, as it is a planning tool to help manage existing recreation. Additionally, the DRECP would not make any travel management decisions or affect existing route networks. Designation of routes is an implementation level decision, and will be subject to appropriate NEPA analysis and public involvement. Site specific water supply assessment and development concerns can be addressed during implementation. Each water use authorization requires an application and permit from the regulatory agency other than BLM. Regulatory decisions are made on a case by case basis.

The DRECP PLUPA/FEIS is based on best available data and science and the adoption of the plan amendment does not violate the CWA. The BLM adequately involved the public in preparing the DRECP PLUPA/FEIS.

NEPA – Impacts Analysis - Wildlife

Issue Number: PP-CA-DRECP-15-02-7

Organization: Basin and Range Watch

Protestor: Laura Cunningham

Issue Excerpt Text: Western snowy plovers (*Charadrius nivosus nivosus*), a Federally Threatened species, may breed on the edges of Koehn Dry Lake after rains have temporarily filled the lakebed. None of this was analyzed because Koehn Dry Lake was not recognized as a dry lake habitat in the draft DRECP. The Koehn Dry lake area has been designated as a DFA in the West Mojave in the FEIS Preferred Alternative, but no analysis of shorebird nesting was undertaken, and significant impacts were potentially overlooked. Cunningham undertook snowy plover surveys on Koehn Dry Lake as a biological contractor for the Bureau of Land Management in the early 2000s, because the BLM considered this as potential breeding habitat.

Issue Number: PP-CA-DRECP-15-04-10

Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: In addition, the EIS fails to disclose how many golden eagles will be taken by the wind farms and solar fields authorized under the DRECP. Instead, the EIS defers this critical assessment, stating that “Take of Golden Eagle would be analyzed and permitted on a project-by-project basis.” (EIS, Table IV. 7-28, n. 2.) NEPA does not permit deferral of such an analysis, especially given the large ranges and territories of golden eagles. Impacts to this species must be conducted on a regional

and plan-wide level to be meaningful. By the time individual wind farms and solar fields are sited and ready for project-level NEPA review, it is too late to relocate the facilities away from golden eagle territories and nests.

Issue Number: PP-CA-DRECP-15-04-9

Organization: Gatzke Dillon & Ballance LLP for the Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: Note also that the EIS fails to disclose whether and how many Mohave tui chubs, Owens pupfish, or desert bighorn sheep- all of which are “fully protected” - will be taken as a result of the DRECP.

Issue Number: PP-CA-DRECP-15-15-33

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS’s re-designed DFAs and Unallocated Lands for these locations do not cure the problems identified by Penrod. The total acreage of the DFAs and Unallocated Lands is roughly the same as the DFAs under the Draft DRECP. And their placement is such that, while their interference with Desert Tortoise Habitat is not quite so drastic, the overall impact is likely to be just as damaging to the desert tortoise. The functional linkages are likely to be compromised, threatening the long-term genetic exchange, demographic stability, and population viability within Tortoise Conservation Areas. The Proposed

LUPA and FEIS's analysis of these impacts is cursory and conclusory.

Issue Number: PP-CA-DRECP-15-18-21

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Detailed information about the conflicts between the proposed SRMAs and ERMAs and other resource values are not clearly identified or analyzed in the Final DRECP. Just a few examples include, but are certainly not limited to:

- the proposed El Paso/Rand, Red Mountain and Superior/Rainbow SRMAs in the Western Mojave which all overlap with federally designated critical habitat for the desert tortoise, ACECs/DWMA established for desert tortoise conservation and recovery under the West Mojave Plan amendment to the CDCA and the Desert Tortoise Research Natural Area (Appendix L_BLM Worksheets – SRMA- ERMA).
- In the Eastern Mojave, the proposed Ivanpah Valley ERMA overlaps with federally designated critical habitat for the desert tortoise and the ACEC/DWMA established for desert tortoise conservation and recovery under the Northern and Eastern Mojave Plan amendment;
- the Shadow Valley ERMA overlaps key connectivity corridors for desert tortoise and bighorn sheep (Appendix L_BLM Worksheets – SRMA/ERMA).
- Other proposed SRMAs overlap designated critical habitat for Inyo California Towhee, the critically endangered Amargosa vole, arroyo toad, southwestern willow flycatcher, and the Lane Mountain milkvetch.

Issue Number: PP-CA-DRECP-15-18-4

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The lack of adequate data and analysis is especially of concern to the Center because of the impacts of the program and the plan amendments on rare and imperiled species, their habitats, and other irreplaceable desert resources including soil and water. For example, the State listed threatened and fully protected black toad is not included in Appendix Q – Baseline Biological Report and yet its habitat in Deep Springs Valley is proposed for designation as “unallocated” lands without any analysis of potential impacts to the species from activities that this designation would allow.

Issue Number: PP-CA-DRECP-15-18-47

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: There is a growing body of evidence regarding the mortality of birds at large-scale renewable energy projects including wind, solar thermal power tower, solar thermal trough, and large-scale PV arrays. The FEIS is far too vague to ensure this issue will be adequately addressed on a site-specific level. Few specifics are included regarding avoidance and minimization measures for siting or specific mitigation measures. This is wholly inadequate for the public to be able to evaluate the likely impacts from BLM's proposed DFA areas much less the effectiveness of contents of the plan to avoid, minimize and mitigate impacts.

Issue Number: PP-CA-DRECP-15-35-7

Organization: National Parks Conservation Association

Protestor: David Lamfrom

Issue Excerpt Text: The Eagle Mountains are also home to several nesting golden eagles, and the region could be more important for nesting than we are currently aware, as a complete survey has not been conducted. The UL designation for the Eagle Mountain region is in direct conflict with conservation of desert bighorn sheep, nesting golden eagles, and the broader connectivity strategy in the region.

Issue Number: PP-CA-DRECP-15-43-13

Organization: Law Offices of Stephan C. Volker obo Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: The FEIS also fails to adequately address and mitigate 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. BLM claims that “a description of typical impacts from renewable energy and transmission development on biological resources” is sufficient to take a “hard look” at the project’s impacts. FEIS E85-204 (Response E85-27); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (FEIS must take a “hard look” at project’s impacts); Block, supra, 690 F.2d at 761. Not so. Without site specific information on the status of these species, as well as information about the location and type of development that will be authorized, the impacts analysis cannot suffice to provide the necessary “hard look.” Robertson, supra, 490 U.S. at 350. BLM’s claim that impacts to the species listed above “are addressed for each alternative in Section IV.7.3” does nothing to remedy the failure of that section to address the actual impacts of proposed projects to species, since there is a dearth of site-specific information with regard to species, their habitat, and proposed development.

Summary:

The DRECP PLUPA/FEIS violates NEPA because it fails to adequately analyze:

- the take of Golden Eagles, Mohave Tui Chub, Owens Pupfish, and Desert Bighorn Sheep;
- impacts of large-scale renewable energy on birds;
- impacts of proposed Special Recreation Management Areas (SRMA) and Extensive Recreation Management Areas (ERMA) on critical habitat and connectivity corridors;
- impacts to the black toad; and
- impacts to sensitive, protected, and biologically diverse species, such as flat-tailed horned lizard, Western snowy plover, desert bighorn sheep, desert tortoise, and burrowing owls.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the DRECP, as an amendment to the CDCA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount of the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground decisions or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Take of Golden Eagles, Mohave Tui Chub, Owens Pupfish, and Desert Bighorn Sheep

The DRECP PLUPA will not result in the take of golden eagles under the Bald and Golden Eagle Protection Act, or the Mohave tui chub, Owens Pupfish, or desert bighorn sheep, which are “fully protected” species under California Department of Fish and Wildlife Code. Additionally, the DRECP does not eliminate the need for site-specific environmental reviews for future utility-scale renewable energy projects; in fact, it specifically states that future site specific analysis is necessary (DRECP PLUPA/FEIS Section I.3.1.3, p. I.3-9). The BLM will make separate decisions whether or not to authorize individual projects in conformance with the existing land use plans, as amended by the DRECP. In authorizing the construction of renewable energy facilities or other activities on BLM-administered lands, the BLM must comply with NEPA, the Endangered Species Act (ESA), and other applicable statutes and regulations.

In regards to the federally listed Mohave tui chub and Owens Pupfish, analysis of the potential site-specific impacts and/or take of these species at the land use planning stage would be speculative. Impacts to Mohave tui chub, Owens Pupfish, and the habitat of riparian and wetland species are adequately analyzed in Section IV.7 of the FEIS. Conservation management actions (CMA) pertaining specifically to federally-listed fish species LUPA-wide can be found in the DRECP PLUPA/FEIS in Section II.3.4.2.1.1, p. II.3-176, LUPA-BIO-RIPWET-4 and LUPA-BIO-RIPWET-5.

Section IV.7 of the FEIS provides an adequate analysis of the impacts of the PLUPA on all potentially-affected species of birds. In this section, impacts of renewable energy and transmission development are broken out and analyzed by specific impacts associated with development, such as siting, construction, and decommissioning. An analysis of those impacts is then detailed by affected resource.

For example, Impact BR-9 (DRECP PLUPA/FEIS, Section IV.7.3.2.1, p. IV.7-156) describes the impacts of operation activities associated with wind, solar, and transmission development, on avian and bat injury and mortality. This discussion specifically addresses impacts from collisions, thermal flux or electrocution at generation and transmission facilities.

Specific to golden eagles, “as proposed in the LUPA, potential authorization of incidental take of golden eagles on BLM-managed land will be addressed on an activity specific basis through the USFWS’s Bald and Golden Eagle Protection Act permitting authorities, and in coordination with CDFW as appropriate, consistent with BLM policies,” (DRECP PLUPA/FEIS, Appendix H, Section H.2.11).

Additionally, the Proposed LUPA contains provisions specifically for the conservation of golden eagles consistent with the Eagle Act, BLM policies, and the USFWS Eagle Conservation Plan Guidance. CMAs for golden eagles include nest buffers, limits on foraging habitat impacts, 2-years of pre-project surveys, risk assessments, potential seasonal closures to protect nesting, and monitoring (DRECP PLUPA/FEIS Section II.3.4.2.1.1, p. II.3-185, LUPA-BIO-IFS-24 through 31, and Section II.3.4.2.2, p. II.3-223, CONS-BIO-IFS-5). The approach to golden eagles contained in Appendix H, Section H.2.11 describes how potential impacts to golden eagles would be avoided, minimized, and compensated for.

Impacts to the black toad

The black toad was not analyzed in the DRECP because the area in which it occurs in the CDCA is outside the impact area. A substantial portion of the black toad’s habitat on public land is within the area proposed as National Conservation Lands (PLUPA/FEIS Section II.3.2.1.1, Basin and Range Subarea, p. II.3-24). Additionally, management in this area will essentially be unchanged by the DRECP PLUPA, with the exception of DRECP-wide CMAs which would serve to clarify and in some circumstances strengthen conservation of its habitat on public lands. The DRECP PLUPA does not weaken any existing conservation for the black toad.

Impacts of proposed SRMAs and ERMAs on critical habitat and connectivity corridors

The FEIS adequately addresses the impacts of ecological and cultural conservation and recreation designations on biological resources in Section IV.7.3.2.2 of the FEIS starting on page IV.7-162. Generally, “[r]ecreation designations (i.e., SRMAs and ERMAs) provide guidance for recreational management and formalize already existing recreational use; these designations [do] not create additional areas for recreation or modify recreational routes or access. Therefore, these designations were not considered to result in adverse effects to biological resources.” Travel management classes (open, limited, and closed) and route designations are outside the scope of the DRECP LUPA, therefore, existing decisions were not revisited. Appendix L, BLM Special Unit Management Plans, of the DRECP Proposed LUPA/FEIS goes into extensive detail for each SRMA and ERMA, including the area’s objective statement, primary activities, management actions and allowable uses. As stated in this appendix, “if a SRMA or ERMA management plan is silent on a resource or use, the plan-wide CMAs will apply. If plan-wide CMAs and SRMA or ERMA management plans are inconsistent, the more site-specific management will apply,” (DRECP PLUPA/FEIS, Appendix L, p. 5).

While the protester points out overlap between SRMAs and ERMAs and designated critical habitat and connectivity corridors, the protest does not identify information contradicting BLM's finding in the FEIS that these designations will not have an adverse effect on the biological resources. Future implementation actions within SRMAs and ERMAs will undergo the appropriate level of NEPA analysis and public involvement and ESA Section 7 compliance, and will consider the presence of, and effect on, wildlife resources and designated critical habitat in accordance with the CDCA, as amended, and applicable laws, regulations and policies.

Impacts to sensitive, protected, and biologically diverse species

Impacts to biological resources, including flat-tailed horned lizard, bighorn sheep, desert tortoise, avian species, and the burrowing owl, are disclosed in Section IV.7 of the DRECP PLUPA/FEIS. For example, the impact analysis summary on Focus Species Habitat for the Preferred Alternative can be found in Table IV.7-20. Additionally, Section IV.7 contains detailed descriptions of potential impacts to focus species. As previously stated, a land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

In regards to snowy plover, the shorebird "...has been documented to nest at Harper Dry Lake and Searles Dry Lake (Garrett and Dunn 1981; National Audubon Society 2011)" (DRECP PLUPA/FEIS, Section III.7.5.3.2, p. III.7-100). The statement that Koehn Dry Lake was not considered as a dry lake in the DRECP is incorrect. As per the DRECP PLUPA/FEIS, Section III.7.5.3.2, p. III.7-100, "[f]or example, Searles Dry Lake east of Trona and Koehn Dry Lake northeast of California City have spring-fed wetlands that expand with winter rains to produce highly productive alkali meadows and mudflats (National Audubon Society 2011)." In its affected environment section, the DRECP FEIS uses high quality information to establish baseline conditions for biological resources, including shorebirds, in the plan area.

The effects of the alternatives on the snowy plover and other migratory shore birds were analyzed in the DRECP PLUPA/FEIS Section IV.7. For the PLUPA/FEIS, Section IV.7.3.2.1, p. IV.7-151, BR-6 states: "...Key bird migration areas affected would include routes between the Tehachapi and San Bernardino passes, and the temporary lakes and wetland refuges on and to the north of Edwards AFB. ...[D]evelopment in the West Mojave and Eastern Slopes...ecoregion subareas would occur in DFAs between the Tehachapi and San Bernardino Mountain passes and dry lakes on Edwards AFB, as well as, the North Mojave dry lakes of China Lake, Koehn Lake, Harper Lake and Searles Lake. ...Application of CMAs would require projects to be sited and designed to avoid impacts to occupied habitat and suitable habitat for Focus Species to the maximum extent practicable. Applicants would develop and implement project-specific bird and bat CMAs (LUPA-BIO-16 and LUPA-BIO-17) to avoid and minimize direct mortality of birds and bats from the operation of the specific wind, solar, geothermal, or transmission project. Further, the compensation requirements in LUPA-BIO-COMP-2 would be based on ongoing/annual fees and the biological basis for the fee will be determined by the mortality effects as annually measured and monitored according to BIO-LUPA-17."

The BLM adequately analyzed impacts to sensitive, protected, and biologically diverse species in the DRECP PLUPA/FEIS. In conclusion, the BLM has complied with NEPA by taking the required “hard look” at impacts to wildlife.

NEPA – Mitigation - General

Issue Number: PP-CA-DRECP-15-09-14

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The current description of disturbance caps appears to be inadequate. Section 6.5.1 of BLM's NEPA Handbook describes why detailed project descriptions are important.⁹ However, the description of disturbance caps in the FEIS is incomplete in that it does not allow for focused and meaningful public input, a complete identification of issues, a sound analysis and interpretation of the efforts, and thus a sound and supportable decision. While the proposed caps appear to be applied to LUPA Conservation Designations only, they will be used in approximately 50.3% of the plan area, yet they are not fully described. Understanding them is critical for the Town, County, and private landowners within the BLM LUPA Conservation Designations.

Based on information from the FEIS (see Section II.3.2.1 and Section II.3.2.2), disturbance levels in NCLs (approximately 73.8% of the LUPA Conservation Designations) will be 1% and in ACECs (approximately 93% new LUPA Conservation Designations)¹⁰, it will vary from 0.1% to 1.0%. There are also caps in the desert tortoise linkage areas, but very little discussion on how these caps will be implemented within the linkage areas depicted. How all the caps will fit together is unknown.

Issue Number: PP-CA-DRECP-15-25-7

Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis

Issue Excerpt Text: Also, the language regarding calculations of disturbance caps is unclear and unnecessarily complicated. OHV Open Areas with the misfortune of being located in ACEC's should be excluded from disturbance calculations, as should the currently designated route networks (including WEMO 2006).

Issue Number: PP-CA-DRECP-15-26-3

Organization: California Off-Road Vehicle Association

Protestor: Amy Granat

Issue Excerpt Text: Volume II Section 3.4.2 contains potentially erroneous statements as part of the CMA's. For example the CMA's are potentially in conflict with the management direction described in the BLM Worksheets in Appendix L. Worksheet Part 12_12 for the Jawbone Butterbredt ACEC indicates that a 1% disturbance cap CMA would be applied, yet also states that under the Preferred Alternative that existing management will continue. Whether or not this will be possible following application of a 1% disturbance cap is unclear.

Issue Number: PP-CA-DRECP-15-26-6

Organization: California Off-Road Vehicle Association

Protestor: Amy Granat

Issue Excerpt Text: In addition, the BLM does not establish a clear connection between the facts presented in Volume II Section 3.4.2 and the conclusions reached by the agency for development of the CMA's. The disturbance cap is simply adopted

without a discussion of its merits, scientific basis or alternative methodologies. The references provided do not address the concept of a disturbance cap and its merits or lack thereof. We contend that this constitutes an error of law in the DEIS and a potential violation of the Administrative Procedures Act (U.S.C. Section 706 (2)(A)).

Issue Number: PP-CA-DRECP-15-27-9

Organization: Individual

Protestor: Randy Banis

Issue Excerpt Text: The disturbance caps have been set arbitrarily at a round percentage without any scientific validation of the resulting value. The EIS does not contain sufficient information to fully assess how the disturbance cap levels were determined for each conservation polygon, and how the cap was calculated to be the exact same for all conservation polygons regardless of their condition or values. Please show us the science that says that a 1% cap is appropriate for each and every conservation polygon regardless of each polygons' unique attribute.

Issue Number: PP-CA-DRECP-15-28-3

Organization: Eastern Kern County

Protestor: Sophia Anne Merk

Issue Excerpt Text: Comment CZ0-8 acknowledges that DRECP does not repeal the Mining Law of May 10, 1872 or the Mining and Mineral Policy Act of 187030 USC 21. Mining laws should not be overridden. However, there are some overlapping designations and the disturbance cap requirements in DRECP pit mining versus recreational uses. There is a

need to calculate the disturbance levels that already exist. An explanation and clarification should be made dealing with the 1 to 10,000 scale on satellite imagery and compared with BLM aerial surveys. To what level do ministerial actions trigger disturbance cap action for assessment? We believe that there should be a definition of what the trigger is and what constitutes implementation of the trigger in regard to changes in the disturbance cap.

Issue Number: PP-CA-DRECP-15-41-6

Organization: Desert Advisory Council

Protestor: Mark Algazy

Issue Excerpt Text: One extremely valid [and completely undiscussed] point regarding the calculation of disturbance caps was only made to me a few days ago. Since the implementation of the court order in the WEMO decision, many, many miles of disturbances in both proposed ACEC and NLCS lands have been restored. However, the restoration work, in the interest of achieving the highest level of results within the court-mandated timeframes has been largely limited to line-of-sight restoration work originating from legal routes of travel into incursions. What this means is that ILLEGAL routes still exist within the interior of these no-travel areas. They technically fit the definition of ground disturbance. My friend made it abundantly clear that in the vague manner DRECP is proceeding to a ROD, there is no guarantee that these routes WHICH NO ONE HAS LEGAL ACCESS TO will not be used in disturbance caps calculations. And, to his consternation, there is no way to address this in the protest process as it is currently offered by the Bureau.

Summary:

The DRECP PLUPA/FEIS violates NEPA because:

- the description of disturbance caps in the FEIS is incomplete and does not allow for focused and meaningful public input, a complete identification of issues, a sound analysis and interpretation of the efforts, or sound and supportable decisions;
- the disturbance cap is adopted without a discussion of its merits, scientific basis or alternative methodologies;
- it is unclear whether existing unauthorized routes could be used in the disturbance cap calculations; and
- the disturbance cap CMAs conflict with the management direction in the BLM Appendix L Worksheet for the Jawbone Butterbret ACEC, which indicates that a 1% disturbance cap CMA would be applied, yet also states that existing management will continue under the Preferred Alternative.

Response:

NEPA regulations require the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). NEPA regulations also require the BLM to implement procedures to make the NEPA process more useful to the public and ensure clarity in environmental impact statements (40 CFR 1500.2(b)).

The targeted disturbance caps included in the DRECP PLUPA/FEIS were established as surrogates for thresholds of sensitivity for desert ecosystems, species, and cultural resources (DRECP PLUPA/FEIS Volume II.3.2.1, p. II.3-18 and II.3.2.2, p. II.3-66). The biological information presented in Vol III, Vol IV and the Appendices, with their cited literature, support the necessity of ground disturbance limitations in the conservation lands to meet and/or maintain the values of the areas.

The disturbance caps in the National Conservation Lands are 1.0%. In the areas of critical environmental concern (ACEC), which through much of the LUPA are sub-units of the larger National Conservation Lands the disturbance caps range from 0.1% to 1.0%, depending on the sensitivity of the resources within the ACECs to ground disturbance (DRECP PLUPA/FEIS, p. II.3-18). Table II.3-25 presents the desert tortoise Conservation Area and linkage ground disturbance caps in the DRECP PLUPA/FEIS Conservation Designations (DRECP PLUPA/FEIS, p. II.3-222), which correspond with details and maps in Appendix H. Table II.3-28 presents the plant focus species suitable habitat disturbance caps within development focus areas and variance process lands (DRECP PLUPA/FEIS, p. II.3-247). In the ACEC Special Unit Management Plans (DRECP PLUPA/FEIS Appendix L), the specific ground disturbance caps are displayed on the individual ACEC maps.

Chapter II.3 of the DRECP PLUPA/FEIS describes the disturbance caps, the process for implementing disturbance caps, the approach for calculating ground disturbance, mitigation requirements, and disturbance recovery criteria for the Preferred Alternative. The DRECP PLUPA/FEIS clearly explains on page II.3-20 that the calculation of ground disturbance must include, among other things:

- Known routes - all routes, trails, etc. in Ground Transportation Linear Feature (GTLF) (or other relevant databases if GTLF is replaced), authorized and unauthorized; and
- Any unauthorized disturbance that can be seen at a 1:10,000 scale using the best available aerial imagery.

On page II.3-22, the DRECP PLUPA/FEIS describes the criteria the BLM will use to determine if previous disturbance should be considered “recovered” and therefore no longer count towards the disturbance cap. The BLM will consider an area recovered if it meets one of the following two criteria: field verification that disturbance area(s) are dominated by the establishment of native shrubs, as appropriate for the site, and demonstrated function of ecological processes (e.g., water flow, soil stability); or disturbance can no longer be seen at the 1:10,000 scale using the best available aerial imagery. For example, if portions of an unauthorized route are restored, such as with line of sight restoration, the areas not part of the line of sight restoration would still be considered disturbance until they meet one of the two recovery criteria, as line of sight restoration does not restore routes’ ecological function. The BLM would determine if an area is considered recovered as part of the disturbance calculation, either as part of the 10-year evaluation or as needed on a project-by-project basis.

It must also be noted that the disturbance cap calculations established by this plan would take place in the context of considering a proposed site-specific action, which would include a subsequent NEPA review, with the appropriate public involvement.

In regards to a perceived conflict between the proposed disturbance caps and existing management, as one protester identified for the Jawbone-Butterbredt ACEC, the BLM does not view the proposed disturbance cap and existing management as contradictory. As described in Sections II.3.2.1, II.3.2.2, II.3.4.2.3.3, and II.3.4.2.4.2 of the DRECP PLUPA/FEIS, the disturbance cap is applied when a ground disturbing activity needs BLM approval. At that time, factors such as the restoration of previous disturbances are considered in calculating ground disturbance.

Section II.3.2.1 of the DRECP PLUPA/FEIS also discussed proposed monitoring and adaptive management associated with the disturbance caps. In the event that monitoring results show the total ground disturbance within the ecoregion exceeds the 1% threshold/cap and the best available data (e.g., species demographic changes, habitat availability, etc.) indicates or illustrates that the resource most sensitive to ground disturbance in that ecoregion for which it was conserved (i.e., biological or cultural) are improving, then adaptive management may be considered, including increase in the disturbance cap in all or portions of the ecoregion, or decrease in the required disturbance mitigation (DRECP PLUPA/FEIS, p. II.3-23)

Section II.3.4.2.1.7 of the DRECP PLUPA/FEIS discusses the proposed management for identified minerals lands and existing mining and energy development (locatable, salable, solid leasable and geothermal minerals) with currently approved Plans of Operations, Notices, Mine and Reclamation Plans or Plans of Development, under the authorities 43 CFR 3200; 3500; 3600; and 3802/09. This section of the DRECP PLUPA/FEIS explains that existing authorized mineral/energy operations, including existing authorizations, modifications, extensions and amendments and their required terms and conditions, are proposed for designation as an

allowable use within all BLM lands in the LUPA Decision Area, and unpatented mining claims subject to valid existing rights. Amendments and expansions not authorized prior to the completion of the DRECP LUPA ROD will be subject to applicable CMAs, including disturbance caps within Ecological and Cultural Conservation Areas, subject to valid existing rights and applicable laws and regulations. Existing high-priority mineral/energy operation footprints and their identified expansion areas would be excluded from proposed renewable energy and conservation CMAs (DRECP PLUPA/FEIS, p. II.3-204).

The DRECP PLUPA/FEIS clearly and thoroughly describes proposed mitigation measures and conforms with NEPA requirements.

NEPA – Mitigation – Air and Water

Issue Number: PP-CA-DRECP-15-15-52

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS’s discussion then goes on (at pages IV.6-20 through 25) to identify impacts of the Preferred Alternative on groundwater, including altering groundwater recharge, lowering groundwater levels, depleting water supplies, causing land subsidence and permanently decreased storage capacity and causing existing poor-quality groundwater to migrate.

Against this background, the FEIS propose a series of CMA’s to mitigate the effect of renewable energy development on these multiple stressed and over drafted groundwater basins, under the Preferred Alternative. Chief among these CMA’s is LUPA-SW-18:

“A project’s groundwater extraction shall not contribute to exceeding the estimated perennial yield for the basin in which the extraction is taking place. Exceeding a basin’s perennial yield can have undesirable effects on the basin’s physical and chemical condition. It is further quantified arithmetically in CMA LUPA-SW-24.”

In turn, LUPA-SW-24 reads:

“A Water (Groundwater) Supply Assessment shall be prepared prior to project certification or authorization. The purpose of the Water Supply Assessment is to determine whether over-use or overdraft conditions exist within the project basin(s), and whether the project creates or exacerbates these conditions. This analysis shall be in the form of a numerical groundwater model. The model extent shall

encompass the groundwater basin(s) where a project would be built, and any groundwater-dependent resources within the groundwater basin(s).”

These CMA’s, and their secondary companions, suggest that a utility scale renewable energy project in the desert may not have an impact on the underlying groundwater basin. This contradicts the FEIS’s conclusion that it will have an impact on the groundwater basin. Under the preferred alternative at least 15 separate overdraft and stressed sub-basins are likely to be affected by renewable energy development in the DFA’s. This does not include the additional basins in overdraft or stressed conditions which would be impacted by renewable energy development on Unallocated and Variance lands. As the FEIS’s discussion of groundwater impacts acknowledges, industrial-scale renewable energy projects consume water at the construction, operation and decommissioning stages. If they are hydrologically connected to a stressed or over drafted groundwater basin, they will by definition contribute to exceeding the estimated perennial yield for that basin. For the masthead CMA to suggest that this may not happen, after having clearly explained that it will happen, puts the FEIS in a position of proposing a CMA which by definition will not mitigate the impact. This is an inadequate and indeed an internally contradictory mitigation plan for impacts on groundwater.

Issue Number: PP-CA-DRECP-15-15-53

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text At the meeting of the BLM’s Desert Advisory Committee (the “DAC”) on September 27, 2014, in Pahrump, Nevada: certain members openly questioned the wisdom of the DRECP (in its then-current form) “less than significant” groundwater impact finding. The reply of Peter Godfrey, a BLM water specialist who was one of the authors of the groundwater portions of the Draft DRECP, was that, in terms of assessing our aquifers’ future sustainability, a long-term time horizon of as much as 30 years is required – that is, after the DRECP’s own 25-year lifetime has ended, and perhaps long after the groundwater basins may have passed the point of no return. (Excerpts of Mr. Godfrey’s presentation are Ex. F in the Appendix to Protesting Parties February 20, 2015 comment letter [E-58]) If this is indeed true, then the FEIS’s attempt to address groundwater at the project level is futile, because the same absence of data and understanding which according to Mr. Godfrey makes program-level analysis impossible will thwart analysis at the project level. Yet the proposed CMA’s for groundwater under the FEIS assume (such as LUPA-GW-24, quoted above) that the developer will be capable of conducting a “Water Supply Assessment”, using an

arithmetic formula. This “arithmetic assessment” is with respect to variables which at the programmatic level are deemed to be unknown and unknowable. In short, the Proposed LUPA and FEIS approach reflects the use of incomplete and inaccurate data as it relates to mitigation of groundwater impacts.

Issue Number: PP-CA-DRECP-15-20-38

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: With the extremity of non-attainment for ozone in most of the region, it is impossible to claim that any incremental impact will not be harmful as mitigation is extremely difficult. Most importantly, mitigation using “emission reduction credits” should not be an option as it has a high likelihood of being ineffective as well as potentially failing to provide air improvements in the affected air basin, as detailed in our comments. Rather, only funding of each air district’s emission reduction programs should be permitted as mitigation. This will have the benefit of actual reductions, and reductions in the same air basin as the emissions.

Summary:

The DRECP PLUPA/FEIS violates NEPA because:

- proposed groundwater mitigation measures are inadequate and internally contradictory; and
- proposed mitigation measures for ozone are inadequate as “emission reduction credits” have a high likelihood of being ineffective and fail to cause improvement in air quality the affected air basin.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3)

rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). Additionally, the BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”. Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2).

FLPMA requires that when preparing land use plans, the BLM must “provide for compliance with applicable pollution control laws, including State and Federal water, air, noise, or other pollution standards or implementations plans” (FLPMA, Section 202(c)(8)). The State of California and the United States Environmental Protection Agency have primacy with regard to implementation of the CWA and the CAA. The BLM has no specific regulatory authority related to permitting and enforcement of the CWA or CAA. Through its land use plans, the BLM establishes desired outcomes for air quality and sets “area wide restrictions” needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2).

The protesters are referred to DRECP PLUPA/FEIS Section IV.6 (Section IV.1: starting on page IV.1-14)). Additionally, as described in the proposed CMAs LUPA-SW-24 through LUPA-SW-26, a Groundwater Monitoring and Reporting Plan, and a Mitigation Plan, would need to be prepared and followed to verify the assumptions in the Water Supply Assessment, and to adaptively manage groundwater extraction if drawdown exceeds certain thresholds that indicate impacts to nearby wells or riparian areas. These measures may be imposed even when groundwater extraction does not appear to exceed the basin’s sustainable yield. Thus, protection is provided for each groundwater basin in the DRECP area in spite of any uncertainty in that basin’s sustainable yield.

The DRECP PLUPA/FEIS proposes avoidance, minimization and compensation measures (i.e. CMAs) regarding water resources including groundwater supply and water quality that will reduce potential future impacts by closing public lands in conservation allocations to certain uses, specifically renewable energy generation facilities, permitting it in line with the regulation on water resources, and the Clean Air Act minimizes other potential future impacts by restricting certain uses on the public lands. At the land use planning-level, it is not intended to analyze site and location specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of a land use plan does not directly result in any on-the-ground impacts. The BLM will look at all appropriate mitigation measures during the plan implementation.

For the DRECP PLUPA/FEIS, the BLM conducted air quality analyses to determine impacts from land management actions anticipated on federal lands under the DRECP alternatives on air quality. The BLM emission control strategies and mitigation measures address context specific

impacts to achieve the desired outcomes. The BLM is neither writing new regulations, nor is the BLM establishing itself as a regulatory agency or establishing mitigation measures that are intended to supersede the regulatory authority of the Environmental Protection Agency (EPA) and the state of California over air quality. Rather, the BLM is adopting an integrated approach to multiple use management and sustainable management of natural resources. The BLM has taken a holistic and hard look in responding to estimated impacts from the DRECP PLUPA/FEIS and complying with NEPA.

The approval of the DRECP PLUPA/FEIS plan provides for compliance with NEPA based on a professional interdisciplinary analysis and disclosure based on best available data.

NEPA – Mitigation - Wildlife

Issue Number: PP-CA-DRECP-15-18-39

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The proposed DRECP LUPAs unjustifiably reduce mitigation for impacts to impacted species. Given the Phased approach (BLM only plan) and no state NCCP in process where a majority of the development was to occur, there is no longer a basis for assuming all of the additional private and public land conservation commitments that BLM relied on in the DEIS as the reason for lowering mitigation ratios will actually happen. Under the existing WEMO plan, a ratio of 5:1 (conservation acres : impact acres) are required as mitigation for impacts occurring in the currently designated Mohave Ground Squirrel Conservation Area. The DRECP LUPAs, without any justification, reduces the mitigation ratio to 2:1 in “Key Areas” only. Impacts to Mohave ground squirrel habitat outside “Key Areas” is further reduced to a 1:1 ratio. The DRECP LUPAs fail to justify this significant reduction in mitigation, especially in light of ongoing declines for this western Mojave desert endemic mammal.

Issue Number: PP-CA-DRECP-15-18-40

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The DRECP LUPAs retain a 5:1 ratio for federally designated desert tortoise critical habitat only – not other designated critical habitat or other

existing conservation areas that currently have 5:1 or 3:1 mitigation requirements. Current ACEC/DWMAAs designated by BLM to implement the Desert Tortoise Recovery Plan that are not within critical habitat and U.S. Fish and Wildlife Service identified crucial linkages between conservation areas are proposed to be mitigated only at 1:1. No justification is given for the reduction in mitigation from the current requirements.

Issue Number: PP-CA-DRECP-15-18-41

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The DRECP LUPAs also unjustifiably roll back mitigation obligations in the Ivanpah Valley, where the Ivanpah DWMA was expanded as part of the mitigation for the Stateline solar Project (through the Stateline EIS’ ROD) that required those additional lands be put into the DWMA to achieve the required 5:1 mitigation obligation for impacts to desert tortoise habitat. The DRECP LUPA preferred alternative overturns that mitigation requirement because it eliminates the DWMA, reducing the conservation value of the area, which under the proposed alternative would receive 1:1 mitigation if it is impacted by any kind development.

Issue Number: PP-CA-DRECP-15-18-47

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: There is a growing body of evidence regarding the mortality of birds at large-scale renewable energy projects including wind, solar thermal power tower, solar thermal trough, and large-scale PV arrays. The FEIS is far too vague to ensure this issue will be adequately addressed on a site-specific level. Few specifics are included regarding avoidance and minimization measures for siting or specific mitigation measures. This is wholly inadequate for the public to be able to evaluate the likely impacts from BLM's proposed DFA areas much less the effectiveness of contents of the plan to avoid, minimize and mitigate impacts.

Issue Number: PP-CA-DRECP-15-20-11
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: In addition to the direct loss of habitat from development, the DRECP LUPA would significantly reduce the 5:1 compensatory mitigation requirement for loss of MGS [Mohave ground squirrel] Conservation Area currently in effect and replace it with a 2:1 requirement that is limited to the species' key population centers. As discussed more fully above, the BLM established the MGS Conservation Area when it adopted the West Mojave Plan amendments in 2006. The primary conservation provisions for the area included a 1% habitat loss limit and 5:1 compensatory mitigation for habitat lost due to BLM authorized activities.

Issue Number: PP-CA-DRECP-15-20-17
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: The conservation actions taken by BLM through the DRECP

would be diminished by the CMA in the DRECP LUPA. Although 5:1 compensatory mitigation is required in the plan, it applies only within designated critical habitat for tortoise. Existing CDCA Plan requires the same compensation in the DWMA/ACECs.

Issue Number: PP-CA-DRECP-15-20-19
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Under the DRECP LUPA, compensatory mitigation has been reduced from the previous requirement of 5:1 compensatory mitigation within MGS Conservation Area to a requirement of 2:1 mitigation within populations Centers and 1:1 mitigation everywhere else. While we appreciate the fact that the requirement of 5:1 compensatory mitigation for impacts to desert tortoise critical habitat covers portions of important MGS habitat areas, the DRECP LUPA compensatory mitigation requirements continue to leave large areas of important MGS habitat with only 1:1 or 2:1 compensatory mitigation requirements. See Map 16 and compare with Map 12 (Attachment 4). Indeed, Map 16 shows that a number of MGS Key Population Centers are reduced from a previous 5:1 mitigation ratio to a 2:1 mitigation ratio. Further, a comparison of Map 12 with Map 16 shows that important MGS linkage areas are at significant risk as they are proposed to be either DFA or Unallocated Lands with the lower 1:1 mitigation ratio when those areas currently have a mitigation ratio of 5:1.

Issue Number: PP-CA-DRECP-15-20-9
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: although the DRECP LUPA requires 5:1 compensatory mitigation

within designated critical habitat, the current CDCA Plan requires 5:1 compensatory mitigation within DWMA/ ACECs. The difference in acreage between desert tortoise critical habitat and DWMA/ACECs is substantial and affects all Desert Tortoise Recovery Units. According to our analysis, there are 236,000 acres of DWMA/ ACECs located outside the boundaries of the various desert tortoise critical habitat units. The following three maps detail the DWMA/ACECs acres that would have only a 1:1 compensatory mitigation requirement under the DRECP LUPA (depicted in light blue). See Maps 7-9 (Attachment 4). The DWMA/ ACECs acres not covered by desert tortoise critical habitat contain important desert tortoise habitat, despite that fact that they do not have the critical habitat designation. Indeed, 233,000 of the 236,000

acres of DWMA/ ACECs not within desert tortoise critical habitat are high value habitats according to the latest scientific information from the USFWS. There are 97,000 acres of DWMA/ ACECs located outside of designated critical habitat that are within Desert Tortoise Connectivity Habitat (P1) as identified by the USFWS in its comments to the BLM on the Solar PEIS (Map 10 (Attachment 4)). In addition, there are 136,000 acres of DWMA/ ACECs outside of designated critical habitat that are within Desert Tortoise High Value Habitat (P2) as identified by the USFWS in its comments to the BLM on the Solar PEIS (Map 11 (Attachment 4)). These high value habitat areas should continue to have the higher 5:1 compensatory mitigation ratio in the DRECP LUPA instead of the much lower 1:1 mitigation ratio.

Summary:

The BLM's proposed measures to mitigate impacts to species violate NEPA because:

- no justification is given for the significant reductions in mitigation from the current requirements to address impacts on the Mohave Ground Squirrel and desert tortoise; and
- given the vague discussion of mitigation to address the impacts of renewable energy development on bird species, the public is unable to properly evaluate the effectiveness of the mitigation of impacts on birds.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f) and 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The DRECP PLUPA/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses, and minimizes other potential future impacts by restricting certain uses on the public lands. Furthermore, Appendix H of the DRECP Draft LUPA/EIS describes the methodology used for developing the proposed compensatory mitigation requirements.

The BLM Preferred Alternative for the DRECP PLUPA/FEIS would concentrate renewable energy development into approximately 388,000 acres of DFAs on BLM-administered lands as compared to the over 6.3 million acres of BLM-administered lands considered open to utility or non-utility scale solar, wind, or geothermal renewable energy development under the No Action Alternative, of which over 2.8 million acres are considered open and where past and current utility-scale renewable projects are being sited . Compared to approximately 2.4 million acres in existing ACECs on BLM-administered lands under the No Action Alternative, under the DRECP PLUPA/FEIS Preferred Alternative, the BLM LUPA would designate approximately 6 million acres of BLM LUPA conservation designations on BLM-administered lands, including 3.9 million acres of National Conservation Lands , 6 million acres of ACEC [of which 2.5 million acres are not included in proposed National Conservation Lands also], and approximately 18,000 acres of wildlife allocation (DRECP PLUPA/FEIS Volume II.3.2.1 on p. II.3-18, II.3.2.2 on p. II.3-66, II.3.2.3 on p. II.3-73, Volume IV.7 onp.IV.7-199, and Appendix L). While other land uses are allowed within these areas, these other uses must be compatible with the resources and values that the land designation is intended to protect (DRECP PLUPA/FEIS Volume IV.7 on p. IV.7-162 and Appendix L).

Please refer to the “CDCA” section of this report for further discussion of the mitigation ratios proposed by the DRECP PLUPA/FEIS in Mohave ground squirrel and desert tortoise habitat.

Mitigation that would contribute additional conservation acreage under the No Action Alternative would be project-by-project and would not be part of a landscape, desert-wide conservation strategy, as under the DRECP PLUPA/FEIS Preferred Alternative. Avoidance, minimization, and compensation for the impacts of renewable energy, transmission development projects, and other activities under the DRECP PLUPA Preferred Alternative would be through the established DRECP Conservation and Management Actions (CMA) and any additional project-specific mitigation, as appropriate; whereas avoidance, minimization, and compensation for renewable energy, transmission development, and other activities under the No Action Alternative would occur under the currently approved resource management plans and on a project-by-project basis (DRECP PLUPA/FEIS, pp. IV.7-199 to 200)

Section II.3.4.2 of the DRECP PLUPA/FEIS discusses the CMAs that will be used to avoid, minimize, and compensate for impacts to biological resources, including birds, from renewable energy development and other impacting activities. Two of the several categories of CMAs are: 1) LUPA-wide CMAs that would apply to all types of activities within the LUPA Decision Area; and 2) Development Focus Area (DFA) and Variance Process Lands (VPL) CMAs that would apply to areas where renewable energy development is allowed. (DRECP PLUPA/FEIS, pp. II.3-145 to 146) Additionally, all impacts resulting from activities would be required to compensate impacts to biological resources (LUPA-BIO-COMP-1 through LUPA-BIO-COMP-4, DFA-VPL-BIO-COMP-1, DFA-VPL-BIO-COMP-2). (DRECP PLUPA/FEIS, p. IV.7-162)

The approval of the DRECP PLUPA/FEIS does not result in any on-the-ground impacts. The BLM would also look at additional appropriate mitigation measures during the project-level decision making process for future on-the-ground actions in the planning area.

The DRECP PLUPA/FEIS appropriately addressed mitigation of wildlife impacts.

NEPA – Mitigation – Cultural

Issue Number: PP-CA-DRECP-15-24-5

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP reveals that the Plan will result in significant, unavoidable impacts to cultural resources and Native American interests. NEPA therefore requires BLM to evaluate all

mitigation measures that could potentially reduce such impacts (City of Carmel-By-The-Sea v. U.S. Dept. of Transp., 123 F.3d 1142, 1154 (9th Cir. 1997)(An EIS cannot “omit a reasonably thorough discussion of mitigation measures because to do so would undermine the action-forcing goals of [NEPA.]”). Yet the DRECP fails to consider a number of feasible mitigation measures and alternatives, both in violation of NEPA and to the detriment of area tribes.

Summary:

The DRECP PLUPA/FEIS violates NEPA by failing to evaluate all mitigation measures that could potentially reduce significant impacts to cultural resources and Native American interests.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). NEPA also directs federal agencies to conduct systematic, interdisciplinary evaluations of the environmental impacts of proposed actions and alternatives.

Secretarial Order 3330 also directs agencies in the Department of the Interior (DOI) to develop mitigation strategies that will ensure consistency and efficiency in the review and permitting of infrastructure development projects that could impact natural and cultural resources. These mitigation strategies should be integrated early in the planning process, and should be durable, consistent and transparent. In response to this Order, DOI published a mitigation policy and practices improvement strategy, which provides guidelines for achieving an effective mitigation policy, entitled: “*A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior.*”

The DRECP PLUPA/FEIS proposed nearly 100 pages of comprehensive Conservation and Management Actions (CMAs) for the entire plan as well as for individual land use allocations. These CMAs include multiple measures to avoid, minimize, and compensate for impacts to cultural resources. BLM-authorized activities within the DRECP Plan Area would be subject to these CMAs. Within National Conservation Lands and ACECs where cultural values

were identified as meeting the nationally significant criteria for National Conservation Lands, or relevant and important criteria for ACECs, special management is identified in the Special Unit Management Plan in Appendix L. In addition, the BLM has committed to implementing Solar Programmatic EIS design features where deemed appropriate. These measures will complement the BLM's consideration and implementation of mitigation at the project level.

The BLM will look at any additional mitigation measures that are not made at the planning level during the decision-making process for future site-specific actions in the planning area. As part of the DRECP PLUPA/FEIS planning process, the BLM took action to identify and evaluate Native American Tribal mitigation concerns by specifically communicating via a variety of methods such as face-to-face consultation and through the Tribal Federal Leadership Conferences, a forum for the 41 federally recognized tribes in the California desert area (See DRECP PLUPA/FEIS, Chapter III.9 and Volume V "Consultation, Coordination and Public Participation", V.1, for elaboration).

The DRECP PLUPA/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for the land use plan level, and by the addition of ACECs within the planning area that are designated for protection of their natural and cultural resource values.

NEPA – Supplementation

Issue Number: PP-CA-DRECP-15-02-8

Organization: Basin and Range Watch

Protestor: Laura Cunningham

Issue Excerpt Text: The Final Environmental Impact Statement has included an additional 802,000 acres of “unallocated lands” This 802,000 acres was not discussed in the Draft DRECP and is not part of the conservation or development alternatives listed in the draft. The Draft DRECP indicated that the Development Focus Areas and variance lands were the only areas that would allow utility-scale energy projects. The Draft DRECP also indicated that “other areas” would not allow large-scale energy projects. These “other” areas include some public lands with conservation designations. There is now potential to develop energy on nearly double the 428,000 acres of land that has been designated Development Focus. The Final DRECP fails to detail the potential impacts that could occur from development on these lands. The amount of new lands that have been included that could be developed on “unallocated lands” represent a large change from the Draft EIS to the Final EIS decision. We request that a Supplemental Environmental Impact Statement be prepared for the Desert Renewable Energy Conservation Plan that addresses the 802,000 acres of unallocated lands that were added the Final Document. The Final DRECP fails to describe these lands in detail and does not discuss potential impacts on a large acreage.

Issue Number: PP-CA-DRECP-15-09-13

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The use of disturbance caps in managing public lands is part of the proposed LUPA project description. While disturbance caps were mentioned in the DEIS, the concept was not fully described nor was any analysis of their implementation provided, including a methodology for how such caps would be calculated. The FEIS provides substantial new information on this topic. The new information is considerable and raises additional issues regarding the opportunity for public review prior to its approval. The Town is particularly concerned that the use of disturbance caps appears to shift the burden of correcting past BLM management decisions onto local jurisdictions or the public.

Issue Number: PP-CA-DRECP-15-09-2

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The separation of the DRECP into parts is in itself a significant change from the Draft DRECP and its stated Project Purpose. This alone should have triggered the preparation of a Supplemental EIS with a comprehensive analysis of this changed circumstance for public review and comment. However, this did not happen. Instead, an entirely new document with an entirely new project and analysis was released.

Issue Number: PP-CA-DRECP-15-15-2

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The BLM presents the Proposed LUPA and FEIS as though

they are simplified, scaled- down versions of the Draft DRECP and DEIS. They are not. Rather, they are a starting over. “Starting over” means that the DRECP and DEIS are being substantially replaced with something new. Therefore a new period is required for public review and comment. The particulars of these radical departures are countless.

Here are some of the big ones:

- The locations, sizes and configurations of the DFA’s in the various Alternatives are very different from the DFA’s in the Alternatives in the Draft DRECP and FEIS. In many cases these DFA’s have significantly higher Conservation Values than the DFA’s in the DEIS version. In many cases the DFA’s now do not seem to relate to the conservation values of the lands to which they are adjacent.
- The approach to ACEC’s and National Conservation Lands is totally different from the approach in the Draft DRECP and FEIS. These differences include the amount of conservation lands, their size, their location, and the criteria applied. Under the Proposed LUPA and FEIS, and unlike under the Draft DRECP, the responsible agency – now the BLM alone does not have jurisdiction over part or all of the proposed Wildlife Corridors is of grave importance. This creates extremely perplexing issues for study, comment or protest.
- The Proposed LUPA and FEIS for the first time incorporate WEMO travel and management decisions into the ACEC’s. This creates, for the first time, the need for the public to study the interrelationship of the WEMO values and the new ACEC. Further, even after study it is not at

all clear how access will be achieved.

- The amount and location of Unallocated Lands, the location of the Lands, their frequent juxtaposition to DFA’s, and the fact that these lands are generally significantly higher in Conservation Values than the DFA’s, is entirely new. The FEIS proposes an additional 802,000 acres of unallocated lands.
- The FEIS’s analysis in the FEIS of the baselines and impacts of such development is minimal. The fact that “unallocated lands” includes lands with relatively high conservation values makes the problem more acute.
- The disturbance cap system, and how under the Proposed LUPA they would be applied to ACEC’s and NCL lands, is entirely new.
- The proposed CMAs are entirely new, not only in their content but in how they would be applied, managed and monitored.
- The disclosure that Transmission will be processed immediately upon completion of the ROD is new and since there is no new Appendix it leaves the reader completely confused at the justifications and lack of Cumulative Impacts analysis.
- The Proposed LUPA and FEIS represent a wholesale change to Mitigation Lands and to how the Conservation and Reserve System will work; this wholesale change is not explained or with any clarity in the new document.

These changes, taken individually or taken together, constitute substantial changes to the proposed action that are relevant to environmental concerns, and therefore a supplemental EIS is required. 40 CFR

1502.9(c)(1)(i)). They also constitute new alternatives, outside the spectrum of alternatives already analyzed, compelling a supplemental EIS (Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations).

Issue Number: PP-CA-DRECP-15-18-23

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: If BLM wants to move forward with sweeping new proposals for new recreation area designations on public lands in the DRECP plan area, it must provide public notice and a draft or supplemental EIS that addresses impacts of these designations adopting the existing routes/conditions based on the failure of previous route designations to apply all of the minimization criteria.

Issue Number: PP-CA-DRECP-15-22-2

Organization: National Public Lands News.com

Protestor: Sophia Ann Merk

Issue Excerpt Text: The FEIS changed significantly from the Desert Renewable Energy Conservation Plan, Proposed Land Use Plan Amendment and Final Environmental Impact Statement. This LUPA only addresses BLM Lands, and 18,000 pages, many of which were changed in this Final compared to the document that included state and county involvement. There are also many acronyms that are used in the second document that are not used in the first document. One of the main ones is Therefore we are requesting a SEIS and to include: impacts to threatened or endangered species, air and quality reports with the different counties affected including Ground

Water Bulletin 118 and the Sustainable Groundwater Management Act passed in 2014, social and economic impacts to local communities including property values and a cost analysis of each alternative. This SEIS should also include why in the original document it alludes to WEMO being part of the plan and is now going to be implemented after the fact.

Issue Number: PP-CA-DRECP-15-25-2

Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis

Issue Excerpt Text: Due to the numerous and radical differences between the Draft EIS/EIR and the Final EIS, we believe it necessary that the BLM re-issue this Final EIR as a Supplemental DEIS with a comment period adequate for meaningful public review.

Issue Number: PP-CA-DRECP-15-25-4

Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis

Issue Excerpt Text: The FEIS contains radically unique concepts that were not present or discussed in the DEIR/EIS. One such significant concept entirely new in the FEIS is the BLM's claim that the lands designated as NLCS cannot be removed from NLCS except through an act of congress. We believe this was not the intent of congress and find this conclusion faulty. Because this radical concept is new to the FEIS, and because the public was never afforded the opportunity to comment on this, we feel this change is significant enough to warrant a DEIS and a public comment period.

Issue Number: PP-CA-DRECP-15-25-5
Organization: Public Lands Roundtable of Ridgecrest
Protestor: Randy Banis

Issue Excerpt Text: In the Draft EIR/EIS, DFA's totaled 2 million acres and with the actual footprint estimated as 177,000 acres. BLM's share of DFA's was 392,000 acres, or 19%. When asked by the DAC, the BLM confirmed the estimated actual footprint on BLM lands would be proportional, or approximately 33,630. In the Final EIS, DFA acreage on BLM lands was reduced slightly to 388,000 acres, but the estimated footprint has more than doubled at 81,000 acres. This is wildly different from the DEIR/EIS and is not sufficiently explained in the FEIS, therefore, a SDEIS and public comment period should be required.

Issue Number: PP-CA-DRECP-15-25-6
Organization: Public Lands Roundtable of Ridgecrest
Protestor: Randy Banis

Issue Excerpt Text: When management actions conflict for overlapping designation, the more restrictive shall apply, however, there is no matrix of which management actions conflict. If the BLM purposefully introduces conflicting management actions, these must be specifically disclosed and analyzed so that the public can form a reasonable expectation of the outcome of the decision. Without such an analysis, the public cannot form a reasonable expectation of the outcome of the plan. A SDEIS should be prepared that contain this analysis.

Issue Number: PP-CA-DRECP-15-25-8
Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis
Issue Excerpt Text: The FEIS proposes a significant increase in Unallocated Acres that is not adequately analyzed with respect to potential renewable energy development and conflicts with other uses. This represents a significant portion (8%) of the DRECP planning area – an area larger than all OHV Areas and DFA's combined. A SDEIS is required so that these unallocated acres can received adequate analysis.

Issue Number: PP-CA-DRECP-15-27-2
Organization: Individual
Protestor: Randy Banis

Issue Excerpt Text: The Final EIS is so radically different than the Draft EIR/EIS that BLM must issue a Supplemental Draft EIS to afford the public an opportunity to review and comment. Such significant differences include:
a) The Draft EIR/EIS Preferred Alternative proposed 7.2 million acres of new conservation in response to 2 million acres for renewable energy development – a ratio of 3.6 acres of conservation for each acre in a DFA. However, the Final EIS proposes 5 million acres of new conservation to offset less than 400,000 acres for renewable energy – a ratio of 12.5 acres of conservation for each acre in a DFA.

Issue Number: PP-CA-DRECP-15-28-2
Organization: Eastern Kern County
Protestor: Sophia Anne Merk

Issue Excerpt Text: The FEIS changed significantly from the Desert Renewable Energy Conservation Plan, Proposed Land Use Plan Amendment and Final Environmental Impact Statement. This LUPA only addresses BLM Lands, and 18,000 pages, many of which were changed

in this Final compared to the document that included state and county implementation. Therefore we are requesting a SEIS and to include: impacts to threatened or endangered species, air and quality reports with the different counties affected including Ground Water Bulletin 118 and the Sustainable Groundwater Management Act passed in 2014, social and economic impacts to local communities including property values and a cost analysis of each alternative. This SEIS should also include why in the original document it alludes to WEMO being part of the plan and is now going to be implemented after the fact.

Issue Number: PP-CA-DRECP-15-28-6

Organization: Eastern Kern County

Protestor: Sophia Anne Merk

Issue Excerpt Text: There has also been a significant change from the draft to the final DRECP in regard to the increase in acres of unallocated lands.

Issue Number: PP-CA-DRECP-15-31-6

Organization: Friends of Jawbone

Protestor: Edward Waldheim

Issue Excerpt Text: In the Draft EIR/EIS, DFAs totaled 2 million acres and with the actual footprint estimated as 117,000 acres. BLM's share of DFA's was 392,000 acres, or 19%. When asked by the DAC, the BLM confirmed the estimated actual footprint on BLM lands would be proportional, or approximately 33,630 acres, but the estimated footprint has more than doubled at

81,000 acres. This is wildly different from the Draft EIR/EIS and is not sufficiently explained in the Final.

Issue Number: PP-CA-DRECP-15-32-2

Organization: Individual

Protestor: James Kenney

Issue Excerpt Text: Therefore, due to the drastic multiple changes from the DEIS to the FEIS, I recommend this document be re-released as a new Draft EIS, with an appropriate comment period. BLM's issue of a protest period instead of a comment period deprives the public of the chance to participate and comment on these changes.

Issue Number: PP-CA-DRECP-15-32-4

Organization: Individual

Protestor: James Kenney

Issue Excerpt Text: The criteria for the disturbance caps on ACEC/SRMA/ERMA/NLCS lands and how they are figured are vastly different between the draft and the final. The DRECP's originally stated goal to not directly affect route networks was repeatedly emphasized in the public meetings. To believe the new disturbance cap definitions won't affect routes and everything else within these areas would be naive at best. Total disturbance caps of 1% or less, universally applied to these areas, and with no guidance to how much disturbance is already there, makes it impossible for the general public to understand how much impact the FEIS will have.

Summary:

The DRECP PLUPA/FEIS requires a supplemental NEPA analysis because:

- a large number of unallocated lands were added between the DEIS and the FEIS, and the FEIS does not analyze the potential impacts to these additional lands;

- while disturbance caps were mentioned in the Draft EIS, the methodology of calculation for disturbance was not defined, and the FEIS provides substantial new information not adequately analyzed;
- locations, sizes, and configuration of the DFAs changed between the Draft and Final EIS;
- the size, location, and criteria applied to ACECs and National Conservation Lands changed between the Draft and Final EIS;
- new recreation area designations were added to the Final EIS; and
- phasing of BLM actions constitutes major changes in the analysis.

These changes constitute new alternatives outside the range of alternatives analyzed, compelling a supplemental EIS (40 CFR 1502.9(c) (1) (i) and CEQ's 40 FAQs #29b).

Response:

With the exception of legislative proposals, environmental impact statements are prepared in two stages and may be supplemented (40 CFR 1502.9). Agencies are required to prepare supplements to either draft or final environmental impact statements if the agency makes substantial changes in the proposed action relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

An agency may also prepare supplements when it determines that the purposes of NEPA will be furthered by doing so. Agencies adopt procedures for introducing a supplement into its formal administrative record, if such a record exists. Except for a formal scoping process, agencies are required to prepare, circulate, and file a supplement to a statement in the same manner as a draft and final statement unless alternative procedures are approved by the CEQ (40 CFR 1502.9).

New circumstances or information are significant and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the ESA of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate. A supplemental analysis may be appropriate when there are "Substantial changes" in the proposed action that may include changes in the design, location, or timing of a proposed action that are relevant to environmental concerns (i.e., the changes would result in significant effects outside of the range of effects analyzed in the draft or final EIS)(NEPA Handbook 1790-1 at 29).

The Purpose and Need did not change between the DEIS and FEIS, and there was no change in the proposed action. This programmatic document discusses at a broad level the general environmental consequences of this complex, long-term program and describes regional impacts within the LUPA Decision Area.

It is important to clarify that this PLUPA/FEIS describes, in general terms, potential environmental, economic, and social effects of the Preferred Alternative and other alternatives.

For each alternative, the PLUPA/FEIS includes, in part, designation of Areas of Critical Environmental Concern, National Conservation Lands, Development Focus Areas, Special Recreation Management Areas, and Extensive Recreation Management Areas, establishes Visual Resource Management Classes and National Trail Corridors, nominates National Recreational Trails, and closes some grazing allotments. The precise impacts of individual future projects cannot readily be identified at this planning stage; additional NEPA documents will be prepared to address project-specific analyses when specific projects are proposed (DRECP PLUPA/FEIS Volume I.3.1.3, page 1.3-9).

Unallocated lands are BLM-administered lands that do not have an existing or proposed land allocation or designation. These areas would be open to renewable energy applications but would not benefit from permit review streamlining or incentives (DRECP PLUPA/FEIS Glossary page 16 and Volume II.3, page II.3-2 and 125), and for all unallocated lands within the PLUPA planning area, renewable energy development applications would require a Plan Amendment. Renewable energy development applications within unallocated lands would also be subject to additional site-specific NEPA analysis.

These unallocated lands were also defined in the DRECP DLUPA/EIS, Glossary page 2, which explained that the BLM unallocated lands were also known as BLM “undesigned” lands. These BLM undesigned (unallocated) lands were a subset of what was called “Other Lands” in the DRECP DLUPA/EIS. On most maps in the DRECP DLUPA/EIS, the BLM undesigned lands were the same color as some non-federal lands. In most tables, the BLM undesigned lands were split out, although still a subset of “Other Lands”. These distinctions and nuances were all results of the combining of a LUPA, Habitat Conservation Plan, and Natural Community Conservation Plan across 22.5 million acres.

The more general/global language from the DRECP DLUPA/EIS for these BLM undesigned (unallocated) lands was found to be confusing, based on public comments on the DRECP DLUPA/EIS. In response to these public comments, and the BLM LUPA moving forward first, the BLM crafted specific Conservation and Management Actions (CMA) for unallocated lands in the DRECP PLUPA/FEIS which carried forward the intent of these lands from the DRECP DLUPA/EIS.

The BLM would retain the discretion to deny renewable energy right-of-way applications, along with geothermal leases and post-lease development, based on site specific issues and concerns, even in areas identified as Development Focus Areas (DFAs). The public would have opportunities to participate and comment during the NEPA process (Draft DRECP and EIR/EIS Volume I.3.1.3 page I.3- 4, and PLUPA/FEIS Volume I.3.1.3, page I.3-9). To support the respective state and federal renewable energy goals, the DRECP identifies desert locations that are most compatible with renewable energy development and areas where the DRECP’s mitigation and conservation efforts will be focused (Draft DRECP and EIR/EIS I.3.5.3, page I.3-36, and PLUPA/FEIS Volume I.3.3.3 page I.3-13). In developing the DFAs, the aim was to avoid areas that were viewed as making significant contribution to the biological and non-biological conservation goals. The REAT agencies and stakeholders identified guiding principles to guide the identification of areas compatible with renewable development including, generation should be developed either on already-disturbed land or in areas of lower biological value, and

conflict with both biological and non-biological resources should be minimized. Generation should, to the maximum extent possible, be aggregated to avoid transmission sprawl, reduce cost, and reduce disturbance across the Plan Area. Again, these principles aim to minimize disturbance to biologically, culturally, recreationally, and visually valuable areas (Draft DRECP and EIR/EIS Volume I.3.5.3.1 page I.3- 37 and PLUPA/FEIS Volume I.3.3.3.1 page I.3-13). These elements have not changed between analysis in the Draft EIS and the Final EIS.

One guiding principle concludes that generation should, to the maximum extent possible, be aggregated to avoid transmission sprawl, reduce cost, and thereby reduce disturbance across the Plan Area. BLM disturbance caps would provide limits on ground-disturbing activities within BLM ACECs and/or National Conservation Lands as called for in the LUPA alternatives. Expressed as a percentage of total or portion of the ACEC and a total of National Conservation Land unit acreage, and cumulatively considering past, present, and future disturbance. Baseline (past and present) disturbance would be determined by the most current imagery and knowledge at the time of an individual project proposal (Draft DRECP and EIR/EIS Glossary page 2 and PLUPA/FEIS Volume II.3 pages II.3-18, 66, 226 and 235). Disturbance caps on National Conservation Lands and ACECs would provide further protections.

Disturbance caps are considered and analyzed in the action alternatives in both the Draft DRECP DLUPA/EIS and the PLUPA/FEIS, starting in Volume II, the description of alternatives and carrying through Volume IV of both documents (Draft DRECP and EIR/EIS Volume IV.4.3.2.2., DRECP P LUPA/FEIS Volume IV.4.3.2).

Although the entire DRECP Plan Area was used to develop the DRECP and is included throughout the Final EIS for analysis and illustrative purposes, the BLM LUPA will only apply to BLM-managed public lands, as described in both the Draft EIR/EIS and the PLUPA/FEIS. The Phase I DRECP, BLM LUPA only, as presented in the PLUPA/FEIS focuses in greater detail on the planning process for the BLM LUPA Decision Area. The Draft DRECP and EIR/EIS included the DRECP Plan Area on non-federal land and the BLM LUPA Area. Because the BLM LUPA Decision Area is a subset of the larger DRECP PLUPA/FEIS Decision Area, the analysis in this FEIS is therefore a subset of the analysis found in the DEIS.

The DRECP PLUPA/FEIS, Volume I, outlines key changes to CMAs between the Draft and Final documents. These changes to CMAs include:

- clarification that the CMAs apply to all activities in a land allocation and for a resource unless specifically addressing renewable energy and transmission; this was implied in Volume II in the Draft DRECP and EIR/EIS, but was not clear due to the interagency nature of the CMAs in the Draft;
- clarification that National Conservation Lands and ACECs are right-of-way avoidance areas (unless an ACEC is designated as an exclusion area or in a designated transmission corridor);
- the goal of acquisitions from National Conservation Lands only, to all conservation designations, and from within boundaries to within and adjacent to the boundaries; added a goal of acquisitions to include land and interest in land throughout the DRECP Plan Area when serving conservation purposes;

- the designation of all lands in National Conservation Lands, ACECs, and Wildlife Allocations for retention;
- the added adaptive management provisions for the Antimony Flats VPL and Kramer Junction DFA to potentially change allocation designation based on Kern and/or San Bernardino County General Plan Amendments;
- the added clarity and detail to mineral resource existing authorizations and valid existing rights; and
- provision of more definition and clarity of management and allowable uses for unallocated lands.

In response to public comments, and the BLM LUPA moving forward first, the BLM crafted specific CMAs for unallocated lands in the DRECP PLUPA/FEIS which carried forward the intent of these lands from the DRECP DLUPA/ EIS (DRECP PLUPA/FEIS Volume I.0.4 page I.0- 10).

These changes did not constitute new circumstances or information unknown or not considered in the DEIS. New circumstances or information that trigger the need for supplementation such as the listing under the ESA of a species that was not analyzed in the EIS or development of new technology that alters significant effects, or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate do not apply in this instance.

A supplemental NEPA analysis is not needed because the changes made between the Draft and Final EIS, as described in Volume I (DRECP PLUPA/FEIS Volume I.0.4 page I.0-10) of the DRECP PLUPA/FEIS do not result in significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the DEIS or FEIS (BLM Handbook H-1790-1, p. 29). Again, additional NEPA documents will be prepared to address project-specific analyses when specific projects are proposed (DRECP PLUPA/FEIS Volume I.3.1.3, page I.3-9 and Executive Summary at 28).

NEPA – Response to Comments

Issue Number: PP-CA-DRECP-15-03-2

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: The Bureau of Land Management’s (BLM) response to comments indicating that the County’s concerns with the mapping will be addressed in Phase II, as Phase I only includes BLM land, is not adequate since the County’s comments have been with regard to proposed designations on public lands and specifically BLM managed land. The BLM’s response indicating that revised descriptions and mapping, found in Volume II address these issues is also not adequate as the maps and associated shapefile are still not clear, nor were they given to potentially affected jurisdictions within a timeframe that allows for comprehensive evaluation or comment.

Issue Number: PP-CA-DRECP-15-03-4

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: The BLM’s response to the DEIS comments indicating that the County’s concerns will be addressed in Phase II, as Phase I only includes BLM land, is not adequate since the County’s comments have been with regard to public land and specifically BLM managed land.

Issue Number: PP-CA-DRECP-15-15-6

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The separation of the DRECP into parts is in itself a significant change from the Draft DRECP and its stated Project Purpose. This alone should have triggered the preparation of a Supplemental EIS with a comprehensive analysis of this changed circumstance for public review and comment. However, this did not happen. Instead, an entirely new document with an entirely new project and analysis was released.

Issue Number: PP-CA-DRECP-15-15-2

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The EPA’s comment letter also stated that:

(1) “Three developments, in particular, have the potential to dramatically alter how electricity is produced, transmitted, and stored in California: the sharp decline in the cost of rooftop solar-powered electricity; the growing demand for, and deployment of, energy storage; and Governor Jerry Brown’s recent proposal to raise State’s renewable portfolio standard.”

(2) The passage of A.B. 2514, which mandates 1,325 gigawatts of new energy storage by California’s three large investor-owned utilities by 2020, has resulted “in contracts being secured for hundreds of megawatts of new energy storage. In addition, the ‘road map’ for smoothly deploying energy storage into California’s grid, which was detailed in a report released in January 2015 by the California Independent System Operator, the California Energy Commission, and the California

Public Utilities Commission, should make it easier to use batteries and other devices to store renewable power and release it at opportune times, thereby enabling greater amounts of energy from rooftop and other distributed solar systems to be fed into the grid.”

(3) The increase in the state’s renewable energy standard could lead to renewed interest in developing utility-scale projects in the Plan Area, but the tax incentives driving utility-scale “may not be available or will have been reduced during the proposed term of the DRECP (the 30% investment tax credit drops from 30% to 10% in 2017).”

(4) “For this reason, the financial viability of future utility-scale renewable energy projects in the Plan Area is far from certain. Each of the market and policy developments detailed above – drastically reduced distributed solar costs, the rapid infusion of energy storage to the grid, and the potential passage of a bill raising California’s renewable portfolio standard – could have profound implications for the DRECP planning effort and should be analyzed and discussed in the FEIS.”

In response to these comments [designated in the FEIS as sections A3-63 through A3-65], the FEIS states only the following: “See response A3-9.” Response A3-9 is the one discussed above; it contains nothing that addresses the EPA’s concerns.

Issue Number: PP-CA-DRECP-15-15-41

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: In response to the Penrod Comment Letter, the BLM provided one and only one rather brief comment in the FEIS (p. E58-221 of Sub-Appendix E58 of Appendix AA) – which is referred to as

“E58-46” – that is nothing more than a directory as to where in the FEIS “baseline biological corridors can supposedly be found, as to where the “Baseline Biology Report” is located, as to where data” for various plant and animal species, vegetation types, riparian resources and sand transport, as to where permitting, funding, monitoring of biological resources is discussed, and as to where conservation tables can be viewed. But the BLM’s E58-46 response states nothing indicating any effort by the BLM to reexamine and/or alter the manner in which the impacts of the Preferred Alternative would be assessed in the FEIS.

Issue Number: PP-CA-DRECP-15-15-42

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: One of the most emphatic points made in the Penrod Comment Letter is that (E58-144 and 145) “NO DFAs should be sited within the Desert Linkage Network [which were created by a 2012 study of which Ms. Penrod was a primary author], desert tortoise linkages, bighorn sheep intermountain habitat and Mohave ground squirrel linkages,” and that “all these species-specific linkages and landscape linkages should automatically be included in the Reserve Design” as ACEC, NLCS lands and the like, and that all “Unallocated Lands within those linkages” should be automatically included in the Reserve Design (see also E58-168). The FEIS nevertheless, and without any explication of its reasons for refusing to accept Ms. Penrod’s counsel, calls for DFAs scattered throughout the Desert Linkage Network and the other referenced linkages and declines to include the entirety of these linkages in the Reserve Design. The FEIS also scatters portions of its over 800,000

acres of “Unallocated Lands” – where utility-scale renewable energy facilities are also permitted – throughout the Desert Linkage Network.

The FEIS readily concedes that it followed exactly the same analytical process employed by the Draft DRECP, notwithstanding Ms. Penrod’s pointed criticism thereof, but the FEIS does not include any discussion as to why it felt justified in nevertheless using that same analytical process. In that regard, the FEIS states (Appendix C-1) only that “[t]he process for drafting the Plan-wide BGOs presented in the Draft DRECP remains valid and applicable, and is herein incorporated by reference. The BLM LUPA biological resources goals and objectives are an updated subset of the BGO’s from the Draft, but for BLM managed land only.”

Issue Number: PP-CA-DRECP-15-15-44

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Another prominent criticism mounted by the Penrod Comment Letter is that the Draft DRECP established narrow and unworkable wildlife corridors critical to species survival. Thus the letter concluded that (E58-145) it was “feasible and desirable to design linkage for the Granite Mountain Wildlife Linkage ACEC [as mapped by the Draft DRECP] more than 1.2 miles wide with revisions to the Apple Valley and Lucerne Valley DFAs.” (As proposed, the Granite Mountain Wildlife Linkage ACEC is reduced to about 1.2 miles wide for much of its length south of State Route 18 and more closely follows the linkage design for the San Bernardino-Granite Connection (Penrod et al. 2005), which did not include land facet analyses. Several land facets corridors were delineated

between these ranges (see Figures 18 and 19 in Penrod et al. 2012) that are designed to support species movements during periods of climate instability.) Likewise, Ms. Penrod criticized (E58-144) the Draft DRECP for having “entirely encompassed the “San Bernardino – Granite Connection” with DFAs, and noted that, “[a]s currently proposed, [that corridor] is not sufficiently wide to provide live-in and move-through habitat for the target species or support range shifts in response to climate change.” The Penrod Comment Letter also noted (E58-148) that: (1) the Draft DRECP reflects that “[v]irtually all of the proposed Apple Valley, Lucerne Valley and Johnson Valley DFAs scored Moderately High to Very High [in terms of “Conservation Values”] with very few pixels scoring Moderately Low and not pixels scoring Low or Very Low;” (2) Section II.3-347 thereof states that the Pinto Lucerne Valley and Eastern Slopes Subareas are “some of the most diverse and threatened habitats in the California desert;” (3) the Pinto Lucerne Valley and Eastern Slopes Subarea ““spans diverse landscapes of the south-central Mojave Desert and the San Bernardino Mountains, from 1,000 feet to over 6,000 feet in elevation””; and (4) that the “northern slopes and foothills of the San Bernardino Mountains contain many” riparian systems that “will be especially important to allow species to respond and adapt to climate change because they provide connectivity between habitats and across elevation zones.” The Letter concluded, based thereon, as follows: “[t]hus, linkages must be sufficiently wide to cover an ecologically meaningful range of elevations as well as a diversity of microhabitats that allow species to colonize new areas.....The FEIS provides no data or analytical discussion as to why the BLM believes that it was justified in declining to increase the breadth of that ACECs – including the Granite Mountain

Wildlife Linkage ACEC that runs through a particularly biologically-crucial region – as to why the BLM believes it appropriate to constrain that ACEC by positioning a series of DFAs around its borders or as to why the presence of the referenced perennial streams would not automatically disqualify the surrounding areas from being designated as DFAs and/or remaining unallocated.

Issue Number: PP-CA-DRECP-15-15-46

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Penrod Comment Letter noted [E58-142] that the Draft DRECP has no maps showing how the DFAs and other land designation – or transmission corridors – coincide with the Desert Linkage Network. It also criticized the Draft DRECP for not including impact analysis maps for the entire Desert Linkage Network, and noted that the “entire discussion describing the six different subareas of the Desert Linkage Network that ‘could be adversely impacted in DFAs and transmission corridors’ is inadequate. The FEIS did not include the requested maps or augment the referenced discussion, nor does it provide no explication of its reasons for having declined to do so.

Nevertheless, the FEIS continued each of the criticized practices, employing the same Ecoregion Subareas (FEIS, Figure IV.7-1/IV.7-6) as did the Draft DRECP and artificially parsing baseline conditions and impacts as per each of those subareas, rather than with respect to the linkages declared by Ms. Penrod. The FEIS gives no explanation as to why it elected to continue that practice over the objection of Ms. Penrod.

Issue Number: PP-CA-DRECP-15-15-47

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Penrod Comment Letter asked why [E58-141 and 142] “non-designated lands” were made “available for disposal by the DRECP, and why, since they covered a significant portion of the Desert Linkage Network, they were not factored into the “Impact Analysis” in the Draft DRECP. Ms. Penrod also opined (E58-145) that all unallocated lands within the Desert Linkage Network should automatically be included in the Reserve Design.

Without engaging in any study, analysis or discussion on the subject, the FEIS continues to deem such lands available for renewable energy development yet declines to factor in those renewable energy and transmission development on those lands into its “Impact Analysis.”¹⁵

Similarly, the FEIS fails to state any reasons why such lands should not automatically be included in the Reserve Design.

Issue Number: PP-CA-DRECP-15-15-48

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Ms. Penrod pointed out (E58-139) that all 37 “Covered Species” should be Reserve Drivers, but that this was not the case in the Draft DRECP. She also noted that the Draft DRECP did not, in formulating its Key Reserve Drivers, “factor in transmission lines.”

Nevertheless, without meaningfully augmenting its discussion of transmission, the FEIS incorporates by reference Appendix K of the Draft DRECP, which (FEIS, II.3.3.1.4/p. II.3-109) identifies “potential transmission lines that could connect renewable energy generation in the

DRECP Plan Area to load centers.”
The FEIS does not provide any explanation as to why it declined to address Ms. Penrod’s above-referenced criticisms, notwithstanding its acknowledgment that transmission-related development will have a big impact on ground disturbance.

Issue Number: PP-CA-DRECP-15-15-49

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS’s BGO “Goal 3” recognizes the importance of maintaining “well-distributed” populations of tortoises through a network of conservation lands configured to provide long-term population viability and connectivity, all of which would lead one to believe that the BLM would be disposed to conduct a PVA as part of the FEIS process. But, notwithstanding the call for such a PVA in the Penrod Comment Letter (E59-160), the BLM declined, without comment or explanation, to incorporate one into the FEIS baseline biology report regarding desert tortoises (App. Q, Part 1, Section 5.5.1).

Issue Number: PP-CA-DRECP-15-15-50

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS neither incorporated Ms. Penrod’s findings nor disclosed its reasons for disregarding those findings. For instance, she found (E58-138) that the Draft DRECP’s “approach to impact analysis is anything but transparent” and that it is “nebulous” inasmuch as its impact acreage was based on the overlap of DFAs and the resource times the proportion of

anticipated “covered activities,” and was reported “in an onerous number of tables with relatively meaningless acreages based on assumptions about proportions of DFAs and the resources [meaning, for example, habitat for the 37 Covered Species and the Desert Linkage Network]” which “slice and dice” conservation analyses and impact analyses (which report “Total Impact Acres’ generated by a mysterious black box). Ms. Penrod made a practical suggestion in that regard, which was that all table in Vol. IV should add a column to report actual acreage of DFA overlap with resources alongside the reported “Total Impact Acreage,” and that maps be provided that show where DFAs overlap with these resources.

The Penrod Comment Letter also states (E58-139 and 140) that maps should be included for each of the 37 Covered Species showing their modeled habitat and, when applicable, their designated critical habitat in relation to DFAs and unallocated lands, such that all 37 Covered Species are “Reserve Drivers.”

The FEIS does not appear to have made changes in response to any of the above-referenced criticisms, or to have proffered a rationale for not having done so.

Issue Number: PP-CA-DRECP-15-15-54

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

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

detailed comment by these Protesting Parties in their February 20, 2015 letter. The Proposed LUPA and FEIS ignores the most authoritative studies. Table IV.3-1 simply reprints Table IV.3-1, which relies on studies pertaining to completely different biomes, i.e. forests and grasslands. The Proposed LUPA and FEIS also repeat the statement, without citing any basis for it, that desert biomes are less valuable CO2 sinks than “forests” or “grasslands”. This refusal to consider and analyze the most pertinent and authoritative data on an issue which is critical to the health of the ecosystem is a violation of FLPMA, which requires the Secretary in her management of public lands to “take any action necessary to prevent unnecessary or undue degradation of the land (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-20-4
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: But in considering the question of California’s need for renewable energy generation in the Plan area, the DRECP LUPA neglects its obligation under NEPA to respond to public comments on the calculated need. These public comments presented substantial evidence that many assumptions used in the Acreage Calculator were outdated or erroneous, serving to grossly inflate the perceived need for utility scale renewables in the Plan area.

Issue Number: PP-CA-DRECP-15-27-3
Organization: Individual
Protestor: Randy Banis

Issue Excerpt Text: My request on Page 9, item VI requesting the addition of a Vinagre Wash SRMA was not addressed. Response

F157 directed me to see BLM’s response to another commenter’s letter, but that letter did not mention the Vinagre Wash nor adding additional SRMA/ERMA’s to the plan. I request that the BLM reread my comment and respond specifically to my request.

Issue Number: PP-CA-DRECP-15-27-4
Organization: Individual
Protestor: Randy Banis

Issue Excerpt Text: The BLM’s response F157-8 to my request 6b on page 3 of my comment letter regarding the Dinosaur Trackway ACEC referred to a “Federal Aviation Area [FAA]” which makes no sense since the FAA was not a party to the DRECP. BLM should reread my comment and issue an applicable response.

Issue Number: PP-CA-DRECP-15-27-5
Organization: Individual
Protestor: Randy Banis

Issue Excerpt Text: The BLM’s response G5-10 is non sequitur. BLM failed to analyze the inclusion of Hauser Geode Beds into the Mule Mountains SRMA despite my making this request during scoping, through the stakeholder committee, and during the Lancaster public meeting. Since this was not analyzed in any alternatives, the alternatives failed to provide a wide range of option to consider in minimizing the environmental impacts of the proposed action on the Hauser Geode Beds recreation area. This oversight demonstrates how BLM failed to consider many of the deserts most important and popular recreation areas in designating SRMA/ERMA’s.

Summary:

The BLM failed to address comments on the DRECP DLUPA/DEIS. Specifically, the BLM failed to adequately respond to comments:

- requesting the BLM to analyze the inclusion of the Hauser Geode Beds in the Mule Mountains Special Recreation Management Area (SRMA);
- requesting the addition of a Vinagre Wash SRMA;
- requesting that Inyo County's concerns be addressed by clarifying maps and associated shapefiles;
- regarding the Dinosaur Trackway Area of Critical Environmental Concern (ACEC);
- pertaining to an Environmental Protection Agency (EPA) comment letter regarding the amount of renewable energy that may need to be produced in the project area;
- pertaining to the calculated need for renewable energy in California;
- pertaining to the Allen/McHughen study in regards to carbon sequestration and the effect of the long term destruction of desert soils; and
- pertaining to issues raised in the Penrod comment letter.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the DRECP DLUPA/DEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix AA of the DRECP Proposed Land Use Plan Amendment/Final Environmental Impact Assessment (PLUPA/FEIS) presents the BLM's responses to all substantive comments. The BLM's response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response. The BLM is not required to make modifications to alternatives based on public comment if such changes are not warranted.

Inclusion/Addition of SRMAs

The protester is correct that the inclusion of the Hauser Geode Beds into the Mule Mountain SRMA was not analyzed in any of the alternatives, as stated in the response to comments for comment letter G5 of the DRECP PLUPA/FEIS. The same protester's comment requesting the addition of a Vinagre Wash SRMA was also referred to letter G5 for response. Comments for both requests were clearly considered in the preparation of the PLUPA/FEIS. BLM has addressed both of these comments specifically by including rock-hounding in changes to the Preferred Alternative/PLUPA map and Conservation Management Actions (CMA) in the FEIS (DRECP PLUPA/FEIS, Appendix AA, Letter G5, p. 7).

Deletion of Development Focus Areas (DFA) near the Dinosaur Trackway ACEC

In comment letter F157, a request is made for "the deletion of the DFAs in the Preferred Alternative that encroaches on the Mountain Pass Dinosaur Trackway ACEC due to existing

values in the area that are incompatible with utility scale renewable energy development,” (DRECP PLUPA/FEIS, Appendix AA, Letter F157, p. 3). The BLM clarified that the map for this ACEC mistakenly showed a Future Assessment Area (misabeled as a Federal Aviation Administration area in the comment response) as DFA. The area is in fact unallocated land, and not designated as DFA as shown in the DEIS. This clarification was made in the DRECP PLUPA/FEIS, as stated in the response to this comment.

Request for Clarification of Maps and Shapefiles

Response to comments contained in Comment Letter C5 adequately address the protester’s comments requesting that maps and associated GIS shapefiles be clarified. In response to comments made on the DRECP DLUPA/DEIS, the planning process was adjusted to employ a phased approach to implementing the DRECP: Phase I addressing BLM lands and Phase II addressing non-federal lands. “Under Phase I of the DRECP, the DRECP BLM LUPA and Final EIS addresses land uses, including renewable energy and transmission development, on BLM-administered lands only,” (DRECP PLUPA/FEIS, Appendix AA, Letter C5, p. 9). Because of this phased approach, descriptions and mapping for the range of alternatives were subsequently revised in the DRECP FEIS to support decisions to be made by the BLM.

EPA Comment Letter and Calculated Need for Renewable Energy

The EPA’s comments to the DRECP DEIS were assessed, considered, and responded to in Comment Letter A3 of FEIS Appendix AA. Comments A3-63 through A3-65, as referenced by the protester, pertain to the Renewable Energy Calculator used in the DEIS and recommends an updated evaluation of the amount of renewable energy that may be needed to be produced in the Plan Area by 2040 to meet State and federal renewable energy goals. The EPA’s comments were considered and responded to adequately. Specifically, these comments are addressed in Section I.3.3, Renewable Energy Goals and Planning Process of the DRECP PLUPA/FEIS.

The protester’s assertion that the assumptions used in the Acreage Calculator were outdated or erroneous, serving to inflate the need for utility scale renewables in the plan area, is also addressed in this section. The estimating process is described in detail in Section I.3.5.4.1 through I.3.5.4.6 of the Draft EIR/EIS and summarized in Appendix F of the FEIS. “Based on the analysis described in the aforementioned sections, the REAT agencies agreed upon an estimate of 20,000 megawatts (MW) of renewable energy development that could be reasonably expected to occur within the DRECP Plan Area through 2040,” (DRECP PLUPA/FEIS, Section I.3.3.4). These estimates were used merely as a planning tool to predict the demand for renewable energy development, and do not represent a target that the BLM is trying to achieve through the PLUPA.

Allen/McHughen Study

The protester’s comments regarding the Allen/McHughen study relating to carbon sequestration and the effect of the long term destruction of desert soils were addressed in Comment Letter E58 of Appendix AA of the DRECP FEIS. The loss of carbon sequestration capabilities due to land use conversion and development-related construction emissions is described in Section IV.3 of the FEIS. “The analysis discloses that while the loss of carbon sequestration or absorption potential, which would have a comparable effect as the potential for ground disturbance to

trigger a release of soil-based carbon dioxide, is quantifiable within a range, the actual amount of this loss is uncertain,” (DRECP PLUPA/FEIS, Appendix AA, Letter E58, p. 219).

For response to the protester’s statement that the BLM failed to use best available information by not including the Allen/McHughen study, please see the NEPA - Best Available Information section within this report. The DRECP PLUPA/FEIS explains that the actual impacts on carbon sequestration is uncertain because it would depend on each specific development site, and data on rates of sequestration by vegetation and soils are approximations (DRECP PLUPA/FEIS, Volume IV, p. IV.3-8). However, Table IV.3-1, on page IV.3-8 of the DRECP PLUPA/FEIS, does provide both a low estimate (based on average U.S. forests, including desert scrub environments) and a high estimate (based on “grasslands” as reported by the California Climate Action Registry) of annual carbon uptake loss for the No Action alternative.

Penrod Comment Letter

A Linkage Network for the California Deserts (Penrod et al. 2012), is referenced multiple times by the protesters and is the subject of Comment Letter E58-Part 3, contained in Appendix AA of the DRECP PLUPA/FEIS. The majority of the comments identified by the protester as not being adequately addressed by Comment Letter E58 pertain to disagreements in the BLM’s analysis of the DRECP. The protester also references requests for maps for Covered Species habitat and for desert linkages in relation to land use allocations.

“The CEQ recommends that responses to substantive comments should normally result in changes in the text of the NEPA document, rather than in lengthy replies to individual comments in a separate section... A short response to each substantive comment and a citation to the section or page where the change was made may be appropriate,” (BLM Handbook H-1790-1, Section 6.9.2.2). BLM’s response to comments made in Comment Letter E58 cites multiple sections within Section III.7, Biological Resources, and the Baseline Biology Report (Appendix Q) of the DRECP FEIS, where Penrod et al. (2012) is referenced and changes have been made as a result of public comment. See Response to Comment E58-46 in Appendix AA for a full list of document citations.

Section III.7.8, Landscape Habitat Linkages and Wildlife Movement Corridors, provides a description of the linkage network study. Section 3.4 of Appendix Q offers a detailed discussion of landscape-level habitat linkages and wildlife movement corridors in the Plan Area, as identified by Penrod et al. (2012) and other similar studies.

Maps for Focus Species (previously called “Covered Species”) and a description of their habitats are included in the Baseline Biology Report (Appendix Q). The DRECP FEIS does not specifically include maps overlaying proposed allocations, such as DFA, and desert linkages. However, multiple detailed maps portraying the linkage network and wildlife movement corridors are presented in Section III.7, showing the Desert Linkage Network and wildlife movement corridors by ecoregion subarea. The maps provided are sufficient in supporting the decision making process.

The BLM’s comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every substantive comment is

considered during the NEPA process. Comment Letter E58 was considered in the preparation of the DRECP PLUPA/FEIS, and the findings of Penrod et al. (2012), are reflected in the document sections previously referenced in response to comments.

The BLM has considered and adequately responded to all comments on the DRECP DLUPA/DEIS.

NEPA – Public Participation

Issue Number: PP-CA-DRECP-15-06-2

Organization: Shield F Ranch

Protestor: Irene Fisher

Issue Excerpt Text: The DEIS did not include any discussion on the use of disturbance caps in permitted livestock grazing programs. I am protesting this inclusion of any aspect of the livestock grazing program in the disturbance caps based on the following compliance issues under the National Environmental Policy Act of 1969 (NEPA). (Failure for Public Disclosure and the Lack of Opportunity for Public Comment).

Issue Number: PP-CA-DRECP-15-06-3

Organization: Shield F Ranch

Protestor: Irene Fisher

Issue Excerpt Text: I have no way of knowing if disturbance caps apply only to new projects or to maintenance, management, or modification of existing rangeland management improvements as well. There is nothing in the language or any analysis to tell me. The failure in the DEIS to disclose that agency approval of new rangeland improvements would be included in the proposed disturbance cap requirements precluded my opportunity to publicly comment to this proposed action as allowed under 40 CFR §1503.

Issue Number: PP-CA-DRECP-15-09-15

Organization: Town of Apple Valley Preservation

Protestor: Lori Lamson

Issue Excerpt Text: Protest Point 3 (see Attachment H), submitted by the Alliance and its “Protesting Parties,” is incorporated here by reference. The Town joins the Alliance on its protest:

...the Mechanism for Receiving Public Input on Disturbance Caps is Left Unclear, in Violation of 43 C.F.R. §§1610.2 and 1610.7-2.

Issue Number: PP-CA-DRECP-15-14-2

Organization: California Four Wheel Drive Association

Protestor: John Stewart

Issue Excerpt Text: Cal4Wheel believes the DRECP, as modified from previous versions, is regressive and limits public participation in future site-specific/project level analysis opportunities. Cal4Wheel objects to the “ground disturbance” caps which are applied in an arbitrary manner. Such specific criteria is not appropriate for a “programmatic” document as they apply limitations that confine future projects in scope. The agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions- both inside and outside the WEMO project area- to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/ Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

Issue Number: PP-CA-DRECP-15-15-3

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA creates over 3.5 million acres of new Special Recreation Management Areas (“SRMA”) and Extensive Recreation Management Areas (“ERMA”). The function of SRMA’s and ERMA’s is to prioritize recreation, and not to promote conservation goals or facilitate renewable energy development. Yet conservation values and renewable energy development are the only stated purposes of the Proposed LUPA. Because BLM failed to notify the public that designing a new recreation paradigm could be part of the proposed plan amendment process in the Notice of Intent, proposing these designations is a violation of both NEPA and FLPMA. The BLM’s Notice of Intent for the proposed Plan Amendments states, in pertinent part:

“The DRECP will advance State and Federal conservation goals in the desert regions of California while also facilitating the timely permitting of renewable energy projects under applicable State and Federal laws, and is intended to complement the Solar Programmatic EIS, which is currently under environmental review as well.”

77 Fed. Reg. 20409, 20410 (April 4, 2012); see also 74 Fed. Reg. 60291, 60292 (Nov. 20, 2009). Nowhere does the Notice mention creation of new SRMAs and ERMAs, and certainly not of the enormous magnitude found in the Proposed LUPA. FLPMA requires that plan amendments be developed with public input. Moreover, any BLM designation of recreation areas requires “public notice of designation or redesignation” in a scoping process. 43 CFR §8342.2(b).

Issue Number: PP-CA-DRECP-15-15-51

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: There Has Been Inadequate Notice that the Proposed LUPA would Supplant the MUC’s, and that it Would Do So Outside as Well as Inside the DRECP Plan Area.

In ADP’s comment letter dated January 15, 2015, it made two formal requests that the REAT agencies correct two procedural flaws in the DRECP public notice/public comment process. One flaw arises from a substantial defect in the Notice of Availability of the Draft DRECP and Draft EIS/R, published in the Federal Register Volume 79, Number 187 on September 26, 2014. This Notice fails to give any real notice that the DRECP is proposing a Land Use Plan Amendment which would entirely overhaul and supplant the “MUC” land use designations which have been in place for more than 30 years, and, further, that this total overhaul would apply not just to federal lands within the DRECP area but to the entire CDCA plan area, and would be applicable to all uses whether or not related to renewable energy. These Notice defects were never properly corrected.

Issue Number: PP-CA-DRECP-15-18-11

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The proposal to eliminate MUC designations and designate SRMAs was not a part of any scoping notice. Indeed, the SRMAs and ERMAs appeared in pre-draft EIS documents, and BLM could have easily taken the opportunity to publicly notice these overarching land management designation

changes at that time, but it did not. Nothing in the FEIS provides evidence that appropriate scoping was done regarding the proposal that MUC designations were to be eliminated or SRMAs and ERMAs were proposed for designation.

Issue Number: PP-CA-DRECP-15-18-15

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: MUC classifications provide management direction for lands that are being retained in federal ownership (and not suitable for disposal from the federal estate) in order to ensure proper administration of such lands. (See 43 CFR § 2420.2; classification criteria.) If the draft DRECP intended to undertake a project of replacing all of the MUC classification in the CDCA with other “land use allocations,” then to comply with NEPA, BLM would have had to notify the public of that purpose in scoping, it did not.

Issue Number: PP-CA-DRECP-15-18-18

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: In this Final DEIS for the DRECP LUPA, BLM has continued to unlawfully turn the process on its head and, instead, re-structured the proposed Plan Amendments to lock-in new designations for recreation areas (the vast majority of which allow for motorized recreation) on close to 3.6 million acres of the planning area without any public notice of this sweeping change of focus or that such designations would be part of the plan.

Issue Number: PP-CA-DRECP-15-22-3

Organization: National Public Lands News.com

Protestor: Sophia Ann Merk

Issue Excerpt Text: Specifically, regarding our comments addressing OHV route designation. We believe that DRECP will be passed without any road/networks included in the plan. WEMO designations are proposed to be used. However WEMO approval will be after DRECP approval and will be incorporated with no input through the DRECP process. The public did not participate in the WEMO process with thought given that there might need to be choices made regarding the road/route network designations in regard to actions that might be taken during the implementation of the DRECP Plan.

Issue Number: PP-CA-DRECP-15-22-4

Organization: National Public Lands News.com

Protestor: Sophia Ann Merk

Issue Excerpt Text: In regard to the Section 106 process, although the 106 process was signed off, it never did have general circulation to the public as required under NEPA.

Issue Number: PP-CA-DRECP-15-27-10

Organization: Individual

Protestor: Randy Banis

Issue Excerpt Text: I object to the improper and illegal extra-NEPA collaboration between BLM planners and lawyers and representatives from the environmental organizations that occurred after the close of public comments on the Draft EIR/EIS.

Issue Number: PP-CA-DRECP-15-28-4
Organization: Eastern Kern County
Protestor: Sophia Ann Merk

Issue Excerpt Text: Specifically, regarding comment C20-9 addressing OHV route designation we believe that DRECP will be passed without any road/networks included in the plan. WEMO designations are proposed to be used. However WEMO approval will be after DRECP approval and will be incorporated with no input having been done through the DRECP process. The public did not participate in the WEMO process with thought given that there might need to be choices made regarding the road/route network designations in regard to actions that might be taken during the implementation of the DRECP Plan (especially mitigation actions implemented to deal with disturbance cap issues).

Issue Number: PP-CA-DRECP-15-31-2
Organization: Friends of Jawbone
Protestor: Edward Waldheim

Issue Excerpt Text: WEMO, in whatever form it finally comes out, should be grandfathered into the DRECP document as existing routes. This was the promise by management from day one to the public. Disturbance cap should apply post “WEMO”, not to the entire WEMO process all over again since BLM decided to postpone WEMO in court instead of fighting to get WEMO done as promised. We have to remember that thousands of hours was spent on WEMO with the Desert Advisory Council (DAC) sub group of WEMO, and now you want to throw all that out the window with new rules. That is totally unacceptable to the Public. Again, you failed to uphold the commitment to Public...

Issue Number: PP-CA-DRECP-15-33-14
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: While we appreciate the BLM’s path forward for completing inventory of the planning area, we are also concerned that the agency has:

- Been extremely slow in sharing existing [Lands with Wilderness Characteristics] information with the interested public (for example, while a number of areas were surveyed by the BLM in 2013 and 2014, the agency failed to make any of the [Lands with Wilderness Characteristics] reports available to the public online until November 24, 2015)...

Issue Number: PP-CA-DRECP-15-33-19
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: The Proposed LUPA does not include a detailed description of the way that BLM identified the DFAs, such as screens and process. Without this description, it is difficult to examine and provide recommendations on the BLM’s rationale for finding an area appropriate as a DFA.

Issue Number: PP-CA-DRECP-15-34-12
Organization: The Wilderness Society / California Wilderness Coalition
Protestor: Nada Culver / Ryan Henson

Issue Excerpt Text: While we appreciate the BLM’s path forward for completing inventory of the planning area, we are also concerned that the agency has:

- Been extremely slow in sharing existing [Lands with Wilderness Characteristics] information with the interested public (for

example, while a number of areas were surveyed by the BLM in 2013 and 2014, the agency failed to make any of the [Lands with Wilderness Characteristics] reports available to the public online until November 24, 2015)...

Issue Number: PP-CA-DRECP-15-35-3
Organization: National Parks Conservation Association
Protestor: David Lamfrom

Issue Excerpt Text: NPCA questions the process developed to designate 800,000 acres as UL. We express concern that the DRECP Agencies had the opportunity to make clear and decisive choices about the future of these public lands, and instead deferred and created a new level of process to govern them that relies on the 1980 California Desert Conservation Area plan which is being amended and replaced by the DRECP. We believe that there has not been sufficient notice, opportunity for comment, impacts analysis presented, or discussion of natural and cultural values present in the UL to move forward with this new concept-one that could result in significant harm to public resources.

Issue Number: PP-CA-DRECP-15-43-3
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: Indeed, the FEIS states that the “DRECP Plan Area covers approximately 22,585,000 acres” (FEIS I.0-2), yet the DRECP also amends rules applicable to lands outside the Plan Area but within the California Desert Conservation Area (“CDCA”). FEIS II.3-1, II.3-3 to II.3-5 (“conservation designations are proposed . .

. in the CDCA outside the DRECP area”), II.3-15 (“BLM LUPA elements outside of the DRECP, but within the [CDCA]”), II.3-17 to II.3-18, II.3-145 (“includes lands . . . outside of the interagency DRECP boundary but within the CDCA”), II.3-263 to II.3-265 (CDCA Plan amendments outside DRECP boundary). 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 both by failing to provide a detailed description of the project and thereby preventing meaningful public review, and also by arbitrarily imposing geographic limits on the scope of its analysis. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1121-1123 (9th Cir. 2004) (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).

Issue Number: PP-CA-DRECP-15-43-7
Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump
Protestor: Stephan Volker

Issue Excerpt Text: The Preferred Alternative makes clear that exceptions to the Conservation and Management Actions (“CMAs”) for surface and groundwater resources “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 (FEIS II.3-207 (LUPA-SW-5)). Indeed, all of the protective CMAs included in the LUPA that could protect soil resources, surface water or groundwater are waivable without an appropriate level of scrutiny or protection. *Id.* Exceptions may be granted by this BLM representative if the

renewable energy applicant's plans show that "[t]he impacts are minimal . . . or can be adequately mitigated" (FEIS II.3-207 (LUPA-SW-5)). Such an exception, however, leaves decisions regarding critical resource protection and mitigation to the authorized agent, with no procedural

guarantees and no public review. BLM's response to Backcountry's comment on this issue, simply that "CMAs are required on BLM land" (FEIS E85-202 (Response E85-17)), does not address the illusory nature of CMAs that allow such exceptions.

Summary:

The DRECP does not meet the NEPA (40 CFR 1500.2) and FLPMA (43 CFR 1610.2) requirements for public participation because:

- there was no opportunity to comment on the effects from implementing disturbance caps.
- the DRECP, as modified, limits the opportunities for public participation in future site-specific project level analyses; the allocations, allowable uses and management actions are inappropriate for this programmatic level of analysis;
- the Federal Register Notice failed to identify the DRECP would overhaul and supplant the MUC land use designations, thereby denying the public notice to participate in this portion of the planning process;
- public participation did not include scoping on the topics of SRMAs and ERMAs;
- the public was given no opportunity to participate in Section 106 processes;
- OHV route designations will adopt WEMO designations without public input due to the timing of the two plans – WEMO will follow DRECP;
- Lands with Wilderness Characteristics inventories were not shared with the public in a timely manner;
- unallocated lands are being designated without sufficient notice and opportunity for public comment;
- it fails to provide a detailed description of the way that BLM identified the DFAs, it made it difficult for the public to provide recommendations on DFA identification;
- Conservation and Management Actions protecting soils and water resources are waivable without an appropriate level of public scrutiny and input; and
- by defining the Plan area smaller than the area of effects, the agency prevented an accurate public review opportunity and imposed arbitrary limits to the scope of analysis.

Response:

Federal agencies are required to interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the NEPA and regulations. Agencies are to implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. EIS's are to be concise, clear, and to the point, and will be supported by evidence that agencies have made the necessary environmental analyses. Agencies also integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively. Public involvement is to be encouraged and facilitated for decisions which affect the quality of the human environment. Use of the NEPA process is to identify and assess the reasonable alternatives to proposed actions that will

avoid or minimize adverse effects of these actions upon the quality of the human environment. Agencies are required to use all practicable means, consistent with the requirements of the NEPA and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment (40 CFR 1500.2: Policy).

Although the inventory process may occur in concurrence with a land use planning effort, it is a distinct and separate process. Public involvement requirements under Section 202 of FLPMA do not apply to BLM's inventory process, which is performed under Section 201 of FLPMA. The BLM is not required to coordinate with state or local governments, or seek comment from the general public, during its inventory process.

The BLM has, to the fullest extent possible, involved the public throughout the planning process for the DRECP, and fulfilled the NEPA requirements to help informed decision-making and to facilitate public involvement in this process. Volume V contains a comprehensive accounting of the public participation opportunities provided. Volume V has been updated with the latest information on consultation and coordination for the Proposed LUPA and Final EIS DRECP (PLUPA/FEIS Volume V.1-3 at pages V-1 through 9, and Table V-2 at page V-15).

The interagency Renewable Energy Action Team (REAT) that prepared the DRECP Draft EIR/EIS used consultation, coordination, and public participation to shape the DRECP, including the Proposed LUPA. Through this process, the BLM determined that in order to meet its purpose and need and the multiple-use requirement of FLPMA, it would be necessary to modify the scope of the DRECP LUPA originally envisioned in the Notices of Intent, as that involvement highlighted concern that renewable energy development and biological conservation have impacts on other resources and uses in the California Desert. The REAT has continued to update the public as to the scope of the DRECP and provided opportunities beyond traditional NEPA and BLM Planning requirements throughout the process (DRECP Proposed LUPA and Final EIS Volume V at 1).

Three Notices of Intent (NOI) were issued for the preparation of this Environmental Impact Statement (EIS). The Bureau of Land Management (BLM) published a NOI to prepare an EIS for a possible amendment to the California Desert Conservation Area (CDCA) Plan in the Federal Register on November 20, 2009 (74 FR 60291). No specific scoping comments were received during the 30-day period initiated by this NOI. Subsequently, the BLM and U.S. Fish and Wildlife Service (USFWS), as co-lead agencies, jointly published a NOI on July 29, 2011, (76 FR 45606) announcing their intent to prepare an EIS for the proposed DRECP. The USFWS expected the DRECP PLUPA/EIS to be prepared to meet the requirements of the Section 10 Habitat Conservation Plan (HCP) permitting process under the ESA. In this same NOI, the BLM announced the joining of its EIS preparation for the possible CDCA Plan amendment with the USFWS's EIS for the DRECP HCP. The 2011 NOI provided dates and contact information for written comments on the scope of the EIS and published the dates, locations, and times for the public scoping meetings. Scoping meetings, receipt of comments, and the scoping report were merged with the CEQ Notice of Preparation process lead by the California Energy Commission. The BLM published a third Notice of Intent on April 4, 2012 (77 FR 20409), amending the Nov. 20, 2009 and July 29, 2011 notices to include proposed amendments to the Bishop,

Caliente/Bakersfield, and Eastern San Diego County Resource Management Plans (RMPs) in preparation of the DRECP and EIS. Comments received during this scoping period, April 4 through May 4, 2012 are not included in the scoping report for the July 29, 2011 scoping period, but are part of the entire scoping administrative record and were considered during preparation of the DRECP and EIS (DRECP PLUPA/FEIS, Volume V at 2).

Through the scoping process and additional public involvement, the BLM determined that in order to meet its purpose and need and fulfill its requirements under FLPMA, it would be necessary to modify the scope of the DRECP LUPA/EIS. In December 2012, the REAT published a Description and Comparative Evaluation of Draft DRECP Alternatives including maps showing existing and proposed “Desert Conservation Lands” (existing and proposed ACECs, proposed National Conservation Lands, and proposed Wildlife Allocations), as well as existing and proposed SRMAs. The BLM also disclosed that the land use plan amendments would “identify: (1) desired outcomes expressed as specific goals and objectives, and (2) allowable uses and management actions designed to achieve those specific goals and objectives.” This document was made available for public comment, and those comments were considered in the development of the DRECP DLUPA/EIS. Volume V has been clarified to further describe this process.

In regards to the MUCs, the DRECP DLUPA/EIS Volume II, section II.3.2.4.1 at page II.3-424 and Table II.3-50 on page II.3-426, describes the elimination of the MUCs, and the public had opportunity to comment on these changes during the public comment period on the DRECP DLUPA/EIS. In the DRECP PLUPA/FEIS, the proposed MUC eliminations are described in Volume II, section II.3.5.1 and Table II.3-29 on page II.3-264, and in extensive detail in Appendix R, Table R2.14-13 on page R2.14-10 which crosswalks the existing MUCs with proposed DRECP designations and allocations by alternative, including acreages.

The BLM decisions evaluated in the portions of the DRECP that constitute the EIS are land use plan decisions that would guide and inform future renewable energy development and resource conservation on public (federal) lands in the Plan Area. These land use plan decisions would not authorize any specific projects or imply such approval. Any future projects would still require additional site-specific environmental analysis and, potentially, a separate land use authorization such as a right-of-way grant or lease (DRECP PLUPA/FEIS Volume I.3.1.3 at page I.3-9).

Implementation decisions generally relate to on-the-ground actions that BLM approves, whether it be a BLM or third-party action. Implementation-level projects will require the appropriate level of NEPA review, which will include appropriate public involvement. This will include an opportunity to review site-specific application of applicable CMAs. When the BLM considers an application, the BLM decision maker must determine if it would conform to the applicable land use plan (43 CFR 1610.5-3; Department of the Interior 2008) and what level or type of environmental documentation or analysis is required in accordance with NEPA. The BLM would retain the discretion to deny renewable energy right-of-way applications, along with geothermal leases and post-lease development, based on site specific issues and concerns, even in areas identified as Development Focus Areas (DFAs). The public would have opportunities to participate and comment during the NEPA process (DRECP DLUPA and EIR/EIS, Volume I.3.1.3 at I.3-4 and DRECP PLUPA/FEIS, Volume I.3.1.3 at I.3-9).

Disturbance caps are addressed in the DRECP DLUPA/EIS, as well as in the PLUPA/FEIS. The DRECP DLUPA/EIS defined BLM disturbance cap as “Limit on ground-disturbing activities within BLM ACECs and/or National Conservation Lands as called for in the LUPA alternatives expressed as a percentage of total ACEC and/or National Conservation Land unit acreage, and cumulatively considering past, present, and future disturbance. Baseline (past and present) disturbance would be determined by the most current imagery and knowledge at the time of an individual project proposal.” This definition made it clear that the cap applied to all ground-disturbing activities within ACECs and National Conservation Lands (DRECP DLUPA and EIR/EIS glossary at 2). Based on public comments requesting more detail on implementation of the disturbance caps, the PLUPA/FEIS refined and expanded on this definition and presented a methodology (DRECP PLUPA/FEIS, Volume II.3 page II.3-18, and repeated on pages II.3-66,226 and 235). Disturbance caps on National Conservation Lands and ACECs would provide further protections for ecological processes and species. Disturbance caps are considered and analyzed in the action alternatives in both the DRECP DLUPA/EIS and the DRECP PLUPA/FEIS, starting in Volume II, the description of alternatives and carrying through Volume IV of both documents (DRECP DLUPA and EIR/EIS Volume IV.4.3.2.2., DRECP PLUPA/FEIS Volume IV.4.3.2).

With regard to disturbance related to range improvements, while not specifically mentioned in the DRECP DLUPA and EIR/EIS, range improvements with the potential for ground disturbance would be covered under the disturbance cap definition of “Limit on ground-disturbing activities”. In the DRECP PLUPA/FEIS, range improvements were specifically called out in the discussion of disturbance cap implementation methodology simply as an illustrative example to further clarify how the disturbance cap would be implemented.

With respect to OHVs, the West Mojave Route Network Project (WEMO) planning decisions center around travel management and to a lesser extent address grazing and recreation management strategies. Neither the DRECP PLUPA/FEIS nor the WEMO propose changes to travel management area designations of closed, open, or limited. The DRECP PLUPA proposes changes to the calculation of disturbance caps. The WEMO Draft Plan Amendment will evaluate and designate the transportation network and further limitations to off-route stopping, parking, and camping.

The WEMO would make specific route designation decisions, which are implementation decisions and not plan decisions. The implementation decisions in the WEMO, such as route designations, will be considered in the context of and in conformance with the DRECP LUP Amendment to the CDCA, including but not limited to the National Conservation Lands and ACEC disturbance caps. Because the WEMO will be completed after the DRECP LUPA Record of Decision (ROD) is signed, implementation decisions in the WEMO will be subject to the CDCA, as amended by the plan decisions in the DRECP LUPA ROD.

With respect to the inventories of lands with wilderness characteristics, the BLM completed a partial inventory of lands with wilderness characteristics for the DRECP DLUPA/EIS, focusing on the DFAs. The BLM then continued the work of inventorying the remaining BLM-managed public lands within the entire DRECP boundary, including over seven million acres and nearly 300 inventory units, making the inventories available for public viewing at the respective field

offices throughout the process until late fall 2015, at which point the BLM had inventoried a majority of the DRECP decision area. At that point, the inventory forms were quality checked, approved by the Field Office Manager, and subsequently made available to the public on the Internet. The results of the nearly completed lands with wilderness characteristics inventories within the DRECP decision area were included in the DRECP PLUPA/FEIS.

Unallocated lands are BLM-administered lands that do not have an existing or proposed land allocation or designation. These areas would be open to renewable energy applications but would not benefit from permit review streamlining or incentives (DRECP PLUPA/FEIS Glossary page 16 and Volume II.3, page II.3-2 and 125); for all unallocated lands within the PLUPA planning area, renewable energy development applications would require a Plan Amendment. Renewable energy development applications within unallocated lands would also be subject to additional site-specific NEPA analysis.

These unallocated lands were also defined in the DRECP DLUPA/ EIS, Glossary page 2, which explained that the BLM unallocated lands were also known as BLM undesignated lands. These BLM undesignated (unallocated) lands were a subset of what was called “Other Lands” in the DRECP DLUPA/EIS. On most maps in the DRECP DLUPA/ EIS, the BLM undesignated lands were the same color as some non-federal lands. In most tables, the BLM undesignated lands were split out, although still a subset of “Other Lands”. These distinctions and nuances were all results of the combining of a LUPA, Habitat Conservation Plan, and Natural Community Conservation Plan across 22.5 million acres.

The more general/global language from the DRECP DLUPA/EIS for these BLM undesignated (unallocated) lands was found to be confusing, based on public comments on the DRECP DLUPA/EIS. In response to these public comments, and the BLM LUPA moving forward first, the BLM crafted specific Conservation and Management Actions (CMA) for unallocated lands in the DRECP PLUPA/FEIS which carried forward the intent of these lands from the DRECP DLUPA/EIS.

With respect to planning for public involvement in the Section 106 process, the November 20, 2009, Notice of Intent published in the Federal Register for the DRECP stated that the BLM would use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the NHPA as provided for in 36 CFR 800.2(d)(3). The BLM used the NEPA commenting process to supplement public involvement efforts required for Section 106.-- Based on the size and complexity of the undertaking, the BLM determined that the development of a Programmatic Agreement (PA) as described at 36 C.F.R. 800.14(b) was the most appropriate manner to meet their responsibilities under Section 106 of NHPA. The BLM, the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO), numerous tribes and a multitude of invited consulting parties contributed to the development of a PA for this undertaking (Appendix V at 11). The final PA was executed on February 5, 2016, with signatures from the signatory parties -BLM, ACHP and the SHPO. The final executed PA also includes the signatures of 21 concurring parties, as of February 2016, including 5 tribes.

Both the DRECP Draft and EIR/EIS and the DRECP Proposed LUPA and Final EIS address, at length, the DFAs and how they were developed. Specifically, refer to Draft DRECP EIR/EIS Volume I.3.5 at page I.3-30, Volume II.3.1.4 at page II.3-161 and Appendices C, D, E, F, J, K, O, P, Q, R, S, T, W, and in the DRECP PLUPA/FEIS Volume I.3.3.3 at page I.3-13, Volume II.3.3 at page II.3-74, and Appendices C, D, E, F, J, K, O, P, Q, R, S, T, W, AA.

The BLM LUPA Decision Area, depicted in Figures I.0-1 and I.0-2, includes BLM lands within the DRECP Plan Area and within the CDCA boundary. This includes lands covered by portions of the CDCA Plan and the Bakersfield and Bishop Resource Management Plans. Although the entire DRECP Plan Area was used to develop the BLM DRECP LUPA and is included throughout the Final EIS for analysis and illustrative purposes, the BLM LUPA will only apply to BLM-managed public lands. The analysis reflects where decisions impacted the full DRECP.

The BLM provided full disclosure of the scope and scale of the land use planning process and adequate opportunity for public participation through public notices, and comment period on the Draft DRECP and EIR/EIS to the fullest extent possible.

NEPA – Environmental Review and Consultation

Issue Number: PP-CA-DRECP-15-15-60

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS Fail to Publish Supporting USFW Environmental Impact Analyses and Related Surveys and Studies, in Violation of 43 Section 1502.25.

A final EIS is required to include and integrate with environmental impact analyses and related surveys and studies required by the Fish and Wildlife

Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders. 43 CFR 1502.25.

It does not appear to Protesting Parties that the FEIS has conducted the required inclusion and integration, or for that matter that the necessary consultation with the U.S. Fish and Wildlife Service has occurred.

Summary:

The DRECP PLUPA/FEIS is in violation of the National Environmental Policy Act (NEPA) regulation 40 CFR 1502.25 Environmental review and consultation requirements because:

- the PLUPA/FEIS does not integrate and include related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C 661 et seq.), the National Historic Preservation Act (16 U.S.C 470 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.); and
- consultation with the U.S. Fish and Wildlife Service did not occur.

Response:

To the fullest extent possible, agencies are required to prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act, the National Historic Preservation Act of 1966, the Endangered Species Act of 1973, and other environmental review laws and executive orders (40 CFR 1502.25).

The DRECP DLUPA/EIS, published in September 2014, was developed as an interagency document by the BLM, the U.S. Fish and Wildlife Service (USFWS), the California Energy Commission (CEC), and the California Department of Fish and Wildlife (CDFW) (I.0.1 DRECP Background and Overview).

Appendix Q, the DRECP Baseline Biology Report of the FEIS includes results of surveys and studies from USFWS. The purpose of this baseline biology report is to summarize the environmental and biological setting for the Plan Area in order to establish the foundation for

conservation planning under the DRECP. This baseline biology report includes the following sections:

- Introduction; includes organizational information and definitions.
- Environmental Setting; addresses ecological classification, climate, geomorphology, and hydrology.
- Physical and Ecological Processes; covers geological and ecological processes, habitat linkages, and wildlife movement.
- Vegetation Types and Biological Setting; describes vegetation types, land covers, and biological diversity.
- Species Considered for Coverage; addresses 37 species covered under the DRECP, organized by taxon and then in alphabetical order by common name.
- Anthropogenic Land Uses and Influences; discusses human uses and disturbances, including rural and urban development, transportation corridors and roadways, water conveyance, utilities and infrastructure, grazing, mining, military uses, off-highway vehicle/recreational uses, and non-native and other invasive species.
- Conservation and Management Factors and Issues; discusses the conservation and management factors and issues related to landscape-level factors, ecological processes, vegetation types, and Focus Species.
- References Cited; lists the documents and resources reviewed and cited in the baseline biology report.

As a part of this planning effort and in implementing on-the-ground activities, the BLM consults with the USFWS under Section 7 of the Endangered Species Act (ESA; Interagency Consultation). In 2001, the BLM and USFWS finalized a consultation agreement to establish an effective and cooperative ESA Section 7 consultation process. The agreement defines the process, products, actions, schedule, and expectations of the BLM and the USFWS on project consultation. The Fish and Wildlife Coordination Act is identified as part of this regulatory setting and is defined in the Affected Environment section in section III.7-1 (3). Amendments to the Act, enacted in 1946, require consultation with the U.S. Fish and Wildlife Service (USFWS) and this consultation process is further described here.

In early 2015, the BLM coordinated with the USFWS to determine the list of species to be covered in consultation and the framework within to prepare the effects analysis for the biological assessment. The BLM prepared a Biological Assessment (BA) to determine the effect of the DRECP PLUPA/FEIS on all relevant listed, proposed, and candidate species, and associated designated critical habitat. The Biological Assessment identifies all expected environmental effects, conservation and management actions, and monitoring including analysis of all direct and indirect effects of plan decisions and any interrelated and interdependent actions. The BA was formally submitted to the USFWS on July 10, 2015. After the BA was submitted, the BLM and the USFWS had a series of phone calls, emails, and meetings discussing and clarifying the BA. On August 10, 2015, the USFWS accepted the BA as sufficient to initiate consultation. The BLM and the USFWS have continued to coordinate closely during the consultation period (Volume V, Consultation, Coordination, and Public Participation, V-14).

After reviewing the BA, the USFWS issues a Biological Opinion (BO) on the plan, as a result of the consultation process. The BO is the determination of the USFWS on the probability of the

DRECP PLUPA/FEIS to pose jeopardy to listed species and/or destruction or adverse modification of designated critical habitat. The BO can include conservation recommendations to minimize or avoid possible adverse effects on listed species or their critical habitat. As this plan's decisions are implemented, actions determined through environmental analysis to potentially affect species listed or candidate species for listing under ESA, or designated critical habitat, the BLM will initiate more site-specific consultation on those actions (Volume V, Consultation, Coordination, and Public Participation, V-14).

Under the PLUPA/FEIS, the BLM issues rights-of-way (ROWs) to applicants who submit acceptable Plans of Development (36 CFR Part 800.16[y]) for lands administered by the BLM. Cultural resources within an Area of Potential Effects (APE) for renewable energy projects approved or authorized by the BLM within the PLUPA/FEIS Decision Area would be either evaluated or assumed eligible for inclusion in the National Register of Historic Places. To date, the BLM has been actively involved in consulting with federally recognized tribes to identify cultural resources located within the BLM's APE for the PLUPA and highlight any concerns with historic properties that may be affected. A Programmatic Agreement has been developed that establishes the process BLM will follow to fulfill its responsibilities under Section 106 of the National Historic Preservation Act for site-specific, renewable energy application decisions implemented in accordance with the DRECP PLUPA/FEIS. The Programmatic Agreement establishes conditions applicants must identify, evaluate for significance, and assess the effects to historic properties, and to mitigate any adverse effects under 36 CFR 800, in consultation with the public and State Historic Preservation Office. Additional details regarding the Programmatic Agreement are provided in the Consultation and Coordination section in Volume V of the DRECP PLUPA/FEIS (III.8.1.2.1 BLM Role and Responsibility under Section 106 of the NHPA, III.8-4). The Programmatic Agreement was signed on February 5, 2016.

Consultation with federal, state, and local agencies, and tribal governments was conducted as required by the National Historic Preservation Act, State Historic Preservation Office, the Fish and Wildlife Coordination Act, and the Endangered Species Act, to fulfill the BLM's responsibilities for Environmental Review and Consultation.

Secretarial Order 3330

Issue Number: PP-CA-DRECP-15-08-2
Organization: Natural Resources Defense Council
Protestor: Helen O’Shea

Issue Excerpt Text: The DRECP thus adds a significant amount of land to the categories of lands already available for development as DFAs and variance lands, but leaves these unallocated lands without the benefit of the specified development procedures and safeguards identified for those other designations. Leaving 802,000 acres of BLM land unallocated and open to potential development is directly inconsistent with the Secretary of the Interior’s prioritization of landscape level planning as articulated in Order 3330 on Mitigation and the report “A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior” published in April 2014 by the Department’s Task Force on Energy and Climate Change.

Issue Number: PP-CA-DRECP-15-35-4
Organization: National Parks Conservation Association
Protestor: David Lamfrom

Issue Excerpt Text: This testimony makes the key points that 1) Secretarial order 3330 requires the Agency to engage a process to avoid significant resources, and thereby conflict and mitigation where reasonable and 2) Screening and analysis can reduce potential future conflict. We have not been made aware of the process used to develop the UL. We raise questions as high conflict lands adjacent to National Park lands with significant and known wildlife values have been identified within this land use type,

From a more practical perspective, considering that DOI has created past processes to avoid conflict by identifying lands adjacent to National Parks, and other protected lands, as high conflict, why would the DRECP Agencies allow UL that present that same conflict to move forward in those locations?

Issue Number: PP-CA-DRECP-15-35-5
Organization: National Parks Conservation Association
Protestor: David Lamfrom

Issue Excerpt Text: As highlighted in the discussion on the Soda Mountain region, the UL designation in close proximity to Joshua Tree National Park invites conflict. Secretarial Order 3330 explains this succinctly as the Department of the Interior “seeks to avoid potential environmental impacts from projects through steps such as advanced landscape-level planning that identifies areas suitable for development because of low or relatively low natural and cultural resource conflicts.

Issue Number: PP-CA-DRECP-15-36-11
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: The Secretary of the Interior endorsed this approach with Secretarial Order 3330, which establishes a Department-wide mitigation strategy: “Central to this strategy will be (1) the use of a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region; (2) early integration of mitigation considerations in project planning and design; (3) ensuring the durability of

mitigation measures over time; (4) ensuring transparency and consistency in mitigation decisions; and (5) a focus on mitigation efforts that improve the resilience of our Nation’s resources in the face of climate change.” (Sec 1, Page 1)..... In Section IV.1.1.2 (Mitigation Measures), BLM states that:

“This EIS presents no mitigation measures; since LUPA already incorporates nearly 100 pages of comprehensive Conservation and Management Action (CMAs), none are required (See Section 11.3.4.2 in Volume II). In addition, BLM is committed to implementing appropriate Solar Programmatic EIS (Solar PEIS) design features where appropriate, as well as various other policies, handbooks, and best practices, as described in each chapter of Volume III-IV.1-3.”

This problematic mitigation approach violates BLM’s policy to mitigate on a regional basis for impacts that remain after application of avoidance and minimization measures. By relying upon a multitude of CMAs to inform compensatory mitigation, BLM will be making mitigation decisions on a species-by-species and project-by-project basis. The DRECP does not provide an analysis or enough detail on BLM’s mitigation decision-making process to ensure transparency or consistency about where mitigation investments will be made or what actions these mitigation investments will fund.

Issue Number: PP-CA-DRECP-15-36-12
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: Furthermore, the DRECP does not analyze or provide enough detail to identify the specific areas of public

lands and the actions that may be used as mitigation. An analysis to determine where mitigation is appropriate must be a separate evaluation, with a different set of considerations, than the analysis used to determine which public lands within the CDCA are to be managed for conservation and identified as components of the NLCS pursuant to the Omnibus Public Lands Management Act. For example, mitigation that is invested on public lands will need to achieve enhancement and restoration goals. Just because lands have been identified as NLCS or ACEC lands does not mean that they are appropriate for mitigation or that enhancement or restoration actions on these lands could compensate for impacts of renewable energy development. In addition, the DRECP does not analyze or provide guidance on how to determine the geographic locations where private lands mitigation are appropriate, or how to prioritize mitigation investments.

Issue Number: PP-CA-DRECP-15-36-13
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: By not including those lands identified as Ecologically Core by The Nature Conservancy, BLM is not fulfilling its duties under FLPMA and the CDCA....and Secretarial Orders....3330, to base the agency’s conservation planning and protections on a broad, landscape-scale consideration of ecologically important resources and processes.

Issue Number: PP-CA-DRECP-15-36-5
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: To further emphasize BLM’s mandate to protect ecologically

significant lands to ensure the integrity of entire ecosystems via adequate conservation measures, there is Secretarial Order 3330. As BLM has noted, Secretarial Order 3330 requires "... the use of a landscape scale

approach to identify and facilitate investment in key conservation priorities in a region".

Summary:

The DRECP PLUPA/FEIS violates Secretarial Order 3330 because:

- it allows potential development on large areas of unallocated lands, some of which have or are near lands with significant natural and cultural resource values;
- it fails to adequately analyze and provide for mitigation on a regional basis; and
- it fails to protect ecologically significant lands.

Response:

Secretarial Order 3330 states that the Department of the Interior "seeks to avoid potential environmental impacts from projects through steps such as advanced landscape-level planning that identifies areas suitable for development because of low or relatively low natural and cultural resource conflicts. Where impacts cannot be avoided altogether, the Department must work to ensure that projects minimize impacts to the extent practicable. Finally, for impacts that cannot be avoided or effectively minimized, the Department should seek ways to offset or compensate for those impacts to ensure the continued resilience and viability of our natural resources over time". Secretarial Order 3330 does not prohibit impacts to natural and cultural resource values, or "ecologically significant lands". Rather, it commits the Department of the Interior to apply a mitigation hierarchy (i.e. seek to "avoid, minimize, and compensate") to address resource impacts. The DRECP PLUPA/FEIS is an advanced landscape-level plan that identifies areas suitable, and not, for renewable energy development because of low or relatively low natural, cultural and recreation resource conflicts, and is in compliance with Secretarial Order 3330.

The DRECP PLUPA/FEIS contains additional measures to avoid, minimize, and compensate for impacts on public lands, in particular impacts from renewable energy development, at a regional scale (i.e. the planning area). The DRECP PLUPA/FEIS seeks to avoid impacts from renewable energy development by designating conservation areas (National Conservation Lands, ACECs, and Wildlife Allocations) and SRMAs, where renewable energy would not be allowed in order to avoid impacts to sensitive resources and incompatible uses. The DRECP PLUPA/FEIS would also designate DFAs, with the goal of "avoid[ing] areas that were viewed as making significant contribution to the biological and non-biological conservation goals" while allowing for "potential tradeoffs between renewable energy goals and biological and non-biological conservation goals" (DRECP PLUPA/FEIS, p. I.3-17, 18). Renewable energy activities outside of DFAs (such as in VPLs or unallocated areas) would be subject to additional analysis and restrictions to protect resources within these areas. To address impacts that could not be avoided through the designation of DFAs, the BLM established conservation and management actions (CMA), which are "the specific set of avoidance, minimization, and compensation measures, and allowable and non-allowable actions for siting, design, pre-construction, construction,

maintenance, implementation, operation, and decommissioning activities on BLM land” (DRECP PLUPA/FEIS, Glossary-5). The DRECP PLUPA/FEIS also proposes compensatory mitigation requirements, such as the ground disturbance mitigation requirements and through numerous resource-specific CMAs (DRECP PLUPA/FEIS, II.3-70, 71).

As described above, the DRECP PLUPA/FEIS complies with Secretarial Order 3330 by establishing a mitigation approach that avoids, minimizes, and compensates for impacts.

Government-to-Government Consultation

Issue Number: PP-CA-DRECP-15-13-13

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: The DRECP is an undertaking subject to NHPA compliance. In developing the DRECP, which will have a significant adverse effect on cultural resources if approved, the BLM has not met the consultation requirements discussed above. General informational meetings in which BLM conveys information to multiple tribes at once is not government-to-government consultation. Many of the required steps in the Section 106 process have been ignored. BLM has not engaged in meaningful government-to-government consultation regarding the DRECP with the Quechan Tribe in accordance with Section 106 of the NHPA or the 36 CFR Part 800 regulations.

Issue Number: PP-CA-DRECP-15-13-3

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: While the LUPA/FEIS cites to informational meetings held with affected Indian tribes, actual government-to-government consultation regarding the DRECP, the design of Development Focus Areas (DFAs), and how to best ensure protection of cultural resources, has been minimal to non-existent.

Issue Number: PP-CA-DRECP-15-24-4

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: CRIT previously detailed some of its concerns regarding the consultation process in correspondence to the Department of the Interior and in its comment letter on the Description and Comparative Evaluation of Draft DRECP Alternatives (“Interim Document”), both of which are hereby incorporated by reference. Briefly, the DRECP agencies initially promised adequate time, financial and technical support, confidentiality, and accountability to assure tribes that consultation would be meaningful. Throughout 2011 and 2012, however, the DRECP agencies withdrew from each of these promises, destroying the trust necessary to engage with Indian tribes in a manner respectful of tribal sovereignty. More recently, these problems have been compounded by BLM’s failure to respond to CRIT’s written comments regarding these and other concerns. Without a meaningful effort to respond to the concerns that the Tribes have already identified, CRIT has been hesitant to engage in further discussions with BLM. BLM’s cursory effort to respond to CRIT’s comment letter on the Draft DRECP does nothing to assuage this concern (See, e.g., DRECP at 08-21: “Thank you for your comment. While it has not resulted in a change in the document, the BLM has taken it into consideration.”). However, CRIT also recognizes the potential for the DRECP to significantly, irrevocably, and adversely impact cultural resources and its tribal members’ cultural,

spiritual, and religious practices. Consequently, CRIT once again requested consultation with BLM regarding the DRECP's potential impacts, but asked for a written response to its comment letter in

advance of scheduling the meeting. Outside of the rote response to comment document, BLM has not responded to CRIT's correspondence and the requested consultation has not yet occurred.

Summary:

The BLM has failed to engage in meaningful government-to-government consultation with affected tribes during the DRECP PLUPA process because:

- it has not engaged in meaningful consultation in accordance with Section 106 of the NHPA or the 36 CFR Part 800 regulation, has ignored the required steps in the Section 106 process; and has not responded to correspondence; and
- consultation regarding the design of Development Focus Areas (DFAs), and how to best ensure protection of cultural resources, has been minimal to non-existent.

Response:

The Bureau of Land Management (BLM) must comply with Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108, where its actions under the DRECP have the potential to adversely affect historic properties. Along with the State Historic Preservation Office (SHPO), the BLM should consult with affected the Tribal Historic Preservation Office (THPO) and/or tribal members in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties (36 CFR 800.3(c)(3)). Consultation with the SHPO, THPO and tribal members involves identifying historic properties (36 CFR 800.4), assessing adverse effects (36 CFR 800.5), and resolving adverse effects (36 CFR 800.6).

Section 106 and 36 CFR Part 800 Consultation

During the DRECP planning process, the BLM consulted with Native American tribes on a government-to-government basis in accordance with several authorities including NEPA, the NHPA, the American Indian Religious Freedom Act, and Executive Order 13175. "To date, BLM has been actively involved in consulting with federally recognized tribes to identify cultural resources located within BLM's Area of Potential Effects (APE) for the PLUPA and highlight any concerns with historic properties that may be affected" (DRECP PLUPA at III.8.1.2.1, p. III.8-4). BLM California and DOI have conducted a number of meetings and technical sessions with Native American tribes. "BLM California management and staff initiated government-to-government meetings creating a series of opportunities and a forum for the 41 federally recognized tribes in the California desert area to engage with federal executives through the Tribal Federal Leadership Conferences" (DRECP PLUPA/FEIS, Volume V, p. V-10). Letters from the BLM were sent in December 2013 requesting assistance in identifying sacred sites and places of traditional religious and cultural significance that may be within the BLM's APE and seeking input regarding knowledge of or concerns with historic properties that may be affected by BLM's Land Use Plan Amendments" (DRECP PLUPA/FEIS, Volume V, p. V-11).

The BLM conducted thorough government-to-government consultation with the Colorado River Indian Tribe (CRIT). The CRIT insists that a written response to the comments for the Description and Comparative Evaluation of Draft DRECP Alternatives was required. The BLM disagrees that this is a requirement and, as a result, did not provide written responses to any comments on this preliminary document. However, the BLM did take into account all input received, as evident in the changes in the DRECP DLUPA/EIS that went out for formal comment and input.

Based on the size and complexity of the undertaking of the DRECP PLUPA/FEIS, a Programmatic Agreement (PA) for renewable energy was developed between the BLM, California SHPO, and the ACHP, as described at 36 CFR §800.14 (b). All potentially affected tribes, listed in Appendix A of the PA (February 2016), were notified via invitation to consult in the development of the PA. The BLM determined that a PA was the most appropriate manner in which to provide the most comprehensive explanation and transparency of agreement to meet its responsibilities under Section 106 of NHPA, and to fully involve and communicate with all affected tribal members. The PA “establishes conditions applicants must identify, evaluate for significance, and assess the effects of and to historic properties, and to mitigate any adverse effects under 36 CFR 800, in consultation with the public and SHPO” (DRECP PLUPA/FEIS at III.8.1.2.1., p. III.8-4).

According to the PA, “The BLM will endeavor to coordinate the Section 106 process with NEPA process such that the agency meets its requirements under both authorities in an efficient manner. The BLM will complete the Section 106 process within the timeframe of NEPA process prior to the approval of all future renewable energy project ROW grants authorized pursuant to this program. In order to facilitate this coordination, the BLM will utilize the public review process described in NEPA to partially meet its public involvement responsibilities under NHPA” (PA, II.J: Section 106/NEPA Coordination, p. 9).

Consultation with the CRIT for DRECP PA development consisted of numerous meetings and correspondence from 2015 through early 2016, demonstrating that the BLM met its obligations for Section 106 consultation. In January 2015, the BLM sent a Consulting Party Meetings Letter for the PA kickoff meeting. Two meetings were held in February 2015, neither of which the CRIT attended. In April 2015, the BLM sent a formal letter invitation to participate in the PA working group; both were held in May and the CRIT participated in both. Also in May 2015, the CRIT sent a formal letter via both regular mail and electronic mail to the BLM with comments on the first working draft of the PA. This letter included a formal request to consult on the DRECP. In turn, the BLM responded to the CRIT, acknowledging receipt of the letter. A second working draft PA, along with a comment matrix that included responses to CRIT’s comments, was sent to the working group for review. The comment matrix included a note that their request for consultation was forwarded to Mr. John Kalish (then BLM Palm Springs Field Manager).

In June 2015, the CRIT sent a formal letter via both regular mail and electronic mail to the BLM with comments on the second working draft of the DRECP PA. This letter included a second formal request to consult on the DRECP. The BLM responded to CRIT to acknowledge receipt of the comment letter and forwarded the emailed version to Mr. Kalish with the second request

for consultation highlighted. Mr. Kalish sent a formal letter to the CRIT requesting to schedule a government-to-government consultation meeting as requested in the CRIT's letters dated May 15, 2015 and June 2, 2015. Previous attempts (from May 18, 2015 through June 9, 2015) to establish a meeting were conducted via electronic mail and telephone. In mid-June, a third working draft PA was sent to the working group for review, which again included a comment matrix with responses to CRIT's comments. The comment matrix included a note that their second request for consultation was forwarded to Mr. Kalish. The following week, the third PA Working Group Meeting was held, and the CRIT attended via conference phone and webinar. The CRIT sent a formal letter via both regular mail and electronic mail to the BLM with comments on the third working draft of the PA. The following week, in July 2015, the BLM responded to CRIT to acknowledge receipt of the comment letter and sent the fourth working draft PA to the working group for review, including a comment matrix with responses to CRIT's comments.

Also in July 2015, the fourth PA Working Group Meeting was held in which the CRIT did not attend. The BLM did not receive comments from the CRIT on fourth working draft PA.

In August 2015, the BLM sent the Draft PA to all Consulting Parties for review. The Consulting Party Meetings were held August 25, 2015 through August 27, 2015 and the CRIT was not in attendance. In September, the CRIT sent a formal letter via regular mail and electronic mail to the BLM with comments on the draft PA. This letter included a formal request to consult with the BLM California State Director on the DRECP. BLM responded to CRIT, acknowledging receipt of the comment letter. Later that month, the BLM sent the revised draft PA to all Consulting Parties for review. A comment matrix with responses to CRIT's comments was sent to all Consulting Parties who submitted comments on the draft PA. The response included a statement regarding the Tribal Federal Leadership Conference held between the Tribes and the BLM CA State Director on September 23, 2015.

In October 2015, the BLM conducted the Consulting Parties Meeting in which the CRIT did not attend. No comments were received from CRIT on the revision. The BLM sent the Proposed Final PA to all Consulting Parties for review in November; no comments were received from the CRIT. In January 2016, the BLM transmitted the Final PA to all Consulting Parties with blank signature pages to complete and return. In February, Concurring Party signature pages were received, with no pages signed or received from the CRIT. The DRECP PA was executed by the BLM, SHPO and the ACHP on February 5, 2016. This final PA was transmitted to all of the Consulting Parties with all signature pages returned to-date on February 8, 2016.

Development Focus Area (DFA) Consultation

Consultation regarding the design of DFAs and how to best ensure protection of cultural resources in accordance with Section 106 of the NHPA is included as part of the PA. "In regards to areas available for solar, wind and geothermal development, and transmission, an application within a DFA would still go through the BLM right-of-way (ROW) process, including environmental and Section 106 review, but would benefit from the DRECP environmental document and this Agreement" (PA, Appendix B, p. 38).

The BLM complied with all requirements in accordance with Section 106 of the NHPA and 36

CFR Part 800 regulations, to engage in meaningful government-to-government consultation with affected tribes during the DRECP PLUPA/FEIS process by following all required steps in the Section 106 process, engaging in meaningful and complete consultation regarding the design of Development Focus Areas (DFAs) and by ensuring protection of cultural resources, and initiating and responding to correspondence and consultation requests.

National Historic Preservation Act (NHPA)

Issue Number: PP-CA-DRECP-15-13-12

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: The LUPA/FEIS confirms that a very small percentage of the lands covered by the DRECP have been subject to cultural resource surveys (LUPA/FEIS, at p. IV.8-2). The Tribe objects to and protests the inclusion of any federally-managed lands within Development Focus Areas until a thorough cultural resource survey has been completed on such lands. Lands that have not yet been surveyed for the presence of cultural resources should be excluded from DFAs until pedestrian surveys are performed. DFAs should be limited to those lands that are confirmed not to contain sensitive cultural resources, sacred sites, or other Native American values.

Issue Number: PP-CA-DRECP-15-13-5

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: The Preferred Alternative of the LUPA/FEIS would set aside 388,000 acres as Development Focus Areas (DFAs), where applicants would be entitled to “streamlining” of the permit process for renewable energy development. The details of the “streamlining” are not found in the LUPA, but the Draft EIR/EIS for the LUPA described a commitment to complete NEPA and other necessary

environmental reviews within one year for applications submitted in DFAs. The Tribe protests the creation of DFAs that will result in artificially streamlined review processes. The commitment to streamlined review in DFAs fails to consider and will unlawfully interfere with the important and often lengthy process associated with consultation and cultural resource evaluation under Section 106 of the National Historic Preservation Act.

Issue Number: PP-CA-DRECP-15-13-6

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: The Tribe opposes any effort to rush or defer any component of the Section 106 process including the surveys, identification of resources, evaluation of impacts, development of mitigation measures and alternatives, and government-to-government consultation. The entire Section 106 process relating to the impacts of an energy development undertaking must be completed prior to issuance of any Record of Decision for any specific project. The Tribe also disagrees that the proposed Final Programmatic Agreement (PA) relating to the DRECP can substitute for or replace BLM’s obligations under 36 C.F.R. Part 800 to Indian tribes that do not sign the PA. As related to cultural resources of significance to non-signatory tribes, BLM must follow the regulatory process described in 36 C.F.R. Part 800.

Issue Number: PP-CA-DRECP-15-13-7

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: Federal and state regulators have a legal and public trust obligation to protect and preserve the cultural resources and Native American values in the California desert. The Preferred Alternative must not contain any explicit or implicit commitment by BLM to “streamline: the permitting process.

Issue Number: PP-CA-DRECP-15-13-8

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: Section IV.9 of the LUPA/FEIS states that 3,480 acres of land

with identified NAEs are included within Development Focus Areas and that 13,248 acres of land with identified NAEs are included within potentially developable Variance Lands. The Tribe protests including any lands containing identified NAEs within DFAs or Variance Lands. Including these lands is inconsistent with BLM’s obligation to protect Native American values from development-related harm.

Issue Number: PP-CA-DRECP-15-28-5

Organization: Eastern Kern County

Protestor: Sophia Anne Merk

Issue Excerpt Text: In regard to Comment C20-15, there is a dissemination issue relating to the Section 106 process. We believe that the Section 106 process documents were never distributed to the general public for review and comment.

Summary:

The DRECP PLUPA/FEIS fails to meet its obligations and does not constitute a good faith effort at compliance with Section 106 under the National Historic Preservation Act (NHPA) and 36 CFR Part 800 because:

- the commitment to streamline reviews in DFAs will unlawfully interfere with the important and often lengthy consultation and cultural resource evaluation process under Section 106 of the NHPA;
- it has failed to limit DFAs to lands that are confirmed not to contain sensitive cultural resources, sacred sites or other Native American values;
- the proposed Final Programmatic Agreement (PA) relating to the DRECP cannot substitute for or replace BLM’s obligations under 36 C.F.R. Part 800 to Indian tribes that do not sign the PA;
- it includes CDCA-administered Native American Elements (NAE) land within DFAs and Variance Lands, which is inconsistent with BLM’s obligation to protect Native American values from development-related harm; and
- publication or notice of Section 106 documents was inadequate.

Response:

The BLM is required to comply with Section 106 under the National Historic Preservation Act (NHPA) and 36 CFR Part 800 to fulfill its responsibilities to ensure full consultation in regards to cultural resources and Native American values.

Development Focus Areas (DFAs).

The BLM has committed to an obligation to recognize lands and resources located in the Development Focus Areas (DFAs). As noted in Section IV.25.3.8 of the DRECP PLUPA/FEIS there is the potential for future development projects within the vicinity of the DRECP planning area, including DFA areas, to have cumulative impacts on cultural resources. The BLM has provided a list of cumulative projects within the DRECP planning area, including locations, acreage, and status (Tables IV.25-1 through IV.25-4).

The streamlining of renewable energy development are incentives described in the DRECP PLUPA/FEIS Volume II.3.3.3.1, p. II.3-118, especially Table II.3-17, p. II.3-119 through 122. These incentives are the same ones presented in the DRECP Draft LUPA, as modified from the Western Solar Plan. The other element of streamlining is the predictability of the land allocations, the avoidance, minimization and compensation actions (Conservation and Management Actions [CMAs]). The site-specific environmental review will not be circumvented in any way; see p. I.3-9:

“1.3.1.3 Site-Specific Implementation Decisions and Requirements for Further Environmental Analysis”:

The BLM’s land use plan decisions will guide and inform future renewable energy development and resource conservation on public (federal) lands in the LUPA Decision Area. Proposed land use plan decisions are subject to protest to the Director under the planning regulations at 43 CFR 1610.5-2. The decisions would not authorize any specific projects or imply such approval. Any future projects would still require additional site-specific environmental analysis and a separate land use authorization such as a right-of-way grant or lease.

Implementation decisions generally relate to on-the-ground actions that BLM approves and that require site-specific analysis. There are no proposed implementation decisions in this Final EIS. When the BLM considers any future application, the BLM decision maker must determine if it would conform to the applicable land use plan (43 CFR 1610.5-3; Department of the Interior 2008) and what level or type of environmental documentation or analysis is required in accordance with NEPA. The BLM would retain the discretion to deny renewable energy right-of-way applications, along with geothermal leases and post-lease development, based on site-specific issues and concerns, even in areas identified as DFAs and Solar Energy Zones. The public would have opportunities to participate and comment during the project-specific NEPA process.

As stated in the DRECP PLUPA/FEIS at Ch. IV.9.3.2.1.1, p. IV.9-24, “Renewable energy development activities covered by the DRECP would be confined to DFAs. The Preferred Alternative could directly impact culturally important resources on 1,994 acres of lands classified as NAEs and an estimated 87,881 archaeological and built environment resources” (See Tables R2.9-6 and R2.8-4). Traditional cultural properties and landscapes are not included

in this calculation as these types of resources are not part of the dataset used to quantify cultural resources. Impacts to these resources are therefore characterized in a more qualitative manner. (See Figure IV.9 2, identified in the Preferred Alternative of the 1980 CDCA Plan, which shows the location of NAEs as well as the components of the Preferred Alternative).

The BLM inventoried and considered the location of cultural resources and Native American interests when designating the DFAs. It involved all tribal groups involved in the planning area in government-to-government consultation and, as identified in the Programmatic Agreement (PA), will continue this with implementation. "Estimated numbers of cultural resource sites within various portions of the DRECP planning area were calculated by overlaying the BLM Cultural Resources Geodatabase (CRG) for the DRECP area with the areas where renewable energy could potentially be developed for the No Action Alternative, DFAs, and conservation designations for each alternative. The CRG, compiled through March 2013 by BLM, contains cultural resource locations and survey information. This data was gathered from several sources including: (1) BLM field office geodatabases within the DRECP area; (2) BLM GIS 2004 Legacy data; (3) South Coastal Information Center Mapping for Eastern San Diego County; (4) the West Mojave Plan Court Remedy records review mapping; (5) mapping associated with renewable energy projects; and (6) State Historic Resource Information Mapping Project" (DRECP PLUPA/FEIS, Ch. IV.9, Section IV.9.3.2.1.1, p. IV.9-24).

Programmatic Agreement (PA).

The consultation process is outlined in the PA, which also specifically states that "the BLM has consulted and will continue to consult with the Tribes and Tribal Organizations on the LUPA and the development of this Agreement, and will continue to consult with the Tribes and Tribal Organizations throughout the implementation of this Agreement, regarding historic properties to which they attach religious and cultural significance" (PA, p. 5).

In addition, the PA specifies that the BLM will carry out consultation responsibilities with all Tribes and Tribal Organizations that request consultation, and that for the purposes of the PA, "Consulting Parties" refers not just to the signatories and concurring parties, but rather to all Tribes or Tribal Organizations regardless of their decision to sign the Agreement as a concurring party. According to the PA, the DRECP LUPA/FEIS will identify "allowable uses, management actions, stipulations, best management practices and mitigation measures to reduce, minimize, or avoid impacts associated with large ground disturbing activities" (PA p. 46).

"Historic Properties" are, as described in the NHPA, those sites that have been determined eligible for the National Register of Historic Places. The BLM has conducted cultural resource work for the DRECP PLUPA/FEIS in accordance with the BLM national Programmatic Agreement (national PA) with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (BLM 2012), and BLM Handbook 8100 for identifying Cultural Resources. Discussion in the DRECP PLUPA/FEIS refers to this national PA as well as the Programmatic Agreement (PA) developed through consultation for the DRECP (See Chapter III.8.1.2.2, III.8.1.2.3, and Appendix V). The BLM recognizes that the DRECP PA is not a replacement for direct consultation in accordance with Section 106 obligations.

NAE-Designated Lands.

While NAE-designated lands and cultural resource sites are critically important, the metrics listed in the DRECP PLUPA/FEIS do not represent a complete list of places or areas significant to tribes in the Plan Area. In accordance with the regulations at 36 CFR 800.14(b), the BLM has executed a Programmatic Agreement with the California State Historic Preservation Officer, the Advisory Council on Historic Preservation and other parties to meet its obligations for Section 106 compliance. The identification, evaluation, and treatment of resources important to tribes will be conducted on a project-specific level, per the terms of the PA, to ensure that any as-yet unidentified resources are identified and taken into account.

With respect to NAE areas, “The accurate evaluation of potential impacts on tribal values can only be made within the cultural context from which those values are derived” (BLM 1980, NAE). The thresholds for identifying resources of interest to tribes and impacts to those resources depend on close coordination, communication, collaboration and formal consultation with tribes. With the participation of tribal governments and individuals, agency staff can make better determinations.

The DRECP PLUPA/FEIS explains that “CDCA-designated NAE areas and estimates about the number of cultural resources that might be impacted do not represent a complete list of places or areas important to tribes or the total impacts anticipated. It would be necessary to conduct additional research, consultation, and meaningful engagement with affected tribal communities on a project-specific level to identify additional areas of concern and importance. Also, NAEs may or may not contain cultural resources of interest to tribes, resulting in an overlap between these analytical categories. Last, there may be a distinction in terms of the perception of impacts to resources important to tribal communities” (DRECP PLUPA/FEIS at Ch. IV.9, p. IV.9.4-5). Analysis in environmental documents is typically undertaken on a case-by-case basis and primarily quantitative level, identifying that the preferred alternative is usually the one that affects the fewest resources, including cultural; however, this method may not account for tribal concerns and perspectives. “The traditional tribal world-view may consider the cultural and spiritual value of the resource and not the total number of impacted resources. For example, some tribes may consider that an adverse impact to two resources is as severe as an impact to 40 resources. As a result, a distinction between alternatives based on a standard metric may not be relevant for resources of concern to tribes because any potential development that would impact resources is considered equally negative” (DRECP PLUPA/FEIS at Ch. IV.9, p. IV.9.4-5).

An accurate evaluation of NAE concerns will depend on close coordination, collaboration and on-going formal consultation with the tribes. With this participation, the BLM will make the best determinations.

Section 106 Documentation

Regarding the inadequacy of publication or notice of Section 106 documents, in accordance with the DRECP PA, the BLM provided the public opportunities to comment on the DRECP LUPA/FEIS through the NEPA process consistent with 36 CFR Part 800.2(d)(3). This included public scoping meetings and public meetings held in November and December 2011, April and May 2013, and October, November, and December 2014. In addition, a Description and Comparative Evaluation of Draft DRECP Alternatives was released in December 2012, and a

public website with additional information was created. All public materials included information about the NHPA and the Section 106 process, and the BLM considered comments received through the NEPA and NHPA processes concerning cultural resources in the development of the PA.

The BLM has fully complied with Section 106 of the NHPA and 36 CFR Part 800 by committing to ongoing tribal consultation to ensure that DFAs will not unlawfully interfere with sensitive cultural areas and Native American interests. Additionally, the DRECP PA is a commitment by the BLM to consult with all affected tribes on any future actions that take place within the DRECP planning area, pursuant to its obligations under 36 CFR 800, and the BLM provided adequate publication of Section 106 documentation.

FLPMA

Issue Number: PP-CA-DRECP-15-18-10

Organization: Center for Biological Diversity

Protestor: Ilene Anderson

Issue Excerpt Text: To the extent that the DRECP LUPAs steer development to intact high value habitat including DT CH in some areas, the proposed DRECP LUPAs are not consistent with FLPMA's planning provisions which require that in developing and revising land use plans, the BLM consider many factors and "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences . . . consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values" (43 U.S.C. § 1712(c)).

Issue Number: PP-CA-DRECP-15-08-7

Organization: Natural Resources Defense Council

Protestor: Helen O'Shea

Issue Excerpt Text: Eliminating high-conflict areas from DFAs would meet BLM's obligations under FLPMA to: ". . . take any action necessary to prevent unnecessary or undue degradation of the lands. BLM acknowledges that only a small percentage of the total DFA acreage is likely to be developed, giving the agency great flexibility to further refine the DFAs to limit conflicts and impacts. See, e.g., Table IV.7.21 projecting 81,000 acres of permanent impact from development in 388,000 acres of DFAs in the Preferred

Alternative, Proposed LUPA, p. IV.27-3. Accordingly, BLM can refine DFAs to avoid unnecessary or undue damage to lands with wilderness characteristics and important habitat and still achieve its goals for renewable energy development.

Issue Number: PP-CA-DRECP-15-08-8

Organization: Natural Resources Defense Council

Protestor: Helen O'Shea

Issue Excerpt Text: In the context of selecting the best DFAs for the DRECP, BLM must avoid unnecessary or undue degradation of other resources; and this approach is also most consistent with agency policy to identify DFAs with the lowest impacts and potential conflicts. Consequently, we urge the BLM to eliminate the specific locations and categories of land outlined below DFAs in the Preferred Alternative that should be refined to reduce conflicts and support development

- Daggett Triangle: Daggett Triangle: We recommended that the federal lands adjacent to the eastern portion of Daggett Triangle, sometimes referred to as East Pisgah, should be closed to application and designated as National Conservation Lands. This area is important not only as a key desert tortoise linkage but also for other species.

- North of Kramer Junction/395. We recommend that the BLM adopt Alternative 4, which would allow development in the southern portion of this area and preserve essential connectivity in the northern

portion.

Issue Number: PP-CA-DRECP-15-15-11

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The FEIS explicitly does not consider reasonable alternatives that depart in any way from the constrictively-defined purpose and need. Rather, each alternative which the FEIS does consider proceeds from the assumption that enough acreage of BLM land must be selected to support 8,175 MW of new renewable energy development; each alternative then arrays the DFA's and unallocated lands in different ways to get this predetermined result, and each of the alternatives contains similar types of conservation management actions. Because of these defects in the articulation of purpose and need, the preferred alternative is not consistent with FLPMA, which requires the Secretary in her management of public lands to "take any action necessary to prevent unnecessary or undue degradation of the land." 43 U.S.C. §1732(b).

Issue Number: PP-CA-DRECP-15-15-24

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The proposed actions of renewable energy development and transmission will hydrologically alter the dissected fan topography for the areas of the Northern Slope of the San Bernardino Mountains which affect habitats for numerous species not only onsite, upstream, but "downstream" of the proposed sites. The proposed actions directly impact an ecologically functional system that supports

a suite of rare species and habitat types including dissected fan landscapes. According to the FEIS discussions on the Climate Change Modeling, the Riparian Corridors, and fan landscapes will be the "Last Refuge" for many of the species of animals. To protect and conserve the public lands and resources, FLPMA requires that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. §1732(b). Not to address the dissected fans landscape issues in the context described in the immediately preceding paragraph is to allow (and indeed, given the proposed placement of DFAs and Unallocated Lands, to incentivize and encourage) unnecessary and undue degradation of public lands in the Northern Slope and adjacent areas.

Issue Number: PP-CA-DRECP-15-15-25

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS, in the preferred alternative, place DFA's and Unallocated Lands in, or in close proximity to, critical habitat as set forth by the USFWS for the area directly adjacent to the current ACEC known as the Barstow Endemic Plant Research Natural Area. As stated in the Appendix "L" Special Unit Management plans for the ACEC's and NCL's, Page 856, "the adjacent lands also meet many of the characteristics as set in the National Conservation Lands Research Area. Of specific relevance and importance, the subject proposed development parcels support unusual geologic, soil and plant association and because it contains habitat for threatened and endangered species". The DFA and Unallocated Lands encompass vital habitat for at least two federal listed species of plants and one unlisted narrowly

endemic carbonate plant species. The subject parcels also provide vital habitat for the San Diego Horned Lizard, Gray Vireo and Bighorn Sheep. In addition, the riparian habitat is critical for rare and common Migratory Birds. This area also functions as a primary wildlife connectivity zone. The area also has high valued soils that are highly wind erosive. The BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-15-27

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS, in the preferred alternative, place DFA’s and Unallocated Lands in DFA’s containing critical habitat as set forth by the USFWS for the area, directly adjacent to the east of the proposed ACEC known as the Granite Mountain Wildlife Linkage. These DFA and Unallocated Lands encompass vital habitat for at least two federal listed species of plants and one unlisted narrowly endemic carbonate plant species. The subject areas also provide vital or critical habitat for the Golden Eagles, Prairie Falcons, Bighorn Sheep and many other species. Joshua Tree Woodlands are present in the subject areas and the Pinyon-Juniper Woodlands “high intactness” covers a majority of the unallocated lands portion of this area. In addition, the habitat is critical for Migratory Birds as these areas have close proximity to approximately 12 Seeps and Springs. The areas include dissected fan landscapes, and 10 NHD Intermittent Streams. These areas also function as a wildlife connectivity zone, and are Intermountain Habitat for the Bighorn

Sheep. By including these lands in the Granite Mountain Wildlife Linkage and removing them from the DFA and Unallocated Lands designations, the wildlife corridor achieves a greater functionality. In addition, a number of focal species selected for the Desert Linkage Network (Penrod, et al (2012)) are expected to be served by this linkage and should be included in this list: puma, badger, kit fox, bighorn sheep, mule deer, little pocket mouse, southern grasshopper mouse, pallid bat, burrowing owl, loggerhead shrike, Bendire’s thrasher, crissal thrasher, cactus wren, greater roadrunner, chuckwalla, desert night lizard, desert spiny lizard, Great Basin collared lizard, rosy boa, speckled rattlesnake, Mojave rattlesnake, Bernardino dotted blue, desert green hairstreak, desert metalmark, and yucca moth.

Penrod et al. (2005) was a focal-species-based connectivity assessment. The Desert Linkage Network used improved methods to make the linkages robust to climate change (i.e., land facet analyses). As currently proposed, the Granite Mountain Corridor ACEC is not sufficiently wide to provide live-in and move-through habitat for the target species or support range shifts in response to climate change. These non-contiguous parcels are in a checker board chaotic configuration and have high conservation value soils that have high wind erosion characteristics according to the NRCS. This area is also predicted habitat for the Mojave Ground squirrel and with climate change modeling this area will become an “Island of Refuge” for this species and others who flee the heat of the desert floor in periods of rising temperatures. The BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-15-29

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Under the preferred alternative in the Proposed LUPA and FEIS, DFAs and Unallocated Lands containing critical habitat, as set forth by the USFWS for the area, are placed directly adjacent to the west of the proposed ACEC known as the Granite Mountain Wildlife Linkage. These DFAs and Unallocated Lands encompass moderately high to very high conservation values and have continuously been included in many wildlife corridor models since 2005. These studies demonstrate the connectivity to the Mojave River as well as the Granite Mountains. The subject areas also provide vital or critical habitat for Golden Eagles, Prairie Falcons, Bighorn Sheep and several other species. Joshua Tree Woodlands are present in the subject areas and the Pinyon-Juniper Woodlands “high intactness” covers a majority of the Unallocated lands portion of this area. In addition, the area habitat is critical for migratory birds as these areas have close proximity to approximately 9 Seeps and Springs. The areas include fan landscapes, and 3 NHD Intermittent Streams. These areas also function as a wildlife connectivity zone, and are Intermountain Habitat for the Bighorn Sheep. By including these lands in the Granite Mountain Wildlife Linkage and removing them from the DFA and Unallocated lands designations, the wildlife corridor achieves a significantly greater functionality. The BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-15-31

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The preferred alternative in the FEIS places Unallocated Lands containing critical habitat, as set forth by the USFWS, directly to the north of the existing Juniper Flats Cultural Area (an existing ACEC which is proposed for NCL per the FEIS). These Unallocated Lands provide habitat for the San Diego horned lizard, Gray Vireo, Least Bells vireo, Southwestern Willow flycatcher, Mojave Ground squirrel, Golden Eagles, Prairie Falcons, and many other species. Joshua Tree Woodlands are present, as well as Juniper Woodlands. Under the Preferred Alternative, the Lucerne Valley DFAs and Unallocated Lands conflict with the Mohave ground squirrel. While the Pinto Lucerne Valley and Eastern Slopes Subarea is outside of the Mohave Ground Squirrel Conservation Area, there are historical recorded occurrences in this subarea and specifically in the Apple Valley and Lucerne Valley. This subarea lies at the southernmost extent of this species distributional range (Inman et al. 2013) and several areas in this sub region are expected to remain relatively stable (Davis et al. in press) under an uncertain climate. In addition, the habitat is critical for migratory birds as these areas have close proximity to approximately 4 Seeps and Springs. The areas include fan landscapes, and 7 NHD Intermittent Streams. These areas also function as a wildlife connectivity zone for a large array of species that transition from the San Bernardino Mountains to the Mojave River and/ or the Granite Mountains. These Unallocated Lands encompass High to Very High conservation values and have continuously been included in many wildlife corridor models since 2005. These studies

demonstrate the connectivity to the Mojave River as well as the Granite Mountains. The BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-15-4

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: To protect and conserve the public lands and resources, FLPMA requires that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)). The Proposed LUPA fails to address the issue of how the creation of new SRMA’s and ERMA’s on such a vast scale can be done in a way that complies with this statutory requirement.

Issue Number: PP-CA-DRECP-15-15-54

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Draft DRECP did not mention, and certainly did not summarize the conclusions of, the Allen/McHughen study, as it relates to the critical issue of carbon sequestration and the true net effect of the long term destruction of desert soils needed to build large-scale renewable energy facilities and associated transmission facilities. This prompted a detailed comment by these Protesting Parties in their February 20, 2015 letter. The PLUPA/FEIS ignores the most authoritative studies. Table IV.3-1 simply reprints Table IV.3-1, which relies on studies pertaining to completely different

biomes, i.e. forests and grasslands. The Proposed LUPA and FEIS also repeat the statement, without citing any basis for it, that desert biomes are less valuable CO2 sinks than “forests” or “grasslands”. This refusal to consider and analyze the most pertinent and authoritative data on an issue which is critical to the health of the ecosystem is a violation of FLPMA, which requires the Secretary in her management of public lands to “take any action necessary to prevent unnecessary or undue degradation of the land (43 U.S.C. §1732(b)).

Issue Number: PP-CA-DRECP-15-17-2

Organization: Audubon California

Protestor: Garry George

Issue Excerpt Text: We fundamentally disagree with a Proposed LUPA and FEIS decision to designate four areas for development within the Preferred Alternative’s Riverside East Development Focus Area (DFA) that occur in and/or proximal to the McCoy Wash and Palen-McCoy Wilderness. We highlight these areas, as we have in previous BLM comment letters and meetings, in Figure 1. The first DRECP Guiding Principle directing the identification of suitable development areas states: Generation should be developed either on already-disturbed land or in areas of lower biological value, and conflict with both biological and non-biological resources should be minimized. [see LUPA FEIS p. I.3-13]

The development of renewable energy projects in these issue areas will result in unnecessary and undue degradation of public lands and their biological resources and values and will contribute to the degradation of environmental quality in the CDCA. This would countermand the intent

of the Federal Land Policy and Management Act (FLPMA), which mandates that public lands:

“...be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;” (Sec. 102(8)).

Issue Number: PP-CA-DRECP-15-18-35

Organization: Center for Biological Diversity

Protestor: Richard Ravana

Issue Excerpt Text: The proposed DRECP LUPAs are not consistent with FLPMA, which requires BLM to prevent unnecessary or undue degradation of public lands (43 U.S.C § 1732(b)). BLM has failed to show that it is necessary to allow expanded renewable energy development and motorized recreation in the designated areas on BLM lands as outlined in the DRECP LUPAs. Such activities, as proposed to be managed under the DRECP LUPAs and the proposed CMAs cause, or are likely to cause, unnecessary and undue degradation of the land, air, water and wildlife resources BLM is mandated to protect through measures regarding surface disturbance, habitat degradation, air pollution, and surface and groundwater depletion. Neither the DRECP LUPAs nor the FEIS adequately explain how BLM management will prevent such impacts.

Issue Number: PP-CA-DRECP-15-18-36

Organization: Center for Biological Diversity

Protestor: Richard Ravana

Issue Excerpt Text: The Final preferred alternative fails to adequately protect public lands from unnecessary and undue degradation. Specifically, BLM chose the more damaging alternative in many areas with sensitive resources including rare plants, listed species, and “Core Areas” and “Ecologically Intact Areas” and parts of “moderately disturbed” areas identified by TNC.

Issue Number: PP-CA-DRECP-15-20-3

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Given that only 3,357 MW of additional permitted capacity remain to reach the federal policy goals, and that this obligation should be shared between California and at least nine other states in the West alone in which there are nearly 300 million acres of public lands that could host renewable energy development- the DRECP LUPA’s assessment of the federal goal, and the amount of fragile public land resources proposed to be devoted to it, must be revised accordingly. Otherwise the DRECP LUPA is not only grossly NEPA deficient, but it also violates BLM’s mandate under FLPMA to avoid exposing public lands and their resources to unnecessary and undue degradation.

Issue Number: PP-CA-DRECP-15-20-33

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Leaving these unallocated lands potentially open to renewable energy development before the

DFA and Variance Lands have been filled and before the completion of Phase 2 of the DRECP is inconsistent with the “directed development” goals of the DRECP and Solar PEIS, is unnecessary to meet the current DRECP Energy goals, and is inconsistent with the BLM’s mandate to avoid unnecessary and undue degradation of public lands.

Issue Number: PP-CA-DRECP-15-20-7
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA has turned a blind eye to the core intent of the DRECP to incentivize renewable development on disturbed lands (most of which are private), as well as to federal laws and policies requiring BLM to avoid unnecessary and undue degradation of valuable public land resources. The DRECP LUPA does so by failing to properly assess the real energy need, and thus proposes to burden BLM lands with excess renewable development. The acreage of preferred alternative DFAs and Variance lands is far more than what is needed to provide the DRECP share of renewable capacity for California and BLM goals. With ample acreage available, these DFAs should be revised to exclude especially sensitive portions, such as core habitat for threatened, endangered, and BLM Sensitive Species; wildlife habitat connectivity areas; and lands identified as ecologically core, all of which are needed for long term persistence and climate change adaptation for both flora and fauna.

Summary:

The DRECP PLUPA/FEIS violates FLPMA’s requirements to consider the relative scarcity of values and to prevent unnecessary or undue degradation because:

Equally important, the proposed 802,000 acres of unallocated lands are completely unnecessary to meet federal and state objectives for renewable energy development, and should be taken off the table altogether for renewable energy applications until and unless a legitimate need is demonstrated in the future.

Issue Number: PP-CA-DRECP-15-33-20
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: Eliminating high-conflict areas from DFAs would meet BLM’s obligations under FLPMA to “...take any action necessary to prevent unnecessary or undue degradation of the lands” (43 U.S.C. §1732(b)). In our comments on the Draft DRECP, we identified conflicts and impacts that would occur from designating DFAs in specific areas. BLM acknowledges that only a small percentage of the total DFA acreage is likely to be developed, giving the agency great flexibility to further refine the DFAs to limit conflicts and impacts. See, e.g., Table IV.7.21 projecting 81,000 acres of permanent impact from development in 388,000 acres of DFAs in the Preferred Alternative, Proposed LUPA, p. IV.27-3. Accordingly, BLM can refine DFAs to avoid unnecessary or undue damage to lands with wilderness characteristics and important habitat and still achieve its goals for renewable energy development.

- it steers development to high-value habitat;
- the purpose and need is too narrow, which in turn limits the range of alternatives and does not allow for an alternative that avoids unnecessary or undue degradation;
- the DRECP is solely carrying the full weight of obligations to meet the BLM's remaining renewable energy capacity targets;
- the preferred alternative is not the least environmentally damaging alternative;
- unallocated lands are potentially left open to renewable energy development before the DFA and Variance Lands have been filled and before the completion of Phase 2 of the DRECP;
- DFAs have not been adequately refined to avoid high conflict areas or sited in already-disturbed land or in areas of lower biological value;
- the BLM has failed to show that it is necessary to allow expanded renewable energy development and motorized recreation in the designated areas on BLM lands as outlined in the DRECP plan amendment;
- the PLUPA fails to address the issue of how the creation of new SRMAs and ERMAs on such a vast scale can be done in a way that complies with the “unnecessary or undue degradation” statutory requirement; and
- the BLM did not consider and analyze the Allen/McHughen study, as it relates to the critical issue of carbon sequestration and the true net effect of the long term destruction of desert soils needed for large-scale renewable energy development.

Response:

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”

The DRECP PLUPA/FEIS provides for the balanced management of the public lands in the planning area in line with FLPMA's multiple use and sustained yield requirements, with the exception of areas identified for inclusion in the National Conservation Lands Section 302(a) of FLPMA includes an exception to the multiple use mandate, stating that “where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” This exception applies to lands within the DRECP identified for inclusion in the National Conservation Lands, as the Omnibus Act of 2009 (PL 111-11) and associated Secretarial Order direct the BLM to prioritize protection of the values for which the lands were designated.

Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM employs an interdisciplinary, professional approach, in line with applicable statutes, regulations, and BLM policy—and includes appropriate mitigation measures—in order to avoid unnecessary or undue degradation of the public lands.

In developing the DRECP PLUPA/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental values and quality. The FEIS identifies appropriate allowable uses,

management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

As explained in Section 1.1 of the FEIS, the Purpose and Need for the proposed action and subsequent analysis fully adheres to the BLM's principles of multiple use and sustained yield to address the value and stewardship of resources as well as complies with the BLM's legal framework outlined in 1.2 of the FEIS. In particular, the FEIS embodies the following information including:

- Section I.3.2 and Appendix D for a description of the Conservation Planning Process. BLM considered biological values and developed a conservation strategy for those values.
- Section I.3.3 and Appendix F has description of the factors considered in the renewable energy planning process.
- BLM considered various factors in determining the preferred alternative, and disclosed the impacts of that alternative. Section I.3.2 and Appendix D for a description of the Conservation Planning Process. BLM considered biological values and developed a conservation strategy for those values.
- Unallocated lands are defined in the glossary as: "BLM unallocated land (also known as undesigned land). BLM-administered lands for which there is no specific existing or proposed land-use allocation or designation. These areas would be open to renewable energy applications, but would not benefit from streamlining or incentives."
- Unallocated lands are lands that did not meet the criteria for inclusion as a conservation area, and therefore, BLM did not feel it necessary to close these areas to large-scale development, including renewable energy activities. For all unallocated lands within the PLUPA planning area, a plan amendment would be required in order to consider renewable energy development application. Additionally, the PLUPA includes CMAs for unallocated lands in order to protect resources on these lands, see section II.3.4.2.9 at II.3-255.
- The DRECP plan does not expand motorized recreation or authorize any additional recreational use. SRMA designations are administrative designations and not special designations managed under the BLM's National Conservation Lands. Consequently, the SRMA designation allows more focused management of existing recreation.

Additionally, the "unnecessary or undue degradation" standard is inapplicable here (1) because the proposed designation of development focus areas (DFA) is a mere planning decision with no on-the-ground effects; and (2) the future development of these areas for renewable energy generation, consistent with the analysis and design features proposed in the DRECP PLUPA/FEIS, can reasonably be expected to cause some impacts, but not unnecessary or undue degradation.

The BLM appropriately considered the relative scarcity of values when preparing the DRECP PLUPA/FEIS, which does not conflict with FLPMA's unnecessary or undue degradation prohibitions found at Section 302(b) of FLPMA.

California Desert Conservation Area (CDCA)

Issue Number: PP-CA-DRECP-15-08-10
Organization: Natural Resources Defense Council
Protestor: Helen O'Shea

Issue Excerpt Text: The Preferred Alternative diminishes management protections for Mohave Ground Squirrel (MGS). It reduces compensatory mitigation from the 5:1 ratio currently in effect throughout the MGS Conservation Area, as codified in the ROD for BLM's West Mojave Plan amendments to the CDCA Plan, 33 to 2:1 in "key population centers" and 1:1 in MGS Conservation Area everywhere else outside key population centers and desert tortoise critical habitat units. Though the 5:1 compensatory mitigation requirement for impacts to desert tortoise critical habitat covers a portion of MGS habitat, the Preferred Alternative leaves large areas of important MGS habitat with the minimal protection of only 1:1 or 2:1 compensatory mitigation requirements.

Issue Number: PP-CA-DRECP-15-09-2
Organization: Town of Apple Valley
Protestor: Lori Lamson

Issue Excerpt Text: The BLM lands around the Town [of Apple Valley] have historically been designated for multiple use. Multiple use of these lands was provided under the FLPMA, the California Desert Conservation Area (CDCA), and the WEMO. How these areas will continue to provide for multiple-use has not been adequately explained. Rather, the document focuses on how conservation values will be retained.

Issue Number: PP-CA-DRECP-15-13-2
Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe
Protestor: Thane Somerville

Issue Excerpt Text: In 1980, an extensive administrative record and planning process resulted in the designation of specific lands for protection under the Class L designation due in large part to the presence of significant cultural and Native American values on those lands. BLM now intends to discard the work of that planning structure that has governed the CDCA lands and protected its cultural resource values for more than three decades. In its place, BLM has created a plan that focuses on designating lands for streamlined intensive energy development regardless of the existing multiple use classification and regardless of the presence of sensitive cultural resources or Native American values on those lands. The LUPA for the DRECP should not be approved given its significant inconsistency with the existing CDCA Plan and because it will result in significant harm to sensitive resources, including those currently located on Class L lands.

Issue Number: PP-CA-DRECP-15-13-4
Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe
Protestor: Thane Somerville

Issue Excerpt Text: Page IV.14-21 of the LUPA/FEIS states that approximately 3% of Class L (Limited) lands would be located within DFAs. There are approximately 6,000,000 acres of Class L lands, which means that approximately 180,000 acres of

Class L lands would be designated as DFAs under the Preferred Alternative. This is inconsistent with the intent of the CDCA Plan and will result in significant diminishment and desecration of cultural and Native American values present on Class L lands. There is no specific analysis in the LUPA/FEIS as to how intensive energy development would affect resources located on these 180,000 acres of sensitive Class L lands.

Issue Number: PP-CA-DRECP-15-13-9

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: Lands that are inventoried as containing Class II or Class III visual values should be managed according to Class II or Class III management objectives. A system that changes the management objective to Class IV solely for the purpose of facilitating large-scale energy development, as opposed to protecting the values actually existing on the land, is not consistent with Congress' intent to protect sensitive visual values within the CDCA, as expressed in FLPMA. It is also unlawfully arbitrary and capricious under the Administrative Procedures Act. All lands that have been inventoried as VRI Class II or Class III should be removed from DFAs.

Issue Number: PP-CA-DRECP-15-15-21

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The preferred alternative's locating of DFA's (for expedited and incentivized development of

renewable energy) and variance and unallocated (permitting development of renewable energy), and the implications for the locating of new transmission facilities in order to bring power from projects in these zones to the grid, are inconsistent with the bioregional planning approach in the CDCA Plan, which identifies as critical Decision Criteria the minimizing the number of separate rights of way and "avoid[ing] sensitive resources wherever possible." CDCA Plan at 93.

Issue Number: PP-CA-DRECP-15-15-23

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: Attached as Exhibits A and B in the Appendix to this Protest Letter are two maps from Database for this area, selected for "Conservation Value". Exhibit A is "zoomed out" and Exhibit B is "zoomed in". Exhibit A shows very high conservation values following the Mojave river flowing north from the southern edge of the map, then trending east; the northern slope of the San Bernardino Mountains is shown trending east-west at the bottom of the map, and the linkage to the Granite Mountains trends north from there. Exhibit B zooms in on the same north slope, and the wildlife linkage to the Granite Mountains. Both exhibits show how the preferred alternative would place DFA's in the midst of lands designated by the FEIS as very high and high conservation value.

The text of the FEIS's discussion of this area under the preferred alternative (at II.3-51 through 53) is very much consistent with the data shown on the maps.

Issue Number: PP-CA-DRECP-15-18-14

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The FEIS fails to provide an analysis of how/why the MUC would be duplicative or contradictory, in light of the fact that existing ACEC and other conservation designations were not duplicative or contradictory to the MUC. It also fails to identify which “concepts” were abandoned as part of the proposed MUC elimination.

Issue Number: PP-CA-DRECP-15-18-30

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The preferred alternative’s inclusion of extensive [over 800,000 acres] undesignated/unallocated lands is not consistent with the bioregional planning approach in the CDCA Plan. The overarching principles expressed in the Decision Criteria in the CDCA include minimizing fragmentation and “avoid[ing] sensitive resources wherever possible.” CDCA Plan at 93. The preferred alternative which includes extensive undesignated lands that may be available for development in the future in the CDCA planning area does not meet these criteria and, rather, will undermine these critical goals. While the designation of DFAs and prioritization of development in those areas attempts to meet these criteria, ultimately, the inclusion of large areas where the future use is uncertain undermines these goals.

Issue Number: PP-CA-DRECP-15-18-6

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The proposed DRECP LUPAs violate the terms of the existing CDCA Plan. Under the terms of the CDCA Plan, BLM is required to affirmatively protect State and Federally listed species and BLM sensitive species from decline on public lands. CDCA Plan, Multiple Use Class Guidelines, at 20 (“All state and federally listed species and their critical habitat will be fully protected”), CDCA Plan, Wildlife Element, Goals, at 29 (“Manage those wildlife species on the Federal and State lists of threatened and endangered species and their habitats so that the continued existence of each is not jeopardized. Stab[i]lize and, where possible, improve populations through management and recovery plans developed and implemented cooperatively with the U.S. Fish and Wildlife Service and the California Department of Fish and Game. . . . Manage those wildlife species officially designated as sensitive by BLM for California and their habitats so that the potential for Federal or State listing is minimized.”); CDCA Plan, Vegetation Element at 37 (“Manage those plant species on the Federal and State lists of threatened and endangered species and their habitats so that the continued existence of each is not jeopardized. . . . Manage those plant species officially designated as sensitive by the BLM for California and their habitats so that the potential for Federal or State listing is minimized.”) Indeed, the CDCA Plan expressly requires that BLM consider the impacts on the habitats of sensitive species “so that impacts are avoided, mitigated, or compensated” (CDCA Plan at 29 (wildlife), 37 (plants)). For UPAs the CDCA Plan also requires BLM to: “Manage unusual plant assemblages (UPAs) so that their continued existence is maintained. In all actions, include consideration of UPA’s so that

impacts are avoided, mitigated or compensated” (CDCA Plan at 38). The proposed LUPAs fail to meet the requirements of the CDCA plan in several ways. Most egregiously, the proposed DRECP LUPAs include over 8,000 acres of Desert Tortoise Critical Habitat within DFAs, Variance Lands and transmission (FEIS at IV.7-134) and eliminate DWMA protections in those areas. The proposed DRECP LUPAs eliminate parts of other existing ACECs (see Figure 1).

Issue Number: PP-CA-DRECP-15-18-7

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The proposed LUPAs also fail to adequately protect Unusual Plant Assemblages (UPAs), other than riparian areas, as required under the CDCA Plan. The Center protests the inclusion of the following UPAs in whole or in part, because of their inclusion in the DFAs, SRMAs and ERMAs.

- Olancha Greasewood Assemblage
- Western Mojave Desert Mojave Saltbush Assemblage
- Ord Mountain Jojoba Assemblage
- Johnson Valley/Lucerne Valley Creosote Bush Clones
- Mojave Sink Desert Willow Assemblage
- Valley Well Shadscale Scrub Assemblage
- Landfair Valley Desert Grassland
- Piute Valley Smoketree Assemblage
- Homer Mountain Ocotillo Assemblage
- Sacramento/Stepladder Mountains Teddy Bear Cholla Assemblage
- Chemehuevi Valley Crucifixion Thorn Assemblage
- Whipple Mountains Saguaro Foothill Palo Verde Assemblage
- Numerous Palm Oases

- Chuckwalla Bench/Chocolate Mountains Munz Cholla Assemblage
- Numerous Mesquite Thicket Assemblages

Issue Number: PP-CA-DRECP-15-18-8

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The Center also protests the inclusion of designated Wildlife Habitat Management Areas (WHMA) in the DFAs, VLs, SRMAs and ERMAs given that BLM has already determined that these areas should be protected to meet long-term conservation goals. The following HMAs and Wildlife Special Attention Areas (WSAAs) identified in the CDCA plan are now overlain with the incompatible designations identified above:

- Lone Tree Canyon (Potential Bighorn Sheep Reintroduction Areas) (WHMA18);
- Koehn Lake (WHMA19);
- Red Mountain/El Paso Raptor Breeding Area (WHMA20);
- East Sierra Canyons(WHMA12);
- Rose Valley (WHMA11);
- Parts of the Argus Mountains (WHMA8);
- Parts of the West Panamint Mountains Canyons (WHMA10);
- Part of the Chicago Valley Mesquite Thickets (WHMA 16);
- Shadow Valley (WHMA 25);
- Part of Cady Mountains (Bighorn Sheep) (WHMA 30);
- Newberry/Granite Mountains Raptor Breeding Area (WHMA23)

The following WHMAs established in the Northern and Eastern Colorado Plan are now overlain with incompatible designations identified above:

- Bighorn Sheep (occupied, unoccupied and corridors);
- Multi-species WHMAs

Issue Number: PP-CA-DRECP-15-20-10

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA must not contribute to additional loss of habitat for the desert tortoise, including its designated critical habitat, habitat linkages and high priority habitat. This is contrary to the mandate in FLPMA, and accompanying BLM regulations and policies, with regard to management of the CDCA's unique and sensitive resources.

Issue Number: PP-CA-DRECP-15-20-12

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA will undermine existing conservation for the MGS on public land by allowing additional loss of key habitat and reduced compensatory mitigation. As with the desert tortoise, this will violate the FLPMA provisions for management of the CDCA and its unique and sensitive resources.

Issue Number: PP-CA-DRECP-15-20-15

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The Fremont Valley DFA is centered on Koehn Lake in the West Mojave and Eastern Slopes Sub-region. Two areas within this DFA must be removed to be consistent with existing habitat conservation designations in the CDCA Plan and to contribute to the conservation of the MGS, desert tortoise and migratory birds. These two areas of the DFA are as follows.

1. ACEC east of Koehn Lake. The DFA overlaps with approximately 800 acres of

the Western Rand Mountains ACEC, which was expanded in 2006 in the West Mojave Plan amendments to the CDCA Plan. The ACEC expansion area is shown on Map 2-15 of the West Mojave Plan which shows the various conservation land designations under Alternative B, the alternative that was approved in the ROD. This ACEC was expanded to include desert tortoise and Mohave ground squirrel habitat and was a recommended action requiring a CDCA Plan amendment when BLM finalized the Western Rand Mountains-Fremont Valley Management Plan in 1994.

2. Koehn Lake WHMA. The 4,000 acre Koehn Lake WHMA was designated in the 1980 CDCA Plan to protect and maintain wetland habitat on the far western portion of the lakebed and adjacent upland habitat. Subsidence on the western portion of the lakebed has created a long trough that fills with rainfall and runoff from the surrounding mountains, thus creating a lake that can persist for weeks to months depending on the volume of runoff. This lake attracts thousands of shorebirds, waterfowl and raptors during the winter and spring seasons. The BLM Ridgecrest Field Office conducted systematic bird surveys of this area in approximately 1977 as part of a NEPA review of a proposed sodium mineral lease operation. The results of these surveys and species occurrence maps at fine scale were included in a bird survey report which should be available in files in the Ridgecrest Field Office.

Issue Number: PP-CA-DRECP-15-20-16

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The North of Kramer Junction DFA must be modified in order to conserve desert tortoise and MGS. As

discussed above, this area contains Desert Tortoise Contiguous High Value Habitat (P2) and is directly adjacent to desert tortoise critical habitat. See Map 3 (Attachment 4). It also contains habitat identified by the TNC Mojave Desert Ecoregional assessment as Ecologically Core (“TNC Mojave Assessment”). This area is also within existing MGS Wildlife Habitat Management Area as adopted by the BLM in the West Mojave Plan Amendment to the California Desert Conservation Area in 2006. Even though multiple uses were allowed in this area, the intent of the MGS WHMA was to conserve habitat for the MGS. To that end, the BLM adopted a conservation framework under which the agency allowed for a maximum habitat loss limit of 1% during the 20 year life of the plan and a 5:1 compensatory mitigation requirement for each acre of habitat lost due to land use activities. (WEMO Plan, Chapter 2, pages 1, 204). The designation of this area as a development focus area violates the intent of the WEMO Plan to provide for conservation of MGS

habitat and is contrary to BLM policy for management of Special Status Species habitat contained in Manual 6840.

Issue Number: PP-CA-DRECP-15-36-9

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: BLM did not include in the NLCS lands previously managed for conservation the proposed Variance Process Lands are currently Limited Use Class lands (MUC L) in the Multiple Use Class system from the CDCA plan- intended to be managed for the conservation of resources. The proposed Variance Process Lands also appear to be part of the Lone Tree Canyon Bighorn Reintroduction Area Wildlife Habitat Management Area (W-18)12. Consistent with the LUPA and final EIS, COCA lands previously classified as MUC L Limited Use should be allocated as NLCS, ACEC, or Wildlife Allocations.

Summary:

The DRECP PLUPA/FEIS should not be approved given its inconsistency with the existing CDCA Plan and FLPMA’s requirements for the CDCA, by:

- not adequately explaining how the area will continue to provide for multiple use;
- significantly harming sensitive resources, including cultural and Native American values, present on Class L lands;
- failing to provide an analysis of how or why the MUC would be duplicative or contradictory;
- failing to protect sensitive visual resources solely to facilitate large-scale energy development;
- making availability of DFAs, variance lands, and undesignated lands, and the implications for siting new transmission facilities in order to bring power from projects in these areas to the grid, inconsistent with the bioregional planning approach in the CDCA Plan;
- heavily weighing DFAs and unallocated lands toward areas with “very high” and “high” conservation values;
- allowing for additional losses to key habitat that will impact conservation of the Mohave Ground Squirrel and Desert Tortoise;

- not protecting ecologically significant lands; and
- not providing sufficient guidance or coordination to ensure that the WEMO plan revision now underway will affirmatively ensure conservation goals laid out in the DRECP are actually met.

Response:

The DRECP PLUPA/FEIS elaborates on use considerations for the CDCA planning area. FLPMA Section 103(c) [43 U.S.C. 1702(c)] defines the term “multiple use” to allow for “the use of some land for less than all of the resources, a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values....” The CDCA provision in FLPMA requires the BLM to consider conservation values (wildlife, fish, and plants, and natural scenic, scientific and historical values) as part of its multiple use management. All land use allocations would allow for some combination of uses; any specific use (such as a large-solar field or geothermal plant) would require additional site-specific NEPA analysis and authorization before BLM prioritizes one specific use over any others. Additionally, the DRECP PLUPA/FEIS complies with Public Law 111-11, which directs the BLM to include lands within the CDCA to be managed for conservation as part of the National Conservation Lands.

Decisions in the proposed LUPA consistently support adherence to BLM’s mandate under FLPMA to manage the public lands for multiple use and sustained yield. Managing for conservation values (e.g. biological, ecological, cultural, etc.) is part of BLM’s FLPMA and CDCA multiple use and sustained yield mandate (FLPMA Sec 103 (c), and Sec 601). The DRECP PLUPA/FEIS LUPA-wide and ACEC specific conservation and management actions (PLUPA/FEIS Volume II.3.4.2.1, p. II.3-161 and Volume II.3.4.2.4, p. II.3-234, respectively), and the ACEC Special Unit Management Plans (PLUPA/FEIS Appendix L) clearly articulate required resource management actions, and allowable and non-allowable uses, and required measures to avoid, minimize, or mitigate impacts to sensitive resources within each of these designations. Renewable energy development is the only type of activity that is not an allowable use in any ACEC or National Conservation Land unit, and other use restrictions were considered on a more site-specific basis in the Special Unit Management Area Plans in Appendix L. Additionally, the BLM land on two sides of the Town of Apple Valley is also proposed as Special Recreation Management Areas (SRMAs) in recognition of the recreation values and the need for special recreation management. Renewable energy development is, here again, the only type of activity that is not an allowable use in SRMAs, same as the ACECs. Development Focus Areas and the unallocated category of lands have a low occurrence of sensitive resources and are of low recreation value, therefore are open to all uses. For all unallocated lands within the PLUPA planning area, a plan amendment would be required in order to consider a renewable energy development application.

The DRECP amends the CDCA plan, Bishop RMP and Bakersfield RMP. In this process, the DRECP scope and purpose and need are explained in Volume I in the Draft and Final LUPA/EIS LUPA. The DRECP is an amendment to the CDCA Plan (see Draft DRECP Volume I, sections I.0.3, I.1.2, I.2, and I.3; in the Final PLUPA FEIS Volume I, sections I.0.1, 1.0.3, 1.0 I.1.2, I.2, and I.3).

The Multiple Use Classes (MUCs) from the 1980 CDCA Plan under the No Action alternative were designated geographically based on the sensitivity of the resource. Each described a different type and level or degree of use which was permitted within that particular geographic area (CDCA Plan, as amended, Chapter 2). As stated in DRECP PLUPA/FEIS Volume II.3.5.1, p. II.3-264: “The DRECP LUPA would eliminate the multiple-use classes (MUCs) in the CDCA. Because the LUPA identifies National Conservation Lands, ACECs, Wildlife Allocations, SRMAs, ERMAs, and DFAs, and specific CMAs for those allocations, retaining the MUCs would create duplicative and potentially contradictory management. Many of the concepts of the MUCs were maintained, but with different names. Similar to the MUCs, the proposed land use allocations within the DRECP were based on the presence or absence of resources, and/or the functional value of the land base for the resources, and the appropriate level and type of use. However, the BLM found that even within areas that allow similar levels of use, not all uses were compatible. For example, under the CDCA Plan, both a DFA and an Open OHV area would be categorized as “Multiple-Use Class I (“Intensive use”). However, in order to protect recreation, the BLM determined it was necessary to include Open OHV areas within SRMAs, which would be closed to renewable energy development. In other situations, SRMAs overlap with National Conservation Lands where the BLM found that appropriately-managed recreation was compatible with cultural and natural resource conservation. Replacing the MUCs with updated land use allocations allowed the BLM to design more targeted, nuanced management, in compliance with FLPMA’s CDCA provisions..

In the DRECP PLUPA/FEIS Volume II.3.5.1, p. II.3-264, Table II.3-29 presents an overview of how the CDCA’s MUCs under the No Action Alternative translate to the DRECP’s land allocations in management objectives/allowable uses. Where the DRECP LUPA is silent on a resource, activity, or use, this table provides guidance on which decisions in the CDCA Plan would apply. For example, if an area is an ACEC, the BLM would apply the decisions for Class Limited (L) if the DRECP did not provide direction.

DRECP PLUPA/FEIS, Appendix R, Table R.2.14-3 provides a detailed side-by side acreage comparison of the No Action Alternative and the land use allocations under the Action Alternatives. Appendix R, Table R2.14-1 ACECs provides an exhaustive side-by side acreage comparison, and Tables R2.14-2 SRMAs provides the same.

Notwithstanding the change in terminology, the BLM’s LUPA decisions adequately protect the values and resources of the CDCA Plan Class L lands. The BLM with the other three DRECP agencies (aka REAT agencies), went through a multi-year process assessing the sensitive desert resources and building a range of alternatives that resulted in differing levels of conservation and impacts to those resources (see Draft and Final DRECP Volume I.2 and I.3, Volume II, Volume IV, and FEIS Appendices B, C, D, E, G, H, L, P, Q, R, BB.). In addition to land use allocations, the BLM developed CMAs to provide for avoidance, minimization, and mitigation for sensitive resources within all land use allocations.

As noted in comment response DR-8 in DRECP FEIS Appendix AA, “DFAs aren’t limited by MUC allocations because the DRECP is amending those allocations. Instead of basing DFA locations on MUC allocations, DFAs are based on updated information on all the resource and

use considerations that were considered when the MUCs were originally designated, including Native American traditional values, as you specify in your comment.” Preferred Alternative Crosswalk, describe the DRECP allocations for CDCA Multiple-Use Class.”

With regard to potential energy development on proposed DFAs that are within 180,000 acres of lands categorized as MUC-L in the No Action Alternative, the BLM was careful to exclude lands with known moderate to high sensitive resource values at conflict with the DFA classification. Furthermore, these classifications are appropriate at the large, programmatic level of the DRECP analysis. Detailed site analysis and site –specific NEPA will be conducted at the project scale when development is proposed. See also Draft DRECP and EIR/EIS Volume II.3.2.4.1, p. II.3-424 through 433, and the DRECP PLUPA/FEIS Volume II.3.5.1, p. II.3-264, Volume IV, and Appendix R, Table R2.14-3, p. R2.14-10 for a discussion on the transition away from the MUC system in the DRECP. Under the No Action Alternative, Class L lands are open to wind and utility and/or non-utility scale solar development and these types of projects may be allowed after NEPA requirements are met. Utility-scale solar developments are subject to the provisions and exclusion criteria in the Western Solar Plan.

With regard to DFAs on lands with high conservation values, the referenced maps in the FEIS and the locations of the DFAs are correct. Looking to the overall desert wide biological reserve design envelope presented in the Draft DRECP EIS/EIR (Appendix D, Figure D-12, p. D-45), which includes non-federal land, areas of high conservation value are included in the reserve design and BLMs biological conservation strategy (PLUPA/FEIS, Appendix D). The BLM-managed public lands in the Draft and Final PLUPA and the non-federal lands in the Draft contain the high value biological resources and/or areas that need special management in the form of BLM conservation allocations or non-federal land protection mechanisms, as determined by the DRECP interagency team which included natural resource specialists from BLM, USFWS, California Department of Fish and Wildlife and the California Energy Commission. In regards to the protester’s comment regarding conservation of the Mojave River in the vicinity of the Town of Apple Valley, BLM does not administer lands along the Mojave River in the area described, and therefore could not propose conservation allocations solely on non-federal land. Planning and conservation actions by local governments are needed to conserve the non-federal lands at the described area along the Mojave River. Also, using the overall DRECP reserve design envelope which includes nonfederal land, and BLM’s DRECP PLUPA/FEIS conservation lands design (National Conservation Lands, ACEC and wildlife allocations), the BLM does not propose DFAs “in the midst” of lands identified in the DEIS or FEIS as having high or very high conservation value. BLM does propose DFAs adjacent to existing and proposed conservation land designations and allocations; buffers were not placed on any ownership or land allocation.

The DRECP PLUPA/FEIS is consistent with the landscape, regional planning approach outlined in the 1980 CDCA Plan. The CDCA Plan does not use the term “bioregional planning approach.” The CDCA does, in numerous locations, direct the BLM to look at the landscape, landscapes, and regional planning. The referenced Decision Criterion at CDCA 93 is limited to renewable energy development and is not a specifically stated overarching CDCA Decision Criterion in the manner presented in the protest. Moreover, by creating DFAs, the BLM is further strengthening this Decision Criteria for renewable energy by encouraging renewable

energy development in less sensitive areas and including more sensitive areas within National Conservation Lands and ACECs.

The BLM's inclusion of Unallocated Lands in the DRECP PLUPA/FEIS does not undermine the landscape, regional planning approach of the CDCA Plan. For unallocated lands within the PLUPA planning area, renewable energy development applications would require a Plan Amendment. Also, any proposals to develop these lands would need to be consistent with the DRECP PLUPA/FEIS LUPA-wide conservation and management actions (DRECP PLUPA/FEIS Volume II.3.4.2.1, p.II.3-161) and additional CMAs specific to unallocated lands (DRECP PLUPA/FEIS Volume II.3.4.2.9, p. II.3-255), including undergoing environmental analysis that will take into account site specific information on sensitive resources and require mitigation, as appropriate, to offset adverse impacts, consistent with federal statutes, regulations and policies. Please note that the DRECP PLUPA/FEIS unallocated/undesignated land category 536,000 acres and not 800,000; there was an error in a table, which will be corrected in the Record of Decision. This is 173,000 fewer acres than the 709,000 acres if unallocated in the DEIS Preferred Alternative.

The BLM believes the proposed reduction of 780 acres from the Western Rand Mountain ACEC will not adversely impact on the relevant and important values of the ACEC (DRECP PLUPA/FEIS Appendix L, Western Desert and Eastern Slopes Sub-region, p.1359). The addition of the proposed LUPA-wide and ACEC CMAs (DRECP PLUPA/FEIS Volume II.3.4.2.1, p. II.3-145, and Volume II.3.4.2.4, p. II.3-234), the ACEC resource objectives, allowable and non-allowable uses, and the 0.5% ground disturbance cap (DRECP PLUPA/FEIS Appendix L, Western Desert and Eastern Slopes Sub-region, p.1359) will provide the necessary measures and tools to maintain and enhance the conservation value of the ACEC (DRECP PLUPA/FEIS Volume IV.7).

Activities on BLM land on Koehn Lake, a DFA, would need to comply with the LUPA-wide CMAs (DRECP PLUPA/FEIS Volume II.3.4.2.1), including CMA LUPA-BIO-17 (PLUPA/FEIS Volume II.3.4.2.1, p. II.3-172) which states that operational avoidance and minimization actions must be taken to reduce the level of population mortality on bird populations within known important bird areas, of which Koehn Lake is one, when flooded. As noted in comment response D3-9 in DRECP PLUPA/FEIS Appendix AA, "The Visual Resource Management (VRM) classifications established within the DRECP are appropriate at the large, programmatic scale of this document. Detailed site analysis is conducted at the project specific scale and would occur when projects are proposed." The BLM has taken appropriate steps to safeguard sensitive visual resources in the PLUPA/FEIS. The description of how visual resources were considered in the development of alternatives and how visual resources are proposed to be conserved may be found in PLUPA/ FEIS, Volume II.3.2.1, p. II.3-17, II.3.4.1.12, p. II.3-142, II.3.4.2.1.12, p. II.3-215, II.3.4.2.4.5, p. II.3-239, II.3.4.2.8.8, p. II.3-253, and II.3.4.2.9.6, p. II.3-261.

As noted in the DRECP PLUPA/FEIS, Volume IV.7.3.2.1, p. IV-134, "Within the DRECP Plan Area on BLM land, critical habitat has been designated by the USFWS for the following Focus Species: desert tortoise, southwestern willow flycatcher, desert pupfish, and Parish's daisy. For desert tortoise, approximately 8,000 acres of impact designated critical habitat would result from

renewable energy and transmission development under the Preferred Alternative located in the Chuckwalla, Fremont-Kramer, Ord-Rodman, and Superior-Cronese critical habitat units.” The impact acreage cited includes both the designated critical habitat in DFAs (~4700 acres) and those acres that may be impacted in conservation lands by transmission or other activities (~3300 acres); this point will be clarified in the ROD. The DRECP PLUPA/FEIS would include approximately 4,700 acres of designated desert tortoise critical habitat within DFAs. The Endangered Species Act of 1973 (ESA) and BLM 6840 wildlife manual do not prohibit impacts in designated critical habitat. The ESA prohibits the “adverse destruction and modification” of designated critical habitat (ESA Sec 7(a)(2)), a conclusion that is rendered by the USFWS at the time of the signing of its Biological Opinion (BO) (ESA sec 7(b)) for a federal action. The BLM analysis used for USFWS to make a conclusion in the BO is in the biological assessment (BA) (ESA sec 7(c)); rarely, it may be in the NEPA document for a large scale effort. The FEIS, Volume IV.7 has an analysis of effects to desert tortoise. The primary analysis, as required by the ESA, for designated critical habitat is contained in the BLM BA and USFWS BO.

The BLM manages 2.7 million acres of desert tortoise designated critical habitat. Approximately 4700 acres are in DFAs (less than 0.2% of designated critical habitat - see above), and over 94% is contained within existing or proposed conservation designations, National Conservation Lands or ACECs (DRECP PLUPA/FEIS Volume IV.7.3.2.2, p. IV.7-279.) In regard to tortoise conservation and recovery, the DRECP PLUPA/FEIS analysis states “...Within the Colorado Desert Recovery Unit, 92% of Tortoise Conservation Areas (TCA), linkage habitat, and high priority habitat would be conserved under the Preferred Alternative. Within the Eastern Mojave Recovery Unit, 93% of TCAs and linkage habitat would be conserved under the Preferred Alternative. Within the Western Mojave Recovery Unit, 89% of TCAs and linkage habitat would be conserved under the Preferred Alternative. CMAs would require avoidance of TCAs, except for impacts associated with transmission or impacts in disturbed portions of TCAs. Additionally, the CMAs would prohibit impacts that affect the viability of desert tortoise linkages. Compensation CMAs would be required for impacts to desert tortoise, including desert tortoise important areas.”

Most of the CMAs for tortoise are for avoidance and minimization, as generally described above. The compensation for tortoise is the standard ratio of 1:1, except in designated tortoise critical habitat where it is 5:1 where the mitigation must occur in the same unit as the impact, and 2:1 compensation in the identified linkage habitat (DRECP PLUPA/FEIS Volume II.3.4.2.1, CMA LUPA-BIO-COMP-1, p. II.3-188, Volume II.3.4.2.8.3, II.3-248 and Appendix H).

Mohave Ground Squirrel (MGS) and desert tortoise are adequately protected by proposed decisions in the LUPA. In fact, the PLUPA/FEIS provides for a far greater level of durable conservation for these two species than exists under current plans. Specifically, existing land use plans may impact up to 51,000 acres of tortoise habitat in important areas (FEIS Volume IV.7.3.1.1, p. IV.7-63), while the PLUPA/FEIS may result in impacts of up to 16,000 acres (FEIS Volume IV.7.3.2.1, p. IV.7-132). Existing conservation for the tortoise consists of 3,733,000 acres (FEIS Volume IV.7.3.1.1, p. IV.7-103) and the proposed consists of 4,718,000 acres in primarily proposed National Conservation Lands and ACECs (FEIS Volume II.3.2.1.1, p. II.3-24-65; Volume IV.7.3.2.1, p. IV.7-187; and, Appendix L).

For MGS, existing conservation consists of 605,000 acres (FEIS Volume IV.7.3.1.1, p. IV.7-104) whereas the proposed LUPA expands this to 773,000 acres primarily in proposed National Conservation Lands and ACECs (FEIS Volume II.3.2.1.1, p. II.3-24-30, 46-51, 61-65; IV.7.3.2.1, p. V.7-188; and, Appendix L). Most of the 605,000 acres in No Action are not considered durable by many in the public because they are only management/conservation areas and not ACECs or National Conservation Lands,

Regarding existing protections for MGS, the protest statements are factually incorrect, WEMO considered a 5:1 mitigation ratio and a 1% habitat cap in Alternative A. However, the WEMO ROD (2006) approved Alternative B, not Alternative A. The compensation framework approved under WEMO (Alternative B) established a 5:1 compensation ratio for disturbance within Designated Wildlife Management Areas (DWMAs) within desert tortoise habitat only and explicitly stated “there would be no new compensation program for disturbance of lands outside the DWMAs, such as lands within the northwestern portion of the MGS conservation area or within other newly established ACECs” (WEMO FEIS, pp. 2-204). The WEMO (2006) 1% disturbance limitation of new surface disturbance was limited to the federal portion of lands within DWMAs only (WEMO FEIS, page 2-204). Under the CDCA, as amended by WEMO, the MGS habitat conservation area was established and conservation goals were identified, but no habitat impact limits or ground disturbance limitations were explicitly defined.

The BLM identified and determined appropriate compensation ratios for the conservation of the species in important areas through analysis presented in the DRECP DLUPA/EIS Appendix H, H.3.1.3 and H.3.2. Current, No Action (WEMO 2006) MGS compensation is at a 1:1 ratio; MGS also benefit, incidentally, from the No Action 5:1 compensation ratios for desert tortoise designated critical habitat and desert tortoise habitat within DWMAs (WEMO FEIS Chapter 2, 2.3.2, p. 2-203). MGS compensation in the DRECP PLUPA/FEIS is proposed at the standard 1:1 ratio, with an increase to 2:1 in key population centers (DRECP PLUPA/FEIS Volume II.3.4.2.1.1, p.II.3-188 and Appendix H), thus providing for an increased compensation requirement compared to the No Action alternative. Additionally, the current plans (No Action) only calculate the 1% disturbance limitation on newly authorized actions, in DWMAs only, since the signing of the 2006 WEMO ROD, and do not account for any existing disturbance. The DRECP PLUPA/FEIS ground disturbance caps would apply to all ACECs and incorporates all existing disturbance, whether authorized or not, and regardless of when it occurred (DRECP PLUPA/FEIS Volume II.3.2.1, p.II.3-18, repeated in Volume II.3.2.2, p. II.3-66, and repeated in CMAs at II.3.4.2.3.3, p. II-3-226 and II.3.4.2.4.2, p. II.3-235). Under the DRECP PLUPA/FEIS, the MGS would, incidentally, continue to benefit from a 5:1 compensation ratio for impacts in and to desert tortoise designated critical habitat. The DRECP PLUPA proposes establishing LUPA-wide CMAs that contribute to the conservation of the desert tortoise and MGS, and also contains specific CMAs for MGS and desert tortoise.

Refer to comment response E79-53 regarding local government coordination and the disturbance caps: “...See Volume II, Section II.3.4.2 for revised CMAs for activities on BLM administered lands, including CMA regarding ground disturbance caps in DRECP PLUPA/FEIS conservation designations and applicable compensation ratios. BLM will continue to work with federal, state, and local partners in the conservation and management of Mohave ground squirrel as it implements the LUPA.”

Comment response E79-51 states: “See Volume II, which includes revised descriptions and mapping for the range of alternatives considered for the BLM LUPA, including substantial reductions in DFAs in the West Mojave region as compared to that proposed for the Plan-wide Draft DRECP alternatives”.

With regard generally to the designation of DFAs in areas of wildlife values, the DRECP PLUPA/FEIS (Volume II.2.2.1.3, p. II.2-17 and Table II.2-4, p. II.2-17) No Action Alternative acknowledges the existing Habitat Management Plan (HMP) areas (also known as and identified as WHMAs in the protesters letter). These areas are not closed to renewable energy development under the No Action Alternative. For example, in the Western Solar Plan ROD (p. 11), which amended the CDCA Plan, the BLM clarified that the WHMAs required design features, such as limiting barriers to bighorn sheep movement, and 3:1 mitigation for disturbance of Desert Dry Wash Woodland and Desert Chenopod Scrub communities. Also, any projects proposed in WHMAs shall not compromise the management goals of those WHMAs, and the required site-specific NEPA analysis would need to analyze the impacts of the project on the WHMAs and their management prescriptions. The BLM will also consider the presence of WHMAs for solar energy ROW applications within variance areas, including documentation from the applicant that the proposed project will minimize adverse impacts on important fish and wildlife habitats and migration/movement corridors.

The DRECP PLUPA/FEIS is an amendment to the CDCA Plan using the best available data, updated analysis methods, and up-to-date land management/planning tools, and did not solely rely on data and planning approaches from the original 36-year old 1980 CDCA plan or the Northern and Eastern Colorado (NECO) Desert Comprehensive Management Plan (2002). A comprehensive landscape scale analysis was conducted and a biological conservation strategy designed for the DRECP planning area of the Mojave and Sonoran deserts of California (Draft DRECP EIR/EIS and PLUPA/FEIS Appendices B, C, D, E, H, L, P, Q, and S). This strategy considered the wildlife resources found within the HMP areas and WHMAs. With this comprehensive information, the BLM designed National Conservation Lands, ACECs, wildlife allocations, and CMAs in order to appropriately conserve biological resources on all BLM land allocations. And, while the DRECP PLUPA/FEIS biological conservation strategy does not fully incorporate all areas that had been identified for conservation purposes in previous Land Use Plan Amendment decisions, the DRECP PLUPA/FEIS includes new areas, based on updated data, that were not previously identified for conservation. This up-to-date comprehensive DRECP PLUPA/FEIS biological strategy for the CDCA supplants the 36-year old HMPs. The HMPs, which were designed as primarily guidance documents, would be unnecessary with the conservation requirements in the DRECP PLUPA/FEIS.

The DRECP analyzed multiple ways to protect sensitive resources, including wildlife. In addition to protective land use allocations (National Conservation Lands, ACECs, and wildlife allocations), the BLM considered CMAs to provide for avoidance, minimization, and mitigation for impacts to sensitive resources. Because of the protective CMAs (both LUPA-wide and DFA- and VPL-specific), and overlap between conservation designations (ACEC and National Conservation Lands) and recreation designations (SRMA and ERMA) where the BLM identified both sensitive resources and recreation value, these allocations are not *de facto* incompatible with

management of wildlife. The protest does not identify how wildlife resources will be negatively impacted, or dispute the analysis in Chapter IV.07 (Biological Resources).

The BLM took steps to ensure coordination of the interrelationship between the DRECP and WEMO planning efforts. DRECP PLUPA/FEIS Volume I.3.1.5 outlines the relationship consistency between the WEMO Route Network Plan and the DRECP planning area. The WEMO is narrower in scope than the DRECP PLUPA. WEMO planning decisions center around travel and recreation management and to a lesser extent address grazing strategies. Where the WEMO proposes plan amendments to the CDCA Plan, those amendments have been reviewed and the BLM has determined they are consistent with the DRECP PLUPA/FEIS.

The WEMO would also make route designation decisions, which are implementation decisions and not plan decisions. The implementation decisions in the WEMO, such as route designations, will be refined and considered consistent with in the context of the CDCA, as amended by the DRECP PLUPA/FEIS, including the LUPA-wide CMAs, and requirements in National Conservation Lands and ACECs. This includes consideration of the national, and relevant and important values, respectively, and the ground disturbance caps. Because the WEMO will be completed after the DRECP LUPA ROD is signed, implementation decisions in the WEMO will be subject to the CDCA Plan, as amended by the DRECP PLUPA/FEIS. This analysis will be outlined in the WEMO NEPA documents, as appropriate.

As noted in comment E79-44, Volume II, Section II.3.4.2 sets forth “the revised CMAs that apply to activities on BLM-administered lands, including a description of avoidance and minimization CMAs and compensation CMAs. The compensation approach recognizes the value of the proposed LUPA-wide and allocation specific CMAs, allowable and non-allowable uses in the specific land allocations, and likewise considers the landscape-scale conservation value provided by the LUPA conservation designations for desert tortoise, BLM special status species, and other biological resources. By implementing the CDCA Plan, as amended by the DRECP PLUPA/FEIS with its conservation designations and CMAs, the BLM land contribution to the conservation value of the ecological function and biological resources on a landscape scale is greatly increased, thereby reducing the mitigation obligation of allowable activities on BLM-administered lands.

The protection of unusual plant assemblages (UPAs) increased with the DRECP PLUPA/FEIS. The following LUPA-wide CMA is proposed for all activities on BLM land: (DRECP PLUPA/FEIS Volume II.3.4.2.1, p. II.3-169): “LUPA-BIO-13: Implement the following CMA for project siting and design: To the maximum extent practicable site and design projects to avoid impacts to vegetation types, unique plant assemblages, climate refugia as well as occupied habitat and suitable habitat for focus and BLM Special-Status Species (see “unavoidable impacts to resources” in Glossary of Terms, p. Glossary-16)”.

Consistency with Other Plans

Issue Number: PP-CA-DRECP-15-07-2

Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.

Protestor: Rebecca Watson

Issue Excerpt Text: Application of the DRECP land allocations and conservation management actions to the Project would hinder the development of the FERC-licensed Project and violate the Federal Land Policy Management Act (FLPMA) and the BLM planning regulations that require coordination and consistency with the “purposes, policies and programs” of other federal agencies. The FERC, in response to an Eagle Crest application and pursuant to the FPA, 16 U.S.C. § 818, withdrew the subject federal land in 1991 from “entry, location, or other disposal.” On June 19, 2014, prior to issuance of the DRECP Draft EIS in September, 2014, and after a lengthy federal and state environmental review process in which BLM was a participant, FERC issued Eagle Crest a license to construct and operate the Project. By this protest, Eagle Crest seeks written clarification by BLM that the DRECP land allocations and conservation management actions were not intended to and do not apply to this FERC-licensed Project on federal lands withdrawn pursuant to the FPA prior to the commencement of the DRECP planning effort.

Issue Number: PP-CA-DRECP-15-07-3

Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.

Protestor: Rebecca Watson

Issue Excerpt Text: BLM Failed to Coordinate and be Consistent with FERC’s FPA Project Withdrawal and License in Violation of FLPMA. A decision to apply DRECP land allocations and conservation management actions to a Project which has already completed a multi-year NEPA process and obtained a permit from another action agency violates the BLM’s FLPMA planning obligations to coordinate land use planning with other federal agency programs. Moreover, it is inconsistent with BLM’s decision in the DRECP to exclude certain “existing applications” that are advanced in their permitting process from application of the DRECP.

Issue Number: PP-CA-DRECP-15-07-4

Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.

Protestor: Rebecca Watson

Issue Excerpt Text: Although it is not clear in BLM’s response to comments, BLM seems to imply that it can use its land use planning authority ex post facto to make land allocations that can injure the value of the lands withdrawn for power purposes. BLM, App. AA, Response to Comment Letter E59, at E59-11, response E59-2 and E59-13. BLM’s legal position is not supported by FLPMA or the FPA and is inconsistent with the authorities that BLM cites in its response to the Eagle Crest comments.

Issue Number: PP-CA-DRECP-15-07-5

Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.

Protestor: Rebecca Watson

Issue Excerpt Text: The coordination rule directs BLM to “keep apprised” and “consider” non-BLM plans “that are germane” in the development of BLM plans. BLM is directed to resolve “inconsistencies” and “collaborate” by inviting other federal agencies to participate as a “cooperating agency.” 43 CFR § 1610.3-1(a)(1, 2, 3 and 5) and (b). BLM is also required to provide other federal agencies with the “opportunity for review, advice and suggestion on issues and topics which may affect or influence other agency or other governmental programs” Id. at (c). The consistency regulation requires that BLM plans “shall be consistent with” officially approved and adopted “resource related policies and programs of other federal agencies” (43 C.F.R. § 1610.3-2(b)). Certainly, FERC’s withdrawal and license for a hydroelectric pumped storage project is a resource related policy and program that BLM is required to consider in the DRECP.

Issue Number: PP-CA-DRECP-15-07-6
Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.
Protestor: Rebecca Watson

Issue Excerpt Text: Here, there is no evidence of any coordination with FERC and the BLM’s DRECP appears inconsistent with FERC’s licensing decision for the Project. BLM does not identify FERC as a cooperating agency or as an agency with whom it consulted. DRECP at V-1, V-9 to V-15; DRECP App. A referencing Draft DRECP App. A. Although BLM is apparently aware of the FPA withdrawal authority (DRECP at 1.2-16), neither the Project nor the FPA withdrawal is mentioned anywhere in the DRECP. This failure to consider the Project in the DRECP is inexplicable when one considers that

BLM has participated in the FERC NEPA process since 2010 and has had the Project SF-299 pending since 2009.

Issue Number: PP-CA-DRECP-15-07-9
Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.
Protestor: Rebecca Watson

Issue Excerpt Text: The FERC Project license appropriately provides for coordination and consultation with BLM; BLM should comply with the 1966 MOU and FLPMA “coordination” and “consistency” requirements by recognizing that the Project withdrawal preceded the DRECP process and BLM should not apply DRECP land allocations and CMAs to the Project after the fact.

Issue Number: PP-CA-DRECP-15-08-4
Organization: Natural Resources Defense Council
Protestor: Helen O’Shea

Issue Excerpt Text: The DFAs in the Preferred Alternative include some low-conflict areas where projects are likely to succeed, but they also include some high-conflict areas that are inappropriate for development and where projects are unlikely to succeed. We believe BLM needs to further refine the Riverside East DFA, in particular, to ensure it meets the guided development purpose of the DRECP and satisfies the requirements laid out in the Western Solar Plan for the Riverside East SEZ. As currently proposed, the Riverside East DFA is inconsistent with the Western Solar Plan.

Issue Number: PP-CA-DRECP-15-08-6

Organization: Natural Resources Defense Council

Protestor: Helen O'Shea

Issue Excerpt Text: The Western Solar Plan also required that BLM, in coordination with the USFWS and the California Department of Fish and Wildlife, identify two north-south wildlife corridors of sufficient width (a minimum of 1.3 miles; wider corridors could be necessary depending on the results of future site-specific studies). The FEIS indicates that the proposed Riverside East DFA contains only one multispecies habitat linkage that does not appear to meet the requirements of even one of the north-south corridors described by the Western Solar Plan. BLM should remove inappropriate areas from the Riverside East DFA, including the McCoy Wash, and work to resolve any other inconsistencies.

Issue Number: PP-CA-DRECP-15-15-36

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS reflect a serious failure on the part of the BLM to cooperate, or even to engage, with the County of San Bernardino. In its comment letter on the Draft DRECP, the County specifically stated its preference for keeping DFA's away from, inter alia, Lucerne Valley, Stoddard Valley and Johnson Valley. This request is in keeping with community plans for these areas emphasizing conservation and rural living. However, the Proposed LUPA and FEIS propose to put DFA's and variance lands directly in and adjacent to these sensitive areas.

Issue Number: PP-CA-DRECP-15-15-37

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA for the Pinto-Lucerne zone proposes to put DFA's in locations directly adjacent to uses earmarked by the [County of San Bernardino's] Community Plan for rural living. The proposed DFA locations are in many instances uphill from most rural homes, so that the energy projects and the accompanying transmission facilities would be visible (and, as to wind energy, in some cases audible) to the residents. In addition, the Proposed LUPA would put "variance" lands right next to the proposed DFA's. Once industrial scale renewable energy projects begin to be "expedited" and "incentivized" on DFA's, the variance lands become extremely vulnerable to development as well, both on the theory that the region has already been sullied by development on the DFA's, and because of the incentive to site projects close to the transmission facilities which will have to be built to handle the new energy production on the DFA's.

The BLM's response to the County's comments states that the proposed DFA's and variance lands are on BLM land only, and that the BLM will "continue to coordinate" with local governments as the Proposed LUPA is implemented. As noted under heading 5 (4) above, this response neglects the BLM's obligation to consider cumulative impacts on land outside the Plan boundary. The fact that the land use plan is only for BLM land does not gainsay the fact that private land will be impacted and County policy decisions thwarted. The statement that the County will "continue to coordinate" misses the point that such coordination has been lacking to this point. The implementation stage is too late to

begin “coordination”, for the die will have been cast by the making of the new land use classifications.

Issue Number: PP-CA-DRECP-15-17-3

Organization: Audubon California

Protestor: Garry George

Issue Excerpt Text: A decision to designate the four issue areas as Development Focus Areas...will sever wildlife habitat corridors across the Riverside East DFA required as per the BLM Solar Program’s PEIS.

Issue Number: PP-CA-DRECP-15-18-28

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The Solar PEIS required that north-south connectivity corridors be established in the Riverside-East SEZ now proposed as a DRECP DFA. The Final DRECP EIS identifies three corridors in text, and provides Figure H-1 in Appendix H that shows the location of these proposed connectivity corridors referred to as “multi- species linkages”. However, the proposed “linkages” dead end into the DFA and provide no linkage for wildlife. Clearly this proposal fails to meet not only the requirement of the Solar PEIS, but the basic requirement of wildlife connectivity corridors and linkages.

Issue Number: PP-CA-DRECP-15-18-32

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: These proposed unallocated lands also do not align with the goals of Inyo County, which has identified

zones and limited renewable energy technologies to solar PV and geothermal in its adopted Renewable Energy General Plan Amendment for all areas outside of the Owens Valley.

Issue Number: PP-CA-DRECP-15-18-37

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: There is no coordination between the DRECP and the Draft West Mojave Route Network Plan and Draft Supplemental EIS, February 2015 (WEMO) plan, which is currently out for public review and comment. The focus of the WEMO draft plan amendment revision is primarily regarding ORV route networks but includes other conservation planning elements (riparian, grazing, etc). The DRECP does not provide sufficient guidance or coordination to ensure that the WEMO plan revision now underway for ORV route minimizations and designations, and other follow-on second-tier plans will affirmatively ensure conservation goals laid out in the DRECP are actually met. We believe the disturbance cap in the conservation areas has already been met and is likely exceeded in a number of areas in the current WEMO plan area. The DRECP should have included a baseline calculation in the DRECP.

Issue Number: PP-CA-DRECP-15-20-14

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: BLM’s DFA in Rose Valley, despite our comments and recommendations to reduce its size to become more consistent with MGS conservation needs, spans the entire width of

the naturally narrow Rose Valley and is inconsistent with the Inyo County SEDA decision as well as with previous agreements with CDFW. See Defenders, et al. comment on the DEIS, pp. 44-45, 61, and Defenders letter to BLM State Director Jim Kenna re: MGS Recommendations for the DRECP Land Use Plan Amendment (May 15, 2015)

Issue Number: PP-CA-DRECP-15-20-18
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Of particular interest is the DWMA/ ACEC in the Ivanpah Valley, which was expanded as part of the mitigation for the Stateline Solar Project (through the Stateline ROD). In the Stateline ROD, the BLM required that the additional lands put into the DWMA/ACEC would be subject to a 5:1 compensatory mitigation ratio plus a 1% habitat loss limit. The current mitigation requirement under the DRECP LUPA eliminates the increased mitigation requirement set forth in the Stateline ROD.

Issue Number: PP-CA-DRECP-15-21-3
Organization: Scenic 247 Committee
Protestor: Betty Munson

Issue Excerpt Text: We quote from the BLM LUPA chart of objectives for Visual Resource Management:
“Class II:
The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low.”
This classification is compatible with requirements for a Scenic Highway established by San Bernardino County and Caltrans.
Therefore we protest the LUPA enabling

industrialization by DFA classification. This disturbance of biological, cultural as well as visual resources within this area must be eliminated. The LUPA must conserve the S.R.247 scenic corridor with the same standards as do SB County and Caltrans.

Issue Number: PP-CA-DRECP-15-33-19
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: The Proposed LUPA does not include a detailed description of the way that BLM identified the DFAs, such as screens and process....It is also inconsistent with BLM guidance under the Western Solar Plan, which requires the agency to make it clear that it has considered the presence of program exclusions established through the Western Solar Plan and sought opportunities to locate new or expanded DFAs/SEZs in degraded, disturbed or previously areas (Western Solar Plan ROD, pp. 172, 173).

Issue Number: PP-CA-DRECP-15-33-21
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: Rose Valley: BLM should modify the Rose Valley DFA boundaries to be consistent with the configuration for Rose Valley that was adopted by Inyo County in its Renewable Energy General Plan Amendment (March 24, 2015). The County’s plan for this area recommends that the public lands on west side of U.S. highway 395 be left as open space to accommodate Mohave Ground squirrel connectivity.

Issue Number: PP-CA-DRECP-15-33-3
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: As a result of these conflicting provisions, it is unclear how unallocated lands are intended to be managed in terms of permitting renewable energy development with or without a future plan amendment. To be consistent with the stated purposes of the DRECP and the approach taken in the Solar Programmatic EIS, these lands should be identified as unavailable for renewable energy development. Notably, many of these lands were previously classified as variance lands under the Solar Programmatic EIS, but excluded from the DRECP variance lands in the Draft DRECP using the criteria in Table II.3-46. Draft DRECP, p. II.3-309-310. Further, according to Table II.3-50 in the Draft DRECP, electrical generation facilities are “not allowed” in the “non-designated lands.” Draft DRECP, p. 11.3-426.

Issue Number: PP-CA-DRECP-15-36-2
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: It is important to note that the ROD for the BLM’s Solar Programmatic Environmental Impact Statement (PEIS), which encompasses the DRECP planning area, specifically calls out the Conservancy’s EAs in 8.4.6.4

Summary:

The DRECP PLUPA/FEIS violates FLPMA’s requirement for consistency with state and local plans with regard to:

- DFAs in San Bernardino County;
- DFAs and Unallocated lands in Inyo County; and
- Visual Resource Management in San Bernardino County.

The DRECP PLUPA/FEIS is inconsistent with the BLM’s Western Solar Plan. Stateline Solar Project ROD.

Landscape-Scale Information as a tool for BLM to use to ensure the protection of key ecological lands:

“The BLM will use landscape-scale information (e.g., BLM’s rapid ecological assessment, California’s Desert Renewable Energy Conservation Plan (DRECP), The Nature Conservancy’s eco-regional assessments, and state-level crucial habitat assessment tools) to identify, and to exclude from SEZs, areas of high ecological value or importance. For example, in areas with pre-existing landscape-scale conservation plans, such as the DRECP in California, future SEZs will not be considered in areas needed to achieve biological goals and objectives established in the plan. Other types of areas to screen for based on landscape-scale information may include areas with significant populations of sensitive, rare, and special status species or unique plant communities, important biological connectivity areas, designated wildlife habitat management areas, lands with wilderness characteristics, and areas with high concentrations of ethno-botanical resources of importance for Native American use. Potential landscape-scale information should be evaluated in coordination with relevant Federal, state, and local resource management agencies and tribes (emphasis added).

The DRECP PLUPA/FEIS is inconsistent with FERC's decisions on the Eagle Crest project and land withdrawal.

There is no coordination between the DRECP PLUPA/FEIS and the Draft West Mojave (WEMO) Route Network Plan and Draft Supplemental EIS.

Response:

Section 202 (c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with this requirement, the BLM has given consideration to state, local, and Tribal plans that are germane to the development of the DRECP PLUPA/FEIS. The BLM has worked closely with state, local, and Tribal governments during preparation of the DRECP PLUPA/FEIS. The BLM considered state and local plans, including those of San Bernardino County and Inyo County, as discussed in Section IV.25.2.2 of the DRECP PLUPA/FEIS, and made the DRECP PLUPA/FEIS consistent with those plans to the extent consistent with Federal law and the BLM's purpose and need. Consistency between the DRECP PLUPA/FEIS and state and local plans will be further addressed in Phase II of the DRECP planning area, which will be led by the State of California.

The DRECP PLUPA/FEIS is consistent with the BLM's Solar Energy Program policy and the BLM's Western Solar Plan as described in Section I.2.1.8.4 of the DRECP PLUPA/FEIS. The DRECP PLUPA/FEIS followed the same approach contained in the Western Solar Plan of encouraging renewable energy development in areas with low resource conflict. The DRECP PLUPA/FEIS encourages renewable energy development in DFAs, which were designed with the goal of "avoid[ing] areas that were viewed as making significant contribution to the biological and non-biological conservation goals" while allowing for "potential tradeoffs between renewable energy goals and biological and non-biological conservation goals" (DRECP PLUPA/FEIS, p. I.3-17, 18). In addition, the DRECP PLUPA/FEIS will not replace or invalidate the entirety of the BLM's Western Solar Plan. While many of the land use allocations established by the DRECP (e.g. exclusion areas) would change as a result of the DRECP PLUPA/FEIS, other decisions (e.g. incentives, variance process) would remain largely unchanged. As stated in the DRECP PLUPA/FEIS: "The BLM will continue to manage resources and uses on BLM-administered lands by existing land use planning decisions unless specifically amended by the Record of Decision (ROD) for the [DRECP] [P]LUPA/[FEIS]" (DRECP PLUPA/FEIS, p. I.3-1). Connectivity corridors in the Riverside East Solar Energy Zone are addressed in CMA LUPA-BIO-13 (DRECP PLUPA/FEIS, p. II.3-169). The three linkage areas are described in CMA LUPA-BIO-13, and depicted in Figure H-1 in Appendix H.

The ROW grant for the Stateline Solar project was signed on March 21st, 2014 and is a valid, existing right. As such, decisions in the DRECP PLUPA/FEIS do not apply to the Stateline Solar

project, and cannot change the terms, conditions, or stipulations related to that ROW grant, including those related to compensatory mitigation. The expansion of the Ivanpah Desert Wildlife Management Area (DWMA) was a planning decision associated with the Stateline Solar project; however, it was not identified as compensatory mitigation for the right-of-way. The Ivanpah DWMA boundary modification was based on the analysis done at the project-specific level and considered existing conditions when the ROW grant was issued. The DRECP had a broader scope, and therefore, could consider modifications to the management actions adopted by the Stateline Solar project Record of Decision (ROD). See Section 2.2.2 of the Stateline Solar FEIS for more information.

The Federal Power Act (FPA) withdrawal, as licensed by the Federal Energy Regulatory Commission, is a valid, existing right. The implementation of the DRECP and the CDCA is subject to Eagle Crest's valid, existing right. That does not mean, however, that Eagle Crest does not need a FLPMA right-of-way to use public lands for the construction, operation, and maintenance of the project on public lands or that the Secretary of the Interior lacks the authority to determine appropriate terms and conditions for any right-of-way issued for the Eagle Mountain Project. The Secretary may reasonably regulate valid existing rights under applicable land use plans. Therefore, the BLM, through the right-of-way process, may determine reasonable and appropriate terms and conditions to be included in any right-of-way granted to Eagle Crest for the Eagle Mountain Project.

The DRECP PLUPA/FEIS does discuss the coordination with the West Mojave Route Network Project (WEMO) in multiple sections, including in Volume I Section I.3.1.5 and in the cumulative impacts analysis in Volume IV Section IV.25. The WEMO Draft Plan Amendment proposes changes to the process for evaluating and designating the transportation network and further limitations to off-route stopping, parking, and camping that do not affect the landscape-level proposals in the DRECP PLUPA/FEIS, and do not dictate particular outcomes in a specific area. The WEMO would also make route designation decisions, which are implementation decisions and not land use plan decisions. The implementation decisions in the WEMO, such as route designations, will be considered in the context of the CDCA Plan, as amended by the DRECP PLUPA/FEIS, including disturbance cap requirements within areas of environmental concern and within National Conservation Lands. Because the WEMO will be completed after the DRECP LUPA ROD is signed, implementation decisions in the WEMO will be subject to the plan decisions in the approved DRECP PLUPA/FEIS (DRECP PLUPA/FEIS, Volume I, p. 1.3-10).

Cooperation & Coordination

Issue Number: PP-CA-DRECP-15-01-2

Organization: San Bernardino County

Protestor: Gerry Newcombe

Issue Excerpt Text: While we appreciate the outreach and interaction we had with BLM staff and the amendment to our MOU with the BLM that is now in process (and includes the BLM's commitment to "...initiate, if needed, an Amendment to the DRECP LUPA land use designations in order to match the County's objectives and land use designations"), the adoption of the DRECP LUPA after only a 30 day review period is inconsistent with the requirement to coordinate with local governments, including Counties, found in 43 CFR 1610 3-2(a).

Issue Number: PP-CA-DRECP-15-03-3

Organization: County of Inyo

Protestor: Joshua Hart

Issue Excerpt Text: The County [of Inyo] protests the maps included in the preferred alternative of the FEIS and the land use categories that are new to the FEIS as they are unclear, confusing and were not vetted by the potentially affected jurisdictions prior to being added.

Issue Number: PP-CA-DRECP-15-09-17

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The FEIS fails to acknowledge local authority within the 9,784,000-acre plan area and lacks proper coordination with at least one of the

counties—the County of San Bernardino—and at least one of the local jurisdictions—the Town of Apple Valley. Section 202(c) of FLPMA states the following mandate for coordinating with local authorities:

In the development and revision of land use plans, the Secretary shall:

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located...

Furthermore the BLM LUP Handbook also includes language for coordination:

The BLM must, to the extent practical, assure that consideration is given to those Tribal, state, and local plans that are germane in the development of land use plans for public lands. Land use plans must be consistent with state and local plans to the maximum extent consistent with Federal law. (BLM LUP Handbook, p. 11)

The FEIS completely ignores the above regulations and bypasses local authority. The Town and the County should have been consulted and included in the BLM's planning process and decision to include private lands in its LUPA Conservation Designations.

Issue Number: PP-CA-DRECP-15-09-9

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The FEIS contains no flexibility for the adjustment of ACEC or NLCS conservation designations, which

severely restricts local planning, and fails to provide a clear path for coordination between the LUPA and local plans. Therefore, finalizing the Proposed FEIS would violate Section 202 of FLPMA (43 U.S.C. 1712) and the precedent for flexibility and cooperation between the BLM and local governments.

Issue Number: PP-CA-DRECP-15-15-36

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS reflect a serious failure on the part of the BLM to cooperate, or even to engage, with the County of San Bernardino. In its comment letter on the Draft DRECP, the County specifically stated its preference for keeping DFA's away from, inter alia, Lucerne Valley, Stoddard Valley and Johnson Valley. This request is in keeping with community plans for these areas emphasizing conservation and rural living. However, the Proposed LUPA and FEIS propose to put DFA's and variance lands directly in and adjacent to these sensitive areas.

Summary:

The DRECP PLUPA/FEIS failed to coordinate adequately with local governments, including counties, because:

- the land use categories that are new to the DRECP PLUPA/FEIS are unclear and were not vetted by the potentially-affected jurisdictions prior to being added;
- the 30-day review period is inconsistent with the requirement to coordinate with local governments, including Counties, found in 43 CFR 1610 3-2(a);
- the FEIS lacks proper coordination with the County of San Bernardino and the Town of Apple Valley, including with regard to the BLM's decision to include private lands in its PLUPA Conservation Designations and the designation of DFAs; and
- there is no flexibility for the adjustment of ACEC or National Conservation Lands designations, which severely restricts local planning.

Issue Number: PP-CA-DRECP-15-15-39

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The County [of San Bernardino] in several of its comments reported that it had to a considerable degree been left on the sidelines in the years-long DRECP process, and that it would likely remain sidelined unless it assented to tiering from the DRECP. The BLM's response is: "The BLM LUPA and Final EIS addresses activities on BLM-administered lands only". Again, this response ignores the duty of FEIS to address cumulative impacts outside the Plan boundaries, and it ignores the mandate of CFR 1610.3 to cooperate with local government policies whenever possible. The BLM adds in its response: "The BLM will continue to coordinate with local governments and stakeholders as it implements the DRECP LUPA." Again, this "continue to coordinate" response is moot if in fact the necessary coordination has not already taken place.

Response:

Although some terminology changed, the land use allocations identified in the DRECP PLUPA/FEIS are not new. These land use allocations were proposed in the DRECP DLUPA/EIS, and only two allocations were modified based on public comment. One allocation was renamed in the PLUPA/FEIS – Variance Process Lands (VPL), previously known as Study Area Lands in the Draft DRECP LUPA/EIS (Glossary, p. 17, and Volume II.3.1, p.II.3-2). The DRECP DLUPA/EIS included three categories of Study Area Lands: Special Analysis Areas, Future Assessment Areas, and DRECP Variance Lands. Special Analysis Areas are no longer in the PLUPA/FEIS. Based on further analysis and public comments, the Special Analysis Areas in the DRECP DLUPA/EIS are now included in either DFAs or conservation designations. The Future Assessment Areas and DRECP Variance Lands that remain from the DRECP DLUPA/EIS are now collectively called VPLs.

One allocation was clarified in the DRECP PLUPA/FEIS based on public comments – unallocated lands (Glossary, p. 16, and Volume II.3.1, p. II.3-2). These unallocated lands were also defined in the DRECP DLUPA/ EIS, Glossary page 2, which explained that the BLM unallocated lands were also known as BLM undesignated lands. These BLM undesignated (unallocated) lands were a subset of what was called “Other Lands” in the DRECP DLUPA/ EIS. On most maps in the DRECP DLUPA/EIS, the BLM undesignated lands were the same color as some non-federal lands. In most tables, the BLM undesignated lands were split out, although still a subset of “Other Lands”. These distinctions and nuances were all results of the combining of a LUPA, Habitat Conservation Plan, and Natural Community Conservation Plan across 22.5 million acres.

The more general/global language from the DRECP DLUPA/EIS for these BLM undesignated (unallocated) lands was found to be confusing, based on public comments on the DRECP DLUPA/EIS. In response to these public comments and the BLM LUPA moving forward first, the BLM crafted specific Conservation and Management Actions (CMA) for unallocated lands in the DRECP PLUPA/FEIS which carried forward the intent of these lands from the DRECP DLUPA/EIS.

The 30-day protest period is prescribed under the 43 CFR 1610 planning regulations. The BLM California State Office, California Desert District (CDD), CDD Field Offices, Bishop Field Office and Bakersfield Field Office have coordinated regularly, and will continue to coordinate with counties and other local governments. All local governments were active members of the State-convened official Stakeholder Group which operated from 2010-12 (DRECP PLUPA/FEIS Volume V). Although the DRECP PLUPA/FEIS is for BLM-managed public lands only and is moving forward separately from the non-federal land phase of the DRECP, the BLM has consistently coordinated and involved local governments in the development of the DRECP PLUPA/FEIS and made them aware of its contents throughout the planning process and prior to the release of the DRECP PLUPA/FEIS.

The DRECP PLUPA/FEIS does not ignore FLPMA and BLM policy with regard to consultation and coordination with San Bernardino County and the Town of Apple Valley. Rather, the BLM coordinated extensively with the County of San Bernardino and the Town of Apple Valley, including with regard to the BLM’s decision to include non-federal lands within the boundaries

of its proposed LUPA Conservation, Recreation, and Development Designations. The BLM Barstow, Needles and Ridgecrest Field Offices and the BLM California State Office met several times and had numerous conversations with San Bernardino County elected officials, and with staff and supervisors of several different county departments before the release of the DRECP DLUPA/EIS and between the draft and the DRECP PLUPA/FEIS. The BLM Barstow Field Office also conversed on a semi-regular basis with the Town of Apple Valley prior to the release of the DRECP Draft and the DRECP PLUPA/FEIS, and has a representative on the Town's habitat conservation planning team. Staff from the BLM California State Office also had several conversations and email exchanges with the Town of Apple Valley's representative consulting firm addressing their questions between the DRECP Draft and DRECP PLUPA/FEIS. The County of San Bernardino requested that the REAT agencies "consider" eliminating DFAs in the stated areas. As per the responses to San Bernardino County's Draft comment letter [C7-5 and C7-40], the vast majority of these DFA areas were on non-federal land; only a small fraction of DFAs remains on public land in these areas. Also, in response to comments from other parties, the BLM removed DFAs from inside the Town of Apple Valley. The DFAs remaining on public land in these areas in the DRECP PLUPA/FEIS are located on disturbed lands with low resource value. There are no VPLs in the DRECP PLUPA/FEIS in Lucerne, Stoddard or Johnson Valleys.

Protest Process

Issue Number: PP-CA-DRECP-15-21-2

Organization: Scenic 247 Committee

Protestor: Betty Munson

Issue Excerpt Text: We protest the limited amount of time available to study the LUPA document. We are unable to adequately evaluate the merits of the alternatives.

Issue Number: PP-CA-DRECP-15-25-3

Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis

Issue Excerpt Text: The 30-day protest period is not adequate for members of the public to identify all the significant differences between the DEIR/EIS and this FEIS, both of which are overwhelming in length and complexity. 43 CFR 1610.5-2 which prescribes the 30 day protest period does not bar the BLM from extending the protest submission period. 43 CFR 1610.5-2 was put into place not to limit the public's participation, but rather to foster it. In this case, the 30 day protest period is being used by BLM to obstruct the public's understanding of this significant action, and to thwart the public's ability to adequately and reasonably review the proposed action. The sheer size of this document (18,780 pages) makes it physically and naturally impossible for any member of the public to read and understand within any 30 day period.

Issue Number: PP-CA-DRECP-15-27-6

Organization: Individual

Protestor: Randy Banis

Issue Excerpt Text: The entire Final EIS was not made available for review as stated in the Notice of Availability that was published in the Federal Register. The GIS data files that are part of the document failed to include the recreation layer (SRMA/ERMA) and were not provided to the public until November 18, 2015. Given that my interest in the GIS files is well known by the agency and project planners, and given that these same GIS layers were also withheld from me for several weeks into the comment period for the Draft EIR/EIS, this oversight has overtones of an intentional obfuscation. This error deprived me of the full 30 days protest period to which I am entitled under 43 CFR 1610.5-2. Therefore, I would like a second full 30 day protest period to remedy this significant and (arguably) intentional defect.

Issue Number: PP-CA-DRECP-15-31-4

Organization: Friends of Jawbone

Protestor: Edward Waldheim

Issue Excerpt Text: The Public was not afforded ample opportunity to review the Final EIS. 43CFR 1610.5-2 was put into place not to limit the public's participation, but rather to foster it. In this case, the protest period is being used by the BLM to obstruct the public's ability to adequately and reasonably review the proposed action. The size of this document (18,780 pages) makes it physically and naturally impossible for any member of the public to read and understand within any 30 day period.

Issue Number: PP-CA-DRECP-15-39-2

Organization: Lucerne Valley Economic Development Association

Protestor: Chuck Bell

Issue Excerpt Text: We concur with San Bernardino County's protest asking for additional time to digest this voluminous Final DRECP/EIS. The 30 day review (protest) period is insufficient for us to fully review the entire document- the maps are difficult to read and do not include roads and other normal map characteristics to better identify locations of DFA's/Variance

Lands/Unallocated Lands/potential land exchanges, etc. In addition, the Final DRECP contains issues, land classifications and programs not included in the Draft- thus constituting new material/decisions that, pursuant to NEPA and FLPMA, would normally require comments and BLM responses prior to submittal of protests. This document should be an addendum to the draft- not a "final".

Summary:

Given the size of the DRECP PLUPA/FEIS and its complexity, the 30-day protest period is not adequate to identify all the significant differences between the DLUPA/EIS and PLUPA/FEIS. Furthermore, the GIS data files in the FEIS were not made available until November 18, 2015, which deprived the public of the full 30 days protest period entitled in accordance with 43 CFR 1610.5-2.

Response:

All protests must be filed within 30 days of the date the EPA publishes the notice of availability of the FEIS in the Federal Register (43 CFR 1610.5-2(a)(1)). The 30-day protest period is prescribed by regulation and cannot be extended. Many of the BLM's environmental documents are quite lengthy, due to the extent of the planning area and complexity of issues. This has not been an insurmountable barrier to the public in preparing and submitting protest to land use plans.

The BLM distributed the DRECP PLUPA/FEIS to cooperating agencies, the Desert Advisory Council, the Stakeholder Group (convened by the State of California), the Science Advisory Groups (convened by the State of California), and all who requested a DVD of the DRECP DLUPA/EIS. The document was also made available at BLM field and state offices, at local libraries in the Plan area, and on the internet, the day the EPA published the Notice of Availability for the FEIS in the Federal Register. The DRECP PLUPA/FEIS was available on the internet several days before the actual opening of the protest period.

While it is true that several of the GIS data files were not posted at the time of the start of the protest period, the BLM does not consider these files essential to conduct an adequate review of the PLUPA/FEIS for purposes of filing a protest. The PLUPA/FEIS contains eight (8) individual maps per alternative; these maps were provided in separate .pdf files on the internet for ease in public accessibility at the start of the protest period.

The protest period for the DRECP PLUPA/FEIS provided by the BLM was sufficient.

General Mining Law

Issue Number: PP-CA-DRECP-15-12-7

Organization: Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture

Protestor: Donovan Collier

Issue Excerpt Text: Notwithstanding the above, the DRECP conflicts well-established federal mining law. Under the General Mining Law of 1872 (30 USC Section 22 et seq.) the holder of valid unpatented mining claims has the right to develop the mineral estate. The rights granted through an unpatented mining claim are property rights in the truest sense and may not be impaired. Although a claimant's right to develop the mineral estate may be reasonably regulated through the application of properly enacted regulations, the rights may not be impaired entirely.

The DRECP indicates that the regulations shall not impair existing mining claims and the claim-holders shall continue to have the right to develop the mineral estate consistent with existing law. The proposed ACEC indicates that the area will remain open to mineral entry with stipulations. However, "impacts on mineral resources within designated ACECs would likely be adverse because of the access restrictions and disturbance caps designed to conserve and protect resources. (FEIS Vol. IV p. IV.15-3.) The DRECP goes on to state that "existing mineral rights and mining activities could be moderately to severely restricted by disturbance caps and other restrictions imposed within conservation lands" although "unpatented mining claims would retain valid existing rights." (Id.)

However, the practical impact of the

DRECP, and particularly the creation of the Castle Mountain ACEC, will be to preclude future mineral development, thereby impairing Castle Mountain's rights as unpatented mining claimholders. While 5,000 acres of the Castle Mountain Mine have been excluded, the remainder of Castle Mountain's claims are still included in the ACEC and are subject to the one percent (1%) disturbance cap. As the entire ACEC comprises approximately 22,800 acres, the stated disturbance cap would allow for the development of only 228 acres, which comprises only 3.7% of the area covered by existing valid unpatented mining claims held by Castle Mountain. Even taking into account the 5,000 acres currently excluded from the ACEC, with the remainder of its claims still subject to the 1% cap, Castle Mountain could only develop approximately 9% of its remaining claims, effectively precluding development in any appreciable manner. As a regulatory action, the DRECP cannot amend federal mining law, which is the effect of the Plan.

Issue Number: PP-CA-DRECP-15-25-9

Organization: Public Lands Roundtable of Ridgecrest

Protestor: Randy Banis

Issue Excerpt Text: Restrictions on Mining: The DRECP does not have the authority to repeal the National Mineral and Mining Policy Act of 1872, 30 USC 21. However, CMA's for the proposed NLCS and ACEC's appear to contain restrictions on mining beyond the DRECP's scope of authority.

Summary:

The DRECP PLUPA/FEIS violates the General Mining Law of 1872 because disturbance caps and other conservation and management actions (CMAs) for the proposed National Conservation Lands and ACECs contain restrictions on mining beyond the DRECP PLUPA/FEIS's scope of authority.

Response:

Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 recognizes the rights of locators to claims filed under the Mining Law of 1872, including the right of ingress and egress. This section also requires the Secretary of the Interior to take any action, through regulation or otherwise, to prevent unnecessary or undue degradation of public lands (43 U.S.C. 1732). The regulations contained in 43 CFR 3715, 43 CFR 3802, and 43 CFR 3809 balance these two mandates by requiring management of the surface disturbances caused by mineral exploration development and reclamation, including mining claim use and occupancy.

Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the General Mining Law of 1872 (BLM Handbook H-1601-1, Appendix C, p. 25).

As stated in Volume I, Section I.2.1.1 of the DRECP PLUPA/FEIS, Section 601 of FLPMA establishes the CDCA and instructs the Secretary of the Interior to prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the CDCA. That plan must take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights of way, and mineral development (43 U.S.C. 1781(d)).

FLPMA Section 601(f) also amends the Mining Law of 1972 to allow for reasonable regulations to protect the scenic, scientific, and environmental values of the public lands of the CDCA against undue impairment, and to assure against pollution of the streams and waters within the CDCA. Additionally, 43 CFR 3809.420(a)(3) states that: "Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land use plans and activity plans...as appropriate."

As stated in Volume IV, Section IV.15.1, Assumptions used in the impacts analysis for mineral resources include the following:

- Development focus area (DFA) designation would not affect existing mining operations authorized under plans of operation allowed under 43 CFR 3809, authorized solid minerals leases in accordance with 43 CFR 3600, and all other active surface and underground mineral extraction operations.
- Active mining claims, including placer claims, lode claims, and mill sites would not be affected by DFAs and proposed conservation designations.

- Areas of current mineral exploration authorized with plans of operation or notice-level operations would not be affected by DFAs and proposed conservation designations in accordance with 43 CFR 3809.
- Existing leases and claims would not be affected by lands either identified as DFAs or within proposed conservation designations.

The DRECP PLUPA/FEIS may affect mineral resources as a result of ecological, cultural, and recreation designations including ACECs and National Conservation Lands. For example, conservation designations could adversely affect mineral resource development by limiting access to mineral areas. Existing mineral rights and mining activities could be affected if they are within a conservation or recreation land allocation, consistent with statute, regulation and policy. Conservation land allocation values and management, including the disturbance caps could restrict mineral operations, consistent with statute, regulation, and policy, when compared to the No Action alternative. However, existing authorized mineral and energy operations would be allowable within conservation areas, and unpatented mining claims would retain valid existing rights, as would other valid existing rights. Existing high priority mineral operations and their identified expansion areas are excluded from proposed conservation designations, as per specific descriptions in the DRECP PLUPA/FEIS Volume II.3.4.2.1.7, LUPA-MIN-3, p.II.3-204. Additionally, established authorized access routes to existing high priority mineral and energy operations are allowable uses in conservation designations.

Because the conservation and recreation land designations proposed in the DRECP PLUPA/FEIS would be managed to protect ecological, historic, cultural, scenic, scientific, and recreation resources and values, the use of or access to mineral resources could be affected, consistent with statute, regulation and policy. Other land uses may be allowed within these areas; they must be compatible with the resources and values that the land designation is intended to protect.

The BLM recognizes that management of conservation areas (National Conservation Lands, ACECs, and Wildlife Allocations), like other proposed DRECP PLUPA/FEIS decisions, are subject to valid existing rights (DRECP PLUPA/FEIS, Volume I, Page I.3-2 and Volume II.3, Pages II.3-126, 204, 205, and 231). If a mining action is proposed within a conservation designation, the BLM will evaluate the proposed operation, and determine the appropriate and reasonable mitigation consistent with the mining laws.

The BLM is aware of current mining and development activities in the vicinity of the Castle Mountain Mine (refer to DRECP PLUPA/FEIS Volume II.3, page II.3-205, and Volume III.15, pages III.15-13 and 17). Existing authorizations will continue as authorized; if modifications are necessary, they are subject to 43 CFR 3809.100, and will be evaluated on a case-by-case basis (see DRECP PLUPA/FEIS conservation and management actions LUPA-MIN-2 and 3, page II.3-204).

The ROD for the BLM DRECP LUPA/FEIS will clarify the following:

- The BLM proposes no specific recommendations for mineral withdrawals under the BLM DRECP LUPA.

- Any potential restrictions on existing mineral rights and mining from disturbance caps and other restrictions imposed within conservation lands would be applied in compliance with relevant law, regulations, and policy.

The BLM properly exercised its authority to manage mineral development under the DRECP PLUPA/FEIS and therefore there would be no violations of valid existing rights if BLM were to adopt the DRECP PLUPA/FEIS.

Endangered Species Act

Issue Number: PP-CA-DRECP-15-08-9

Organization: Natural Resources Defense Council

Protestor: Helen O'Shea

Issue Excerpt Text: The DRECP's Preferred Alternative undermines the recovery of both desert tortoise and MGS in the West Mojave. The Preferred Alternative permits greater impacts to the species through habitat loss and reductions to compensatory mitigation ratios compared to current management strategies for this region. In desert tortoise habitat, 5:1 compensatory mitigation ratios would be required for impacts in designated critical habitat but no longer in DWMA/ACECs. More than 200,000 acres of DWMA/ACEC habitat, however, is located outside the boundaries of the desert tortoise critical habitat units, and these additional lands would only require 1:1 mitigation ratios under the Preferred Alternative. Though these DWMA/ACECs lands do not have critical habitat designations, they still represent important desert tortoise habitat. The vast majority of the DWMA/ACEC acreage located outside critical habitat units is either within Desert Tortoise Connectivity Habitat (Priority 1 Habitat) as identified by the U.S. Fish and Wildlife Service ("USFWS") or within Desert Tortoise High Value Habitat (Priority 2 Habitat) as identified by the USFWS.

Issue Number: PP-CA-DRECP-15-18-24

Organization: Center for Biological Diversity

Protestor: Ilene Anderson

Issue Excerpt Text: The FEIS includes more than 4,700 acres of Desert Tortoise critical habitat in DFAs.

Issue Number: PP-CA-DRECP-15-18-25

Organization: Center for Biological Diversity

Protestor: Ilene Anderson

Issue Excerpt Text: The only known habitat for the very rare and highly imperiled Mohave shoulder band snail is proposed as DFA in the preferred alternative. The Mohave shoulder band snail's whole known range is only eight square miles of public and private lands locations on Soledad Mountain and adjacent Standard Hill, near the town of Mojave. The Golden Queen Mine expansion threatens many of the known populations on Soledad Mountain. Because of this threat to the snail, the Center submitted an emergency petition to list it as an endangered species to the US Fish and Wildlife Service in January 2014. In April 2015, the US Fish and Wildlife Service determined that the Mohave shoulder band snail may warrant protection under the Endangered Species Act.

Issue Number: PP-CA-DRECP-15-20-9

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Although the DRECP LUPA requires 5:1 compensatory mitigation within designated critical habitat, the current CDCA Plan requires 5:1 compensatory mitigation within DWMA/ACECs. The difference in acreage between desert tortoise critical habitat and DWMA/ACECs is

substantial and affects all Desert Tortoise Recovery Units. According to our analysis, there are 236,000 acres of DWMA/ ACECs located outside the boundaries of the various desert tortoise critical habitat units. The following three maps detail the DWMA/ACECs acres that would have only a 1:1 compensatory mitigation requirement under the DRECP LUPA (depicted in light blue). See Maps 7-9 (Attachment 4).

The DWMA/ ACECs acres not covered by desert tortoise critical habitat contain important desert tortoise habitat, despite that fact that they do not have the critical habitat designation. Indeed, 233,000 of the 236,000 acres of DWMA/ ACECs not within desert tortoise critical habitat are high value habitats according to the latest scientific

information from the USFWS. There are 97,000 acres of DWMA/ ACECs located outside of designated critical habitat that are within Desert Tortoise Connectivity Habitat (P1) as identified by the USFWS in its comments to the BLM on the Solar PEIS (Map 10 (Attachment 4)). In addition, there are 136,000 acres of DWMA/ ACECs outside of designated critical habitat that are within Desert Tortoise High Value Habitat (P2) as identified by the USFWS in its comments to the BLM on the Solar PEIS (Map 11 (Attachment 4)). These high value habitat areas should continue to have the higher 5:1 compensatory mitigation ratio in the DRECP LUPA instead of the much lower 1:1 mitigation ratio.

Summary:

The DRECP PLUPA/FEIS violates the intent of the Endangered Species Act (ESA) because:

- it includes more than 4,700 acres of Desert Tortoise critical habitat in DFAs;
- it includes important habitat for the Mohave shoulder band snail in DFAs; in April 2015 the United States Fish and Wildlife Service (USFWS) determined that the species may warrant protection under the ESA; and
- it undermines the recovery of listed species by easing compensatory mitigation requirements.

Response:

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species . Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

Section 7(a)(2) of the ESA requires Federal agencies to ensure that their proposed actions will not be “likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of the critical habitat of such species” (16 USC 1336[a][2]). If an agency determines through a finding in a biological assessment that a proposed action is likely to adversely affect listed species or designated critical habitat, formal consultation is required under 50 CFR 402.14(a).

The BLM prepared the DRECP PLUPA/FEIS in full compliance with the ESA and in close coordination with other agencies responsible for administering regulations governing impacts to listed species, including the USFWS and California Department of Fish and Wildlife. As stated in Volume 1, Section 1.10.1 “DRECP Background and Overview,” one of the primary goals for the DRECP, which are addressed for BLM-managed lands by the DRECP PLUPA/FEIS, is “to contribute to the conservation [recovery] of Focus Species...” Additionally, Section 1.3.2 discusses the overall approach to the biological conservation planning process used in the DRECP PLUPA/FEIS. As discussed in this section, a comprehensive approach was undertaken that integrated the planning process, scientific input and recommendations at all stages to ensure the latest science was used in the development of conservation strategies. As described in Section I.3.3, the renewable energy planning process is guided by the need to reduce the environmental impacts of anticipated renewable energy development and the need to help achieve state and federal renewable energy goals. The renewable energy planning areas (DFAs) were developed based on a consideration of mapped renewable energy resources and modeled renewable energy technology profiles on the one hand, and areas with important or sensitive natural resources, as identified in the biological conservation planning process and BLM’s land use planning process, on the other.

The DRECP PLUPA/FEIS is a landscape level plan that adds more than 2 million acres for the purpose of conservation of species and habitats. Although a small fraction, less than 5,000 out of 2.7 million acres of designated critical habitat on BLM land for Desert Tortoise is located within a DFA, the current and potential future quality and location of this habitat is not considered fundamentally important to the recovery of the desert tortoise based on the best available data and consultation with the USFWS. Also, development would not occur in all areas or on all acres of the DFA. With regard to the Mohave shoulder band snail, the ESA does not currently apply since the species is not, at this time, listed or proposed for listing. The BLM will continue to evaluate new scientific information on a project-by-project basis for species that may warrant listing but are not currently listed or a candidate for listing, such as the Mohave shoulder band snail. The ESA also does not include any requirements for compensatory mitigation ratios. The BLM has conducted a rigorous analysis of the best available scientific information and determined appropriate mitigation ratios based on that information. The BLM has also conducted the required consultation necessary under the ESA to address potential impacts to listed species. Impacts to listed species and their habitats are discussed in the DRECP PLUPA/FEIS in Volume IV, Section IV.7. The BLM determined that the approval of the DRECP PLUPA/FEIS is likely to adversely affect some listed species or designated critical habitat, and therefore underwent formal consultation with the USFWS in compliance with the ESA.

As discussed in Volume V, Section V.4.3, BLM formally submitted a biological assessment (BA), as per 50 CFR 402.14, to the USFWS on July 10, 2015. After the BA was submitted, the BLM and USFWS conducted a series of phone calls, emails, and meetings discussing and clarifying the BA. On August 10, 2015, the USFWS accepted the BA as sufficient to initiate consultation. The BLM and the USFWS have continued to coordinate closely during the consultation period. After reviewing the BA, the USFWS evaluates the effects of the DRECP PLUPA/FEIS and issues a Biological Opinion (BO) on the plan, concluding the formal section 7(a)(2) consultation process. The BO is the determination of the USFWS on the probability of the PLUPA/FEIS to pose jeopardy to listed species and/or destruction or adverse modification of

designated critical habitat. The BO will include an Incidental Take Statement, as determined necessary by USFWS that may contain reasonable and prudent measures to minimize the impact of the incidental taking of listed species. The BO may also include discretionary conservation recommendations. As this plan's decisions are implemented, actions determined through environmental analysis to potentially affect species listed or candidate species for listing under ESA will be subject to site-specific consultation on those actions.

The BLM has developed the DRECP PLUPA/FEIS in full compliance with the ESA, including but not limited to sections 7(a)(1) and 7(a)(2). The proposed action does not violate the intent of any portion of the ESA. The BLM has developed the DRECP PLUPA/FEIS and the accompanying landscape strategies on public and private land (DRECP Draft Environmental Impact Report [EIR]/EIS) in partnership with the USFWS and California Department of Fish and Wildlife. The BLM has initiated formal consultation, as per section 7(a)(2), 50 CFR 402, with the USFWS and continues to coordinate closely during the consultation period. The BLM will include the BO in the ROD for the DRECP PLUPA/FEIS.

National Conservation Lands – National Trails System

Issue Number: PP-CA-DRECP-15-16-4

Organization: Pacific Crest Trail Association

Protestor: Mike Dawson

Issue Excerpt Text: NLCS-NSHT-4: Linear Rights-of-Way – Generally, NSHT Management Corridors would be avoidance areas for linear rights-of-way, except in designated transmission corridors, which are available for linear rights-of-way. Cultural landscapes, high potential historic sites, and high potential route segments within or along National Historic Trail Management Corridors would be excluded from transmission, except in designated transmission corridors. For all linear rights-of-way adversely impacting trail management corridors, the BLM will follow the protocol in BLM Manual 6280 to coordinate as required and complete an analysis showing that the development does not substantially interfere with the nature and purposes of the trail, and that mitigation results in a net benefit to the trail. This CMA is critical to RETAIN, however the areas outside the designated transmission corridors should be CHANGED to exclusion areas rather than avoidance areas for electrical transmission lines, while retaining the avoidance area designation for other types of linear rights of way. We believe that this is required to comply with the National Trails System Act and existing BLM manual direction pertaining to the PCT.

Issue Number: PP-CA-DRECP-15-16-5

Organization: Pacific Crest Trail Association

Protestor: Mike Dawson

Issue Excerpt Text: NLCS-NSHT-7: Locatable Minerals – For the purposes of locatable minerals, NSHT Management Corridors would be treated as “controlled” or “limited” use areas in the CDCA, requiring a Plan of Operations for greater than casual use under 43 CFR 3809.11. This CMA is insufficient to assure that activities inconsistent with NSHT nature and purposes do not occur as required by the National Trails System Act, and therefore requires a CHANGE.

Issue Number: PP-CA-DRECP-15-16-7

Organization: Pacific Crest Trail Association

Protestor: Mike Dawson

Issue Excerpt Text: NLCS-NSHT-10: Recreation and Visitor Services – Commercial and competitive Special Recreation is a discretionary action and would be considered on a case-by-case basis for activities consistent with the NSHT values. The precise wording of this CMA cripples its effectiveness. The needed change regards the last phrase which requires a CHANGE from “NSHT values” to “NSHT nature and purposes” to comply with the wording of the National Trails System Act and give clear direction to agency staff.

Issue Number: PP-CA-DRECP-15-16-8

Organization: Pacific Crest Trail Association

Protestor: Mike Dawson

Issue Excerpt Text: NLCS-NSHT-13: Visual Resources Management – All NSHT Management Corridors will be designated as VRM Class II, except within approved transmission corridors (VRM Class III) and DFAs (VRM Class IV). However, state of the art VRM BMPs for renewable energy will be employed commensurate with the protection of nationally significant scenic resources and

cultural landscapes to minimize the level of intrusion and protect trail settings. The text of this CMA should be strengthened with the addition of the following wording found in other CMAs: “Where National Scenic and Historic Trails overlap other National Conservation Lands, the more protective CMAs or land use allocations will apply.” This CMA is not in compliance with direction found in the BLM Manual 2680 [sic] (Chapter 4, Section 2, Subsection E.1.i.a and should be changed to comply with that direction.

Summary:

The DRECP PLUPA/FEIS violates the National Trails System Act and its associated regulations and policies because:

- it fails to identify as exclusion areas for linear rights-of-way those portions of National Scenic and Historic Trail (NSHT) Management Corridors that fall outside designated transmission corridors;
- it fails to provide sufficient protection of NSHT nature and purposes from locatable mineral development activities;
- it fails to require that commercial and competitive Special Recreation activities be consistent with NSHT nature and purposes; and
- the CMA for Visual Resource Management in NSHT Management Corridors does not comply with BLM Manual 6280.

Response:

After Congressional designation of trails, the BLM inventories those trails under the Federal Land Policy and Management Act (FLPMA) and National Trails System Act authorizes and addresses National Trail Management through the land use planning process, including by considering the establishment of the National Trail Management Corridor and related management actions. The DRECP PLUPA/FEIS establishes a National Trail Management Corridor for the Pacific Crest National Scenic Trail and describes management actions to safeguard the nature and purposes for which the trail was designated.

Moreover, BLM Manual 6280 (Chapter 1.6.A.3.ii; and A.3.v.a.1.viii and A.3.b) instructs the BLM to avoid permitting proposed projects that substantially interfere with the nature and purposes of the National Trail and, to the extent practicable, make efforts to avoid activities incompatible with National Trail purposes. Thus, future proposed activities must be consistent with the decisions made within the DRECP planning area, and will be considered under the protocol identified in BLM Manual 6280 (Chapter 5.3).

BLM Manual 6280 Chapter 4.2(E)(5)(ii)(d) guides the BLM to identify Right-of-Way (ROW) avoidance and exclusion areas for lands within National Trail Management Corridors. As required in and consistent with Chapter 4.2(D)(4), to the greatest extent possible, during the DRECP land use planning process, utility corridors, energy development zones, and exclusion areas for solar, wind, oil and gas, and similar types of uses were considered simultaneously with the establishment of the National Trail Management Corridor to ensure National Trail protections and energy development objectives were compatible.

Generally, the BLM has identified ROW avoidance areas for the National Trail Management Corridor for the Pacific Crest National Scenic Trail, except in existing designated transmission corridors, which are available for linear rights-of-way. Existing designated transmission corridors currently run parallel with and cross over the Pacific Crest Trail and its proposed management corridor in several locations in the DRECP PLUPA/FEIS planning area.

Additionally:

- Renewable energy activities would not be allowed within NSHT Management Corridors except in approved DFAs.
- For any proposed linear ROW or renewable energy activities within DFAs that may adversely impact the Pacific Crest National Scenic Trail, the BLM will follow the protocol in BLM Manual 6280 to coordinate and complete an analysis to determine whether the proposed project would substantially interfere with the nature and purposes of the trail, and whether proposed mitigation would result in a net benefit to the trail (NLCS-NSHT-4, NLCS-NSHT-5, page II.3-232 of the FEIS). If the analysis were to determine that the proposed action would substantially interfere with the nature and purposes of the trail, the BLM would not approve the project.
- Through identifying the Pacific Crest National Scenic Trail National Trail Management Corridor avoidance areas outside of DFAs, the BLM will avoid siting of transmission lines outside of existing designated corridors across the Pacific Crest Trail National Trail Management Corridor during implementation of the DRECP PLUPA/FEIS.

It is not practicable for the BLM to classify VRM Class I or II on all segments of the Pacific Crest National Scenic Trail administered by the BLM. Some of the segments are already impacted by existing modifications, including wind energy projects and existing designated transmission corridors in Riverside and San Bernardino Counties and existing designated transmission corridors in Kern County (BLM Manual 6280, Chapter 4.2.E.1).

The BLM will comply with the BLM Manual 6280 (Chapter 5.3) protocol for proposed actions and the Special Recreation Permit Manual and Handbook, H-2930-1 (Recreation Permit Administration) during implementation of the DRECP PLUPA/FEIS. It is the BLM's policy to discourage competitive or commercial recreation uses along the National Trail unless the proposal clearly demonstrates that the use does not substantially interfere with the nature and purposes of the National Trail, is compatible (see Chapter 1, 1.6 Statement of Programmatic Policy), and the proposal serves an identified trail resource or trail visitor services need.

The BLM will develop a priority list of National Conservation Lands identified in the DRECP PLUPA/FEIS that may be considered for segregation and possible withdrawal from entry under

the public land mining laws. This will be completed as an administrative action by BLM following completion of the ROD for the DRECP (Appendix Z of the DRECP PLUPA/FEIS).

The DRECP PLUPA/FEIS adequately safeguards the nature and purposes for which the Pacific Crest National Scenic Trail was designated, consistent with the National Trails System Act. Consistent with the DRECP PLUPA/FEIS and policy, the BLM will not authorize uses along National Trails that substantially interfere with the nature and purposes for which those Trails were designated and the BLM shall make efforts, to the extent practicable, to avoid authorizing activities that are incompatible with the purposes for which such trails were established.

National Conservation Lands – Omnibus Act

Issue Number: PP-CA-DRECP-15-08-3

Organization: Natural Resources Defense Council

Protestor: Helen O’Shea

Issue Excerpt Text: While BLM has confirmed that addition of areas to the NCLs will not be subject to amendment in future land use planning efforts, the Preferred Alternative also confirms that management prescriptions may be amended.²³ Based on the explicit requirements under the 2009 Omnibus Act, Secretarial Order 3330 and BLM guidance to prioritize protection of values for which NCL units are designated and to ensure proposed actions are limited accordingly, BLM should confirm that amendments related to management of NCLs will not weaken protections.

Issue Number: PP-CA-DRECP-15-18-5

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The National Landscape Conservation System (NLCS) establishing legislation states that all BLM lands in the California Desert Conservation Area managed for conservation purposes at the time of establishment of the NLCS (from March 30, 2009) are automatically part of the NLCS and by law must continue to be administered for conservation purposes. Lands in the NLCS cannot be removed from the conservation system except by an Act of Congress. BLM correctly asserts that once such BLM CDCA lands are administered for conservation purposes, that the inclusion in the NLCS is permanent (a one way ratchet).

Additionally, lands administered for conservation after March 30, 2009, are also in the NLCS. At that time:

- 3.2 million acres of BLM lands were being managed for conservation purposes as wilderness, wilderness study areas in 2009 which the DRECP LUPA recognizes as NLCS lands.
- 3.8 million acres of BLM lands were also being managed for conservation as ACECs, Desert Wildlife Management Areas, other various conservation designations, wildlife habitat management areas and others) as of March 30, 2009 and are therefore also part of the NLCS system (Figure 1).

Despite the plain wording of the statute, the FEIS asserts in the LUPAs that only certain BLM CDCA lands administered for conservation purposes are “nationally significant” and therefore are part of the NLCS. This interpretation is wrong. In the Final DRECP LUPAs, this arbitrary and capricious distinction has manifested in two ways. Instead, the Final DRECP LUPA in the CDCA:

1) Proposes to strip approximately 268,000 acres of existing conservation lands of their conservation status. These lands include important plant and animal habitat. The vast majority of these acres are now designated as Development Focus Areas (DFAs), Variance Lands (VLs) which are open to renewable energy and other types of development, or Unallocated lands which are also open to development.

Remedy: Restore NLCS status to these 268,000 acres.

2) Downgrades permanent conservation protections on approximately 1 million acres that are being managed for conservation purposes in the CDCA and are therefore part

of the NLCS to administrative designations. Most of these acres are proposed to remain ACECs in the DRECP but as a result of the BLM interpretation that illegally misapplies the statute, ACEC and other conservation designations will have lower protection than BLM lands in the NLCS because the protections are no longer permanent. Specifically, the ACEC designation could be removed in the next BLM plan amendment. The Final DRECP LUPAs never explain why areas of critical environmental concern (ACEC) or federally designated critical habitat—particularly if they were established for rare and listed species—would not be nationally significant. Any rationale it may proffer is irrational. The distinction that the Final DRECP LUPAs have made between BLM CDCA lands that are administered for conservation purposes that are or are not of national significance is arbitrary and capricious and contrary to law.

Issue Number: PP-CA-DRECP-15-18-26

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The East Mesa Management Area was established as an ACEC in 1996 on 115,297 acres of BLM lands to conserve the flat-tailed horned lizard and prevent a federal listing under the Endangered Species Act and is therefore part of the NLCS system now. The DRECP eliminates 20,429 acres of the existing NLCS lands and 13,623 acres of the existing ACEC. Both the Conservation Management Actions (CMAs) for the ACEC and NLCS have the same disturbance cap in the respective designations up to 1% (same disturbance cap as the 1996 ACEC). If the DFA was fully developed it would disturb 23% of the ACEC or 25% of the NLCS—well above the disturbance cap. But more to

the point—the DRECP should not be designating DFAs on critical conservation lands at all.

Issue Number: PP-CA-DRECP-15-20-2

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The approval of the DRECP LUPA will leave land qualified for inclusion into the National Landscape Conservation System (“NLCS”) excluded from the NLCS in contravention of the specific direction of Congress in Public Law (“P.L.” 111-11, the Omnibus Public Lands Act of 2009, “Omnibus Public Lands Act of 2009”).

Issue Number: PP-CA-DRECP-15-20-21

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Congress listed several categories of lands that are, by definition, to be included within the NLCS, and expressly designated other lands as part of the NLCS. 16 U.S.C. § 7202(b)(2). In addition to the lands specifically identified in the 2009 Act, Defender, et al., in its comments on the DEIS, urged the BLM to include the additional lands in the NLCS that were “managed for conservation purposes.” These lands included:

- All designated Areas of Critical Environmental Concern (“ACEC”) in the CDCA.
- All designated Desert Wildlife Management Areas (“DWMAs”) within the CDCA, which were designated to conserve the desert tortoise and its critical habitat with the intent that they be managed to support both survival and recovery of the desert tortoise.
- All BLM designated Conservation Areas

for imperiled plants and wildlife.

- Wildlife Habitat Management Areas (“WHMA”) were designated in the CDCA Plan to provide for wildlife conservation zones and habitat connectivity or continuity.
- All wetland and riparian areas designated in the CDCA in 2009.
- Research Natural Areas
- National Natural Landmarks
- National Register of Historic Places lands (e.g., Archaeological Districts, National Historic Districts)
- Lands with Wilderness Characteristics
- Limited Use Class Lands (Class L) (Class L lands are managed to protect “sensitive, natural, scenic, ecological, and cultural resource values [and] to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished”).

Issue Number: PP-CA-DRECP-15-20-22

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: While we continue to maintain that the BLM should include all lands that were managed primarily for conservation purposes at the time of the enactment of P.L. 111-11 as NCL, we also believe that the below set of lands meet the “national significance” criteria articulated by the BLM in the DRECP LUPA and should be included in the final DRECP.

Pisgah Valley. The Pisgah Valley is located in the Central Mojave Desert and links the Western Mojave and Eastern Mojave regions of the California Desert. Located east of Barstow, it is comprised primarily of large expanses of undeveloped federal public land managed by the BLM and totals approximately 90,000 acres. These lands are valued for their scenic, biological, recreational and historic resources and

values. The general landscape of the Pisgah Valley is largely unspoiled and highly scenic, especially during the spring when wildflowers carpet the valley. While a large part of the Pisgah Valley has been proposed as NCL, 7,500 acres of land in the northwestern corner of the valley has been left as unallocated lands.

Issue Number: PP-CA-DRECP-15-20-23

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The Fremont-Kramer DWMA/ ACEC was designated through the West Mojave Plan amendments to the CDCA Plan in 2006. In the DRECP LUPA preferred alternative, large parts of this designated conservation area are not included in the NLCS. The remaining unprotected parts of this area conform to many of the identification criteria

Issue Number: PP-CA-DRECP-15-20-24

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The Superior-Cronese DWMA/ ACEC was designated through the West Mojave Plan amendments to the CDCA Plan in 2006. In the LUPA preferred alternative, large parts of this designated conservation area are not included in the NLCS. The remaining unprotected parts of this area conforms to many of the identification criteria

Issue Number: PP-CA-DRECP-15-20-25

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Ord-Rodman DWMA/ ACEC. The Ord-Rodman DWMA/ ACEC was designated through the West Mojave

Plan amendments to the CDCA Plan in 2006 for the conservation and recovery of the desert tortoise. In the LUPA preferred alternative, high quality desert tortoise habitat adjacent to the DWMA/ ACEC, primarily south of the Rodman Mountains Wilderness and the habitat linkage leading to the Pisgah Valley, are not included in the NLCS. These adjacent areas conform to many of the identification criteria.

Issue Number: PP-CA-DRECP-15-20-26

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Ivanpah DWMA/ ACEC. The Ivanpah DWMA/ACEC was designated in 2002 for the conservation and recovery of the desert tortoise, and substantially enlarged in 2014 through the ROD for the Stateline Solar Project. The 2002 designation included critical habitat whereas the 2014 expansion included adjacent high quality habitat supporting a high density of desert tortoises. It was expanded, in part, to preserve remaining habitat linkages within the Ivanpah Valley, protect remaining desert tortoise populations and mitigate impacts associated with solar energy projects in the Valley. The DRECP LUPA identifies the critical habitat within the ACEC/DWMA as proposed NLCS, but leaves the DWMA/ ACEC expansion area in Ivanpah Valley as an ACEC. Since the expansion area was designated specifically for conservation and recovery of the desert tortoise, it should be included in the NLCS, making for a seamless expanse of NLCS lands.

Issue Number: PP-CA-DRECP-15-20-27

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: Mohave Ground Squirrel WHMA. The Mohave Ground Squirrel (MGS) WHMA was designated in 2006 to conserve habitat for this BLM Sensitive Species and to assist the CDFW with its long term conservation program. The BLM's overall goal with this WHMA was to contribute to the conservation and protection of its habitat in order to preclude or minimize the need for future listing under the ESA. This WHMA is shown on BLM's West Mojave Plan Map 2-15 of the final plan. The management requirements for the public lands within the WHMA included a 1% habitat loss cap and 5:1 compensatory mitigation for habitat loss up to the cap. The species is confined to the Western Mojave, a region of high biological diversity due to diverse landforms and proximity to the Sierra Nevada, Tehachapi, and Transverse mountain ranges. Assessing the NLCS overlap with the WHMA under the preferred alternative reveals there are several areas excluded from the NLCS.

Issue Number: PP-CA-DRECP-15-20-28

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: 17 Multi-species WHMAs in the Northern and Eastern Colorado Desert. These multi-species WHMAs were designated in 2002 to conserve a variety of sensitive species of plants and animals and associated unique and restricted habitats including wetlands, playas, sand dunes and dry desert wash woodlands. They also include the DWMA Connectivity WHMA specifically to provide for desert tortoise movements under and north of I-10 to connect the Chuckwalla and Chemehuevi DWMA/ACECs.

Issue Number: PP-CA-DRECP-15-20-29

Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Southern Mojave Bighorn Sheep Meta-population WHMAs. Several WHMAs for the conservation of bighorn sheep in the Southern Mojave Metapopulation were designated in 2002. These correspond with mountain ranges with suitable habitat and intermountain habitat that provides linkages for bighorn movements between the various metapopulations. These WHMAs are consistent with the NLCS identification criteria as follows.

Issue Number: PP-CA-DRECP-15-20-30
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Deep Springs Valley (Shadscale Community) WHMA and the Deep Springs Valley (Black Toad habitat) ACEC. These two conservation areas were designated in 1980 for conservation of the diverse assemblage of species in the Shadscale community and habitats supporting the black toad, a species endemic to Deep Springs Valley and classified by the State as Fully Protected and Threatened. Although its aquatic habitats are limited, there are habitat linkages located in desert washes that are occasionally traversed by the species, especially during periods of high precipitation. These linkages allow the isolated populations to remain genetically interconnected. In the LUPA preferred alternative, Deep Springs Valley habitats supporting a majority of the wetlands and populations of the black toad are in an unallocated lands designation. This WHMA and ACEC are consistent with the following NLCS identification criteria.

Issue Number: PP-CA-DRECP-15-20-31
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Sacramento Mountains. The Sacramento Mountains located in the eastern Mojave near the town and Needles and south of interstate 40 are comprised of approximately 70% public land located near the Colorado River and sandwiched between three wilderness areas: Bigelow Cholla, Chemehuevi Mountains and Stepladder Mountains. It is a highly scenic area that is accessible via the East Mojave Heritage Trail and several other dirt roads and trails. It has spectacular stands of Bigelow cholla cactus and is suitable habitat for desert bighorn sheep, although the range is currently unoccupied. The LUPA Preferred Alternative designates this range as a Special Recreation Management Area, with no underlying or complementary designation in recognition of the biological resources and values of the area. The Sacramento Mountains should be designated a part of the NLCS based on consistency with the following criteria

Issue Number: PP-CA-DRECP-15-20-32
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: Antimony Flat. Antimony Flat is the place name for a Variance Process Land area in the Preferred Alternative, located south of Jawbone Canyon. This area consists of a solid block of public lands totaling approximately 10,200 acres, and its northern boundary is abuts the Jawbone-Butterbrecht ACEC. This entire block of public lands was designated as a WHMA in the 1980 CDCA Plan, with long-term goals to "Protect, Stabilize, and Enhance Values." CDCA Plan, Table 2-Planned Management Areas for Fish and

Wildlife. The 1980 CDCA Plan map, “Planned Management Areas for Fish and Wildlife” shows that the 10,200 acre block of public lands south of Jawbone Canyon is a WHMA associated with either the Sierra-Mojave-Tehachapi Ecotone, or the Lone Tree Canyon Bighorn Sheep Reintroduction Area, or both. The 10,200 acre block of public lands that include Antimony Flat is consistent with BLM’s criteria for identifying NLCS lands.

Issue Number: PP-CA-DRECP-15-27-8
Organization: Individual
Protestor: Randy Banis

Issue Excerpt Text: PL111-11 does not authorize or allow the establishment of disturbance caps on NLCS lands. OHV area lands should be excluded from disturbance cap calculations where they are overlapped by conservation designations. Better yet, OHV area lands should be excluded from conservation designations.

Issue Number: PP-CA-DRECP-15-31-5
Organization: Friends of Jawbone
Protestor: Edward Waldheim

Issue Excerpt Text: BLM’s interpretation of PL111-11 is faulty in claiming it possesses the same power as Congress to designate NLCS lands in the CDCA.

Issue Number: PP-CA-DRECP-15-33-4
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: Just as the National Conservation Lands are excluded from renewable energy development in the draft DRECP, these lands should also be proposed for mineral withdrawal so that the

Secretary of the Interior has the chance to study these areas for their compatibility with mining. BLM has the authority to recommend to the Secretary of the Interior that additions to the National Conservation Lands be withdrawn from mineral development to ensure that these units are adequately protected as required by law.

Issue Number: PP-CA-DRECP-15-33-5
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: While BLM has confirmed that addition of areas to the National Conservation Lands will not be subject to amendment in future land use planning efforts, the Proposed LUPA also confirms that management prescriptions may be amended. See, e.g., Proposed LUPA, pp. II.3-275 - II.3-276. Based on the explicit requirements under the Omnibus, Secretarial Order and BLM guidance to prioritize protection of values for which National Conservation Lands units are designated and to ensure proposed actions are limited accordingly, BLM should confirm that amendments related to management of National Conservation Lands will not weaken protections.

Issue Number: PP-CA-DRECP-15-34-2
Organization: The Wilderness Society / California Wilderness Coalition
Protestor: Nada Culver, Sally Miller / Ryan Henson

Issue Excerpt Text: Just as the National Conservation Lands are excluded from renewable energy development in the draft DRECP, these lands should also be proposed for mineral withdrawal so that the Secretary of the Interior has the chance to study these areas for their compatibility with

mining. BLM has the authority to recommend to the Secretary of the Interior that additions to the National Conservation Lands be withdrawn from mineral development to ensure that these units are adequately protected as required by law.

Issue Number: PP-CA-DRECP-15-34-3
Organization: The Wilderness Society / California Wilderness Coalition
Protestor: Nada Culver, Sally Miller / Ryan Henson

Issue Excerpt Text: While BLM has confirmed that addition of areas to the National Conservation Lands will not be subject to amendment in future land use planning efforts, the Proposed LUPA also confirms that management prescriptions may be amended. See, e.g., Proposed LUPA, pp. II.3-275- II.3-276. Based on the explicit requirements under the Omnibus, Secretarial Order and BLM guidance to prioritize protection of values for which National Conservation Lands units are designated and to ensure proposed actions are limited accordingly, BLM should confirm that amendments related to management of National Conservation Lands will not weaken protections.

Issue Number: PP-CA-DRECP-15-36-10
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: Additionally, pursuant to the Purpose and Need one of BLM's objectives for the DRECP and Environmental Impact Statement (EIS) is "identify and incorporate public lands managed for conservation purposes within the CDCA as components of the National Landscape Conservation System (NLCS), consistent with the Omnibus Public Land

Management Act of 2009 (PL 111-11)."14

We believe that this issue can be resolved within the existing range of alternatives as the Variance Process Lands (i.e., Antimony Flats in the Western Desert and Eastern Slope subarea of the DRECP) are identified as NLCS in Alternative 2.

Therefore, given previous classification and management requirements, the Variance Process Lands (i.e., Antimony Flats in the Western Desert and Eastern Slope subarea of the DRECP) meet the criteria for lands that have been previously managed for conservation.

Issue Number: PP-CA-DRECP-15-36-6
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: Critically, BLM acknowledges that it applied and weighed the criteria differently to vary NLCS designations for each alternative, in an attempt to balance conservation against renewable energy development. While this may be a laudable goal, in doing so BLM has ignored its own analyses while also misinterpreting and violating the Omnibus Act. The FEIS estimates the demand for lands in the planning area for all renewable generation technologies (e.g., solar, wind, geothermal) to be 101,000 acres, with permanent disturbance estimated at 48,000 acres, yet BLM intends to make 1.23 million acres available for renewable energy development, seeking "balance" in ways that contravene the purpose and need of the DRECP, placing critical ecological resources at risk. Determinations for inclusion in the NLCS must be made, as BLM acknowledges, based on whether the lands exhibit characteristics of "nationally significant landscapes that have outstanding

cultural, ecological, and scientific values”. Lands either have these characteristics, or they do not- they do not alter their fundamental values depending on whether renewable energy development is intense or minimal, e.g. by “balancing” NLCS inclusion with renewable energy development And whether or not they may be intended to be used as mitigation for potential future renewable energy development, either via designation or in the form of Conservation Management Actions (CMAs, neither of which is justified, see “III. Compensatory Mitigation” below), does not alter the fundamental characteristics of these lands.

Issue Number: PP-CA-DRECP-15-36-7
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: As previously mentioned, BLM does not make clear in the Proposed LUPA and FEIS how the primary and additional criteria were used to determine whether or not specific lands should be included in the NLCS. Other than “primary” and “additional” criteria, BLM offers no insights as to whether the criteria were weighted or prioritized in any way, other than they were used to “balance conservation against renewable energy development,” which is not a legal rationale for inclusion or exclusion from the NLCS.

Issue Number: PP-CA-DRECP-15-36-8
Organization: The Nature Conservancy
Protestor: Erica Brand

Issue Excerpt Text: BLM did not include in the NLCS lands previously managed for conservation. The Omnibus Act requires BLM to include within the NLCS “[a]ny area designated by Congress to be

administered for conservation purposes, including...public land within the California Desert Conservation System administered by the Bureau of Land Management for conservation purposes.” The Omnibus Act includes lands exhibiting characteristics of “nationally significant landscapes that have outstanding cultural, ecological, and scientific values.” BLM interpreted this legislative command to authorize both decisions on which lands are to be included in the NLCS under the LUPA as well as goals and objectives and allowable uses within these National Conservation Lands. Out of the 87,300 acres of Ecologically Core lands we request be removed from DFAs:

- 44% are currently managed for conservation 6 according to the CDCA, its plan amendments or other BLM Resource Management Plans;
- 31% are currently Limited Use Class Lands according to the BLM’s Multiple Use Class system7;
- 67% are proposed for inclusion in the NLCS in Alternative 1; and,
- 72% are proposed for inclusion in the NLCS or ACEC designation in Alternative 1.

Out of the 7,500 acres of Ecologically Core lands we request be removed from Variance Process Lands:

- 71% are currently managed for conservation 8;
- 20% are currently Limited Use Class; and
- None are proposed for inclusion in the NLCS in one or more of the action alternatives.

Out of the 264,000 acres of Ecologically Core lands we request be removed from Unallocated Lands:

- 9% are currently managed for conservation 9;
- 39% are Limited Use Class; and
- 9% are proposed for inclusion in the NLCS in Alternative 1.

For example, the following DFAs include

Ecologically Core lands that are currently managed for conservation or considered for conservation in other LUPA alternatives:

- North of Kramer DFA: This area is currently managed for the conservation of Mohave ground squirrel per the West Mojave Plan (“WEMO;” March 2006). It was also proposed for ACEC designation in Alternatives 1 and 4 of the DRECP LUPA;
- Rose Valley DFA: This area is currently managed for the conservation of Mohave ground squirrel per the WEMO plan;
- Riverside East DFA: Areas of the Riverside East DFA are managed for conservation as Wildlife Habitat Management Areas (WHMA) per the

Northern and Eastern Colorado Desert Coordinated Management Plan (NECO) plan amendment to the CDCA. Many of the Ecologically Core lands in the Riverside East Solar Energy Zone (SEZ) overlap with proposed designations in Alternative 1 for these lands to be managed as ACECs or NLCS;

- Bristol Dry Lake DFA, Variance Process Lands and Unallocated Lands: Parts of this area are currently managed for conservation as WHMAs. Ecologically Core lands in this area overlap with proposals for ACEC or NLCS per the Alternative 1 designations.

Summary:

The DRECP PLUPA/FEIS violates the Omnibus Public Land Management Act (OPLMA) of 2009 (PL 111-11) because:

- existing conservation lands would not be managed as National Conservation Lands, and a large acreage of conservation lands would be stripped of their conservation status;
- BLM does not possess the same power as Congress to designate National Conservation Lands within the CDCA;
- by inappropriately “balancing” identification and inclusion of National Conservation Lands with renewable energy development, the BLM fails to include nationally significant landscapes in the National Conservation Lands;
- public lands of the CDCA identified for inclusion in the National Conservation Lands are not recommended for withdrawal from mineral entry;
- the BLM does not disclose the criteria and rationale used for adding or excluding public lands in the CDCA as National Conservation Lands;
- the plan would allow for amendments that could potentially weaken the protection of National Conservation Lands; and
- the plan allows the establishment of disturbance caps on, and OHV use within, National Conservation Lands.

Response:

The National Conservation Lands in the California Desert Conservation Area (CDCA) were designated by the Omnibus Public Land Management Act of 2009 (“OPLMA”), Public Law 111-11, Section 2002(b)(2)(D) (16 U.S.C. 7202). The OPLMA established the National Conservation Lands, and states that: “[t]he system shall include each of the following areas administered by the Bureau of Land Management:

(D) public land within the California Desert Conservation Area administered by the Bureau of Land Management for conservation purposes.”

OPLMA Section 2002(c) states that “[t]he Secretary shall manage the system— (1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and (2) in a manner that protects the values for which the components of the system were designated.”

Department of the Interior Secretarial Order 3308, “Management of the National Landscape Conservation System” (November 15, 2010), provides additional direction to the BLM regarding management of the National Conservation Lands. It directs the BLM to ensure that components of the National Conservation Lands are managed to protect the values for which they were designated. Appropriate multiple uses may be allowed, but the BLM should limit or prohibit uses that are in conflict with the purposes for which the units were designated.

The DRECP planning process, a process that included a FLPMA land use planning component, offered a timely opportunity for the BLM to fulfill the requirements of OPLMA Sections 2002(b) and 2002(c). The BLM has therefore used the DRECP PLUPA/FEIS process to help it identify the public lands in the California Desert to be managed for conservation and formally identified as components of the NLCS, pursuant to OPLMA and consistent with other laws and policies (DRECP PLUPA/FEIS, Volume I, p. 1.1-3).

The BLM interprets OPLMA to provide for permanent inclusion of these lands in the National Conservation Lands, meaning that they would remain part of that system unless legislation was to be passed otherwise (DRECP PLUPA/FEIS, Volume I, p. 1.3-7 and 8). The BLM has also used the DRECP BLM LUPA as an opportunity to define goals, objectives and allowable uses within the National Conservation Lands. These land use planning decisions are described in Section I.3.1.2.2 of the DRECP PLUPA/FEIS. These decisions can be changed through a future land use plan decision.

In order to determine which lands Congress intended to include within the National Conservation Lands, the BLM inventoried and evaluated CDCA lands to determine whether they exhibit characteristics of “nationally significant landscapes that have outstanding cultural, ecological, and scientific values,” the characteristics Congress identified as describing the National Conservation Lands.

The BLM has, pending the ROD, identified such lands and their outstanding cultural, ecological, and scientific values in Chapter II.3 of the DRECP PLUPA/FEIS (DRECP PLUPA/FEIS, Volume I, p. 1.3-7 and 8). The BLM describes the criteria used to determine which CDCA lands qualify for inclusion in the National Conservation Lands in the DRECP PLUPA/FEIS at Chapter I.3 (p. I-3-4 - I-3.5). In the alternatives sections of the DRECP PLUPA/FEIS the BLM also discusses different approaches to how it might weigh these criteria (Sections II.3.2.1, II.4.2.1, II.5.2.1, II.6.2.1, II.7.2.1).

There are areas within the CDCA with special resource values that have special management for the protection of those resources under administrative designations through the land use plans in the No Action Alternative. These include, but are not limited to, ACECs, Desert Wildlife Management Areas (DWMAs), and Habitat Management Areas (HMAs) (Mohave Ground

Squirrel, Flat Tailed Horned Lizard, and the Coachella Valley Fringe-toed Lizard Habitat Management Areas). The DRECP PLUPA/FEIS provided the BLM and the public an opportunity to evaluate existing administratively designated areas and to determine which lands meet the definition in Public Law 111-11 for inclusion as National Conservation Lands. Where areas did not meet the criteria for inclusion, they were evaluated to determine if they met the criteria for other administrative designations, such as ACECs or Wildlife Allocations, and whether CMAs were adequate in those areas to protect sensitive resources. For example, the BLM determined that the land ownership pattern of Superior-Cronese DWMA was too checker-boarded to manage as a component of the National Conservation Lands. However, this area still met the relevant and important criteria for designation as an ACEC (See page 805 of Appendix L, and map at page 808 of Appendix L).

Where an area was proposed for inclusion in the National Conservation Lands in any one of the action alternatives, the nationally significant ecological, cultural, and scientific criteria is listed on that unit's Special Unit Management Plan in Appendix L. If an area was proposed for inclusion in the National Conservation Lands by the public and the BLM determined it was inappropriate to include in one of the action alternatives, the rationale is included in the response to those comments in Appendix AA of the PLUPA/FEIS.

The CDCA lands that the BLM identified under the Preferred Alternative for inclusion in the National Conservation Lands focus on habitat connectivity, scientific cultural and botanical values. For ecological values, lands focus on important wildlife linkages; threatened and endangered critical habitat and BLM Special Status Species habitat; and smaller, highly significant botanical sites. For cultural values, the lands focus on large cultural landscapes important to Native Americans, local communities, and those that assist in understanding human habitation in the CDCA; historic trails and roads; and smaller, highly significant cultural sites. The lands for scientific values focus on larger landscapes that offer opportunities for large-scale research on ecological response to climate change, cultural resources, biological resources, hydrology, paleontology, and geology; and smaller sites with opportunities for focused research. The Preferred Alternative included only areas where BLM has primary jurisdiction, where the BLM lands are in predominantly large contiguous blocks, and where the landscape is intact with no large-scale developments. Approximately 3,856,000 million acres of CDCA lands met these criteria and are proposed for inclusion in the National Conservation Lands under the Preferred Alternative.

The BLM developed management goals, objectives, and actions under each action alternative with the purpose of protecting CDCA lands that have outstanding nationally significant cultural, ecological, and scientific values (see DRECP PLUPA/FEIS Chapter I.1 for the purpose and need of the DRECP). Based on the impacts analysis conducted, the BLM included measures in the DRECP that protect outstanding nationally significant cultural, ecological, and scientific values for lands identified for inclusion in the National Conservation Lands through the DRECP effort. The BLM determined that conservation management actions (CMAs), including disturbance caps, would provide management to protect the values for which National Conservation Lands were identified.

Regarding the use of Ecologically Core Areas identified in The Nature Conservancy 2010 Mojave Desert Ecoregional Assessment, the BLM utilized information in the identified 2010 document and more recent best available data, some as recent as 2015, to determine the preferred configuration of the proposed National Conservation Lands, consistent with statute, regulation and policy. (Refer to the Literature Cited and Reference sections in Volume III.7 Biological Resources, and biologically relevant Appendices - B, C, D, H, P, Q, and S - in the DRECP PLUPA/FEIS and DEIS).

Specific to the East Mesa National Conservation Lands and ACEC, the overlap with the DFA is limited to geothermal leasing, as outlined in the FEIS and ROD for the East Mesa Non-competitive Leases for the Geothermal Exploration and Development. No surface occupancy will be encouraged, and would be required for lease expansions or amendments. Any surface disturbance from existing leases would need to consider the disturbance cap, subject to valid existing rights. Any new geothermal leasing would require a No Surface Occupancy stipulation. No solar or wind energy projects would be authorized (Appendix L, page 514).

Appendix Z of the DRECP PLUPA/FEIS explains the process that the BLM would follow for analyzing potential mineral withdrawals on National Conservation Lands and DFAs after the DRECP LUPA ROD is signed. This will be completed as an administrative action by the BLM, as mineral withdrawal recommendations can be made at any time, not just during a land use plan revision or amendment process.

The BLM, consistent with the OPLMA, FLPMA, and relevant policies, has used appropriate criteria to identify CDCA lands best suited for inclusion in the National Conservation Lands by way of the DRECP development process. The DRECP PLUPA/FEIS has also proposed the land use plan decisions that would constitute the management regime for those lands. Therefore, the DRECP PLUPA/FEIS adequately identifies lands for inclusion in the National Conservation Lands and proposes protection for nationally significant landscapes that have outstanding cultural, ecological, and scientific values consistent with the OPLMA Section 2002(b)(2)(D) and other applicable law and policy.

Areas of Critical Environmental Concern

Issue Number: PP-CA-DRECP-15-07-7

Organization: Welborn, Sullivan, Meck, and Tooley for Eagle Crest Energy Co.

Protestor: Rebecca Watson

Issue Excerpt Text: Although the Chuckwalla ACEC provides for transmission line permitting it puts in place a 0.1% disturbance cap for BLM authorizations in the ACEC. Chuckwalla ACEC, App. L at 239, 246-247. It is unknown if existing projects in the Chuckwalla ACEC, including an existing CDCA utility corridor and transmission lines to area solar projects, have already met or exceeded the approximate 500 acre disturbance cap for the Chuckwalla ACEC. The ACEC also does not clearly include utility lines like the licensed Project water pipeline as a permissible use in the utility corridor. “Within the designated utility corridor, the area is open for a transmission ROW only (i.e. the integrity of the BLM utility corridor will be maintained).” Id. at 245. The DRECP ACEC disturbance cap and limitation on use of the utility corridor would be inconsistent with the FERC license.

Issue Number: PP-CA-DRECP-15-09-11

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: The text of the FEIS does not provide a complete list of the ACECs being designated nor does it provide the acreage associated with each ACEC. The designation of these ACECs also was not provided in the Federal Register Notice as required. A complete description of these lands, the reasons for their incorporation

into a conservation area, and a description of their future uses need to be provided.

Issue Number: PP-CA-DRECP-15-09-15

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: Protest Point 3 (see Attachment H), submitted by the Alliance and its “Protesting Parties,” is incorporated here by reference. The Town joins the Alliance on its protest: There Was Neither the Required Notice nor the Required Opportunity to Comment on the Proposed ACEC’s....in Violation of 43 CFR §§1610.2 and 1610.7-2.

Issue Number: PP-CA-DRECP-15-09-3

Organization: Town of Apple Valley

Protestor: Lori Lamson

Issue Excerpt Text: As designated in the FEIS, the Fremont-Kramer to Ord-Rodman Desert Tortoise Linkage, shown in Figure H-5, Desert Tortoise Biological Goals and Objectives Names (see Attachment C), includes areas with non-existent habitat values, is encumbered by DFAs sited in high-quality habitat areas is incomplete, and does not connect the Fremont-Kramer Desert Wildlife Management Area (DWMA) to the Ord-Rodman DWMA. Specifically, the linkage design proposed by the FEIS is composed of two Areas of Critical Environmental Concern (ACECs), the Northern Lucerne Wildlife Linkage ACEC and the Brisbane Valley Mojave Monkeyflower ACEC. Together the two ACECs do not provide a complete connection between the Fremont-Kramer DWMA in the northwest and the Ord-

Rodman DWMA in the east, or meet the FEIS linkage goals. The Town's MSHCP/NCCP planning effort has spent significant time and resources studying and ground-truthing this linkage area, and through this effort, the Town has identified a full connection between these two DWMA's based on habitat quality and existing land use.

Issue Number: PP-CA-DRECP-15-09-4
Organization: Town of Apple Valley
Protestor: Lori Lamson

Issue Excerpt Text: The linkage design includes highly impacted areas with no habitat value in the Northern Lucerne Wildlife Linkage ACEC:
As noted in our comment letter, in comment C25-20, the Northern Lucerne Wildlife Linkage ACEC includes unsuitable lands south of Stoddard Valley OHV Area (see Attachment D, Area of Conflict South of Stoddard Valley OHV Area) that are heavily used by the OHV community and do not provide the values ascribed in FEIS Section II.3.2.2 Areas of Critical Environmental Concern.

Issue Number: PP-CA-DRECP-15-09-5
Organization: Town of Apple Valley
Protestor: Lori Lamson

Issue Excerpt Text: Linkage design fails to include high-quality desert tortoise habitat in Upper Lucerne Valley and instead designates federal lands in this area as a DFA:
As noted in our comment C25-17, the eastern portion of the Northern Lucerne Wildlife Linkage ACEC is not functional and does not provide for the movement of desert tortoises across its range. The linkage as proposed in the FEIS contains only the

mountainous portions of the valley (Stoddard Ridge) and does not include the floor of Upper Lucerne Valley, which is highly connected and high-quality desert tortoise habitat. Instead of including this area in the linkage design, the FEIS designates a DFA on the roughly 500 acres of BLM lands located in Upper Lucerne Valley.

Issue Number: PP-CA-DRECP-15-12-3
Organization: Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture
Protestor: Donovan Collier

Issue Excerpt Text: Despite these changes, Castle Mountain continues to have concerns regarding the current boundaries of the Castle Mountain ACEC designation. As stated above, the LUPA and FEIS categorizes the Castle Mountain Mine as consisting of 5,000 surface acres, which includes Castle Mountain's 1,298 acres of patented claims/fee lands. However, the Castle Mountain Mine holdings consist of approximately 7,458 acres, with approximately 6,168 acres of unpatented mining claims. The proposed Castle Mountain ACEC therefore does not exclude all of Castle Mountain's unpatented claims from the ACEC designation. A map depicting the extent of Castle Mountain's land holdings in the area is attached as Exhibit A. As stated in the FEIS, "Existing high priority mineral and energy operations and their identified expansion areas would be excluded from proposed conservation designations" (FEIS Vol. IV p. IV.15-3).

Issue Number: PP-CA-DRECP-15-12-4
Organization: Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture
Protestor: Donovan Collier

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

Issue Number: PP-CA-DRECP-15-12-5
Organization: Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture
Protestor: Donovan Collier

Issue Excerpt Text: Additionally, there is no discussion of how conservation of the resources found within the Castle Mountain area, through application of an ACEC designation, would promote conservation of sensitive biological and cultural resources in the context of the DRECP. In other words, considering the Castle Mountain area is not within a Developed Focus Area permitted for renewable energy development, it is

unclear how preservation of Castle Mountain area is a necessary component of the Land Use Plan Amendment. The plan and associated FEIS remains unclear as to justifying the need for inclusion of the Castle Mountain area within a new ACEC. In any event, linkages between the Piute and New York Mountains has been extensively studied, mapped, mitigated and monitored. Conditions of approval in existing permits and approvals contain sufficient mitigation obligations so as to not justify further regulation. Castle Mountain is currently working closely with regulatory agencies and NGO’s to enhance wildlife habitat in the area. Reclamation and revegetation activities conducted at the site and universally recognized as a template for reclamation and habitat restoration.

Issue Number: PP-CA-DRECP-15-12-8
Organization: Gresham, Savage, Nolan, and Tilden, for Castle Mountain Venture
Protestor: Donovan Collier

Issue Excerpt Text: Further, the DRECP specifically provides that “existing high priority mineral and energy operations and their identified expansion areas would be excluded from proposed conservation designations” (FEIS Vol. IV p. IV.15-3.) As stated above, BLM has included the Castle Mountain Mine as an Existing High Priority Mineral/Energy Operations Exclusion Area. By the terms of the DRECP, the entire operation and identified expansion areas should be excluded from an ACEC designation as stated above.

Issue Number: PP-CA-DRECP-15-15-25
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: The Proposed LUPA and FEIS, in the preferred alternative, place DFA's and Unallocated Lands in, or in close proximity to, critical habitat as set forth by the USFWS for the area directly adjacent to the current ACEC known as the Barstow Endemic Plant Research Natural Area. As stated in the Appendix "L" Special Unit Management plans for the ACEC's and NCL's, Page 856, "the adjacent lands also meet many of the characteristics as set in the National Conservation Lands Research Area. Of specific relevance and importance, the subject proposed development parcels support unusual geologic, soil and plant association and because it contains habitat for threatened and endangered species". The DFA and Unallocated Lands encompass vital habitat for at least two federal listed species of plants and one unlisted narrowly endemic carbonate plant species. The subject parcels also provide vital habitat for the San Diego Horned Lizard, Gray Vireo and Bighorn Sheep. In addition, the riparian habitat is critical for rare and common Migratory Birds. This area also functions as a primary wildlife connectivity zone. The area also has high valued soils that are highly wind erosive...
The DFA's and Unallocated Lands in this area should be re-assigned ACEC classification.

Issue Number: PP-CA-DRECP-15-15-27
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: As currently proposed, the Granite Mountain Corridor ACEC is not sufficiently wide to provide live-in and move-through habitat for the target species or support range shifts in response to climate change. These non-contiguous parcels are in a checkerboard chaotic configuration and have

high conservation value soils that have high wind erosion characteristics according to the NRCS. This area is also predicted habitat for the Mojave Ground squirrel and with climate change modeling this area will become an "Island of Refuge" for this species and others who flee the heat of the desert floor in periods of rising temperatures....

The DFA's and Unallocated Lands in this area should be re-assigned ACEC classification.

Issue Number: PP-CA-DRECP-15-15-29
Organization: Alliance for Desert Preservation
Protestor: Richard Ravana

Issue Excerpt Text: Unallocated Lands containing critical habitat, as set forth by the USFWS for the area, are placed directly adjacent to the west of the proposed ACEC known as the Granite Mountain Wildlife Linkage.

These DFAs and Unallocated Lands encompass moderately high to very high conservation values and have continuously been included in many wildlife corridor models since 2005. These studies demonstrate the connectivity to the Mojave River as well as the Granite Mountains. The subject areas also provide vital or critical habitat for Golden Eagles, Prairie Falcons, Bighorn Sheep and several other species. Joshua Tree Woodlands are present in the subject areas and the Pinyon-Juniper Woodlands "high intactness" covers a majority of the Unallocated lands portion of this area.

In addition, the area habitat is critical for migratory birds as these areas have close proximity to approximately 9 Seeps and Springs. The areas include fan landscapes, and 3 NHD Intermittent Streams. These areas also function as a wildlife connectivity

zone, and are Intermountain Habitat for the Bighorn Sheep. By including these lands in the Granite Mountain Wildlife Linkage and removing them from the DFA and Unallocated lands designations, the wildlife corridor achieves a significantly greater functionality...The DFA's and Unallocated Lands in this area should be re-assigned ACEC classification.

Issue Number: PP-CA-DRECP-15-15-31

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The preferred alternative in the FEIS places Unallocated Lands containing critical habitat, as set forth by the USFWS, directly to the north of the existing Juniper Flats Cultural Area (an existing ACEC which is proposed for NCL per the FEIS).

These Unallocated Lands provide habitat for the San Diego horned lizard, Gray Vireo, Least Bells vireo, Southwestern Willow flycatcher, Mojave Ground squirrel, Golden Eagles, Prairie Falcons, and many other species. Joshua Tree Woodlands are present, as well as Juniper Woodlands.

Under the Preferred Alternative, the Lucerne Valley DFAs and Unallocated Lands conflict with the Mohave ground squirrel. While the Pinto Lucerne Valley and Eastern Slopes Subarea is outside of the Mohave Ground Squirrel Conservation Area, there are historical recorded occurrences in this subarea and specifically in the Apple Valley and Lucerne Valley. This subarea lies at the southernmost extent of this species distributional range (Inman et al. 2013) and several areas in this sub region are expected to remain relatively stable (Davis et al. in press) under an uncertain climate. In addition, the habitat is critical for migratory birds as these areas have close proximity to

approximately 4 Seeps and Springs. The areas include fan landscapes, and 7 NHD Intermittent Streams. These areas also function as a wildlife connectivity zone for a large array of species that transition from the San Bernardino Mountains to the Mojave River and/ or the Granite Mountains. These Unallocated Lands encompass High to Very High conservation values and have continuously been included in many wildlife corridor models since 2005. These studies demonstrate the connectivity to the Mojave River as well as the Granite Mountains.... These Unallocated Lands should be included in any one of three ACEC's or NCL's, in order to preserve intact existing wildlife corridors: Mojave River, Granite Mountain Wildlife Linkage and / or the Juniper Flats ACEC/NCL.

Issue Number: PP-CA-DRECP-15-15-6

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The BLM notice of this creation of new proposed ACEC's, as required by CFR 1610.7-2 (which fairly clearly conveys that ACEC's are to be noticed on an individual basis, and certainly not in bulk lots of 127 new ACECs). Also, Protesting Parties have not found any clear designation of routes. This makes public consideration and comment impossible, in violation of 43 CFR 1610.2.

Issue Number: PP-CA-DRECP-15-15-7

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The approach of the Proposed LUPA toward new ACEC's has been pursued without the required notice

and with no meaningful ability of the public to participate.

Issue Number: PP-CA-DRECP-15-18-26

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: The East Mesa Management Area was established as an ACEC in 1996 on 115,297 acres of BLM lands to conserve the flat-tailed horned lizard and prevent a federal listing under the Endangered Species Act and is therefore part of the NLCS system now. The DRECP eliminates 20,429 acres of the existing NLCS lands and 13,623 acres of the existing ACEC. Both the Conservation Management Actions (CMAs) for the ACEC and NLCS have the same disturbance cap in the respective designations up to 1% (same disturbance cap as the 1996 ACEC). If the DFA was fully developed it would disturb 23% of the ACEC or 25% of the NLCS – well above the disturbance cap. But more to the point – the DRECP should not be designating DFAs on critical conservation lands at all.

Issue Number: PP-CA-DRECP-15-18-27

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: South of Interstate 8, a new ACEC is designated on 5,600 acres but a DFA overlays approximately 3,200 acres of the ACEC, which vastly exceeds the disturbance cap for this ACEC.

Remedy: Remove the DFA from ACEC and add the ACEC to NLCS.

Issue Number: PP-CA-DRECP-15-18-31

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: This whole Owens Valley and adjacent lands, including all public lands, easily reach the metric of being nationally significant. Few places on the planet, and nowhere else in the nation, encompass the landscape (topographic) diversity going from the lowest elevation in North America – Badwater - at 282 feet (86 m) below sea level to the highest point in the contiguous United States - Mount Whitney - with an elevation of 14,505 feet (4,421 m) all in a mere 84.6 miles (136.2 km). All of these lands should have the highest level of conservation protection to protect the unparalleled landscape of this unique area – ACEC in this case

Issue Number: PP-CA-DRECP-15-18-34

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: Numerous proposed unallocated parcels occur within habitat for the FTHL [Flat Tailed Horned Lizard], adjacent to, in between and directly within the boundaries of existing management areas that were specifically established for the conservation of the FTHL...Designate the Unallocated lands in the Bakersfield and Bishop areas as ACECs.

Issue Number: PP-CA-DRECP-15-26-2

Organization: California Off-Road Vehicle Association

Protestor: Amy Granat

Issue Excerpt Text: We contend that the new ACECs designated in the DRECP final

EIS were not properly noticed in the Federal Register. The newly proposed ACECs were not individually named in the original September 26, 2014 FR notice for the DEIS, nor are they individually named in the Federal Register at any point after this. The statutory authority covering the designation of ACECs can be found at 43 CFR 1610.7-2 The relevant subsection is subsection(b) This subsection requires the State Director to “publish a notice in the Federal Register listing each ACEC proposed and specifying the resource limitations....” The notice shall provide a 60-day period for public comment on the proposed ACEC designation.”

Issue Number: PP-CA-DRECP-15-26-4
Organization: California Off-Road Vehicle Association
Protestor: Amy Granat

Issue Excerpt Text: The DRECP BLM ACEC Worksheet Part 12_12 for the Jawbone Butterbredt ACEC contains a potentially contradictory statement. Under the Preferred Alternative that “no construction or recreation would be permitted in riparian areas”, yet many designated trails run through desert washes in this ACEC. In addition, the DRECP final EIS Glossary includes the term “minor incursions” that could be interpreted to allow recreation on designated routes within washes.

Issue Number: PP-CA-DRECP-15-31-8
Organization: Friends of Jawbone
Protestor: Edward Waldheim

Issue Excerpt Text: [The BLM] has disregarded management practices in Jawbone Dove Springs and in the Rand’s, which have management plans.

Issue Number: PP-CA-DRECP-15-32-3
Organization: Individual
Protestor: James Kenney

Issue Excerpt Text: The statutory authority covering the designation of ACECs can be found at 43 CFR 1610.7-2, subsection (b). This subsection requires the State Director to “publish a notice in the Federal Register listing each ACEC proposed and specifying the resource limitations.... The notice shall provide a 60-day period for public comment on the proposed ACEC designation.” The Federal Register, September 26, 2014 doesn’t name the ACECs individually or in subsequent issues are they named.

Issue Number: PP-CA-DRECP-15-41-2
Organization: Desert Advisory Council
Protestor: Mary Algazy

Issue Excerpt Text: The statutory authority covering the designation of ACECs can be found at 43 CFR 1610.7-2 The relevant subsection for discussion here is subsection(b) This subsection requires the State Director to “publish a notice in the Federal Register listing each ACEC proposed and specifying the resource limitations.... The notice shall provide a 60-day period for public comment on the proposed ACEC designation.” The ACECs are definitely not individually named in the original September 26, 2014 FR notice for the DEIS. Nor are they ‘individually named in the Federal Register at any point after this.

Issue Number: PP-CA-DRECP-15-41-3
Organization: Desert Advisory Council
Protestor: Mary Algazy

Issue Excerpt Text: This is not just a ‘procedural defect; it is a substantive one.

The ACECs as offered for public comment in the DEIS lacked THE MOST CRITICAL information: 43CFR 1610.2[a] clearly states that “The public shall be provided opportunities to meaningfully participate in and comment on the preparations of plans, amendments and related guidance...”

Issue Number: PP-CA-DRECP-15-41-4

Organization: Desert Advisory Council

Protestor: Mary Algazy

Issue Excerpt Text: So now we have 5.8 million acres of ACECs that were never properly noticed per 43 CFR 1610.72 standards, without appropriate notifications provided to the public in order to provide the opportunity for meaningful participation promised by 43 CFR 1610.2, whose access will be detrimentally impacted to an unknown extent by disturbance caps that were never explained to the public [during their viable NEPA participation in the WEMO process]. While I must candidly admit that my experience in these matters is limited compared to some, I find it hard to imagine a more clear-cut violation of NEPA.

Issue Number: PP-CA-DRECP-15-41-5

Organization: Desert Advisory Council

Protestor: Mary Algazy

Issue Excerpt Text: In conclusion, I am protesting the inclusion of the ACECs in the DRECP for two reasons. First, as a matter of a procedural violation of NEPA, the proposals were not individually noticed per requirement of 43 CFR ‘1610.7-’2. NEPA, resting on the backbone of the due process guarantees of the 14th amendment, requires NOTICE and an opportunity to be heard. The BLM has failed to provide adequate

notice according to their own standards. Secondly, the ‘opportunity’ to be heard must be ‘meaningful’ per 43 CFR 1610.2. Where 127 ACECs are shuttled thru a master-class planning document in an Appendix without road designations, the participation has been rendered de facto meaningless.

Issue Number: PP-CA-DRECP-15-42-3

Organization: Friends of the Inyo

Protestor: Jora Fogg

Issue Excerpt Text: We are unsure why the lands to the south of 168 remain unallocated. Toad populations exist around the lakebed and the small dune systems to the north of the Deep Spring Lake contain an endemic species of beetle discovered in the early 2000’s. The BLM has a Black Toad ACEC here (and previously a 1987 WHMA designation) in order to create connectivity around the lake. In order to properly address toad connectivity, all lands in the Deep Springs area should be NLCS because of these existing designations and the BLM intent to provide habitat connectivity.

We request the unallocated lands north of highway 190 and south of the Saline Valley Road, an area known as Lower Centennial Flat, be changed to the NLCS classification. The area is surrounded by proposed NLCS and existing wilderness, indicating the area’s nationally significant values. Namely, this region is a Joshua tree recruitment area, has substantial Mohave Ground Squirrel habitat, and offers fantastic primitive recreation in an intact desert ecosystem with much plant and bird diversity. The area known as Lee Flat north of highway 190 also contains an isolated population of Bendire’s Thrasher, a rare species this far west and north in California.

Summary:

The DRECP PLUPA/FEIS violates laws, regulations, and policies associated with ACECs because:

- the ACEC disturbance cap and limitation on use of the utility corridor would be inconsistent with a FERC license;
- there was neither the required notice nor the required opportunity for public comment on the Proposed ACECs and their proposed restrictions, including disturbance caps, in violation of 43 C.F.R. §§1610.2 and 1610.7-2;
- some linkage ACECs include highly impacted areas with no habitat value;
- the proposed Castle Mountain ACEC does not conform to DRECP's provision to exclude existing high priority mineral and energy operations and their identified expansion areas from proposed conservation designations;
- the BLM has disregarded management practices in Jawbone Dove Springs and in the Rand's, which have management plans;
- there is insufficient discussion as to why the biological characteristics in the Castle Mountain area are of such import to require special management considerations;
- some DFAs overlap ACECs in such a way as to cause the disturbance caps for those ACECs to be exceeded; and
- proposed restrictions on recreation within Jawbone Butterbredd ACEC riparian areas conflict with many designated trails running through desert washes in this ACEC.

Response:

An area must meet at least one relevance criterion and one importance criterion to be considered as a potential ACEC and be analyzed for designation in an RMP alternative (43 CFR 1610.7-2(a)) (BLM Manual Section 1613.22.B). BLM Manual Section 1613.11 provides four relevance criteria and five importance criteria. The State Director, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, must publish a notice in the FEDERAL REGISTER listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation. (43 CFR 1610.7-2(b))

The BLM must carry forward all potential ACECs as recommended for designation in at least one alternative in the DRECP DLUPA/EIS (BLM Manual Section 1613.22.B). There is no requirement to carry forward potential ACECs into the PLUPA/FEIS.

The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the PLUPA/FEIS. BLM Manual Section 1613.33.E provides direction for when the BLM may choose not to designate potential ACECs.

Appendix L of the DRECP PLUPA/FEIS discusses the proposed ACEC designations, including their associated relevance and importance values and overarching goals. For example, Appendix L explains that the Northern Lucerne Wildlife Linkage ACEC (Pinto Lucerne Valley and Eastern Slopes Subregion) is proposed for designation, in part, to provide critical linkage corridors for wildlife populations. The objectives for this proposed Northern Lucerne Wildlife Linkage

ACEC would include improving the conditions of sensitive habitat and to protect sensitive habitat from impacts associated with vehicle traffic (DRECP PLUPA/FEIS, Appendix L, pp. 893-900). This ACEC and the wildlife linkage value it provides is consistent with the best available data as described in the biological conservation framework (DRECP PLUPA/FEIS Appendix D: DRECP LUPA Biological Conservation Strategy) and the landscape-level linkages and desert tortoise conservation area linkages (DRECP PLUPA/ FEIS, Appendix H: Conservation and Management Actions) in the DRECP DLUPA and PLUPA/FEIS. Although some specific locations inside this and other ACECs do not currently provide high quality habitat, the configuration of the ACEC(s) have been determined important for the long-term viability of sensitive species and recovery of federally listed species.

Protesters identify certain areas that they claim should have been considered and proposed for ACEC designation. The BLM used the best available data and analysis in the DRECP PLUPA/FEIS, including data provided by the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, to evaluate areas for consideration as ACECs. The BLM determined that some areas met the relevance and importance criteria as required for ACEC designation, and therefore considered those areas for ACEC designation in at least one action alternative. However, the BLM determined that some areas did not meet the relevance and importance criteria as required for ACEC consideration, and therefore did not consider those areas for ACEC designation in any of the action alternatives.

South of Interstate 8, there are, portions of or entire, five existing and proposed ACECs as depicted in the DRECP PLUPA/FEIS, Appendix L, Lake Cahuilla Subregion - Lake Cahuilla (#63, p.533), Ocotillo (#81, p. 557), Pilot Knob (#93, p. 567), Plank Road (#98, p. 577) and Yuha Basin (#134, p. 640). None of these ACECs are of the size described by the protester. Only one of the five, Lake Cahuilla ACEC, is co-located with a proposed DFA. The Lake Cahuilla ACEC is an existing ACEC and does not have a disturbance cap in the DRECP PLUPA. The co-located DFA is on a portion of unit C of the ACEC, is limited to geothermal development only, and is stipulated as a no surface occupancy DFA. The other four ACECs do not have a proposed DFA overlay.

Most of the Owen's Valley and adjacent BLM administered public lands are outside the DRECP Decision Area (DRECP PLUPA/FEIS Volume I, Figures 1.0-1 and 1.0-2). With regards to the areas specifically noted by the protester, Badwater is within Death Valley National Park and therefore not within the jurisdiction of BLM or BLM land use planning, and Mount Whitney is located outside the DRECP Decision Area, managed by the USDA Forest Service.

In the No Action alternative there are approximately 163,000 acres of existing BLM public lands in some conservation status within the range of the flat-tailed horned lizard. The DRECP PLUPA/FEIS contains approximately 271,000 acres in existing or proposed conservation status within the range of the flat-tailed horned lizard, an increase of 108,000 acres of conserved lands (DRECP PLUPA/FEIS Volume IV.7). In addition to the existing and proposed conserved lands, the DRECP PLUPA/FEIS also proposes a LUPA-wide conservation and management action, LUPA-BIO-IFS-10 (PLUPA/FEIS, Volume II.3.4.2.1.1, p. II.3-183) which states "Comply with the conservation goals and objectives, criteria, and management planning actions identified in the most recent revision of the Flat-tailed Horned Lizard Range wide Management Strategy (RMS).

Activities will include appropriate design features using the most current information from the RMS and RMS Interagency Coordinating Committee to minimize adverse impacts during siting, design, pre-construction, construction, operation, and decommissioning; ensure that current or potential linkages and habitat quality are maintained; reduce mortality; minimize other adverse impacts during operation; and ensure that activities have a neutral or positive effect on the species”.

With regards to the East Mesa ACEC, the DRECP PLUPA/FEIS actually proposes expanding the East Mesa ACEC from its current 42,100 acres to 88,480 acres, more than doubling its size, and also proposes it for inclusion in the National Conservation Lands. Approximately one quarter of the East Mesa ACEC and National Conservation Lands have a DFA overlap allocation. However, this DFA is limited to geothermal development only, with a no surface occupancy provision (DRECP PLUPA/FEIS Appendix L, Lake Cahuilla Subregion, pp. 511-514).

There are no existing ACECs south of Highway 168 (DRECP PLUPA/FEIS, Volume II.2). The boundaries of the existing ACEC north of Highway 168, White Mountain City ACEC, remain unchanged. The BLM will continue to manage resources and uses on BLM-administered lands in this area in conformance with existing land use planning decisions in the Northern and Eastern Mojave Desert Management Plan Amendment (NEMO) including the WHMA, unless specifically amended by the ROD for the DRECP LUPA (DRECP PLUPA/FEIS Volume I.3.1.1, p. I.3-1).

National Conservation Lands are proposed north of Highway 168 (DRECP PLUPA/FEIS Volume II.3). Lower Centennial Flats is located south of Highway 190 and is included in the proposed Mojave Ground Squirrel ACEC (DRECP PLUPA/FEIS, Appendix L, Western Desert and Eastern Slopes Subregion, map #75, p. 1293).

For further discussion of the BLM’s process for considering lands for inclusion in the National Conservation Lands, please see the response to the “Omnibus Act” section of this protest resolution report.

With regards to designated trails running through Jawbone Butterbrecht ACEC, the proposed management plan for this ACEC is consistent with the CMAs for riparian, LUPA-BIO-RIPWET. The management plan and the CMAs allow for “minor incursions”. A designated trail would be considered a minor incursion; a viewing or staging area for an OHV race would not. In the DRECP Approved LUPA that will accompany the Record of Decision, the BLM would clarify the definition of “minor incursion” to include designated routes.

As a land use plan amendment to the CDCA plan, the DRECP PLUPA/FEIS proposed management for areas such as Jawbone, Dove Springs, and Rand Mountain may differ from those in the existing CDCA plan. Management in the two open OHV areas, Jawbone and Dove Springs, would follow the applicable CMAs proposed in the DRECP PLUPA/FEIS, and for those issues and resources not addressed in the DRECP PLUPA/FEIS, the existing management plans will govern. The Rand Mountain area lies within the Fremont-Kramer ACEC under No Action and all the action alternatives. The DRECP PLUPA/FEIS would reduce the size of this

ACEC slightly as compared to the No Action. Rand Mountain is not a designated open OHV area, but does have extensive OHV use in some areas. As explained in Appendix L of the DRECP PLUPA/FEIS, the proposed changes to management in the Fremont-Kramer ACEC through CMAs, including disturbance caps, aim to better protect and manage for the relevant and important values within the ACEC. The ecological condition and some BLM special status species populations are in decline in this and surrounding areas, hence the need for different management actions than No Action. The designated existing route network is considered compatible with the ACEC values.

With regards to the Chuckwalla ACEC, the proposed disturbance caps in the Chuckwalla ACEC are 0.1%, 0.5%, and 1%, respectively (see DRECP PLUPA/FEIS, Appendix L, Colorado Desert Subregion, Chuckwalla ACEC, Preferred Alternative map, p. 246). The area of the 0.1% disturbance cap is a small fraction of the overall ACEC and is part of the federally listed desert tortoise Pinto Wash Linkage. The DRECP PLUPA FEIS explains that “ground disturbance will be calculated on BLM managed land at the time of an individual proposal, by BLM for a BLM initiated action or by a third party for an activity needing BLM approval or authorization, for analysis in the activity-specific National Environmental Policy Act (NEPA) document” (DRECP PLUPA/FEIS, Volume II, section II.3.2.2., p. II.3-66 and section II.3.4.2.4.2, p. II.3-235). The Chuckwalla disturbance cap will be calculated as per the requirement above. It was not the BLM’s intent to have linear features banned from existing utility corridors. The BLM will modify the language in the DRECP Approved LUPA in order to clarify that other linear features are allowed in a utility corridor, as long as they do not impact transmission or the ACEC values. The Eagle Crest FERC license is considered a valid existing right, therefore the CMAs and disturbance cap will apply as long as the existing right can be exercised.

With regards to mining claims within the proposed Castle Mountain ACEC, the BLM is aware of current mining and development activities in the vicinity of the Castle Mountain Mine. The BLM recognizes that non-mining proposed actions cannot materially interfere with the development of valid mining claims.

Section II.3.4.2.1.7 of the DRECP PLUPA/FEIS discusses the plan amendment’s area-wide conservation and management actions (CMA) related to minerals in the preferred alternative. Existing authorized mineral/energy operations, including existing authorizations, modifications, extensions and amendments and their required terms and conditions, are designated as an allowable use within all BLM lands in the LUPA Decision Area, and unpatented mining claims subject to valid existing rights (DRECP PLUPA/FEIS, p. II.3-204). Existing high-priority operation footprints and their identified expansion areas will be excluded from proposed renewable energy and conservation CMAs. The Castle Mountain/Viceroy Mine (Gold) (General Legal Description: 35° 17’N; 115° 3’W)—5,000 surface acres - is included in the list of existing high-priority mining operations (DRECP PLUPA/FEIS, pp. II.3-204 to 205).

On the other hand, amendments and expansions to mineral/energy operations that are not authorized prior to the completion of the DRECP LUPA ROD will be subject to applicable CMAs, including disturbance caps within Ecological and Cultural Conservation Areas, subject to valid existing rights (DRECP PLUPA/FEIS, p. II.3-204). Such expansions not authorized prior

to the completion of the DRECP LUPA ROD fall under the category of Areas Located Outside Identified Mineral Areas, and the DRECP PLUPA/FEIS explains that these are “Areas which could not be characterized due to insufficient data and mineral potential may fluctuate dependent on market economy, extraction technology, and other geologic information requiring periodic updating. Authorizations are subject to the governing laws and regulations and LUPA requirements” (DRECP PLUPA/FEIS, p. II.3-205).

Federal Register Notices that provided the Notice of Availability of the DRECP DLUPA/EIS (published September 26, 2014) and the DRECP PLUPA/FEIS (published November 13, 2015) did not meet the regulatory requirement of 43 CFR 1610.7-2(b) with regard to proper noticing of proposed ACECs. The BLM resolved this issue and complied with 43 CFR 1610.7-2(b) by publishing a subsequent Federal Register Notice on March 11, 2016 (Federal Register Volume 81, Number 48) and allowing a 60-day public comment period on proposed ACECs and proposed management prescriptions. 43 CFR 1610.7-2 does not require multiple, individual notices when the BLM is proposing multiple ACECs through a planning effort, multiple ACECs may be noticed in the same notice so long as the required information is included in that notice.

A map showing all proposed ACECs and a full list of those ACECs was provided as the introduction to Appendix L of the DRECP DLUPA/ EIS and the DRECP PLUPA/FEIS. The DRECP DLUPA/EIS, including the appendices, was available for a 152-day public comment period. Descriptions of the Proposed ACECs and alternatives, maps, relevant and important criteria, and special management were included for each ACEC in the body of Appendix L. Reviewers were referred to Appendix L throughout the DRECP DLUPA/EIS Preferred Alternative for more detail on proposed ACEC (see, for example, Sec. II.3.2.2, page II.3-66 (“The Preferred Alternative would include 127 ACECs, totaling approximately 5,814,000 acres [non-overlapping ACEC acres] on BLM-administered lands within the DRECP area [1,163,000 acres within existing conservation areas; 4,651,000 outside existing conservation areas]).

Additionally, approximately 207,000 acres of ACECs are proposed within the CDCA outside the DRECP planning area (excluding existing conservation areas). Required elements of the ACECs (Name, Location, and Size; Description of Value, Resource System, or Hazard; and Provision for Special Management Attention) and maps of each unit are included in the Special Unit Management Plans (National Conservation Lands and ACEC) in Appendix L.” [emphasis added]). Additionally, Appendix L was specifically mentioned in the Federal Register Notice published on March 11, 2016.

Travel management decisions are outside the scope of the DRECP PLUPA/FEIS. LUPA-CTTM-5 states that the BLM will manage OHV use per the appropriate Travel and Transportation Management Plan or RMP and/or SRMA objectives. Designation of routes is an implementation-level action. Changes to the route network will be considered through appropriate implementation-level NEPA and public participation.

The Federal Register Notice published on March 11, 2016 satisfied the regulatory requirements at 43 CFR 1610.7-2(b). The BLM properly considered the designation of potential ACECs in the DRECP Proposed LUPA.

BLM Visual Resource Management Policy

Issue Number: PP-CA-DRECP-15-13-10

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: There also appears to be an error or inconsistency in the discussion of the VRI/VRM Classes in the Preferred Alternative (LUPA/Final EIS at IV.20-40). That page states that under the Preferred Alternative, there would be approximately 19,000 acres of VRI Class II lands, 54,000 acres of VRI Class III lands, and 28,000 of VRI Class IV lands within DFAs. These figures add up to only 101,000 acres (even though there are 388,000 acres within DFAs). Thus, the LUPA/FEIS fails to disclose the VRI classifications for the remaining 287,000 acres of DFAs.

Issue Number: PP-CA-DRECP-15-13-11

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: Table IV-20.4 states that 112,000 acres of VRI Class II land will be managed as VRM Class IV and that 431,000 acres of VRI Class III will be managed as Class IV. Thus, a total of 543,000 acres of visually sensitive VRI Class II/III land will be managed as Class IV, which provides the lowest level of protection. At the same time, the Preferred Alternative intends to manage approximately 1.1 million acres of VRI Class IV lands as VRM Classes I, II, or III. This is an irrational approach to managing visual resources. Applying a more protective

designation on lands that have no or limited scenic value makes little sense. This is especially true when 543,000 acres of visually sensitive lands are not going to be managed for protection. BLM's proposed management of visual resources here is wholly arbitrary and capricious in violation of the Administrative Procedures Act, FLPMA, and the CDCA Plan.

Issue Number: PP-CA-DRECP-15-13-9

Organization: Morisset, Schlosser, Jozwiak & Somerville for the Quechan Indian Tribe

Protestor: Thane Somerville

Issue Excerpt Text: Lands that are inventoried as containing Class II or Class III visual values should be managed according to Class II or Class III management objectives. A system that changes the management objective to Class IV solely for the purpose of facilitating large-scale energy development, as opposed to protecting the values actually existing on the land, is not consistent with Congress' intent to protect sensitive visual values within the CDCA, as expressed in FLPMA. It is also unlawfully arbitrary and capricious under the Administrative Procedures Act.

Issue Number: PP-CA-DRECP-15-24-11

Organization: Colorado River Indian Tribes

Protestor: Dennis Patch

Issue Excerpt Text: The DRECP's approach to completing this task appears to violate both the letter and spirit of FLPMA's mandate to inventory and protect the quality of scenic values within the CDCA. 43

U.S.C. §§ 1701(a)(8), 1702(c), 1711(a), 1765(a), 1781(a)(l). Instead of evaluating the underlying visual resource values of the landscape (using either VRI or another tool) and then assigning VRM classes based on these values, the DRECP proposes to assign VRM classes based on the particular uses proposed by the DRECP agencies. For example, the DRECP states that BLM will manage all DFAs as VRM Class IV (the lowest level of protection) and all Variance Lands as Class III. DRECP at II.3-253 to -254. 11 This classification structure completely divorces visual resource values from visual resource management, and the VRM classifications simply become an overlay with which all proposed projects will automatically comply. The DRECP must be revised to assign VRM classifications based on underlying visual resource values, rather than the agencies desired development patterns.

Issue Number: PP-CA-DRECP-15-43-7

Organization: Law Offices of Stephan C. Volker on behalf of Backcountry Against the Dump

Protestor: Stephan Volker

Issue Excerpt Text: The Preferred Alternative will allow BLM to manage lands currently designated at Visual Resource Inventory Class II (one of the highest visual values) as Visual Resource Management Class IV. This Management Class will allow the highest amount of visual disturbance and facilitate major modifications to the existing character of the landscape. The FEIS states for the first time that BLM will “mitigate” this major scar on the landscape by maintaining some of these lands as Visual Resource Inventory Class II (FEIS E85-205 [Response E85-37], II.3-254). But this does nothing to actually rectify the harm of converting significant portions of this high value land to industrial development. By failing to accurately describe the extent of the visual impacts of LUPA, and by creating illusory mitigation, the FEIS is insufficient to allow a hard look at the DRECP’s impacts.

Summary:

The Visual Resource Management (VRM) analysis and proposed decision in the DRECP PLUPA/FEIS is flawed because:

- it fails to disclose the VRI classifications for 287,000 acres of DFAs;
- it arbitrarily applies a more protective designation on lands that have limited scenic value while allowing large acres of visually sensitive lands to be managed as VRM Class IV;
- it is not consistent with Congress’ intent to protect sensitive visual values within the CDCA;
- it fails to assign VRM classifications based on underlying visual resource values rather than the agency’s desired development patterns; and
- it fails to accurately describe the extent of the visual impacts of proposed VRM decisions

Response:

BLM regulations and policy in FLPMA (43 USC 1701), the BLM Land Use Planning Handbook (H-1601-1 Appendix C, p. 11), and the BLM Visual Resource Manuals 8400.02, 8400.06.A.2 and 8400.06.A.4, require the BLM to protect the quality of scenic resources on public lands and

manage scenic resources in accordance with the VRM objectives (management classes). The sections of FLPMA relevant to visual and scenic resources are:

- Section 102(a)(8) [43 USC 1701(a)(8)]: Declares that it is the policy of the United States that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.”
- Section 103(c) [43 USC 1702(c)]: Identifies “scenic values” as one of the resources for public management.
- Section 201(a) [43 USC 1711(a)]: States that “the Secretary shall prepare and maintain on a continuing basis and inventory of all public lands and their resources and other values (including...scenic values).”
- Section 505(a) [43 USC 1765(a)]: Requires that “Each Right-of-Way shall contain terms and conditions which will...minimize damage to the scenic and esthetic values.”
- Section 601(a)(1) [43 USC 1781(a)(1)]: Congress finds that “the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;”

The BLM must manage visual resource values through the VRM system which designates VRM management classes based on an inventory of visual resources and management considerations for other land uses. This process is described in detail in BLM Manual 8400, BLM Handbook H-8410-1, and BLM Handbook H-8341-1.

Section 1.3 of the DRECP PLUPA/FEIS explains the planning process used to guide the formulation of the alternatives and the PLUPA/FEIS. The VRM class objectives established within the DRECP PLUPA/FEIS are appropriate at the large, programmatic scale of this document, and conform to FLPMA, including, 43 USC 1781(a)(1), and BLM VRM policy requirements in terms of designating VRM management classes based on scenic, economic, and other resources within the CDCA. The CMAs proposed under the DRECP PLUPA/FEIS would help to avoid and reduce impacts to visual resources within the CDCA (DRECP PLUPA/FEIS, Appendix H). Detailed site analysis and visual resource contrast rating analysis are conducted at the project specific scale and would occur when projects are proposed.

Section IV.20.3.2 of the DRECP PLUPA/FEIS discloses the potential impacts of the Preferred Alternative on visual resources, and its sub-section IV.20.3.2.4 provides a comparison of the Preferred Alternative with the No Action Alternative in regards to impacts on visual resources.

The eastern-northeastern portion of the DRECP PLUPA/FEIS Decision Area, where there are large areas set aside as national parks, preserves, and wilderness, would have the lowest concentration of DFAs under the DRECP planning area. As a result, fewer renewable energy projects would be visible from extensive areas of existing or proposed conservation. Under the DRECP PLUPA/FEIS, the concentration of development could increase localized adverse impacts as compared with the current CDCA Plan, which currently allows renewable energy development across a large area of the desert without conclusive and binding land use plan decisions on the VRM class objectives. However, under the DRECP PLUPA/FEIS, overall impacts would be much lower, because the visual integrity of the large-scale open desert landscapes would not be as compromised by concentrated development in DFAs as it would be

by the more widely dispersed development of the current CDCA Plan. (DRECP PLUPA/FEIS, p. IV.20-39)

One protester identifies what appears to be an error or inconsistency in the discussion of the VRI/VRM Classes in the Preferred Alternative of the DRECP LUPA/FEIS on page IV.20-40. The total acreage of 101,000 from VRI Class II, Class III, and Class IV lands constitutes those acreages that would fall within the potential renewable energy project impact area, not within the entire DFAs (DRECP PLUPA/FEIS, Appendix AA, Letter D3, p. D3-18). A discussion of the potential renewable energy project impact area within DFAs can be found in “**Step 3: Distribution of Technologies and Acres of Development**” under Section IV.1.4.1 Impact Assessment Methodology of the DRECP PLUPA/FEIS (DRECP PLUPA/FEIS, pp. IV.1.-14 to 15).

The VRM analysis and proposed decisions in the DRECP PLUPA/FEIS conform to relevant laws, regulations, and policies.

BLM Special Status Species Policy

Issue Number: PP-CA-DRECP-15-04-4

Organization: Gatzke Dillon & Balance, LLP for the Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: The EIS states that the DRECP has the potential to cause “take” of eight species that have “fully protected” status under California law, but the EIS does not explain the importance or legal effect of that designation. Under the California Fish and Game Code, 37 species are listed as “fully protected.” These species enjoy the highest level of protection afforded by the State. Unlike species listed as “threatened” or “endangered” under the California Endangered Species Act (CESA), fully protected species cannot be taken except for purposes of scientific research, which is not the case here. In other words, no Incidental Take Permit may be issued for fully protected species. Any action that authorizes take or results in take of fully protected species is prohibited by law and punishable by fines and other criminal penalties. According to the EIS, the DRECP will result in impacts to the following “fully protected” species: California condor; California black rail; golden eagle; greater Sandhill crane; Yuma Ridgeway’s rail; Mohave tui chub; Owens pupfish; and desert bighorn sheep. These impacts include “take” of three condors, 20 California blackrails, and 20 Yuma’s Ridgeway’s rails. Each of these projected takes is illegal under California law. The California Department of Fish and Wildlife, a co-sponsor of the DRECP, cannot authorize any activity that causes take of these “fully protected” species. The BLM likewise has no power to thwart California law and authorize take of these

species.

Issue Number: PP-CA-DRECP-15-04-5

Organization: Gatzke Dillon & Balance, LLP for the Off-Road Business Association

Protestor: David Hubbard

Issue Excerpt Text: The California Department of Fish and Wildlife cannot authorize any activity that causes take of this “fully protected” species. The BLM likewise has no power to thwart California law and authorize take of this species, especially since the golden eagles affected by the DRECP live, nest, and forage both inside and outside BLM’s jurisdictional boundaries.

Issue Number: PP-CA-DRECP-15-20-16

Organization: Defenders of Wildlife

Protestor: Kim Delfino

Issue Excerpt Text: The North of Kramer Junction DFA must be modified in order to conserve desert tortoise and MGS. As discussed above, this area contains Desert Tortoise Contiguous High Value Habitat (P2) and is directly adjacent to desert tortoise critical habitat. See Map 3 (Attachment 4). It also contains habitat identified by the TNC Mojave Desert Ecoregional assessment as Ecologically Core (“TNC Mojave Assessment”). This area is also within existing MGS Wildlife Habitat Management Area as adopted by the BLM in the West Mojave Plan Amendment to the California Desert Conservation Area in 2006. Even though multiple uses were allowed in this area, the intent of the MGS WHMA was to conserve habitat for the MGS. To that end, the BLM adopted a conservation framework under

which the agency allowed for a maximum habitat loss limit of 1% during the 20 year life of the plan and a 5:1 compensatory mitigation requirement for each acre of habitat lost due to land use activities. (WEMO Plan, Chapter 2, pages 1, 204). The designation of this area as a development focus area violates the intent of the WEMO Plan to provide for conservation of MGS habitat and is contrary to BLM policy for management of Special Status Species habitat contained in Manual 6840.

Issue Number: PP-CA-DRECP-15-20-20
Organization: Defenders of Wildlife
Protestor: Kim Delfino

Issue Excerpt Text: The DRECP LUPA undermines long-standing conservation management for the MGS and will clearly move the species closer to a need for federal listing under the ESA, contrary to the policies in BLM Manuals 6500 and 6840.

Summary:

The DRECP PLUPA/FEIS violates the BLM's Special Status Species Policy because:

- it would cause the take of species that are "fully protected" under California law;
- Development Focus Areas (DFAs) would occur within Desert Tortoise High Value Habitat and Mohave ground squirrel (MGS) WHMA as adopted by the BLM in the West Mojave Plan Amendment to the CDCA in 2006; and
- the plan amendment would move the MGS closer to a need for federal listing under the Endangered Species Act (ESA).

Response:

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

Section 7(a)(2) of the ESA requires Federal agencies to ensure that their proposed actions will not be "likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of the critical habitat of such species" (16 USC 1336[a][2]). If an agency determines through a finding in a biological assessment that a proposed action is likely to adversely affect listed species or designated critical habitat, formal consultation is required under 50 CFR 402.14(a).

Additionally, a primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B). However, the BLM does not have the authority to determine if listing under the ESA is warranted for a particular species.

The California Fish and Game Code sections dealing with fully protected species state that these species "...may not be taken or possessed at any time and no provision of this code or any other

law shall be construed to authorize the issuance of permits or licenses to take any fully protected”, although take may be authorized for necessary scientific research. The BLM is not subject to state law, which includes the California Fish and Game Code; however, the BLM works carefully to coordinate with the California Department of Fish and Wildlife on activities that may impact special status species addressed in the California Game and Fish Code.

The BLM has prepared the DRECP PLUPA/FEIS in full compliance with the ESA and BLM Special Status Species Policy. The BLM has worked in partnership with other agencies responsible for administering regulations governing impacts to federal and state protected species, including USFWS and California Department of Fish and Wildlife. As stated in Volume I, Section I.0.1, “DRECP Background and Overview”, one of the primary goals for the DRECP, which is addressed for BLM-managed lands by the DRECP PLUPA/FEIS is “to contribute to the conservation [recovery] of Focus Species...” Additionally, Section I.3.2 discusses the overall approach to the biological conservation planning process used in the DRECP PLUPA/FEIS. As discussed in this section, a comprehensive approach was undertaken that integrated the planning process, scientific input and recommendations at all stages to ensure the latest science was used in the development of conservation strategies. As described in Section I.3.3, the renewable energy planning process is guided by the need to reduce the environmental impacts of anticipated renewable energy development and the need to help achieve state and federal renewable energy goals. The DFAs were developed based on a consideration of mapped renewable energy resources and modeled renewable energy technology profiles on the one hand, and areas with important or sensitive natural resources, as identified in the biological conservation planning process and BLM’s land use planning process, on the other.

With regard to species protected under California law, as a Federal agency, the BLM is not subject to the California Fish and Game Code although BLM and the California Department of Fish and Wildlife work together cooperatively and closely on issues related to CA wildlife protection. The California Department of Fish and Wildlife is responsible for enforcing the California Fish and Game Code and applicable state laws. The BLM has worked in close cooperation with the California Department of Fish and Wildlife throughout the development of the DRECP PLUPA/FEIS and will continue to do so as needed on a project-specific basis.

Throughout the planning effort, the BLM has carefully considered potential impacts to species protected under the ESA. The DRECP PLUPA/FEIS is a landscape level plan that proposes adding more than 2 million acres for the purpose of conservation of species and habitats. The BLM has fully coordinated with USFWS on the approximately 4700 acres out of 2.7 million acres of BLM land in designated desert tortoise critical habitat that occurs in a proposed DFA. The BLM adequately considered the best available science and data in developing proposed DFAs. With regard to the Mohave ground squirrel (MGS), the DRECP PLUPA/FEIS adds more than 150,000 acres of MGS habitat to conservation over current conditions, and proposes these and other MGS areas for areas of critical environmental concern (ACECs) and some for National Conservation Lands. The DRECP PLUPA/FEIS also adds additional MGS species and habitat requirements in specific DFAs to minimize impacts to movement, genetic exchange, climatic adaptation, individuals, and populations.. The proposed compensatory mitigation focuses on protection of key linkages and key population centers. Additionally, within National Conservation Lands and ACECs, there would be disturbance caps of no greater than 1%

(and in some cases as low as 0.1%), which currently does not exist in most locations under No Action alternative. The BLM has carefully evaluated the available scientific information and formulated a plan that is compliant with both the ESA and BLM policy.

Impacts to listed species and their habitats are discussed in the DRECP PLUPA/FEIS, Volume IV, Section IV.7. The BLM determined that the approval of the DRECP PLUPA/FEIS is likely to adversely affect some listed species or designated critical habitat, and therefore underwent section 7(a)(2) formal consultation with the USFWS, consistent with the ESA and 50 CFR 402 regulations.

As discussed in Volume V, Section V.4.3, BLM formally submitted a Biological Assessment (BA), per 50 CFR 402.14, to the USFWS on July 10, 2015. After the BA was submitted, the BLM and USFWS had a series of phone calls, emails, and meetings discussing and clarifying the BA. On August 10, 2015, the USFWS accepted the BA as sufficient to initiate consultation. The BLM and the USFWS have continued to coordinate closely during the consultation period. After reviewing the BA, the USFWS issues a BO on the plan, concluding the formal section 7(a)(2) consultation process. The BO is the determination of the USFWS on the probability of the PLUPA/FEIS to pose jeopardy to listed species and/or destruction or adverse modification of designated critical habitat. The BO will include an Incidental Take Statement, as determined necessary by USFWS that may contain reasonable and prudent measures to minimize the impact of the incidental taking of listed species. The BO may also include discretionary conservation recommendations. As this plan's decisions are implemented, actions determined through environmental analysis to potentially affect species listed or candidate species for listing under ESA will be subject to site-specific consultation on those actions.

Based on the science considered and impacts analysis presented in the DRECP PLUPA/FEIS, the management proposed in the DRECP PLUPA/FEIS meets the BLM's legal requirement to manage the public lands in a manner that is consistent with the ESA and avoids the need for listing of sensitive species under the ESA. The management proposed in the DRECP PLUPA/FEIS complies with the ESA and BLM's Special Status Species policy.

Lands with Wilderness Characteristics

Issue Number: PP-CA-DRECP-15-33-7

Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: We appreciate that BLM has inventoried many lands with wilderness characteristics (LWC) units in the planning area and that the Draft RMP considers multiple alternatives to protectively manage some subset of those lands. However, the Proposed LUPA does not include inventories for the full planning area. FLPMA's mandate to maintain an inventory of public lands resources is the foundation on which all further management decisions are built, from land use allocations to site-specific project planning. In order to comply with FLPMA and IM 2011-154, the comprehensive inventory must include the full planning area.

Issue Number: PP-CA-DRECP-15-33-10

Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: Additionally, Manual 6310 states that boundaries for wilderness inventory units should generally be based on the presence of wilderness inventory roads "but can also be based on property lines between lands in Federal ownership and other ownerships." BLM Manual 6310 at .06(C)(1). Section lines, county lines, and administrative boundaries such as those between different BLM Field Offices or between different BLM designations (i.e. Areas of Critical Environmental Concern boundaries) are not included as qualifying boundary delineation features. However, throughout the wilderness inventory for this

planning area, BLM uses these invisible administrative boundary lines to define boundaries for selected wilderness inventory units. Thus, determinations made on the wilderness characteristics present within these boundaries are not made on complete and accurate information.

Issue Number: PP-CA-DRECP-15-33-11

Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: As alluded to in the BLM reports for this area, these boundary lines follow no qualifying boundary delineation feature as defined by Manual 6310 and as such results in inventories of several smaller units, instead of the larger block of contiguous BLM lands that should have been defined and inventoried according to current guidance. Wilderness characteristics do not stop at administrative boundaries or at invisible section lines. By arbitrarily truncating units like this, BLM is unnecessarily omitting potentially qualifying units, or only assessing a portion of a unit for outstanding opportunities for solitude or primitive and unconfined recreation. It follows that a bigger unit may have more outstanding opportunities for solitude or primitive and unconfined recreation than a smaller unit. If BLM is only reviewing a small portion of the actual contiguous block of unroaded BLM lands, because of arbitrary boundary delineation for that unit, then BLM is not seeing a true picture of the wilderness values that may be present in that area.

Issue Number: PP-CA-DRECP-15-33-12
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: BLM Manual 6310 directs the agency to “avoid an overly strict approach to assessing naturalness.” BLM Manual 6310 at .06(C)(2)(b)(ii)(2). BLM is to assess apparent naturalness, which the manual distinguishes from natural integrity, meaning that naturalness determinations should be based on whether an area looks natural to the average visitor regardless of ecosystem health. Features listed in Manual 6310 that may be considered “substantially unnoticeable” and thus have no effect on apparent naturalness include trails, spring developments, fencing, stock ponds, and certain types of linear disturbances. Furthermore, the manual specifically states that “undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed.” BLM Manual 6310 at .06(C)(3)(d). Although “substantially noticeable” is a term rarely used in the BLM’s reports for this planning area, there are many instances where BLM cites human impacts explicitly listed in Manual 6310 as “examples of human-made features that may be considered substantially unnoticeable” as rationale for disqualifying a unit for a lack of naturalness.

Issue Number: PP-CA-DRECP-15-33-13
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: Manual 6310 also states, “Human impacts outside the [wilderness inventory] area will not normally be considered in assessing naturalness of an area”. This is consistent with how the Wilderness Act has been

interpreted, as numerous federally designated wilderness areas have been created with boundaries that directly abut prominent human impacts such as major metropolitan areas, interstate highways, railroad tracks, reservoirs, etc. Yet, BLM disqualifies many units throughout the planning area because of such human impacts located outside the boundaries of the unit being assessed. For example, BLM determines that the 24,000-acre Bagdad to Chase unit (CDCA254) does not meet the naturalness criteria because of the adjacent military base, “This area while it appears to be free of any man-made developments, it is often impacted by the 29 Palms Military Base”. BLM’s assessment of the Dark Ridge unit (CDCA 267D-1) proclaims that the unit does not meet the naturalness criteria because of an adjacent “tailing pile and monitoring wells associated with the Hart Mining District”. This tailings pile is located on private land outside of the wilderness inventory unit and should not be considered an impact to naturalness for the unit as a whole. Finally, numerous units are disqualified because of proximity to major interstate highways such as I-40, I-15, or I-10. This despite the fact that numerous Wilderness Areas have previously been designated along these interstate highways, some boundaries of these Wilderness Areas come within 250 feet of these interstate highways. While Congress has decided that these areas can still contain wilderness characteristics despite their proximity to interstate highways, BLM concludes in almost every case in this inventory effort that such lands cannot contain wilderness characteristics. This is contrary to current wilderness inventory guidance and historical interpretation of the Wilderness Act.

Issue Number: PP-CA-DRECP-15-33-15
Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: While we understand and accept the fact that results among surveyors can differ, the BLM's LWC report fails to support its non-wilderness findings with data from the field. In fact, there is no evidence offered in the report to prove that the BLM actually entered the area CalWild identified as LWC. This is demonstrated by the lack of supporting documentation from the field and inaccurate statements such as the claim that certain vehicle routes in the LWC (such as 7981) are in "regular and continuous use."⁴² A visit to Route 7981 would have revealed that it has been cut-off from Highway 66 by flooding for many years so that it cannot be accessed by most vehicles. The route contains no vehicle tracks and, in fact, vegetation has been slowly recovering along the route since it was first constructed and abandoned decades ago.

Issue Number: PP-CA-DRECP-15-33-16
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: Despite these superlative values, CDCA 294-2/Gold Ace Hills LWC report dismisses this vast wild area with the following general statement: "The majority of this area has been impacted by a rich mining history. Large sections of land have been graded clear. There are [sic] also evidence of heavy wartime practicing of tanks with the area also [sic]"⁴⁸.... The BLM did not provide any evidence to support its assertion that the area is so disturbed as to be completely lacking in natural character.

Issue Number: PP-CA-DRECP-15-33-17
Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: BLM should identify all qualifying blocks of contiguous roadless BLM lands as defined by BLM Manual 6310.

Issue Number: PP-CA-DRECP-15-33-6
Organization: The Wilderness Society
Protestor: Nada Culver

Issue Excerpt Text: While we understand the challenges inherent in this large planning area, the failure to release inventory information prior to it being used to inform planning decisions is not sufficient to comply with Manual 6310. Accordingly, BLM should commit to releasing all the information gathered and created through this inventory process, including geotagged photographs, route analysis forms, and updated GIS data, and should accept and evaluate public comments on its land with wilderness characteristics inventory. To the extent that BLM identifies additional lands with wilderness characteristics or modifies the inventory based on new information received or gathered, additional evaluation of management of those lands should be included in the amendment that it will be conducting. In addition, BLM is required to respond to new information provided through citizen inventories. As discussed in detail, the California Wilderness Coalition has provided detailed inventories that comply with the requirements of Manual 6310, but BLM has not responded to these inventories, as required by Manual 6310. BLM should commit to evaluating these citizen inventories and, to the extent that BLM identifies additional lands with wilderness characteristics, to include evaluation of management of those lands in the amendment that it will be conducting.

Issue Number: PP-CA-DRECP-15-33-9

Organization: The Wilderness Society

Protestor: Nada Culver

Issue Excerpt Text: In many cases, BLM did not identify or otherwise disqualified from further review blocks of contiguous unroaded BLM lands regardless of size that are “contiguous with lands which have been formally determined to have wilderness or potential wilderness values, or any Federal lands managed for the protection of wilderness characteristics” including designated Wilderness, Wilderness Study Areas and National Park Service (NPS) areas recommended or proposed for designation” contrary to Manual 6310. For example, it appears that BLM did not inventory any of the lands in the McCoy Wash area contiguous with the Palen/McCoy Wilderness or in the Upper Panamint Valley contiguous with the Argus Range, Manly Peak, and Death Valley Wilderness areas. In addition, numerous smaller parcels of BLM lands contiguous with federally designated Wilderness or BLM Wilderness Study Areas have not been recognized in BLM’s inventories. BLM also did not provide documentation or rationale for wilderness-contiguous units it seemingly has inventoried, but found to not have wilderness characteristics. For example, BLM’s map of inventoried lands (Figure III. 14-5, Proposed LUPA) shows the large area north of the Rice Valley Wilderness has been inventoried but not found to meet the criteria for lands with wilderness characteristics. The northern boundary of the Rice Valley Wilderness is an invisible administrative boundary drawn along a section line; no on-the-ground linear feature exists in this location. Yet, BLM not only maps this area as an area inventoried but not found to contain wilderness

characteristics, it has yet to publish the report detailing that determination and the rationale used to make it. In fact, inventory reports for numerous polygons on the Map of Inventoried Lands (Figure III.14-5) have not been released to the public, despite the fact that determinations have been made on these units, and those determinations used to inform this land use planning process.

Issue Number: PP-CA-DRECP-15-34-5

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: We appreciate that BLM has inventoried many lands with wilderness characteristics (LWC) units in the planning area and that the Draft RMP considers multiple alternatives to protectively manage some subset of those lands. However, the Proposed LUPA does not include inventories for the full planning area. FLPMA’s mandate to maintain an inventory of public lands resources is the foundation on which all further management decisions are built, from land use allocations to site-specific project planning. In order to comply with FLPMA and IM 2011-154, the comprehensive inventory must include the full planning area.

Issue Number: PP-CA-DRECP-15-34-10

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: BLM Manual 6310 directs the agency to “avoid an overly strict approach to assessing naturalness.” BLM Manual 6310 at .06(C)(2)(b)(ii)(2). BLM is to assess apparent naturalness, which the manual distinguishes from natural integrity,

meaning that naturalness determinations should be based on whether an area looks natural to the average visitor regardless of ecosystem health. Features listed in Manual 6310 that may be considered “substantially unnoticeable” and thus have no effect on apparent naturalness include trails, spring developments, fencing, stock ponds, and certain types of linear disturbances. Furthermore, the manual specifically states that “undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed.” BLM Manual 6310 at .06(C)(3)(d). Although “substantially noticeable” is a term rarely used in the BLM’s reports for this planning area, there are many instances where BLM cites human impacts explicitly listed in Manual 6310 as “examples of human-made features that may be considered substantially unnoticeable” as rationale for disqualifying a unit for a lack of naturalness.

Issue Number: PP-CA-DRECP-15-34-11

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: Manual 6310 also states, “Human impacts outside the [wilderness inventory] area will not normally be considered in assessing naturalness of an area”. This is consistent with how the Wilderness Act has been interpreted, as numerous federally designated wilderness areas have been created with boundaries that directly abut prominent human impacts such as major metropolitan areas, interstate highways, railroad tracks, reservoirs, etc. Yet, BLM disqualifies many units throughout the planning area because of such human

impacts located outside the boundaries of the unit being assessed. For example, BLM determines that the 24,000-acre Bagdad to Chase unit (CDCA254) does not meet the naturalness criteria because of the adjacent military base, “This area while it appears to be free of any man-made developments, it is often impacted by the 29 Palms Military Base”.

BLM’s assessment of the Dark Ridge unit (CDCA 267D-1) proclaims that the unit does not meet the naturalness criteria because of an adjacent “tailing pile and monitoring wells associated with the Hart Mining District”. This tailings pile is located on private land outside of the wilderness inventory unit and should not be considered an impact to naturalness for the unit as a whole. Finally, numerous units are disqualified because of proximity to major interstate highways such as I-40, I-15, or I-10. This despite the fact that numerous Wilderness Areas have previously been designated along these interstate highways, some boundaries of these Wilderness Areas come within 250 feet of these interstate highways. While Congress has decided that these areas can still contain wilderness characteristics despite their proximity to interstate highways, BLM concludes in almost every case in this inventory effort that such lands cannot contain wilderness characteristics. This is contrary to current wilderness inventory guidance and historical interpretation of the Wilderness Act.

Issue Number: PP-CA-DRECP-15-34-13

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: While we understand and accept the fact that results among surveyors can differ, the BLM’s LWC report

fails to support its non-wilderness findings with data from the field. In fact, there is no evidence offered in the report to prove that the BLM actually entered the area CalWild identified as LWC. This is demonstrated by the lack of supporting documentation from the field and inaccurate statements such as the claim that certain vehicle routes in the LWC (such as 7981) are in “regular and continuous use.”²⁹ A visit to Route 7981 would have revealed that it has been cut-off from Highway 66 by flooding for many years so that it cannot be accessed by most vehicles. The route contains no vehicle tracks and, in fact, vegetation has been slowly recovering along the route since it was first constructed and abandoned decades ago.

Issue Number: PP-CA-DRECP-15-34-14

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: Despite these superlative values, CDCA 294-2/Gold Ace Hills LWC report dismisses this vast wild area with the following general statement: “The majority of this area has been impacted by a rich mining history. Large sections of land have been graded clear. There are [sic] also evidence of heavy wartime practicing of tanks with the area also [sic]”³⁵ The BLM did not provide any evidence to support its assertion that the area is so disturbed as to be completely lacking in natural character.

Issue Number: PP-CA-DRECP-15-34-15

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: BLM should identify all qualifying blocks of contiguous road-less BLM lands as defined by BLM Manual 6310.

Issue Number: PP-CA-DRECP-15-34-4

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: While we understand the challenges inherent in this large planning area, the failure to release inventory information prior to it being used to inform planning decisions is not sufficient to comply with Manual 6310. Accordingly, BLM should commit to releasing all the information gathered and created through this inventory process, including geotagged photographs, route analysis forms, and updated GIS data, and should accept and evaluate public comments on its land with wilderness characteristics inventory. To the extent that BLM identifies additional lands with wilderness characteristics or modifies the inventory based on new information received or gathered, additional evaluation of management of those lands should be included in the amendment that it will be conducting. In addition, BLM is required to respond to new information provided through citizen inventories. As discussed in detail, the California Wilderness Coalition has provided detailed inventories that comply with the requirements of Manual 6310, but BLM has not responded to these inventories, as required by Manual 6310. BLM should commit to evaluating these citizen inventories and, to the extent that BLM identifies additional lands with wilderness characteristics, to include evaluation of management of those lands in

the amendment that it will be conducting.

Issue Number: PP-CA-DRECP-15-34-7

Organization: The Wilderness Society / California Wilderness Coalition

Protector: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: In many cases, BLM did not identify or otherwise disqualified from further review blocks of contiguous unroaded BLM lands regardless of size that are “contiguous with lands which have been formally determined to have wilderness or potential wilderness values, or any Federal lands managed for the protection of wilderness characteristics” including designated Wilderness, Wilderness Study Areas and National Park Service (NPS) areas recommended or proposed for designation” contrary to Manual 6310. For example, it appears that BLM did not inventory any of the lands in the McCoy Wash area contiguous with the Palen/McCoy Wilderness or in the Upper Panamint Valley contiguous with the Argus Range, Manly Peak, and Death Valley Wilderness areas. In addition, numerous smaller parcels of BLM lands contiguous with federally designated Wilderness or BLM Wilderness Study Areas have not been recognized in BLM’s inventories.

BLM also did not provide documentation or rationale for wilderness-contiguous units it seemingly has inventoried, but found to not have wilderness characteristics. For example, BLM’s map of inventoried lands (Figure III. 14-5, Proposed LUPA) shows the large area north of the Rice Valley Wilderness has been inventoried but not found to meet the criteria for lands with wilderness characteristics. The northern boundary of the Rice Valley Wilderness is an invisible administrative boundary drawn

along a section line; no on-the-ground linear feature exists in this location. Yet, BLM not only maps this area as an area inventoried but not found to contain wilderness characteristics, it has yet to publish the report detailing that determination and the rationale used to make it. In fact, inventory reports for numerous polygons on the Map of Inventoried Lands (Figure III.14-5) have not been released to the public, despite the fact that determinations have been made on these units, and those determinations used to inform this land use planning process.

Issue Number: PP-CA-DRECP-15-34-8

Organization: The Wilderness Society / California Wilderness Coalition

Protector: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: Additionally, Manual 6310 states that boundaries for wilderness inventory units should generally be based on the presence of wilderness inventory roads “but can also be based on property lines between lands in Federal ownership and other ownerships.” BLM Manual 6310 at .06(C)(1). Section lines, county lines, and administrative boundaries such as those between different BLM Field Offices or between different BLM designations (i.e. Areas of Critical Environmental Concern boundaries) are not included as qualifying boundary delineation features. However, throughout the wilderness inventory for this planning area, BLM uses these invisible administrative boundary lines to define boundaries for selected wilderness inventory units. Thus, determinations made on the wilderness characteristics present within these boundaries are not made on complete and accurate information. For example, the Iron Mountains region in the Needles Field Office, including the Kilbeck Hills and portions of the Cadiz and Ward Valleys was

inventoried by the BLM as several distinct units (CDCA 305-1 through CDCA 305-6) based on boundaries that in many cases follow no on-the-ground linear feature or developed right-of way whatsoever; while many of these boundaries follow section lines, contrary to the boundary delineation guidance in Manual 6310, others appear to simply be hand-drawn lines across the map.

Issue Number: PP-CA-DRECP-15-34-9

Organization: The Wilderness Society / California Wilderness Coalition

Protestor: Nada Culver / Sally Miller & Ryan Henson

Issue Excerpt Text: As alluded to in the BLM reports for this area, these boundary lines follow no qualifying boundary delineation feature as defined by Manual 6310 and as such results in inventories of several smaller units, instead of the larger

block of contiguous BLM lands that should have been defined and inventoried according to current guidance. Wilderness characteristics do not stop at administrative boundaries or at invisible section lines. By arbitrarily truncating units like this, BLM is unnecessarily omitting potentially qualifying units, or only assessing a portion of a unit for outstanding opportunities for solitude or primitive and unconfined recreation. It follows that a bigger unit may have more outstanding opportunities for solitude or primitive and unconfined recreation than a smaller unit. If BLM is only reviewing a small portion of the actual contiguous block of unroaded BLM lands, because of arbitrary boundary delineation for that unit, then BLM is not seeing a true picture of the wilderness values that may be present in that area.

Summary:

The DRECP PLUPA/FEIS violates laws, regulations, and policies associated with Lands with Wilderness Characteristics because:

- it fails to fully inventory lands with wilderness characteristics, the DRECP LUPA violates FLPMA's mandate regarding inventories;
- the BLM did not follow current BLM guidance for inventorying lands with wilderness characteristics;
- non-wilderness findings are not supported with data from the field;
- the BLM did not release the lands with wilderness characteristics inventory for public review prior to using it to inform planning decisions; and
- the BLM did not respond to lands with wilderness characteristics inventories submitted by citizens.

Response:

Section 201(a) of FLPMA requires that the BLM "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values."

Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.”

Although the inventory process may occur in concurrence with a land use planning effort, it is a distinct and separate process. Public involvement requirements under Section 202 of FLPMA do not apply to BLM’s inventory process, which is performed under Section 201 of FLPMA. The BLM is not required to coordinate with state or local governments, or seek comment from the general public, during its inventory process.

BLM Manual 6310 states: “A wilderness characteristics inventory is the process of determining the presence or absence of wilderness characteristics. The BLM must document existing conditions as opposed to potential future conditions. The BLM may conduct the inventory using available information (e.g., existing maps, photos, records related to range projects, monitoring data) and will field check the information as necessary.”

BLM Manual 6310.04(C)(1) says that “District Managers and Field Managers shall: 1. Review and document relevant data, including citizen-submitted information, for conducting and maintaining the wilderness characteristics inventory on a continuing basis”.

BLM Manual 6310.06(B)(3)(a) states that the BLM will identify areas that need lands with wilderness characteristics inventoried, “Identification of a specific area where inventory is needed requires a combined review of existing land status and available route inventory data.”

BLM Manual 6310.06(C)(1) states that the BLM establish “the boundary of the wilderness characteristics inventory unit...The boundary is generally based on the presence of wilderness inventory roads (which is defined in BLM Manual 6310 Appendix C), and can also be based on property lines between lands in Federal ownership and other ownerships or developed rights of way. Other inventory unit boundaries may occasionally be identified.”

BLM Manual 6310.06(C)(2)(b)(ii) states that BLM “document noticeable human impacts within the area. If several minor impacts exist, summarize their cumulative effect on the area’s degree of apparent naturalness.”

BLM Manual 6310.06(C)(2)(b)(iii) states that “human impacts outside the area will not normally be considered in assessing naturalness of an area. If, however, a major outside impact exists, it should be noted in the overall inventory area description and evaluated for its direct effects on the area.”

The BLM has nearly completed Lands with Wilderness Characteristics inventories of all the BLM-managed public lands within the DRECP planning boundary. This inventory includes over seven million acres and nearly three hundred inventory units. This inventory has followed the procedures found in BLM Manual 6310. The BLM reviewed citizen-submitted information and inventories for lands with wilderness characteristics.

Inventories have not yet been completed for the area within the DRECP boundary that falls under the jurisdiction of the BLM Palm Springs Field Office. At the completion of these inventories, the BLM will propose lands to be managed to protect wilderness characteristics through a plan amendment.

The BLM relied on a current inventory of the resources of the public lands when preparing the DRECP PLUPA/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Chapter III.14 (p. III.14-39 - III.14.40) of the DRECP PLUPA/FEIS.

The BLM made all completed Lands with Wilderness Characteristics inventories available at local field offices between both the DRECP DLUPA/EIS and the PLUPA/FEIS.

In addition, the BLM appropriately considered its current inventory of Lands with Wilderness Characteristics in developing the DRECP PLUPA/FEIS. The Lands with Wilderness Characteristics inventory was completed with the best available information using a combination of GIS, maps, interviews with knowledgeable staff, and fieldwork consistent with Manual 6310.

Travel Management

Issue Number: PP-CA-DRECP-15-15-5

Organization: Alliance for Desert Preservation

Protestor: Richard Ravana

Issue Excerpt Text: The proposed new recreation designations appear to fix area designations allowing OHV use in over 3 million acres of the Plan Area. This stems from the fact that BLM puts these recreation designations in the category of “mitigation” for impacts of renewable energy development on recreation. The Proposed LUPA does not connect the proposed SRMA and ERMA designations to the alleged “impacts to” recreation.

Most of these proposed new recreation area designations would allow at least some motorized vehicle use in the recreation management area. The proposed designation or redesignation of these areas as SRMA or ERMA must therefore include application of the minimization criteria of 43 C.F.R. §8342.1.

Issue Number: PP-CA-DRECP-15-18-20

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: There is clearly significant new information regarding the status of species and other resources (including vegetation communities, soils, riparian, and water resources) in the planning area that must be considered (much of this information gathered as part of the draft DRECP process itself) and additional significant new information regarding the on-the-ground impacts to species and

habitats from ORVs, route proliferation, that requires full consideration of the minimization criteria at this time. (See also detailed below discussion of impacts of ORVs on resources that should have been considered under FLPMA, NEPA and the ESA). Moreover, there are changed circumstances since any earlier recreation area designations were made including the threat of climate change and the expansion of industrial-scale renewable energy in the DRECP planning area that were required to be considered in any proposal to designate or redesignate recreation areas allowing motorized use on these public lands.

Issue Number: PP-CA-DRECP-15-18-3

Organization: Center for Biological Diversity

Protestor: Ileene Anderson

Issue Excerpt Text: In proposing the SRMA and ERMA area designations, BLM has also failed to comply with the regulations and executive orders requiring that any designation of areas for motorized recreation consider minimization factors to protect the environment and other resources. BLM should not make any decision on these aspects of the LUPAs without first providing adequate notice to the public regarding the scope of the intended changes and a full NEPA process that considers alternatives that would reduce or eliminate motorized recreation in these areas.

Issue Number: PP-CA-DRECP-15-31-3

Organization: Friends of Jawbone

Protestor: Edward Waldheim

Issue Excerpt Text: 1. [The BLM] has basically taken all the limited use trails away from us with the different layers of designation and leaving just open areas.
2. [The BLM] has taken management

practices for restoration “line of site” to 1 to 10,000 view of routes, counting that in the disturbance cap and ramifications of that are tremendous.

Summary:

The DRECP PLUPA/FEIS violates the BLM’s Off-Road Vehicle (OHV) regulations and policies because:

- it proposes vast areas as SRMA and ERMA designations without application of the designation criteria of 43 C.F.R. §8342.1, especially considering significant new information about on-the-ground impacts to species and habitats; and
- it has essentially deprived OHV users of all limited-use trails with the different layers of designation and proposed disturbance caps.

Response:

43 CFR 8342.1 states that “The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands;”

The designation of an area as a Special Recreation Management Area (SRMA) or Extensive Recreation Management Area (ERMA) does not require the consideration of designation criteria as per 43 CFR 8342.1. That regulation refers to designation of areas as open, limited or closed to OHV use. SRMAs and ERMAs in the DRECP PLUPA/FEIS do not make OHV area designations. SRMAs and ERMAs identify an area as having an emphasis on recreation values without authorizing any particular recreation use (DRECP PLUPA/FEIS, Volume II.3.2.4.1 on page II.3-73, Volume II.3.2.4.2 on page II.3-74, and Appendix AA, Letter E65, p. E65-79). The OHV area designations within the planning area were made as part of previous land use planning efforts, and the DRECP PLUPA/FEIS does not propose any modifications to these existing OHV area designations.

The assumption that overlapping conservation areas (National Conservation Lands or ACEC) with recreation areas will eliminate the limited-use trails is incorrect. The DRECP PLUPA/FEIS does not make decisions on individual routes or trails. Travel management decisions that designate off-highway vehicle trails are an implementation-level action. While such travel management decisions will be subject to the values of the National Conservation Lands and/or ACECs (including the CMAs and disturbance caps) subsequent site-specific evaluation will be conducted in order to determine the best way to meet those values, CMAs, and caps through implementation decisions.

While “line of sight” restoration can be effective in discouraging continued OHV use of a closed route, the disturbance is still there from an ecological perspective. Using the 1:10,000 foot aerial photos to determine disturbance acknowledges this, and counts the disturbance until it is functioning ecologically. Volume II.3 on page II.3-8 (repeated on pages II.3-66, 226, and 235)

of the DRECP PLUPA/FEIS describes the disturbance caps, the process for implementing disturbance caps, and the approach for calculating ground disturbance for the Preferred Alternative.

The BLM has met, not violated the OHV regulations in the DRECP PLUPA/FEIS.

Clarification Issues

Issue Number: PP-CA-DRECP-15-06-3

Organization: Shield F Ranch

Protester: Irene Fisher

Issue Excerpt Text:

I have no way of knowing if disturbance caps apply only to new projects or to maintenance, management, or modification of existing rangeland management improvements as well. There is nothing in the language or any analysis to tell me. The failure in the DEIS to disclose that agency approval of new rangeland improvements would be included in the proposed disturbance cap requirements precluded my opportunity to publicly comment to this proposed action as allowed under 40 CFR §1503.

Response:

The disturbance caps were disclosed in the DRECP DLUPA/DEIS. The DEIS glossary defines disturbance caps as follows:

“BLM disturbance cap. Limit on ground-disturbing activities within BLM ACECs and/or National Conservation Lands as called for in the LUPA alternatives (Expressed as a percentage of total ACEC and/or National Conservation Land unit acreage, and cumulatively considering past, present, and future disturbance). Baseline (past and present) disturbance would be determined by the most current imagery and knowledge at the time of an individual project proposal.”

Page II.3-319 of the DEIS discloses that the disturbance cap will be applied to National Conservation Lands. Page II.3-382 of the DEIS discloses that the disturbance cap will be applied to ACECs. Also, Appendix L - BLM Worksheets of the Draft LUPA/DEIS contains special unit management plans for the individual ACECs with maps and their proposed ground disturbance cap.

In response to comments received from the public on the Draft LUPA/DEIS requesting additional detail regarding disturbance caps, the BLM added a disturbance cap implementation methodology, which elaborated on the definition and provided flexibility. This implementation methodology is found in the DRECP PLUPA/FEIS Volume II.3.2.1, p. II.3-18 for National Conservation Lands and repeated in Volume II.3.2.2, p. II.3-66 for ACECs and repeated again, as CMAs, in Volume II.3.4.2.3.3, p. II.3-226 (NLCS), and II.3.4.2.4.2, p. II.3-235 (ACECs). In addition, the BLM explained that range improvements would be considered “ground disturbing activities”. “Range improvement” is included as an example to illustrate how the cap would be applied.

Clarification of Application of Disturbance Caps

As to the protester’s point that she doesn’t know if the caps would only apply to new project or to maintenance, existing improvements would be included when determining existing disturbance on the ground. BLM would determine whether modifications or improvements

required it to calculate ground disturbance or apply mitigation based on whether the improvements or modifications were creating new disturbance or falling under the exception for “Actions that are entirely within the footprint of an existing authorized/approved site of ground disturbance that is within the calculation above.” The methodology also has exceptions for previously authorized activities, and those activities authorized under a NEPA Categorical Exclusion (CX) **only if** the project is within the disturbance mitigation exemption. The BLM exempts CX’s from having to conduct the ground disturbance calculation because of the type of findings made under NEPA for use of a CX. For the ecological purposes of the ground disturbance cap, calculating for a CX did not seem logical, necessary, or meaningful. In addition, a CX project will be part of the existing ground disturbance when the next calculation is complete.

Issue Number: PP-CA-DRECP-15-07-8

Organization: Welborn, Sullivan, Meck, and Tooley

Protester: Rebecca Watson

Issue Excerpt Text:

Moreover, the Chuckwalla ACEC states the DRECP will “[a]llow no activities that would create a water basin deficit/decline” (Chuckwalla ACEC, App. L at 240). The FERC license, supported by the California State Water Control Board review process, has authorized the Project for a temporary drawdown and a recharge of the basin over a period of years (Eagle Crest Energy Company, “Order Issuing Original License” (June 19, 2014) at Article 403). The DRECP provision appears inconsistent with those decisions. The DRECP would also impose a National Landscape Conservation System (NLCS) area adjacent to and including a portion of the transmission line. Att. 3. Our analysis indicates that the land where the Project transmission line crosses the NLCS is private land possibly owned by the Metropolitan Water District. BLM should clarify that the NLCS does not include this fee land or the Project transmission line.

Response:

Water Basin Issues

The BLM has determined that Eagle Crest’s FERC license constitutes a valid existing right, meaning that the DRECP cannot make decisions that would preclude exercise of that right; however, the BLM can apply reasonable mitigation measures. The BLM will conduct an evaluation of the CMAs in the NEPA document for the Eagle Crest Right-of-Way (ROW), apply those that are reasonable, but will not apply those that would preclude building the project.

National Conservation Land on Private Land

The BLM decisions only apply to BLM-administered land; this is stated numerous times in Volume I and II in the DRECP DLUPA/DEIS as well as in the DRECP PLUPA/FEIS. There are some maps that overlap private land; however, the National Conservation Lands’ CMAs would only apply if those lands become public. If the BLM were to acquire private lands within mapped National Conservation Lands, those lands would be managed as National Conservation Lands. Additionally, identifying inholdings would allow these lands to be considered for potential off-site mitigation and Land and Water Conservation Funds, if those lands are owned

by willing sellers. However, the BLM would have no jurisdiction over land not within public ownership.

Issue Number: PP-CA-DRECP-15-09-8

Organization: Town of Apple Valley

Protester: Lori Lamson

Issue Excerpt Text:

The FEIS is vague on how Phase II will be implemented and work alongside the LUPA. It does not provide any provisions of the development and implementation of Phase II of the DRECP. The only description of Phase II is in Volume I Section I.0.1 DRECP Background and Overview: Phase II of the DRECP will focus on the renewable energy development and resource conservation opportunities on nonfederal lands within the DRECP area. The timing and completion of Phase II has yet to be determined (p. I.0-1). This description is insufficient and ambiguous on whether Phase II will be implemented at all.

Response:

Phase II is discussed in Volume I and in Volume IV, Section IV.25. Volume IV contains a thorough discussion of the potential cumulative impacts, given the DRECP DLUPA/DEIS was a state and federal document containing a draft LUPA, U.S. Fish and Wildlife Service Endangered Species Act section 10 plan, and State of California Natural Community Conservation Plan.. Volume I discusses the generalities of Phase II only, because it is now a separate (yet coordinated) negotiation and permitting process on non-federal land with the USFWS, State of California Department of Fish and Wildlife, California Energy Commission, and the applicable Counties, cities, etc. The decision to phase the DRECP was based on public comment on the Draft DRECP, as described in Volume I. All known details for Phase II are included.

Issue Number: PP-CA-DRECP-15-13-15

Organization: Morisset, Schlosser, Jozwiak & Somerville

Protester: Thane Somerville

Issue Excerpt Text:

The CMAs relating to protection of biological resources do not specifically require energy applicants to apply for and obtain federal eagle take permits as a mandatory prerequisite where their projects could result in eagle take. The Tribe protests this omission in the CMAs and requests that BLM require applicants to obtain appropriate federal eagle take permits under the Bald and Golden Eagle Protection Act in advance of approving any project that could result in eagle take on federal lands. The BLM did not make it a requirement for applicants to apply for and obtain permits in accordance with the Bald and Golden Eagle Protection Act prior to any project that may require an eagle take on Federal lands.

Response:

A requirement for an Eagle Take Permit to be obtained would be inconsistent with current BLM policy in accordance with BLM California Instruction Memorandum (IM) 2013-030, which

states: “While renewable energy and transmission operators are not legally required to seek or obtain a BGEPA take permit under the Act, any take of an eagle without such a permit would be a violation of the BGEPA and could result in enforcement actions being taken against the owner and/or operator of the project. In addition, the BLM requires right-of-way grant holders to comply with all applicable Federal and State laws and regulations in accordance with 43 CFR 22805.12(a). Thus, while requesting an eagle take permit for a renewable energy or transmission right-of-way authorization on BLM-managed public land is voluntary, take without a permit is a violation of Federal law and a violation of the terms and conditions of the BLM right-of-way authorization. It should be noted, however, that the BLM will not require compliance with the BGEPA for operations or facilities located on lands not managed by the BLM.”

The BLM did include a CMA for eagle permitting in the DRECP PLUPA/FEIS. LUPA-BIO-IFS-27 states: If a permit for golden eagle take is determined to be necessary, an application will be submitted to the USFWS in order to pursue a take permit.” The BLM did not require that a permit be obtained.

Issue Number: PP-CA-DRECP-15-16-2

Organization: Pacific Crest Trail Association

Protester: Mike Dawson

Issue Excerpt Text:

Despite the fact that there are substantial sections of the document that address National Scenic and Historic Trails (NSHTs), we were not able to find even one of the dozens of maps in the FEIS preferred alternative that shows the 3 NSHTs or the Corridors that are called for in the preferred alternative. We see this as a significant omission in that agency personnel who will use this document for implementation of the decision in the future to make project level decisions will have to find the important direction in the text and require additional mapping work to proceed. If they refer to the maps for elements that they must consider in a particular area, they will not see anything that directs them to the NSHT direction in the text of the document. IN THE LEAST it seems that a map could be added that shows the three NSHTs so that the affected areas would be obvious and future users would find themselves directed to the pertinent direction for implementation.

Response:

The BLM agrees and will include maps relating to National Scenic and Historic Trails (NSHTs) in the ROD.

Issue Number: PP-CA-DRECP-15-16-3

Organization: Pacific Crest Trail Association

Protester: Mike Dawson

Issue Excerpt Text:

The following statement makes no sense as it stands. We believe this is an EDITING ERROR. And that the actual wording should appear as edited in italics below:

ORIGINAL TEXT: “Where transmission corridors parallel NSHT, placement and design must

be performed in a manner that minimizes National Trail visual settings”.

SHOULD READ: “Where the transmission corridors parallel NSHT, placement and design must be performed in a manner that minimizes adverse impacts on National Trail visual settings”.

Response:

The BLM agrees that an error in the wording exists, resulting in clarification issues. As such, clarification will be made in the ROD.

Issue Number: PP-CA-DRECP-15-16-6

Organization: Pacific Crest Trail Association

Protester: Mike Dawson

Issue Excerpt Text:

NLCS-NSHT-9: Leasable Minerals – NSHT Management Corridors would be available for leasing with a no surface occupancy stipulation, as long as the action would not substantially interfere with the nature and purposes of the trail, and subject to following established policy protocols. The sufficiency of this CMA cannot be determined in that there is no reference to where these “established policy protocols” might be found. Without reference the CMA is meaningless.

Response:

The language will be modified in the ROD to reference the “established policy protocols” as per the most up-to-date BLM national policy and guidance.

Issue Number: PP-CA-DRECP-15-18-19

Organization: Center for Biological Diversity

Protester: Ileene Anderson

Issue Excerpt Text:

193,000 acres of existing SRMAs on BLM-administered lands in the DRECP area appear to include the Algodones Dunes – an area which is inconsistently included within the DRECP LUPAs.

Response:

The maps for unallocated lands were in error for the Imperial Sand Dunes Area. The BLM will correct the maps and will reiterate and clarify in the ROD that the DRECP carries forward decisions made in the 2013 Imperial Sand Dunes Recreation Area Management Plan and CDCA Plan Amendment.

Issue Number: PP-CA-DRECP-15-18-29
Organization: Center for Biological Diversity
Protester: Ileene Anderson

Issue Excerpt Text:

Discrepancies noted in acres in DFA descriptions in FEIS – Table II.3-4b total acreage is presented as 388,000 acres, but the actual numbers in the table add up to 698,000 acres.

Response:

The BLM agrees, and the table will be modified in the ROD. The acreage of DFA in the PLUPA is 388,000.

Issue Number: PP-CA-DRECP-15-18-33
Organization: Center for Biological Diversity
Protester: Ileene Anderson

Issue Excerpt Text:

Proposed unallocated lands also appear within the boundaries of the Algodones Dunes (Imperial Sand Dunes Recreation Area). Responses to our comments indicate that the Algodones Dunes are outside the DRECP Plan, so it is unclear why the DRECP LUPAs includes designations in this area.

Response:

Please see response to Comment Number PP-CA-DRECP-15-18-19 above.

Issue Number: PP-CA-DRECP-15-23-2
Organization: Conservation Lands Foundation
Protester: Danielle Murray

Issue Excerpt Text:

The Conservation Lands Foundation is encouraged by the approach set out in Appendix Z to “identify priority areas within the National Conservation Lands for consideration in a Phase 1 analysis of mineral withdrawals” and “commence a Phase 2 analysis of withdrawals for any remaining National Conservation Lands.” However, we are concerned with the lack of timeline for these two phases, including identifying when Phase I will begin.

Response:

The decision for Phase 1 and Phase 2 analysis of withdrawals will be made by the BLM Director and the Department of the Interior.

Issue Number: PP-CA-DRECP-15-26-5
Organization: California Off-Road Vehicle Association
Protester: Amy Granat

Issue Excerpt Text:

We have identified the following mapping error in the DRECP FEIS that should be corrected in the ROD. The Jawbone Canyon and Dove Springs OHV open areas appear to have been omitted from the maps for the Jawbone Butterbrecht ACEC. (See Preferred Alternative map in the DRECP Appendix L BLM worksheet Part 12-12.)

Response:

The Jawbone and Dove Springs designated open OHV areas are part of the existing designation of the Jawbone-Butterbrecht ACEC (See No Action). In the DRECP DLUPA/DEIS, the BLM proposed removing these 2 open OHV areas from the ACEC. This proposal did not carry through to the proposed LUPA, and the DRECP PLUPA/FEIS maintained the 2 OHV areas in the ACEC (See Appendix L, Jawbone-Butterbrecht ACEC special unit management plan).

Issue Number: PP-CA-DRECP-15-27-11

Organization: Individual

Protester: Randy Banis

Issue Excerpt Text:

Each NLCS polygon requires its own worksheet with respects to the specific values to be protected. The vague, nonspecific regional discussion of NLCS values is overly broad for the public to understand the potential impacts on the ground. Just like there is a worksheet for each ACEC, there needs to be a worksheet or matrix for each NLCS polygon. For example, obviously the NLCS overlaying the Early Man Site is to protect archeological resources. However, the broad regional discussion might have the public thinking that the Early Man Site will be managed for tortoise or golden eagle habitat, which is not the case.

Response:

Appendix L in the DRECP PLUPA/FEIS includes discussion of the nationally significant values within the ACECs that are included in the National Conservation Lands. Where ACECs are “underneath” the National Conservation Lands, they provide area-specific management that serves as the conservation delivery mechanism to the larger National Conservation Lands units. This concept is described in more detail in Volume II.3 and Appendix L.

Issue Number: PP-CA-DRECP-15-30-2

Organization: Desert Tortoise Preserve Committee, Inc.

Protester: Ron Berger

Issue Excerpt Text:

In Figure II.3-1 of volume II.3 Preferred alternative, the Development focus areas appear to meet the boundary line of the Desert Tortoise Research Natural Area (DTRNA); however upon further inspection, the GIS file for this alternative shows that this particular DFA actually overlaps the boundary layer in some areas. It is requested that a buffer area of at least one mile be

implemented around the DTRNA to ensure that this land would not be impacted by development.

Response:

There is no DFA in the DRECP PLUPA Preferred Alternative that overlaps with the BLM designed Desert Tortoise Research Natural Area (DTRNA), and the BLM does not see the overlap on its GIS layers, nor on the maps in the Final (Figure II.3-1, and a close up view in Appendix L). There could be three issues occurring to cause this discrepancy, which include: (1) the commenter is using a Databasin (online spatial non-GIS mapping tool) map layers and not the actual GIS layers; (2) the commenter is speaking to a boundary of the DTRNA that is put forth by the Desert Tortoise Preserve Committee and is not the official BLM boundary; and/or (3) the commenters is referring to several of the other action alternatives. In response to the commenter's letter on the DLUPA, the BLM stated in the PLUPA that all DFA acres were being removed from the DTNRA in the PLUPA (See comment response E37-2).

In addition, the BLM analyzed buffering the DTRNA after receiving public comments to do so following the 2012 Comparative Alternatives Analysis document, as well as the DRECP DLUPA and EIR/EIS. As a result, the BLM found no biological, management or policy rationale for creating a buffer around the DTRNA.

Issue Number: PP-CA-DRECP-15-33-18

Organization: The Wilderness Society

Protester: Nada Culver

Issue Excerpt Text:

While we support BLM's decision to add language about the guiding role of the DRECP LUPA with respect to the WEMO Plan, Section I.3.1.5 needs to incorporate stronger language. We recommend that BLM add more explicit language to Section I.3.1.5 to better frame the DRECP LUPA as the overarching planning document for developing the WEMO Route Network. Further, BLM should also use this section to confirm that all designated routes should comply with the management prescriptions of overlapping conservation land designations. This additional language will improve the coordination and compatibility between the two plans, which currently does not exist.

Requested Remedy: In order to avoid any ambiguities regarding the planning impact of the final DRECP LUPA on implementation plan decision-making in the WEMO, BLM should include additional language in Section I.3.1.5 stating:

The finalized West Mojave Route Network Project must be consistent with the planning requirements of the DRECP LUPA, giving special consideration to allocations and designations for conservation, as well as specific management prescriptions, in the DRECP and applying them in the context of recreation and travel planning.

Response:

Section I.3.1.5 of the DRECP PLUPA/FEIS states: "The WEMO (West Mojave Route Network Project) would also make route designation decisions, which are implementation decisions and

not planning decisions. The implementation decisions in the WEMO, such as route designations, will be considered in the context of the DRECP proposals, especially disturbance caps, and are being designed to avoid conflicts with the DRECP. Because the WEMO is anticipated to be completed after the DRECP LUPA ROD is signed, implementation decisions in the WEMO will be subject to the plan decisions in the DRECP". The BLM disagrees with the protester that the routes being subject to the DRECP are not stated. The DRECP is not separate from the CDCA; rather, it is an amendment to the CDCA and the WEMO must be consistent with the CDCA.

Issue Number: PP-CA-DRECP-15-33-2

Organization: The Wilderness Society

Protester: Nada Culver

Issue Excerpt Text:

In the Glossary, "unallocated lands" are defined as: "BLM-administered lands for which there is no specific existing or proposed land-use allocation or designation. These areas would be open to renewable energy applications, but would not benefit from streamlining or incentives" (Proposed LUPA, p. Glossary-4). This definition indicates that unallocated lands are simply available for renewable energy development. The Glossary is seemingly contradicted by other statements in the Proposed LUPA.

For instance, Section II.3.3.3 indicates that an amendment would be required to develop unallocated lands only within the California Desert Conservation Area, stating: "Unallocated lands would be open to renewable energy development applications, but within the CDCA would continue to require a Plan Amendment" Proposed LUPA, p. II.3-125. And this statement is seemingly contradicted by a more general statement in Section II.3.3 that: "In the Proposed LUPA, renewable energy-related activities would be incentivized in DFAs, allowed in Variance Process Lands, and considered in unallocated lands with a plan amendment" (Proposed LUPA, p. II.3-75).

Response:

The second definition is correct and will be clarified in the glossary in the ROD: "*In the Proposed LUPA, renewable energy-related activities would be incentivized in DFAs, allowed in Variance Process Lands, and considered in unallocated lands with a plan amendment*" (Proposed LUPA, p. II.3-75).

Issue Number: PP-CA-DRECP-15-33-22

Organization: The Wilderness Society

Protester: Nada Culver

Issue Excerpt Text:

The Proposed LUPA also does not provide a clear and consistent definition of what constitutes an "existing corridor." BLM should define "existing corridors" to be "transmission corridors designated in relevant land use plans and identified in the DRECP, and Section 368 corridors as

modified by the DRECP.” The final definition should be included in the glossary and used consistently throughout the plan. The Plan should also be clear whether major upgrades of existing transmission lines within existing rights-of-way is allowed in BLM Conservation Designations under the plan and under what conditions.

Response:

The BLM agrees and a definition of “existing transmission corridor” will be added to the glossary in the ROD.

Issue Number: PP-CA-DRECP-15-34-16

Organization: The Wilderness Society

Protester: Nada Culver

Issue Excerpt Text:

While we support BLM's decision to add language about the guiding role of the DRECP LUPA with respect to the WEMO Plan, Section 1.3.1.5 needs to incorporate stronger language. We recommend that BLM add more explicit language to Section I.3.1.5 to better frame the DRECP LUPA as the overarching planning document for developing the WEMO Route Network. Further, BLM should also use this section to confirm that all designated routes should comply with the management prescriptions of overlapping conservation land designations. This additional language will improve the coordination and compatibility between the two plans, which currently does not exist.

Requested Remedy: In order to avoid any ambiguities regarding the planning impact of the final DRECP LUPA on implementation plan decision-making in the WEMO, BLM should include additional language in Section I.3.1.5 stating:

“The finalized West Mojave Route Network Project must be consistent with the planning requirements of the DRECP LUPA, giving special consideration to allocations and designations for conservation, as well as specific management prescriptions, in the DRECP and applying them in the context of recreation and travel planning”.

Response:

Please refer to response to comment number PP-CA-DRECP-15-33-18, above.

Issue Number: PP-CA-DRECP-15-40-2

Organization: State of California Natural Resources Agency

Protester: Christopher Conlin

Issue Excerpt Text:

Ocotillo Wells SRMA and DFA overlay – Discrepancy and conflict between the SRMA worksheet and associated maps. Below represents the worksheet language, however, the SRMA maps do not reflect the below sections that would allow for surface occupancy. (See attached SRMA worksheet and maps- per protest requirements). T 11 S, R 9 E, Section 14 was omitted

from the SRMA Worksheet Maps. State Parks is requesting Ocotillo East SRMA worksheet language be accurately reflected on the associated worksheet SRMA maps in the ROD.

Response:

The BLM agrees and the SRMA map will be updated in the ROD to include this information.

Issue Number: PP-CA-DRECP-15-40-3

Organization: State of California Natural Resources Agency

Protester: Christopher Conlin

Issue Excerpt Text:

Jawbone/Butterbrecht ACEC-Removal of ACEC and NLCS designation layers.

Below represents the Jawbone and Dove Spring Open OHV Areas worksheet language, where across ALL action alternatives, the Jawbone/Butterbrecht ACEC would be removed from the Jawbone and Dove Springs Open OHV areas. However, in the FEIS this language was omitted and maps were not changed. State Parks is requesting the maps be corrected in the ROD to reflect the below intended outcome. (See attached Draft ACEC and Final ACEC worksheets per protest requirements.)

Response:

The DRECP PLUPA/FEIS did not carry forward the language from the Draft LUPA/DEIS alternatives that removed Jawbone and Dove Springs designed open OHV areas from the Jawbone-Butterbrecht ACEC. Instead, the DRECP PLUPA/FEIS maintained the existing configuration of the Jawbone and Dove Springs designed open OHV areas within the Jawbone-Butterbrecht ACEC.