

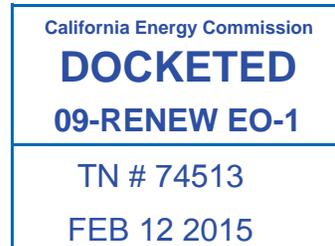


*working through science, law and creative media to secure a future for all species,
great or small, hovering on the brink of extinction.*

VIA ELECTRONIC MAIL

February 12, 2015

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



Re: Draft DRECP Baseline and the National Landscape Conservation System

To whom it may concern,

The Center for Biological Diversity submits these specific comments and the attached letter regarding the draft DRECP documents; additional comments will be provided before the comment period ends.

The focus of these comments is the “identification” of National Landscape Conservation System (“NLCS”) lands that has been bundled with the draft DRECP (also referred to in the document as National Conservation Lands (“NCL”)¹). The Center is concerned that the way this issue is treated in the draft DRECP is inaccurate, creates confusion, and distorts the baseline used for analysis. In light of these shortcomings, the CEQA and NEPA analyses are fundamentally flawed and do not accurately identify the existing conservation status of many of the public lands or what “new” additive conservation commitments are proposed on public lands via the DRECP.

Simply put, all of the lands within the California Desert Conservation Area (“CDCA”) managed for conservation as of 2009 were already declared to be part of the NLCS by Congress along with wilderness, wilderness study areas, national monuments, national conservation areas, components of the wild and scenic rivers system, and national scenic or historic trails. The lands within the NLCS in the CDCA include (a) wilderness, wilderness study areas, national monuments, national conservation areas, components of the wild and scenic rivers system, and national scenic or historic trails (16 U.S.C. §§7202(b)(1)(A–F))²; **and** (b) all “public land within the California Desert Conservation Area administered by the Bureau of Land Management for

¹ See Glossary at 12.

² Notably, wilderness, wilderness study areas, components of the wild and scenic rivers system, and national scenic or historic trails are identified in the draft DRECP as part of the Legally and Legislatively Protected Areas; however national monuments and national conservation areas are not.

conservation purposes” (16 U.S.C. §7202(b)(2)(D)). These NLCS designations were made by statute and cannot be reduced or changed by the BLM through administrative action.

The draft DRECP should have, at minimum, identified all of the NLCS lands within the CDCA as part of the baseline conservation which would include: 1) all of the lands that fall within the categories listed in 16 U.S.C. §7202 subsection (b)(1); and 2) all lands administered by BLM for conservation purposes as of 2009 pursuant to 16 U.S.C. §7202 subsection (b)(2) including, but not limited to, all existing Desert Wildlife Management Areas (DWMAs), Areas of Critical Environmental Concern (ACECs), and Conservation Areas (such as the Mojave Ground Squirrel Conservation Area). The Center submitted a detailed letter to BLM and FWS regarding these NLCS land issues on April 9, 2014; that letter is attached hereto as Attachment A and incorporated by reference as though fully set forth herein.

Unfortunately, BLM has dragged its feet for many years and failed to provide a clear list of the areas managed for conservation within the CDCA to the public or to enroll those lands within the System. However, that lack of action by BLM did not and cannot change the legal status of those lands included within the NLCS pursuant to statute.

The draft DRECP must be revised and re-circulated to reflect the accurate status of the existing NLCS lands within the CDCA as part of the **baseline** conservation existing on the ground. While the draft DRECP can certainly propose additional management measures and the use of other tools to increase the conservation value of these lands, it cannot remove any of these lands from the NLCS nor can it count the “identification” of NLCS lands by BLM as part of any “new” conservation provided under the DRECP because the designation of NLCS lands already occurred in 2009.

Thank you for considering these comments and the attached letter. The Center looks forward to reviewing a revised draft DRECP that provides a clearly articulated and accurate baseline from which to assess the impacts and effects of the proposed land use plan amendments, General Conservation Plan (or HCP), and Natural Communities Conservation Plan. Please feel free to contact us if you have any questions regarding these comments or the attached letter.

Sincerely,



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Attachment A: April 9, 2014 Letter to State Director James Kenna and Assistant Director Michael Fris from Center for Biological Diversity, Re: National Landscape Conservation System Lands in the California Desert Conservation Area and the DRECP Planning Area

Attachment A



VIA ELECTRONIC MAIL

April 9, 2014

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Re: National Landscape Conservation System Lands in the California Desert Conservation Area and the DRECP Planning Area

Dear State Director Kenna, and Assistant Director Fris,

The Center for Biological Diversity provides this letter as part of the ongoing discussions relevant to the development of the Desert Renewable Energy Conservation Plan. Specifically, we are writing regarding the lands within the California Desert Conservation Area that Congress designated as part of the National Landscape Conservation System.

Many Public Lands Within the CDCA Are Already Part of the NLCS

In 2009, Congress established the National Landscape Conservation System (“NLCS”) or “System”) “to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” At the same time, Congress determined which public lands administered by the Bureau of Land Management would be included in the System.

First, Congress listed several *categories* of lands that are, by definition, to be included within the NLCS including: wilderness, wilderness study areas, national monuments, national conservation areas, components of the wild and scenic rivers system, and national scenic or historic trails. 16 U.S.C. §§ 7202(b)(1)(A–F). Within the California Desert Conservation Area (“CDCA”), there are many lands that are included in the NLCS because they fall into the categories listed in subsection (b)(1) including, but not limited to: San Jacinto/Santa Rosa Mountains National Monument, Amargosa River and Cottonwood Creek Wild & Scenic River segments, the Old Spanish Trail, at least 72 designated wilderness areas, and at least 8 wilderness study areas.¹

¹ We have been informed that these areas are included in the “legally and legislatively protected areas” layer utilized in the DRECP planning to date.

Second, Congress also expressly designated other lands as part of the NLCS. 16 U.S.C. § 7202(b)(2). As relevant here, Congress stated that all “public land within the California Desert Conservation Area administered by the Bureau of Land Management for conservation purposes” were designated as part of the NLCS. 16 U.S.C. § 7202(b)(2)(D). At that time, in 2009, pursuant to subsection (b)(2), all of the lands within the CDCA “administered by the Bureau of Land Management for conservation purposes” were included by Congress in the NLCS *in addition to* wilderness, wilderness study areas, national monuments, wild and scenic river segments, and national scenic or historic trails designated in subsection (b)(1).

At minimum, the NLCS lands within the CDCA include: 1) all of the lands that fall within the categories listed in subsection (b)(1); and 2) all lands administered by BLM for conservation purposes as of 2009 pursuant to subsection (b)(2).

We have compiled a list below of the lands administered by BLM for conservation purposes as of 2009 (which is not exhaustive).

Under the terms of the statute these lands are already part of the NLCS:

- All designated Areas of Critical Environmental Concern (“ACEC”) in the CDCA, which protect a variety of resources (water sources, cultural, rare species, and other unique resources). The CDCA Plan recognizes that “the primary management focus for ACECs is the protection of important cultural and natural resources.” CDCA Plan at 102. The CDCA Plan also anticipates that each designated ACEC would also have a site-specific plan to protect the resources therein “designed to meet the immediate management needs for each area: to eliminate threats to critical resource values . . . and to provide other measures that result in protection of the most environmentally important and fragile resources.” *Id.*²

There can be no doubt that the ACECs in the CDCA that had been designated by the BLM as of 2009 were “administered by the Bureau of Land Management for conservation purposes” and accordingly were included by Congress as part of the NLCS.

- All designated Desert Wildlife Management Areas (“DWMAs”) within the CDCA which were designated to conserve the desert tortoise and its critical habitat with the

² 95 ACECs were listed in the CDCA Plan as of 1999 (CDCA Plan at 103-104) and others have been added after that time including 14 new ACECs designated in the WEMO Plan amendments. Just a few examples of the ACECs designated within the CDCA as of 2009 include: West Mesa, East Mesa, and Yuha Basin (which are also management areas for the protection of the flat-tailed horned lizard as part of the FTHL Rangeland Management Strategy (2003)); Desert Tortoise Research Natural Area; Pilot Knob ACEC; Desert Lily Preserve, Mojave Monkeyflower Conservation Area, and Barstow Woolly Sunflower ACECs adopted to conserve rare plants; Mojave Fringe-toed Lizard Conservation Area ACEC; Bendire’s thrasher Conservation Area ACEC; Pisgah ACEC; Juniper Flats ACEC; Middle Knob ACEC; Jawbone/Butterbrecht ACEC; Carbonate Endemic Plants ACEC; Amargosa River ACEC; Carson Slough ACEC; San Sebastian Marsh/San Felipe Creek ACEC; Dos Palmas ACEC; Big Morongo Canyon ACEC; and Afton Canyon Natural Area ACEC; and Mule Mountains ACEC.

intent that they be managed to support both survival and recovery of the desert tortoise. For example, the Northern and Eastern Colorado (“NECO”) Plan amendment to the CDCA Plan states: “Proposed Desert Wildlife Management Areas (DWMAs) address the recovery of the desert tortoise. These are stand-alone areas [E]mphasis is placed on minimizing disturbance and maximizing mitigation, compensation, and restoration from authorized allowable uses.” NECO Plan at 2-2. The specific objectives for desert tortoise survival and recovery are tied to the designation of the DWMAs:

- “The objectives are to
- a. Establish desert wildlife management areas (DWMAs) where viable desert tortoise populations can be maintained.
 - b. Implement management actions within DWMAs to address conflicts with the goal.
 - c. Acquire sufficient habitat within the DWMAs to ensure that management actions are effective in the DWMAs as a unit.
 - d. Reduce tortoise direct mortality resulting from interspecific (e.g., raven predation) and intraspecific (e.g., disease) conflicts that likely result from human-induced changes in ecosystem processes.
 - e. Mitigate effects on tortoise populations and habitat outside DWMAs to provide connectivity between DWMAs.”

NECO Plan at 2-17. (*See also* WEMO Plan at ES-5)

There can be no doubt that, as of 2009, the designated DWMAs in the CDCA were being “administered by the Bureau of Land Management for conservation purposes” and, accordingly, are part of the NLCS.³

- All BLM designated Conservation Areas for imperiled plants and wildlife. For example, the BLM designated the Mohave Ground Squirrel (“MGS”) Conservation Area in the West Mojave (“WEMO”) Plan Amendments to the CDCA Plan. WEMO ROD at 15. As the ROD stated, the MGS conservation area was designated to “facilitate protective management for this species and serve to prevent further declines and assist the California Department of Fish and Game. A goal of the CDCA Plan is to prevent rare species from declining to the point of becoming federally listed as threatened or endangered.” *Id.*

There can be no doubt that, as of 2009, the designated Conservation Areas in the CDCA were being “administered by the Bureau of Land Management for conservation purposes” and, accordingly, are part of the NLCS.

- All wetland and riparian areas designated in the CDCA in 2009. The CDCA Plan Goals include specific requirements to:

³ The DWMAs designated as of 2009 include: Chuchwalla, Chemehuevi, Fenner, Pinto Mountains, Ivanpah-Shadow, Ord-Rodman, Superior-Cronese, and Fremont-Kramer. Notably, the DWMAs designated in the CDCA planning areas are administered and designated as ACECs as well.

“5. Manage wetland and riparian areas in the CDCA, with the following specific objectives:

a) To avoid the long-term and short-term impacts associated with the destruction, loss, or degradation of wetland and riparian areas;

b) To preserve and enhance the natural and beneficial values of wetland and riparian areas which may include constraining or excluding those uses that cause significant long-term ecological damage;

c) To include practical measures to minimize harm in all actions causing adverse impacts on wetlands and riparian areas; and

d) To retain all wetlands and riparian habitats presently under BLM administration wherever high resource values exist and adverse impacts cannot be mitigated.”

CDCA Plan at 38.

There can be no doubt that, as of 2009, wetland and riparian areas in the CDCA were being “administered by the Bureau of Land Management for conservation purposes” and, accordingly, are part of the NLCS.⁴

In addition other areas within the CDCA were “administered by the Bureau of Land Management for conservation purposes” in 2009 and, accordingly, are part of the NLCS

- Unique Plant Assemblages (“UPAs”) designated for conservation in the CDCA Plan. The UPAs include a variety of rare plant communities across the CDCA.⁵ The CDCA Plan Goals include specific requirement to: “4. 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. All UPAs “administered by the Bureau of Land Management for conservation purposes” in 2009 are also, accordingly, part of the NLCS.
- Wildlife Habitat Management Areas (“WHMA”) were designated in the CDCA Plan to provide for wildlife conservation zones and habitat connectivity or continuity. WHMAs were clearly intended to be administered for conservation, as shown in the NECO Plan amendment to the CDCA Plan which fulfilled its objective to “Protect and enhance habitat” (NECO Plan at 2-55), by “designa[ting]”:

⁴ Some of the wetland and riparian areas are mapped and identified in the CDCA Plan and amendments, it is our understanding that mapping and identification of seeps and springs in the CDCA is ongoing.

⁵ The most comprehensive list of UPAs we have found is provided in the legend to Map 6 of the CDCA Plan 1980 as amended (1999). The UPAs include, but are not limited to: Johnson Valley/Lucerne Valley Creosote bush (*Larrea*) Clones; Palm Oases in the Colorado desert; Crucifixion Thorn Assemblages in Ward-Chemehuevi Valley, Cronese Valley, and Yuha Desert; and Smoke Tree Assemblage in Piute Valley. Notably, UPAs also include all seeps and springs and riparian and river bottomland in the CDCA. Map 6, III B 3&5.

multi-species WHMAs . . . such that approximately 80 percent of the distribution of all special status species and all natural community types would be included in the Multi-species Conservation Zone (Map 2-21 Appendix A). See Appendix H for a description of the process used to define the WHMA and the concept of conservation zones.

NECO Plan at 2-55; see also NECO ROD at D-1 (13 Multi-species WHMAs established). All WHMAs in the CDCA “administered by the Bureau of Land Management for conservation purposes” in 2009 are also and, accordingly, part of the NLCS.⁶

While many of these designated areas in the NLCS overlap, taken together, these lands which include millions of acres, and comprise the existing NLCS lands within the CDCA and provide the baseline of conservation designated lands within the CDCA. Because all of these lands were designated by Congress as part of the NLCS at the time the System was created in 2009, they remain within the NLCS today. The status of these lands as part of the NLCS cannot be changed by the BLM, because that status is the result of a Congressional designation.

The Draft DRECP Documents Must Include a Comprehensive List of All CDCA Lands within the NLCS As Part of the Existing Baseline of Conservation

As part of the California Desert Renewable Energy Plan Amendment (DRECP) planning process BLM must: 1) provide a comprehensive list of all NLCS lands in the CDCA as of 2009; and 2) utilize the comprehensive list of NLCS lands in the CDCA part of the conservation baseline for the DRECP plan amendments.

BLM has variously stated that it would “enroll” or “list” areas within the NLCS system along with the DRECP plan amendment. We urge the BLM to undertake this administrative task promptly. The BLM should first make explicit the NLCS status of these important conservation lands in the CDCA through providing a comprehensive list and, second, ensure that this is used as the baseline in any DRECP related plan amendments.

Of course, simply “listing” or “enrolling” these lands in the NLCS in the context of the DRECP plan amendments (or at any other time) does not change their status which, as discussed above, was determined by Congress in 2009. Further, simply listing these lands as NLCS lands in the context of the DRECP plan amendments (or at any other time) does not provide any “additive” conservation value because these areas have already been designated as conservation areas in the CDCA since 2009.

While this may appear to be an obvious step, we are concerned that, over the past few years, in the context of the planning for the DRECP, the BLM has used the term “National Conservation Lands” or “NLC” in a way that does not include all of the existing NLCS lands. As a result, the BLM’s use of these terms has created confusion by suggesting that BLM may not

⁶ 13 Multi-Species WHMAs were adopted for conservation in the NECO planning area including, but not limited to, Palen-Ford dry lake Multi-species WHMA; bighorn sheep WHMAs including Southern Mojave and Sonoran WHMAs.

appropriately recognize all of the existing System lands that Congress clearly designated as part of the NLCS in 2009.

BLM must recognize all of the lands designated by Congress as part of the NLCS in 2009 and cannot remove any of these lands from the System. Nothing in the statute allows the BLM any discretion to remove lands designated by Congress as part of the NLCS.

For BLM to fail to recognize any of the existing lands administered for conservation by BLM as part of the NLCS in the baseline for the DRECP plan amendments would be a major error. Moreover, it is clear that the DRECP cannot provide *less* conservation than currently exists in the CDCA, since this would be an absurd result.

Conclusion

Millions of acres of land within the California Desert Conservation Area were designated by Congress as a permanent part of the National Landscape Conservation System in 2009. 16 U.S.C. §§ 7202(b)(1)(A–F) and (b)(2)(D). The BLM needs to formally recognize the status of these lands as soon as possible in order to minimize confusion and ensure that the Desert Renewable Energy Conservation Plan includes an accurate description of the conservation baseline on which to build a strong and comprehensive conservation future for the California Deserts.

Thank you in advance for your attention to this matter. Please do not hesitate to contact us directly if you have any questions or would like to set up a meeting to discuss these issues in more detail.

Sincerely,



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