

## Energy - Docket Optical System

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California Energy Commission

**DOCKETED**

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DRECP Comments February 21, 2015

Dear D.R.E.C.P. officials,

Thank you for the opportunity to comment on the draft D.R.E.C.P. I echo many of the comments made in public meetings and letters on the complexity, the lack of clarity, and the lack of details on how the Plan will operate in real life, but those items have been covered extensively.

I am a Realtor who has actively followed the siting cases for a number of projects in Riverside County. Many of my clients have participated in successful private mitigation packages for the following projects: Genesis, Desert Sunlight, Blythe phase one pre-bankruptcy, Devers Palo Verde II transmission line, and Red Bluff Substation. My clients have also transferred property to various NGO land trusts over the past eleven years. Thus, while not an expert, I do have some experience in conservation land, so my comments will be directed as such.

### **D.R.E.C.P. effect on current private land owners in conservation preserve.**

If energy developers are required or encouraged to pay development fees in lieu of doing their own mitigation, which seems to be the Plan intent, this will cost private landowners in conservation areas an estimated \$100 million to \$200 million loss of private wealth. That is a lot of private money. And it doesn't need to be the case. The numbers, charts, and assumptions in Appendix I are hard to follow (more on that latter in this comment) so here are some estimates on a back-of-the-napkin basis: on 20,000 MW of power (per Plan), 10 acres of land per MW, mitigation at 1:1, and land prices of \$1,000 per acre as outlined in the NFWF Fee documentation. The math on that yields \$200 million of potential land value to private owners. That's the rough starting number. Now, if developers are required to pay their as-yet-unknown fees to the Plan, then their money becomes public money and any land acquired with it must be bought at appraised value. Right now, appraised value for basic Desert Tortoise habitat appears to be running about \$300 per acre in Riverside and San Bernardino Counties (based on recent sales and offers received), which leaves a difference of \$700 per acre and wipes out \$140 million of private wealth, given the standard NFWF Fee schedule. It should probably be noted here that if developers are charged their fee based on the NFWF schedule, and the Plan or an NGO buys the land at appraised value, it means the Plan (whoever that is) has realized that \$140 million mentioned above, instead of the private citizens. This seems wrong.

It doesn't have to be that way. The Plan could make it a priority to encourage private mitigation (with Fast Track approval since the Conservation areas would be clearly established) thereby creating a win-win situation for developers and private land owners and habitat conservation. In order to build this Biological Conservation Preserve, you will need help from the private sector. At appraised value pricing, the chances of acquiring conservation land to create this preserve will be severely downgraded, which will make building the preserve more difficult than already envisioned.

As we have all seen, private mitigation works very well, is completed fairly expeditiously (except for the agency approval portion which sometimes takes longer than it took to issue a solar permit) and is usually completed well within the 18 month deadline required in their Conditions of Certification. Having worked in this field for eleven years now, it is evident that if compensatory mitigation acquisition is attempted through NGOs at appraised value it will take much longer than 18 months and may take years.

Restoration (as discussed in Appendix I, I.7.1 page I.30) does have a use in the Plan. It should be the mitigation method of last resort, only used when all else fails. Restoration on public land instead of compensatory mitigation acquisition will effectually render the private land in DRECP conservation areas with no value. Restoration eliminates private mitigation and appraised value acquisition. Private landowners, who now would have virtually no possibility of development, and no mitigation or conservation market, due to Restoration, would now lose the last \$70 million of private wealth. Of course, this will also severely hinder building a conservation preserve. As mentioned earlier, Restoration should be the last option and it should be written into the Plan specifically in that way.

#### **Fast track process:**

Just a quick comment here: A developer will certainly address this issue, but from my reading, it seems that it will take possibly a year to find a project in compliance with the DRECP, then the project would go to final permitting by the appropriate agency. If that permitting takes another year, then I am not sure where the Fast Track comes in. Doesn't CEC mandate a year to complete a siting case?

However, let's assume I didn't understand the Fast Track process correctly and it is faster and developers use it. If that is the case, any private mitigation projects should also receive Fast Track approvals. The DRECP has mapped out where Biological Conservation is to occur so it would follow that any mitigation property proposed in those mapped areas should be easily Fast Track approved as well. Given all the scientific work done already, the vetting process should go as quickly as it does for land trusts/NGOs.

#### **Mitigation time frame per project.**

Each solar project appears to have a hard deadline to complete its mitigation requirements, and also has a security deposit to hedge against mitigation deficiencies. The Conditions of Certification typically state an 18 month deadline to complete mitigation. At the DRECP Workshop in Palm Desert, I asked a staff member what the time limit would be for covered

projects, and the response was 18 months. Then I asked, what happens if it isn't complete in that time. The response I got was—we will extend the deadline. That should never be the case. If it takes a year to Fast Track a project, there is no acceptable reason that mitigation should take more than a year and a half. All parties should be held to the deadline, and advised to select a mitigation option that has a realistic chance of being completed in that timeframe.

### **Transparency.**

California Energy Commission's siting cases are a model of transparency, of which the CEC should be very proud. All the documents are posted on a web site for all to read and/or comment upon. This is public transparency. However, if you want to find out about mitigation results for a project, it becomes much harder on the public. If you want to find out how the mitigation packages were vetted and approved, it is even harder. For example, which individual parcels make up the mitigation for Ivanpah? We can read the press release and get a general idea, but it isn't specific. They used parcels from the SB 34 Mitigation Bank, but which ones? Should parcels in northern Imperial County be acceptable mitigation for a project in northeastern San Bernardino County? How did the pricing compare to offering documentation of SB 34? Did the SB 34 Mitigation Bank make money, lose money, or break even? The answers to questions like these should be available for public review. In a CEC siting case, the data is all there, the public can review it all. Not so with mitigation. Rules for agency approval of mitigation should be clear, consistent and transparent. The DRECP plans to spend a lot of money on land for mitigation, or even on Restoration in place of mitigation. The public should know those details. They should be published on a web site, just like the CEC does. Then everyone could review the progress or its lack. The Plan should require that level of transparency.

### **Notes on Appendix I.**

A huge amount of work has gone into the creation of this Plan. There are many assumptions that were necessary just to arrive at a draft document and I appreciate all that work and time. On the other hand, it is necessary to point out places that, in my humble experience, seem slightly off, wrong, or misplaced assumptions. With that attitude, allow me to go through a few notes on the Appendix I. Costs and Funding.

#### **Page 1.2, II.1.1.1 Number and Timing of Projects.**

In the last line, the statement "If acreage is acquired far in the future, funds collected now can earn interest to help fund those purchases." I don't understand this entry. According to the Plan, funds are collected as projects are enrolled. Those projects should have mitigation completed in 18 months from approval, so interest collected may be two years worth. How does "far in the future" play into this Plan?

#### **Page 1.4 I.1.1.2 Lands Potentially Available for Acquisition to address Covered Species Mitigation.**

The assumptions in this section are interesting—and seem new. Beginning half-way down the first paragraph, starting at "If private lands are not available . . ." there are a series of If/Then scenarios that seem to accept the prospect of pushing compensatory mitigation purchases farther and farther from the area of disturbance. Maybe with a 40 year Plan, it makes sense to forecast for this possibility, and it's possible this actually occurred with the mitigation for Ivanpah from the

limited information I found. I hope this would apply to any private mitigation as well, because that hasn't been the case in the past.

**Page 1.5 Table I-1 Lands Potentially Available for Covered Species Mitigation Acquisition ---Preferred Alternative.**

From the title of this chart, one would think all this specified land should be available for mitigation, and maybe plentiful. Here's a couple of observations from the ground: Why is Agriculture Land included in the Table? If I suggested Agriculture land for mitigation, I would be laughed at. Maybe there are limited uses, assuming a conservation easement, for a few species of migratory birds that feed in farms but including 630,541 acres of agriculture land in the Plan in a potential mitigation table seems outside the bounds of logic. This should be eliminated. I wonder about the column labeled Rural. I couldn't find a map to support this category, so I will let it go, however, Rural is usually developable and cut into small parcels. As was stated in the goal for the Plan and the Conditions of Certification on most projects, small, non-connected parcels would not be considered appropriate mitigation. Thus, I question the Rural category.

**Page 1.15 I.2 Land Value Estimation.**

In the opening paragraph it's stated, "however, all of the factors are essentially components of supply and demand." While it is very difficult to assess land value in such a wide-ranging Plan due to many various factors, it is not always true that the laws of supply and demand effect land values. Not to sound like a broken record, but when the Plan is approved and developers pay Fees to be used for land acquisition, the laws of supply and demand are immediately abandoned. At that point, all land values will be determined by Appraised Value. A qualified appraiser should add detail here, which I am not. However, from my eleven years of experience, Appraised Values based on recent sales, typically for conservation in conservation areas, which yield low values. And values tend to go down as time passes, due to conservation "echo-chamber" sales. Because development is precluded in conservation areas, values continue a downward spiral. Supply and demand works in an open market. Appraised Value acquisition is not an open market.

**Page I.16 I.2.1 Mitigation Banks and Land Conservancies.**

Prices paid by Mitigation Banks and Land Conservancies cannot be directly compared. Mitigation banks do not use public money so they are not tied to appraisal value pricing. Also, higher prices are often paid for specific parcels based on additional conservation values a parcel may contain, like Waters of the State, etc. Appraised value ignores these added values.

It should also be noted that even after private mitigation buying in a specific area, the appraised values do not increase because the mitigation sales are defined as not-arms-length sales, therefore those sales are eliminated from the comparable sales used in the appraisal. After the completion of the 2010 to 2012 mitigation sales in the Colorado Desert, appraised values went down for that area. For these stated reasons, price comparisons between mitigation banks and conservancies are invalid.

Both mitigation banks and land conservancies will be needed to build this conservation preserve, so both should be encouraged.

**Page I.22 DRECP- Area Environmental Review Cost Estimates. Table I-15.**

This table may be a reflection of the Security Deposits required. Were there cost estimates in the compliance documents? The numbers seem off.

**Page I.22 Escalation Factor.** While this is an interesting discussion, land acquired with public money typically de-escalates values. Some escalation may occur when private mitigation occurs.

**Page I.36 Property Taxes.**

If the Plan or a state agency acquires title to mitigation lands in the Conservation Areas, will they have to pay property taxes? I don't think so.

**General.** Including projects in Tables that were never built, for whatever reason, dilutes the value of the entire Table. Examples: Imperial Valley, Rice Solar, and Palen.

In conclusion, this massive undertaking is impressive, but many questions remain. Private landowners must be respected. In order for this Plan to be successful, there must be public, non-profit, and private businesses involved and working together.

Thanks for your time and hard work.

Sincerely,

Kenneth B. Waxlax

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