DRECP NEPA/CEQA Public Comment letter #1-Mark Algazy

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D(RE)CP

I. Executive Summary

The premise of this comment letter is simple. There has been a huge public outcry regarding the proposed streamlining of industrial-scale renewable energy projects under the DRECP. While there are also multiple concerns regarding the underlying science that has been used to define and designate conservation areas and identify what would appear to be appropriate development focus areas, those concerns have been secondary, and primarily related to their effect in helping support what can effectively be referred to as 'green lighting' of development zones. This sparked in me the interest in exploring the possibility of dividing the plan into its two separate components for further consideration.

1. Background

The BLM's Desert Advisory Council is chartered with the task of providing the BLM with advise on how best to advance the goals of multiple use and sustained yield in the area of the California Desert District. When a specific plan like the DRECP is put forward, the task of the DAC is to advise the BLM on whether it thinks there are any other concerns that should be addressed, any other options to be considered, and whether the proposal at hand has sufficient support on which to make a defensible decision. While this task is normally not a difficult one, the shear enormity of this particular proposal makes advise on the merits particularly challenging. Not everyone on the DAC was enthusiastic about engaging in this process, so a subcommittee was formed. I am a member of the Subcommittee.

Without a specific planning document to address, the subcommittee initially decided to focus on the one component of the plan that could be addressed with publicly available information: purpose and need. Meetings were held, and additional information was submitted by a very enthusiastic public. Without exception, all information that was submitted only helped to further challenge the assumptions expressed in the purpose and need statements that had been made for the project at that point.

Those points included

1. The 20,000MW target for siting in the desert is not an appropriate goal.

a. It does not fully or adequately account for energy conservation.
b. It does not fully or adequately account for siting projects on disturbed lands closer to distribution points.
c. It does not fully or accurately account for many projects that are already online, but not considered utility scale within the definition of the plan.

2. The underlying data used to 'inform' the RPS calculator is out of date, even for projects within the scope of the plan.
3. The 33 percent goal has already been reached. Setting substantially higher goals based solely on 'projections' does not strike an appropriate balance with FLPMA policy of multiple use and sustained yield.
4. The DRECP further institutionalizes and delays a long overdue overhaul of the power grid itself, a system based on 1930s principles that no modern engineer would ever sign off on as sound. This is one more glaring example of Washington 'kicking the can down the road', except that now they think it's ok to litter the desert with these proverbial 'cans'.
5. Even though it claims to embrace wind and solar, DRECP is 'old thinking' because there are so many new variants of generation technologies emerging, as well as models for improving distribution by minimizing or eliminating most of the current transmission paradigm. The DRECP effectively undermines these new technologies by further institutionalizing older technologies.
6. Remote, utility-scale projects present a false economy. Once you factor in the huge need for scarce water resources to build these projects, the enormous and ongoing issue of fugitive dust on thousands of new miles of unpaved access and service roads, and the full cost of producing the materials themselves, it would take a team of economists to predict when the projects would TRULY reach a break-even point, never mind constituting a true net benefit. And this is WITHOUT ANY CONSIDERATION of environmental effects.

II. Rational Basis for Divisibility

While it is fundamentally true that industrial-scale renewable energy cannot move forward without a plan-wide conservation plan, the California desert already has a 30-plus year track record of developing and implementing conservation efforts that have been made without area-wide development plans, the CDCA . While no one questions the premise that industrial-scale RE projects cannot continue to be sited without an area-wide conservation plan, no one has seriously considered the possibility of moving the conservation elements of this plan forward on their own merits. [see Footnote]

The Executive Summary to the DEIS notes at p. 9 that choosing the No Action Alternative leaves the agencies and the desert itself with the problem of lacking "integrated, interagency conservation strategy." Implicit in this statement is the idea that further conservation of the desert within the parameters of the DRECP cannot be achieved without full implementation of the plan. This is a faulty assumption, as I shall discuss in more detail below.

As developers, the mining and the recreational communities can attest, erring on the side of conservation has been the default position of land managers and the courts for decades, echoing the cliché 'better safe than sorry.' So this begs the question, 'why change now?',

especially for a particular kind of development whose assumptions regarding 'need' have been fundamentally challenged at every opportunity, and from every angle? All affected elements are purported to have been addressed in the development of the conservation parts of the DEIS.

So, the first question is whether it would be fair, appropriate, or balanced in the sense that would survive a legal challenge to move the conservation elements of the plan forward without the specific designation of DFAs as contemplated by the RE portions of the plan. The obvious answer to that is it depends. In much the same way that government entities around the country have learned over the last five decades that outright bans on development are much more likely to fail in court than short-term moratoriums, a conservation plan that includes only a temporary stay, or a phased roll out of DFAs is much more likely to survive than one that makes no accommodation for developers. Further discussion on these possibilities follows in Section III.

However, I personally believe that it is also legally tenable to say that implementation of the conservation components of this plan by themselves would put developers in a far superior position then they have been in, thus arguably making this a legally defensible option on its own. The logic here is that the current paradigm holds a high degree of uncertainty for developers in siting, with the numerous denials that have been issued by multiple agencies having provided much of the stated impetus for the DRECP. In contrast, implementation of the conservation element of the plan on its own merits will give developers a MUCH higher degree certainty of where it is NOT ok to build. That in and of itself is a HUGE net benefit to the RE industry as a whole. Couple that with the improvements in biological science that have been cooperatively vetted by all the relevant permitting agencies, and the net benefit takes another leap.

This still leaves the question of whether the stakeholders themselves would agree to move the conservation elements of the DRECP forwards without the formal establishment of DFAs. While there may be strong arguments why the stakeholders would not agree to this, it is neither an impossibility or irrelevant, as the BLM still has its own legal responsibility to make it's own independent assessment of what is the BEST management decision for the lands under its jurisdiction. As stated earlier, all permitting agencies now share in the net benefit of mutually vetted science, so that even the 'No Action' alternative cannot fairly be dismissed as maintenance of the status quo any more. Even as presented in the DEIS, the No Action alternative considers that projects needed to meet the statewide objectives will continue to move forward. It just does not acknowledge that they will do so with mutually vetted science.

So then the next step would be to define reasonably alternative ways in which to move the DRECP forwards without the RE...as it is currently conceived of in the DEIS...that still fulfills the purpose and needs for siting additional renewable energy in the desert. On this basis, I offer the following three proposals.

III.The Algazy Alternatives [apologies for the numbering issue; software glitch I tried multiple times to override!]

1. Science only. Incorporate all underlying “driver”science, along with ALL cumulative

impacts analysis provided by the CMAs into EXISTING permitting processes. This will require identifying what additional land management processes, if any, are required to supplement current scientific analysis performed during the EIS process to include the cumulative impacts [CI] identified by the plan...and implement them. Since the cumulative impacts are said to vary from alternative to alternative, there is also the further choice of choosing to acknowledge ONLY those cumulative impacts common to all alternatives[common denominator], or choosing the impacts associated with one alternative to use as a baseline.
[Sadly it must be noted that this entire discussion starts with a presumption that all of the projects that have been built, started or permitted have not been considered sufficient to trigger a cumulative impacts analysis before this point.]
If for instance we choose to use the CI analysis associated by the alternative with the highest acreage of DFAs [which I believe is Alternative 2], it would stand to reason that it would articulate the highest levels of impacts, and the highest levels of conservation/ mitigation. This would have the advantage of allowing the reviewers, be it the public or the agencies, to look at both the estimated impacts and proposed mitigation and only have to ask if it still applies to a smaller DFA, rather than having to hunt for supplimental data for an alternative with wider ranging DFAs, should an initial 'common-denominator' approach be taken.
In a general sense, a 'science-only' DRECP would better represent the FLPMA goal of multiple use and sustained yield. As explained in detail below, RE development will still move forward an an accelerated rate thanks to vastly improved science and collaboratively vetted conservation measures embraced by all the REAT agencies. At the same time, without having formal recognition of DFAs, the public can still be certain of having FULL opportunities to participate in all aspects of project evaluations. Further, other interest groups including but not limited to recreation and mining will not be summarily dismissed from continuing to voice the concerns of their constituencies on ALL aspects of project development.

This option has multiple benefits for the public, the agencies and developers.
a. The public, for as much as it has been frustrated in participating in the current paradigms of land use planning, has adopted a 'better the devil we know...' attitude in defending the status quo against the uncertainties of the joint management processes envisioned by the DRECP. While individual projects are stated to still require a substantial EIS process, there is concern that the formalizing of DFAs in some way will fundamentally alter the public's ability to participate in the NEPA and CEQA elements of the process by creating rebuttable presumptions that now become the citizen's responsibility to unravel. A science-only option will preserve the status quo regarding FULL citizen involvement, which is definitely a net-benefit under CEQA.

b. Secondly, it is not hard to imagine that it has been, and will continue to be an extremely difficult process for the agencies to coordinate joint management efforts. The level of collaboration contemplated by DRECP is unprecedented. I consider it comparable to all the branches of the military sitting at a table together and agreeing that they don't all need separate airplanes...they are going to share!

The plan is short on details of how the joint objectives will be achieved. This will undoubtedly be one basis for a NEPA challenge to the plan. Section II.3.1.5 et seq. provides the beginnings of a structure of the Executive Policy Group and an Adaptive Management Team, but is very vague on the all-important element of funding. Because land use funding has become hyper-critical in the 21st century, advancing ANY new programs that lack clear and objectively verifiable funding sources raises both academic concerns and the likelihood of legal challenges.

It would be enough to forward the proposition of coordinating conservation without having to also coordinate development and even more importantly OVERSIGHT of development. Since the plan is short on details for the coordinated activities of the Adaptive Management Team, allowing the conservation elements to move forward either before or without the RE components will offer the agencies more time and flexibility to develop joint management plans for conservation without being forced to develop hastily-conceived joint management plans for time-driven development proposals. [just one very-illustrative example of this time-driven pressure can be found in the executive summary, pg 23, "Any additional project-level studies or CEQA/NEPA environmental review would have to be completed within this 1-year period."]

Through the process of creating the DEIS, the agencies have learned valuable lessons in coordination that will serve them well moving forwards, and will perhaps form the basis for further modifications of their existing collaboration agreements [whatever the technical name is for those agreements is, I don't know them right now.]

c. The advantages to developers are at least threefold. The first and most basic advantage is that because the DRECP process had the full backing of the federal government, the scientific studies and analyses that would have otherwise taken the agencies close to two decades to perform with their normal funding were themselves fast-tracked to completion in under four years. As we all know, better science leads to better management decisions. Despite verbal agency comments to the contrary, the DEIS acknowledges on pI.3-25, "vast improvements to key biological databases have been made over the course of the DRECP planning process"

For better or worse, the biological science that has been provided by the DRECP has fundamentally improved the transparency of several bases for evaluating RE permits. Even without providing any of the 'green lights' that the DFAs figuratively offer, it is a HUGE benefit to have as a matter of public record where the 'red light' zones are.

The second advantage is that the studies and their conclusions have been ENDORSED by all the participating agencies. So developers not only have the benefit of knowing with greater certainty where the most environmentally sensitive areas are [the red-light zones], they also have the benefit of knowing that whatever biological concerns their specific project proposals may have, the standards for reviewing them amongst all the permitting agencies are 'level'.

The third advantage is slightly more speculative. The idea here is that if a rollout is

based on the highest level of conservation conceived of in the highest-conservation alternative currently on the table with the DEIS [Alternative 2] , but there has not been any formal adoption of any specific DFAs, it retains the possibility that the areas contemplated for development under that alternative could be expanded on based on subsequent analysis, information we don't have today, and could conceivably provide MORE opportunities in the long run than a prematurely defined DFA with initially higher acreage.

1. Science, with 'flashing green' zones added that are provisionally ok for development, subject to further screening. This would create a new, as yet undefined intermediate planning process between current development procedures and the streamlined procedures contemplated by formally-designated DFA areas. This would allow the agencies, in partnership with the public, to design further screening procedures to achieve the objectives. Overall, this idea is not much different from the DEIS as it currently stands, except that it would not provide the full net benefit of formal DFA designation. As noted earlier, developers would still have the dual advantages of having 'red' zones identified and cooperatively developed biological impacts analysis.
   While the current process still requires individual project proponents to go through an EIS process, part of the agencies' legal exposure with the plan as it stands comes from challenges that the science used to identify the BGOs is incomplete, thereby undermining the validity of the DFA designations. A 'flashing green' light approach to identifying DFAs would provide 'provisional' targets, subject not only to the EIS process contemplated in the DEIS as it stands, but with the continuing ability to adjust the 'un-formalized' DFAs based on subsequent improvements in science. Groundwater is just one excellent example of an underdeveloped science that may profoundly affect the size and shape of DFAs at a point after the plan has been signed.
   The DEIS specifically states that all underlying agency authority to provide supplemental analysis remains intact. It also notes that supplemental analysis will be performed on a project basis. Nonetheless, I and the general public would both prefer to see it READILY identified in the basic structure of the plan. Vague references in preambles that none of the agencies have ceded any of their underlying authority do little to ease the concern that the permitting agencies will be under pressure to adhere to the ultimate decisions that formed the boundaries of the DFAs. The DFAs as they have been presented in the DEIS appear TOO firm to yield to the 'adaptive management' concepts.

2. Science with several STAGED ROLLOUTS of DFAs over a period of time to allow for further study and modification of the DFAs based on issues identified during implementation and subsequent monitoring. This alternative would require several components. One would have to decide on a timeline for the rollout[one, two, five or ten years for example, or the entire 25 year length of the plan] Another would be to decide if the stages would be strictly driven by a number in percentages of acreage contemplated by the plan, or area driven, focused on a few target areas or a representative sampling across all the areas contemplated in the plan.

   It should be obvious in determining which areas should be the focus of an initial phase, that primary consideration should be given to disturbed lands within a short distance of existing transmission lines. The DEIS indicates that this is the case for generation siting,

but only for utility-scale distributed generation projects [DEIS I.3-56]. Under the Garamendi principles [specifically acknowledged by the DRECP on Page 48 of their 11-21-2011 Transmission Planning and Permitting Working Group Meeting]the state should also tier their responsibilities in siting new transmission by "Encourage the use of existing right of way by upgrading existing transmission facilities..."

a. This option would strike a balance between allowing areas that have been suitably screened through the DRECP process to incrementally move forward within the 25 year timeframe allotted for the plan while acknowledging the fact that the state has already met the 33% goal that was the plan target BEFORE the plan was enacted. It does not preclude the stated purpose and need objectives of the DEIS because 100% of the DFAs would still be eligible to be developed over the timeframe of the plan. The difference here is that the agencies [and hopefully the public as well] would have to take an active role in defining the INITIAL sites that would become open and the additional phases of development that would continue to roll out during the duration of the plan.

b. This proposal offers a huge benefit over the current DEIS in the area of Study Area Lands. The DEIS contemplates making final disposition decisions on many of these areas within one year of enacting the final plan. There are grave concerns about the adequacy of assessments made under these time constraints. A phased rollout will offer the opportunity to adjust the schedules for the SAAs, FAAs and Variance Lands to timetables that are more likely to achieve [rational, reasoned, defensible]well-considered decisions.

c. This option would also preserve MORE opportunities for emerging technologies to play a part in achieving the stated RE goals of the plan without having to fully implement the DFAs as presented in the current DEIS. As the public and the industry's attention continues to shift in the direction of RE technologies, innovation that will supplant the existing models for generation, transmission and distribution become more and more likely.

d. This option not only satisfies all five of the Guiding Principals listed in Section I.3.5.3.1 of the DEIS [I.3-37], but it satisfies most of them better. The 'disturbed lands' principle can form the basis for identifying the primary phase of a rollout. Existing transmission corridors can also be targeted, allowing for more time [read: better analysis] in developing supplemental transmission options. Making initial sites correspond to EXISTING transmission better serves the principal of insuring aggregation. And most importantly, a staged rollout preserves TRUE market neutrality, not prematurely and unnecessarily favoring remote utility scale projects over emerging technologies that may ultimately more expeditiously serve urban end users.

e. A staged rollout offers a greater opportunity for achieving true fiscal accountability in implementation. As proposed in the Preferred Alternative, the new Executive Policy Group [II.3-216] and its subsidiary Coordination Group are charged with seeking that most elusive quantity—adequate funding--for the new Monitoring and Adaptive Management Program. The goals of the CMAs and the MAMP are ambitious and admirable. Several members of the DAC have however raised concerns that the funds necessary to implement all of these worthy objectives may not materialize. The potential

funding sources described in Vol II.3-293 et.seq. can best be described as 'entertaining.'

Because we have personally witnessed the steady erosion of funding for the BLM over the last decade, these doubts are not unfounded. A smaller-scale, staged rollout presents not only a safer option for testing the science of the DRECP, but an excellent opportunity to test the government's FISCAL SINCERITY and dedication to achieving the goals presented in the DEIS. Further, a provision that would TOLL ALL FUTURE PERMITS if there is a funding shortfall would help ensure that the government is truly committed to the conservation goals of the DRECP.

f. Modifying the Preferred Alternative to include a staged rollout meets the requirements of CEQA. To quote Section 15126.6, subpart (b)

Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

As stated before, a staged rollout not only preserves the basic objective of preserving the full potential for development as identified in the Plan's purpose and need, but also preserves opportunities for improved science to modify some of the DFAs, as well as preserving opportunities for revising 'need' calculations, and opportunities for alternative technologies to participate in meeting needs. Any and/or all of these qualify as being "capable of avoiding or substantially lessening" effects within the DIRECT LANGUAGE, meaning, and intentions of CEQA.

g. Most importantly for the BLM, a phased rollout is more responsive to the multiple use and sustained yield concepts of FLPMA than the DEIS as it stands. The whole concept of formally identifying and reserving huge swaths of land for development is foreign to the multiple use concepts that have underpinned BLM management of the CDCA for the last 34 years. While DFA designation is not in-and-of-itself a 'green light' for development, the fact that this designation will remain in effect on ALL the land so designated for twenty five years does not seem like the most balanced land use decision the BLM could make. While multiple resource values were examined in the initial scoping processes, the BLM also has a long track record of maintaining responsiveness to the changing needs of all its users. Designating ALL the DFAs up front prematurely and unnecessarily restricts the BLM from providing the flexibility it not only needs, but is mandated to maintain under FLPMA.

h. Phased rollout of DFAs could AND SHOULD also include a provision for 'stopping the clock.' Rather than leaving this as a matter of agency discretion to decide when the goals have been met, FLPMA is better served by having EXPRESS language in the final document that RELEASES all remaining undeveloped BLM lands identified in the DFAs back to multiple use once the stated goal of the plan is reached. That is what the 'multiple' in multiple use is all about. Keeping a 'finger' on DFAs may be a acceptable goal for the CEC, but it is not appropriate for the BLM managed lands.

If supplemental needs are later identified, and the science used to define the DFAs is still 'good', those lands may be reviewed for re-designation in an expeditious way. If the science proves inadequate, then those public lands would better protected by a mandatory release. In either respect in the meantime, the prime directive of multiple use is better served by specific release language.

In layman's terms, a staged rollout is a way that we the people can take the DRECP 'out for a test drive' before we have to buy into the whole of it. But most importantly, it provides an environmentally superior option that still meets the purpose and needs of the plan.

IV. Other Considerations.

1. The DRECP should really consider adding a short-term MORATORIUM on implementation until some well-defined benchmark on GROUNDWATER AVAILABILITY is reached. In his September presentation to the DAC, BLM water specialist Peter Godfrey referenced a Process-based Adaptive Watershed Simulator [PAWS]model being developed by Penn State. This study is being performed in the Chuckawalla Basin, which covers a large area of land being considered in the Preferred Alternative as a DFA.

So, while it's conclusions may not have a lot of relevance for the West Mojave and Victorville-adjacent areas, it has the advantage of covering a substantial amount of proposed DFAs AND of being completed within the next two years. Thus it could provide a useful timetable for rolling out initial projects under the DRECP in that area, as there would be actual quantifiable amounts of groundwater from which to base permit decisions without developers having to apply for permits for the process of analyzing groundwater effects to begin. It is also more in keeping with the 'streamlining' the DRECP set out to offer.

2. The BLM should consider postponing the making of new ACEC designations under this Plan. The DRECP already constitutes a major overhaul of the CDCA. The new designation of the conservation lands alone will vastly alter the management paradigm of roughly twenty percent of the CDCA. This, combined with the SRMAs and ERMAs constitute a wholesale replacement of major parts of the CDCA that has not been properly acknowledged by any of the public notices for the DRECP.

In my estimation, the proposed changes are of such a fundamental nature that the requirements of due process may have already been missed just by the way the project has been presented to the public. Something more along the lines of "BLM announces major restructuring of CDCA in furtherance of Renewable Energy Plan" would have been a more appropriate way to start the whole process of public engagement. And my reservations concerning due process are based on a hypothetical version of the plan that does not include ANY ACECs!

The fact that almost 150 ACECs in the CDCA are being considered for final disposition at one time is problematic. The fact that they are all being proposed for simultaneous consideration in one document makes it more so. The fact that they are being addressed

programmatically just makes matters worse. ACECs by their very nature are extremely site-specific and analysis specific. In contrast, their consideration in Appendix L appears to be very 'cookie cutter', with virtually identical terse reuse of management objectives from one ACEC to the next.

The fact that they are buried in an Appendix while the public is trying with all their might just to penetrate the basic concepts of the DFAs and the BGOs in the main document makes meaningful public participation in the ACEC analyses not only unlikely, but virtually impossible. Including an additional 1.4 million acres of ACECs in the DEIS, FEIS and ROD is not only unnecessary, but exposes the agency to an unnecessary increase in risk of litigation over NEPA compliance. 89 of the ACECs in the Plan, the ones categorized as "Existing," were identified over a 34 year time span, which equates to roughly three a year. In stark contrast 58 ACECs in the Plan are designated "New", and expected to be acted on en mass, based on information provided in an Appendix.

Further, there is a fair possibility that a final decision on the DRECP will be reached before the WEMO process is finished. As of this time, the comment period for the DRECP will conclude before the DEIS for WEMO is even released. There may be substantial public comment during the WEMO process on route designations in the proposed ACECs, because THAT is the process in which the public EXPECTS to be commenting on the future of routes in the desert. Premature designation of ACECs in the DRECP may effectively short circuit this very important aspect of public involvement in the process.

As an alternative, the BLM should consider simply ACKNOWLEDGING those areas in the Plan with some other new acronym, for future consideration along the same lines that a WSA designation precedes a formal designation of a Wilderness Area.

3. The DEIS must not shirk its responsibilities under Environmental Justice to quantify the cumulative impacts of this plan. From the time I was a child I was given to understand that in this society 'rights' come with 'responsibilities.' In the context of the DRECP, the REAT agencies are asking for the 'right' to designate two million acres of land as DFAs, but at the same time are saying that the acreage is too large, and the actual potential for development too uncertain to require the cost of the analysis.

Interestingly enough, if the requested acreage of the DFAs was only 177,000 acres, then the Plan size would probably be considered specific enough to trigger a requirement for EJ analysis. So the affected communities may find it more than just a little convenient that by ballooning the size of DFAs that magically the analysis can be postponed.

At the same time, the agencies are asking for the right to define the DFAs in these larger brush strokes to preserve their ability to offer developers more options, in case one or more of these areas turns out to be 'hot' for development. The planning scenario says that we cannot discount the possibility that a DFA could be completely built out. But while they want to preserve the 'right' to do this, over the entire course of the 25 years by DFA designation, they believe that this broad of a 'right' is still too amorphous to trigger the responsibility to provide the EJ analysis. While a staged rollout might provide an appropriate basis for postponing analysis until actual projects are proposed, this large

of a "programmatic" right ought to trigger a commensurate "programmatic" responsibility to provide full-build-out analysis. Don't want to do that much? Fine, propose smaller DFAs and/or a staged rollout.

Nothing would please me more than to see the REAT agencies, in meeting their responsibilities under the EIS process, explain how every point I have raised is covered by the DEIS. It is more than appropriate considering the vast amount information contained in the document to shift the burden back to the agencies to find the language in the document that addresses each of the concerns I have raised. Never before have I been SO THANKFUL that the planning process is already set up that way!

Sincerely

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