Energy - Docket Optical System

From: Mark Algazy <65swb45@earthlink.net>
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Subject: DRECP DEIS Public Comment

California Energy Commission

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Docket No. 09-RENEW EO-01

1516 Ninth Street

Sacramento, CA 95814-5512

RE: DEIS/ DRECP public comment

February 21st, 2015

I. Preamble and Overarching NEPA issue.

My name is Mark Algazy, and I am currently a member of the BLM's Desert Advisory Council. In this capacity, the BLM has asked us to advise them on the DEIS of the DRECP. In August of 2014, the BLM provided us with short list of questions to help focus our comments. Here is the list.

1) Is the Plan Amendment Criteria sufficient for the Planning Decisions for the BLM in the DRECP?

2) Is the Analysis of the Planning Decision sufficient for each section for the Plan's 20-year timeframe?

3) Was the analysis done correctly; given the Planning Decisions?

4) Is the Impacts Analysis on specific Resources done correctly to identify impacts associated with the Planning Decisions?

In keeping with the original four questions, I am formatting my final comments to reflect and respond to those questions. I do however need to address Question #1 in an additional context that is larger than the DEIS itself, and directly addresses the sufficiency of application of the Plan Amendment Criteria to this process.

While NEPA does not specify a particular course of action, the question is always whether the effort put forth by the agency was appropriate and sufficient for the task at hand. In my opinion, the DRECP is a master-class planning document, well beyond any of the RMPs that the Bureau has been generating for the last 30 plus years. The scope of its ambition is actually unrivaled since the time of creating the original CDCA. All agree that in its complexity, it is also unrivaled.

Therefore the REAT agencies efforts to shoehorn the DEIS into the standard NEPA profile for engaging the public [90 day comment period, single round of public meetings] simply was inadequate for a Plan of this magnitude. By its nature, the planning steps should have put it on par with those used in developing the CDCA itself, rather than just a Plan Amendment. Reasonable minds might even conclude that the DRECP is SO ambitious, as a multi-agency, master-class planning document, that it requires even MORE NEPA OUTREACH than the CDCA process did.

To put this in layman's terms, when there is a job to be done, NEPA is the toolbox. Not every job requires every tool in the box. A CX [categorical exemption] or an EA [environmental assessment] would not require as many 'tools'...as extensive an engagement of NEPA...as an EIS. But where the EIS is on an order of magnitude that rivals, if not overshadows the creation of the CDCA itself, a commensurate level of NEPA engagement requires emptying out the whole box. You don't bring a bag of hand tools to overhaul an engine.

The standard reply to this type of complaint has been that there is a fair amount of latitude in how the agencies respond to NEPA in this process, as this is only a PLANNING document, and there will be multiple additional opportunities for public input. This response is simply inadequate. The consequences of the ROD are enormous. Not only will the public and interested parties be potentially precluded from legal challenges that are not made administratively now; the danger of misfeasance in the implementation of this Plan is real. The ROD that will result from this process is the equivalent of putting a loaded gun on the table: no crime has been committed...yet. But the danger of this symbolic tool, meant for protection [in this case, the desert], being used for misfeasance on a grand scale is real if inadequate science allows for avoidable resource degradation. Remember the mantra: easily scarred, slowly healed.

Finally, I will also note here that I will be making several references to my first public comment letter, filed with the CEC and the BLM on December 4. 2014, and hereby incorporated by reference. The letter can be found at this link:

http://drecp.org/draftdrecp/comments/

II. Comments

A. Purpose and Need-for the following reasons, I do not think that the Analysis of Purpose and Need was done correctly.

1.Location. Agency statements repeated state that the DRECP is part of the President's Climate Action Plan to site 20,000MW of renewable energy on public land. What is missing from all of these statements is the 'need' for this goal to be met ENTIRELY IN CALIFORNIA. This however is a planning assumption of the DEIS. The unsubstantiated focus of this 'need' is one of many ways in which the DEIS fosters an atmosphere conducive to a pre-determined outcome.

2. The Energy Calculator. I understand that the BLM is not directly in the energy business. It has let the CEC take the 'driver's seat' in determining the energy goals of the

plan. This is rightly so. Nonetheless the BLM, as the lead agency responsible for implementing those portions of the plan that will occur on public lands, is the one that will be held to account in court for mistakes that result in unnecessary environmental degradation. Therefore the Bureau must use 'second sight' to perform some sort of diligence in determining the adequacy of the CEC's calculations. “The BLM’s decision on the LUPA portion of the DRECP is not constrained or determined by any other agency’s action, except as required by federal law, such as the ESA”. DEIS 1.3.1.1

While it is well within the CEC's discretion to err on the side of 'aiming high' to ensure California meets its RE goals, the Bureau's mandate is to err on the side of conservation[“easily scarred, slowly healed”]. Therefore, in my opinion, the Bureau not only has the right, but the obligation to require the CEC to further refine not only it's calculations as to the AMOUNT of the need, but the manner in which it is to be provided [large, remote, utility-scale projects] before agreeing to endorse, much less implement this plan.

3. Other Options. As a result of the public meetings that have been held, and the public comments that have been generated, there is a heightened interest in determining if distributed generation, use of 'Brownfields' and other previously disturbed lands, and hybrid alternatives that include these options were prematurely dismissed. To answer the question 'Was the analysis done correctly...?' the answer at this time would have to be that none of us can tell based on the conclusory statements provided on these alternatives in the DEIS. The Bureau has the right and the obligation to have the CEC provide further exploration and explanation of these options before asking themselves or anyone else if the analysis was done correctly. Like anyone, or any THING charged with producing a result, the quality of the result is only as good as the input.

4. Acreage Calculator. Many members of the public have questioned the principles used to design the Acreage Calculator. Again, while the CEC has the option to use more conservative estimates, the Bureau's obligations are different. Conservative estimates require more land to fulfill. Where that land is public land, decisions must be made on sound science. The Bureau may be exposing themselves to unnecessary liability by not making a good-faith effort to determine if these calculations are reasonable based on the CURRENT state of technology.

5. Net Benefit Analysis. Perhaps the most fundamental flaw in the purpose and need section is the failure of any of the agencies to perform a net benefit analysis to prove that the DRECP actually satisfies its underlying purpose: a true NET reduction of greenhouse gases. Some estimates indicate that the 'true' energy cost of producing the RE technology itself [building solar panels and windmills] along with transporting, siting and transmitting product across hundreds of miles of NEW transmission lines will consume over three quarters of the net benefit in carbon reduction projected by the Plan. Further, this huge consumption of value does not take into account the loss of carbon sequestration [see comments under D.1.2] by the soils that must be degraded to build the projects or the RELEASE OF CARBON from the those same disturbed soils.

A more useful net benefit analysis would also compare the lower cost of construction on urban lands that either do not require any grading [rooftop/parking lot] and commensurate groundwater needs, or on disturbed lands that no longer contribute to carbon sequestration.

B. Reserve Design. Section 1.3-27 of the DEIS indicates “The reserve design envelope will not be implemented under any DRECP alternative.” Why? We could assume it is a jurisdictional question: BLM does not have the direct jurisdiction to implement the envelope anywhere except on Federal lands. I would rather not make this assumption. Please indicate the reason. Otherwise, it is just as easy to assume that the reserve design is not being fully implemented because it interferes in some way with agency interests in creating some of the DFA designations. I think that could be characterized as a pre-determined outcome. So once again, to answer the question 'Was the analysis done correctly?” the answer would have to be that it is not possible to tell from the information provided in the DEIS.

C.NHPA- It is not possible to comment on the adequacy of analysis for compliance with the Section 106 requirements of the National Historic Preservation Act because no analysis has been done, or will be done before the public comment period ends. In truth, very little analysis will have been done even by the Record Of Decision.

The Bureau is currently embarking on a process to develop a Programmatic Agreement for assessing and managing cultural resources. Not only is this an important aspect of the overall management of the planning area, but it also constitutes important MISSING

information that renders many of the DFA designations premature. Without providing sensitive details, current Bureau estimates are that there are 500,000 cultural features in the Plan area. With this many features, there can be no doubt that many of these resources are in areas already defined as DFAs.

D. LUPA

1.DFAs-As stated in my first comment letter, I do not think the analysis used to designate the DFAs was complete. The primary purpose of creating DFAs was to shift some of the multiple burdens of siting uncertainty away from developers by providing important baseline scientific analysis, and thereby encouraging more environmentally sound projects. However two critical, science-based components are currently deficient in this designation process: groundwater and soils.

1.1 Water. It cannot be stressed enough just how dire our water situation is in California. Faced with the possibility of repeating "multidecadal megadroughts" [see Stine, S. (1994), Extreme and persistent drought in California and Patagonia during Medieval time, Nature, 369, 546–549.] governments and land managers must make very careful long range water management plans to ensure the health and safety of both people and the environment. Our state has recently passed legislation which will hopefully help us determine what our resources are in order to make better long term plans.

On the other hand, we have a DEIS which lacks quantifiable data on this critical resource that will HAVE to be impacted in order for utility-scale projects to be built in the DFAs. The DEIS in large part defers substantive groundwater analysis to the project stage. One reference that underscores the need for this information can be found in Volume IV.6-24, where the DEIS acknowledges that of 35 groundwater basins where development could occur under the Plan, 14 are already stressed or in overdraft.

In my opinion, this is not only irresponsible in the face of the reality of the scarcity of this resource, it constitutes a fraud on developers. A DFA without a guaranteed source of water for building not only provides NO INCENTIVE to developers, but a FALSE sense of security. I would be willing to go so far as to say that the lack of this one element...by itself...undermines the stated purpose of the DRECP in providing developers with more certainty.

1.2 Soils. Letters I have received from the public suggest that the soils analysis provided in the DEIS is similarly deficient in meaningful information on which to base sound designation of DFAs and provide meaningful project security for developers. Proper soil characterization is not only critical to determining site stability/suitability, but more critically, for determining water needs for development. Virtually all the utility-scale RE projects that have been built have severely underestimated the amount of water needed during the development phase, exacerbating already impacted aquifers.

The lack of quantifiable data on these two critical science-based elements in the DEIS as presented provides only an increased certainty that developers will be fast-tracked into a dead end by locating projects in DRECP DFAs, which is totally at odds with the stated goals of the Plan.

In a separate but completely overlooked aspect regarding soils, there has been no discussion in the DEIS of development impacts on carbon sequestration. The DAC was recently provided with a presentation from Dr. Michael F. Allen, a well-regarded researcher in this field, who indicated that the soils that are typical of the areas already targeted by development sequester carbon at rate almost commensurate to that of a tropical rain forest. See DAC December 2014 meeting transcript, Pg 118 et.seq.

Lastly under the heading of problems with the DFA designations, I would like to address the fact that at numerous points in the DEIS, critical detailed impact analysis was avoided because the planning area was too large, too speculative. If the DFAs had been more narrowly tailored to match the 177,000 acres on which Plans goals will presumably be met, the responsibility of providing detailed analysis would have been much harder to postpone. While I am not suggesting that the REAT agencies purposely outsized the DFAs to avoid analysis, it is a convenient outcome, considering the delays the gathering of this additional information would add to the process.

So, to the question 'Was the analysis done correctly?” the answer for this component would have to be: NO.

2.ACECs -please refer to my December 4, 2014 for full analysis. In summary: ACEC designations are premature AT THIS TIME based on lack of critical route data that will not be determined until the final WEMO travel management plan is adopted. The maps provided in the DEIS do not include any roads. Therefore no analysis can be done by the public or the agency. So, to the question 'Was the analysis done correctly?" the answer for this component would also have to be: NO.

3.Monitoring/ Adaptive Management-Please refer to my December 4 comment letter, as well as the Interim Report of the DAC Subcommittee for full analysis of this element. In summary: the DEIS provides a provisional outline for creating a multi-agency collaboration that will provide oversight. Under the plan as it is currently proposed, this group is to be given six months to organize itself. If only site assessments for future developments occur during this timeframe, then the risk of adverse consequences is low. However, if there is any meaningful possibility that projects could proceed to the construction phase before this group is fully functional, the risks of inadequate oversight are heightened.

There are also multiple concerns and suggestions regarding adequate funding provided in my previous comments and those of the DAC Subcommittee. Also see Recommendations, below.

E. NLCS-lost and found. As pointed out in the final comment letter of the Alliance for Desert Protection [ADP] et. al. the process of designating lands for NLCS status requires making specific determinations of conservation values worthy of protection. To quote "These significant conservation resources are, by their nature, immutable; they do not suddenly become "lesser" or "greater" conservation resources according to how important a competing use is deemed to be..."

In what should be an alarming contrast, the designation of NLCS lands in the DEIS changes significantly from one Alternative to another. "Under this scheme, resources identified as worthy of NCL status are 'lost' in one alternative and 'found' in another..." See page 6 of their final comment letter for further analysis. If the science is valid, the results should not change; if the results change, then the credibility of the science itself is brought into question.

F. Other Issues-MUC and NEPA

“Resources, uses, and values not affected in any way by renewable energy and

biological resource management are outside the scope of this Land Use Plan

Amendment (LUPA)”.DEIS 1.3.1.1. As I stated in my public comment letter of November 7, 2014, [same hyperlink] the elimination of the current MUC system is a MAJOR revision of the CDCA which has been improperly obscured by the DRECP. Not only is the elimination of the MUCs completely missing from ALL Federal Register notices, ALL public workshops and the Executive Summary, we have the language quoted directly above that can easily be construed [or misconstrued, as the agency might counter] as meaning that only actions necessary to implement the DRECP are being considered. As stated elsewhere, the replacement of the land uses/classifications applies to the ENTIRE CDCA, not just the DRECP planning area. Informed discussion and decision-making start with ADEQUATE public notice. There has been NO public discussion of this issue [except for my public comments]because there has been no notice. This is a glaring violation of NEPA.

III. Recommendations. Owing to my dual capacity as both a member of the public and of the DAC, I am making two sets of recommendations. The first set are directed to the REAT agencies as a whole. The second are directed to the BLM specifically.

A. REAT

1. Start over. The NEPA issue over lack of notice of the elimination of the MUCs is a fundamental flaw in due process. The renewable energy focus of this plan completely overshadowed this important component of the plan, which covers the ENTIRE CDCA, not just the DRECP plan area. The EIS is too complex to unravel and remove this as an issue. This is a BLM mistake that will cost all of the agencies longer delays in litigation than the delay of just starting over.

2. Consider a Supplemental EIS to attempt to remedy the NEPA flaw over the MUCs. I offer no opinion on whether this will be legally sufficient, but it sure beats doing nothing once you've been put on notice of a problem this big.

3. Consider a Supplemental EIS to address the hybrid alternative, mixing DG with Brownfields, suggested in numerous public comments. Adding analysis on this option that is strongly supported by the public will add legitimacy to the FEIS and the NEPA process.

4. Consider a Supplemental EIS to incorporate phasing the rollout of DFAs as part of the overall implementation of the Plan, regardless of which Alternative is ultimately chosen. As mentioned in my December 4 comment letter, phasing balances the requirement to utilize the best-available science, encourages emerging technologies rather than institutionalizing current resource-intensive ones, and best satisfies not just the letter but the spirit of multiple use and sustained yield. Last but not least, phasing is a legal requirement: “An EIR shall describe feasible measures which could minimize significant adverse impacts” [Guidelines, Section 15126.4, subd.(a)(1)

Since none of the REAT agencies has had an opportunity to review the BLM's additional responsibilities under Section 106 in the context of this DEIS, it also worth separately noting that phasing will also allow for further development and refinement of the Cultural Resource Programmatic Agreement, which does not exist yet, without incurring unnecessary risk in degradation of those resources.

B. BLM

1. Walk. As mentioned in my December 4 comment letter, the 'driver' science used to 'inform' the reserve design, while it may not be complete, or legally adequate for supporting the DRECP, can be readily used to bolster current management plans, or a modified LUPA that does not rely on the DRECP. The call for more renewable energy can simply be answered elsewhere, or using current permitting procedures in conjunction with the SEZ of the Solar PEIS, without exposing the Bureau to increased liability for rushed new development decisions based on the inadequate science that created the DFAs.

2. Overlay the non-alternative specific recommendations made in my previous comment letter, as well as those of the DAC Subcommittee in its Interim Report.

a.Phase rollout of DFAs.

b. Remove ACECs from this process, or create an intermediate classification that allows for current levels of protection to continue until the WEMO process is completed.

c. Hard release language. If only 177,000 acres are needed to meet Plan Goals, the MUSY requirements of FLPMA and sound management policy requires CONCRETE release language that will return the remainder of lands currently proposed to be identified as DFAs to multiple use.

d. Tie project development to SECURE AND DURABLE...ADDITIONAL funding for monitoring and adaptive management that does not simply reallocate current funding resources.

e. Use the already-acknowledged SEZs of the PEIS to begin analysis of Environmental Justice aspects of RE development, rather than avoiding them as the DEIS does by inflating the DFAs to a point that precludes this i.e. hiding behind a self-created, self-serving artificial barrier.

C. Support the Preferred Alternative with overlay of powerpoints mentioned in B above.

Thank you for your consideration.

Sincerely,

Mark Algazy, Esq., member

Desert Advisory Council,