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California Energy Commission

DOCKETED

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All county boards of supervisors and all city councils February 22, 2015

California Energy Commission
Docket Office, MS-4
Docket No. 09-RENEW E001
1516 Ninth Street
Sacramento, CA 95814-5512

Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Secretary Jewell
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

REG: DRECP Comments (letter 6)

A. Process Issues:

1) We are just now gaining a solid understanding of all that the DRECP Plan proposes to ensure due to the overwhelming length and complexity of the DRECP's Draft EIS/EIR, the misstatements of the NOI, the Purpose and Need, three plans rolled into one, and the lack of public engagement of a 10,000 page document.

We are requesting a second extension of the public comment period for an additional 90 days after the release of the WEMO route designation Draft EIS which is a substantial part of the DRECP and has not been released as of today's date.

2) The DRECP's Notice of Availability is substantively defective in that it did not make it clear that it would be entirely replacing the Multiple Use Classifications that have been at the core of the California Desert Conservation Plan since 1980.

3) The DRECP Draft EIS/EIR document is simply too long and too complex for members of the public to fully understand. This is clearly evident by the disturbingly high degree of misperception of local elected representatives, and members of the general public. The length of the public comment period was too short to meet the public's need, and the document too limited in its distribution. We also received a faulty CD which prevented our attempt to review the document, especially in areas of the desert that have little capability for internet access for such a huge document.

4) The Draft EIS/EIR should have analyzed and carried forward the Distributive Generation Alternative. By not listing it as an alternative, it artificially limits the terms of discussion of the future of the California desert to lock in an increasingly obsolete scenario, in which 2.2 million acres of our open desert lands could be converted to industrial facilities that advances in technology make increasingly unnecessary.

5) The California Desert Conservation Area was designated by Congress in the Federal Land Policy and Management Act of 1976. In Section 601 [43 U.S.C. 1781] subsection (a) Sec. 1781. California Desert Conservation Area (a) Congressional Findings The Congress finds that - (1) 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; (2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed; (3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California; (4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles; (5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and (6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate

effective implementation of such planning and management. (b) Statement of purpose It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality." This plan mentions it, but does not adequately quote the whole Section 601.

6) The California Desert Conservation Plan of 1980 was the first plan for the BLM to adhere a balance in the desert. As such, it demands more respect than is currently or financially given. The Amendment Process in the CDCA Plan must be followed. The 1980 California Desert Conservation Area Plan Amendment Process

FACTS

1. The CDCA Plan established a process for amending the 1980 Plan to assure consistency and evenhandedness in future management of the California Desert.
2. The CDCA Plan established criteria for how BLM will review and process Plan amendments

Plan Amendment may be initiated at any time by the BLM California District Manager, in response to new findings under the continuing monitoring, and revision procedures.

Individuals and public or private organizations desiring to have the Plan or any of its elements amended may submit requests for amendment to the District Manager of the BLM, California Desert District. The District Manager will respond in writing within 30 days, acknowledging receipt of the request and informing the applicant of the process to be followed in studying and deciding upon the amendment. Processes will be consistent with Bureau procedures.

The general categories of Plan amendments anticipated are described below:

Category 1- The proposed changes are less than significant EA -Level NEPA analysis (no EIS is required).

i.e. NO significant changes to the goals and policies expressed in the Plan elements or in ACEC's or Special Areas.

Category 2-The proposed change, based on preliminary analysis, will require a significant change to a Plan element, goals, policies, or the process in that element.

Will require an EIS.

Category 3- The proposed change is beyond BLM jurisdiction and requires legislation.

Upon receipt of a request to consider a Plan amendment, the Desert District Manager shall decide:

- (1) To consider the Plan amendment, in which case he shall determine the category of amendment to be assigned:
 - (2) Not to consider the Plan amendment, in which case shall notify the requestor stating the reasons for his decision.
- Any decision to consider or not to consider a Plan amendment is subject to protest to the State Director.

ANALYSIS OF PROPOSED AMENDMENTS

In analyzing any applicant's request for amending or changing the Plan, the BLM District Manager, Desert District, will:

- (1) Determine if the request has been properly submitted and if any law or regulation prohibits granting the requested amendment.
- (2) Determine if alternative locations within the CDCA are available which would meet the applicant's needs without requiring a change in the Plan's classification, or an amendment to any Plan element.
- (3) Determine the environmental effects of granting and/or implementing the applicant's request.
- (4) Consider the economic and social impacts of granting and/or implementing the applicant's request.
- (5) Provide opportunities for and consideration of public comment on the proposed amendment, including input from the public and from Federal, State, and local government agencies.
- (6) Evaluate the effect of the proposed amendment on BLM management's desert-wide obligation to achieve and maintain a balance between resource use and resource protection.

DECISION CRITERIA FOR APPROVAL OR DISAPPROVAL

Before submitting a recommendation for a Plan amendment, the BLM Desert District Manager must determine that the proposed amendment is in accordance with applicable laws and regulations and will provide for the immediate and future management, use, development, and protection of the public lands with the CDCA. The BLM Desert District Manager will base his rationale for such determination on the principles of multiple use, sustained yield, and maintenance of environmental quality, as required in the Federal Land Policy and Management Act of 1976.

PUBLIC NOTIFICATION

Notification of proposed amendments to or changes in the California Desert Plan will be published in the Federal Register. In addition, notices will also be published in a newspaper, or newspapers, of general circulation in the area which would be affected by the proposed amendment(s).

Further, a Plan amendment mailing list will be developed by the BLM and will include appropriate publications which publish material of interest to people concerned about public lands of the California Desert. All individuals, organizations, and other public agencies requesting notices of Plan amendment proposals or decisions will receive such notices. All notices and information will be published in this manner no later than 30 days prior to the first or subsequent public hearing, if one is to be held.

All county boards of supervisors and all city councils located where incorporated limits and spheres of influence encompass the land area which might be affected by a proposed amendment to the Plan will be notified of such application to amend no later than 30 days prior to any scheduled public hearings.

PUBLIC HEARINGS

Before the BLM Desert District Manager makes final decision(s) on proposed amendment(s), he may hold one or more public hearings to consider these proposals. Source: 1980 CDCA Plan Ch 7. The reason we quote it, because the DRECP did not follow this process.

7) The Conservation Management Actions (CMA's) for some BLM Worksheets (Appendix L) appear to exceed BLM's authority in regulating hunting.

8) The DRECP does not have the authority to repeal the National Mineral and Mining Policy Act of 1872, 30USC 21. However, the CMA's for the proposed NLCS and ACEC's appear to contain restrictions on mining beyond the DRECP's scope of authority.

9) SRMA's for OHV Open Areas must be left open and expanded if necessary to access these areas.

10) The National Conservation Landscape System (NCLS) was established in Section 2002 of the Omnibus Public Lands Management Act of 2009, Subsection (c)(2) directs the Secretary to manage the system "in a manner that protects the values for which the components of the system were designated." Please see 5 and 6 above.

11) Under Section iii.6., 113 ground water basins are listed, 70 are listed as Water Level and Water Budget Conditions with uncertain data, and 11 are adjudicated. There is so little information listed on the aquifers that the column that lists Designated Overdraft Conditions, 100 are listed with no designation. However, there is some question as to whether that is an accurate number and whether it is a sole source aquifer which would qualify it under the Safe Water Drinking Act and give it extra protection. The Ground Water Legislation that was recently passed by the State of California (2014) is not mentioned in this report which would mean that the water basins would need to be prioritized for overdraft conditions. Many of the basins in the desert receive very little recharge and most water basins have a negative water budget. Many of these areas are populated by economic deprived communities. For instance, the people in Tecopa are driving to Pahrump, Nevada for water. To place a solar plant there, even panels need washing, would be a disaster even though it gets lots of sun. Many tribal communities in the desert would be especially hurt. Please see my previous letters regarding inadequate tribal communication and respect to their heritage and artifacts.

12) We have grave concern that there has not been adequate analysis of geology, soils and air in this area. At one time, the dust from Owens Lake was the number 1 man-made disaster. It has been revegetated at great expense, and it seems to be working. The soils in the desert have less than a 16th of an inch of organic material to keep it from being airborne. Once you disturb that, there is nothing to prevent dust storms. We did not find any relevant charts on blading desert soil and how much dust was put into the air in the 10,000 pages. Maybe we missed it; however we also need to be mindful of Valley Fever and the possibility of exposing the desert population as sensitive receptors. Already, we have had a significant increase to this disease.

13) The DRECP also does not have the right to ignore the "Taylor Grazing Act", which protects and stabilizes the livestock industry which adds economic viability to the County and State.

14) The CEC no longer has to follow CEQA, they have their own rules, and yet they are the lead agency and the rest are cooperating agencies. CA Fish and Wildlife is supposed to follow CEQA but that is a mitigating agency. With most of the lands being private and state owned in the one plan, all mitigation is to fall on BLM Federal Lands. Placing a solar plant in Olancho (now a DFA though it was never a SEZ under the Federal PEIS) and using 5 to 1 mitigation as under WEMO

and with Inyo County having less than a 6% tax base is a hardship. And guess what, the other three agencies will be receiving funding; however, the agency that has the land actions is not receiving funding, BLM.

15) We also have great concerns over the new 106 PA's that are currently being initiated. We wondered why they were not including Section 110 in their newest endeavor and that they started six days before closing the comment period. It states, "2. Section 110 Section 110 of NHPA governs Federal agency programs by providing for consideration of historic preservation in the management of properties under Federal ownership or control. Originally a codification of Executive Order No. 11593, Section 110 established special preservation responsibilities for Federal agencies with an emphasis on property management activities. Section 110 does not replace or invalidate Executive Order No. 11593, but rather supplements it.

As passed in 1980, Section 110 established procedures for Federal agencies managing or controlling property. Among other things, agencies must assume responsibility for the preservation of historic properties under their jurisdiction and, to the maximum extent feasible, use historic properties available to the agency. Additionally, Federal agencies were directed to carry out their programs and projects in accordance with the purposes of NHPA. Further, Section 110(f) requires that, prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, agencies must undertake such planning and action as may be necessary to minimize harm to the landmark and obtain Council comments on the undertaking. The review required by Section 110(f) is similar to that required under Section 106 but involves a higher standard of care. Generally, Section 110(f) review is accomplished under the Council's procedures implementing Section 106.

The 1992 amendments to NHPA added greater Federal agency responsibility for consideration of historic properties during agency. The amended Section 110 requires each Federal agency to establish a historic preservation program. The program must provide for the identification and protection of the agency's historic properties; ensure that such properties are maintained and managed with due consideration for preservation of their historic values; and contain procedures to implement Section 106, which must be consistent with the Council's regulations. Specifically, the amendments explain that such procedures must provide a process for the identification and evaluation of historic properties for listing in the National Register and the development of agreements in consultation with SHPOs, local governments, Native Americans and Native Hawaiians and the interested public.

Congress also added a new provision that directs Federal agencies to withhold grants, licenses, approvals, or other assistance to applicants who intentionally significantly and adversely affect historic properties. This provision, known as the "anticipatory demolition" section, is designed to prevent applicants from destroying historic properties prior to seeking Federal assistance in an effort to avoid the Section 106 process. Finally, the 1992 amendments to Section 110 add the responsibility that the head of a Federal agency, without delegation, must document any decision under Section 106 where a Memorandum of Agreement has not been executed. This provision ensures a high level of Federal agency review where there is a failure to reach an agreement and, thus, strengthens the incentives for agencies to sign MOA. The amendments also codified a provision of the Council's regulations stating that an MOA will govern implementation of the undertaking in a binding manner".

16) The Secretary of the Interior, in consultation with the Advisory Council, is responsible for developing guidelines to implement the requirements of Section 110 of the act. The Council and the National Park Service jointly issued guidelines in 1989 and new guidelines are under development to address the 1992 amendments to NHPA. Therefore we are requesting that Section 110 be added to the DRECP and the Element 3 of the CDCA Desert Plan.

17) The DRECP also does not include a socio economic report for the different counties that it will affect nor an adequate environmental justice. In light of Executive Order 12898, the Council on Environmental Quality's (CEQ) issued Environmental Justice; Guidance Under the National Environmental Policy Act (December, 1997) (PDF) (40pp, 2.3MB). This guidance includes six principles for environmental justice analyses to determine any disproportionately high and adverse human health or environmental effects to low-income, minority, and tribal populations. The principles are:
1. Consider the composition of the affected area to determine whether low-income, minority or Tribal populations are present and whether there may be disproportionately high and adverse human health or environmental effects on these populations;

2. Consider relevant public health and industry data concerning the potential for multiple exposures or cumulative exposure to human health or environmental hazards in the affected population, as well as historical patterns of exposure to environmental hazards;
3. Recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed action;
4. Develop effective public participation strategies;
5. Assure meaningful community representation in the process, beginning at the earliest possible time;
6. Seek Tribal representation in the process.

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