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Thursday, February 19, 2015

California Energy Commission
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California Energy Commission

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09-RENEW EO-1

TN # 74583

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Subject: DRECP NEPA/CEQA – Present Alternatives in Comparative Form

The DRECP DEIS is in clear, obvious violation of NEPA's requirement for presentation of alternatives. NEPA Section 1502.14 requires alternatives be presented in "comparative form", in order to "sharply define the issues".

NEPA §1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.

Instead, the alternatives are in separate documents, in a non-comparative form that defies convenient comparison.

NEPA §1502.2 Implementation.

*(c) Environmental impact statements shall be kept **concise** and shall be no longer than absolutely necessary*

Section 1502.14, shown above, explains why concision is important:

"...providing a clear basis for choice among options by the decisionmaker and the public."

NEPA wants the document to be easily understood. In its current form, the DEIS fails completely.

Example 1: These tables appear in five documents:

Document	Table
Chapter II.3. Preferred Alternative	Interagency DRECP Plan-Wide Preferred Alternative
Chapter II.4. Alternative 1	Interagency DRECP Plan-Wide Alternative 1
Chapter II.5. Alternative 2	Interagency DRECP Plan-Wide Alternative 2
Chapter II.6. Alternative 3	Interagency DRECP Plan-Wide Alternative 3
Chapter II.7. Alternative 4	Interagency DRECP Plan-Wide Alternative 4

Each table is in the same format:

**Table IL3-1
Interagency DRECP Plan-Wide Preferred Alternative**

Alternative Components	Acreage
DFA's	2,024,000
Study Area Lands	183,000
Future Assessment Areas	128,000
Special Analysis Areas	42,000
DRECP Variance Lands	13,000
DRECP Plan-Wide Reserve Design Envelope	14,921,000
Existing conservation areas	7,662,000
BLM LUPA conservation designations	6,177,000
Conservation Planning Areas	1,142,000
Urban Areas, Other Lands, and Undesignated Areas	5,457,000
Impervious and Urban Built-up Land	535,000
Military Lands	3,019,000
BLM Open OHV Areas	264,000
Imperial Sand Dunes, including the BLM Open OHV Area	132,000
Johnson Valley OHV Shared Use Area	56,000
Tribal Lands	129,000
Undesignated Areas	1,323,000
Plan Area Total	22,585,000

The five tables have nearly identical left columns. The acreage numbers in the right column change from table to table. It is these numbers the reader must compare to understand the alternative differences.

The diligent reader is faced with some possibilities:

- Try to remember the numbers as he reads the five chapters. This is clearly impractical.
- Print the five tables and arrange the printouts on a table to align the number columns next to each other. In four of the five the table is spread across two pages. Scissors and tape are almost a necessity. This is almost comedic.
- Invent a cut-and-paste method in a word processor or spreadsheet to align the columns so they can be compared. Few readers have the skills to do this.
- With pencil and paper copy the data into a new single table. Archaic, but perhaps the only way.

But the left column is slightly different from table to table. So even these techniques, except the last, won't work. The DEIS has pushed the reader into a task so difficult for most that comprehending the alternative differences is either impossible, or is so frustrating that the reader would give up.

In unequivocal conflict with NEPA's requirement for concision, each table is preceded by a paragraph repeating the data in the table, both columns, sequentially, in narrative form. The wording in the five paragraphs for the five tables is identical – only the numbers change. The narratives add nothing to comprehension. Instead the narratives subtract from comprehension, since a diligent reader must waste time and tolerance reading and comparing to detect the possibility of small changes.

Instead of presenting the reader with this clerical, time-consuming, and intellectually frustrating task, all the data could be in one table and the redundant narrative paragraph omitted.

This form of presentation is the exact opposite of NEPA's intention. It is a clear and obvious violation of the letter and spirit of NEPA.

Example 2: Most of the first pages of the documents describing each alternative are identical. Only until the last few lines of the pages do the descriptions begin to differ. As with Example 1, a diligent reader must examine the identical sections, looking for possible small differences that may be important. With this form of presentation the reader has no confidence that important differences are easily understood, and must rely on this detail comparison. This is a clear violation of NEPA's requirement to present data in comparison form.

Example 3: There appears to be no simple description of the main difference in focus of each of the alternatives. Instead, the reader must, by comparing the five documents, assemble a list of

differences before being able to understand the intent of each alternative's focus. We are all used to alternative names indicating focus, such as 'Development Focused Alternative', and 'Conservation Focused Alternative'. Even this technique is denied the reader. Again, this is a clear violation of NEPA's requirement to present data in comparison form.

These are not trivial issues. Presuming BLM is indeed interested in substantive, useful, well thought out comments, it must present the data in easily understood form so reviewers can spend time on substance. But by ignoring NEPA's requirements, and common sense, the form of the document requires reviewers to waste time deciphering what the document says. BLM will receive fewer comments, and lower quality comments, with a document so difficult to read and comprehend. Decisionmakers must also understand the document. We cannot assume that because BLM created the document, decisionmakers and others at BLM fully understand the document – these people can be confused also. These compromises increase the distinct possibility that the EIS will lead to flawed conclusions.

I have had the opportunity to examine the DEIS only in some small detail, partially because of its daunting length and difficult format. I have heard that it has anywhere from 8,000 to 11,000 pages. I have heard many complaints from others of difficulty in understanding because related information is so scattered and so difficult to use. The NEPA violations contributed substantially to my inability to understand the differences between the alternatives because of the time required to discover the differences. Had the DEIS followed NEPA requirements, I could have quickly understood the differences, and been able to spend my limited resources on concepts.

The DEIS is a hostile document, not friendly. The concept of 'easy-to-use' is absent. This must be corrected.

Sincerely,



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09-RENEW EO-1

TN # 74582

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Subject: DRECP NEPA/CEQA – Readability

The DEIS is in clear, obvious violation of NEPA's requirement that documents be "concise" and "written in plain language", so the "public can readily understand them". Random readability tests show the text fails to be concise, and is very difficult to comprehend.

The Draft DRECP is greatly compromised. It must be rewritten for clarity, and to bring it into compliance with the regulations and the spirit of NEPA. More importantly, it would reduce the distinct possibility that the DEIS would lead to flawed decisions. This, of course, is the intent of the NEPA regulations and of the legislation that created NEPA.

NEPA §1500.2 Policy.

Federal agencies shall to the fullest extent possible:

*(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. **Environmental impact statements shall be concise, clear, and to the point**, and shall be supported by evidence that agencies have made the necessary environmental analyses.*

NEPA §1502.2 Implementation.

*(c) Environmental impact statements shall be kept **concise** and shall be no longer than absolutely necessary.*

NEPA §1502.8 Writing.

*Environmental impact statements shall be **written in plain language** and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.*

A number of tests have been created to measure text readability. To gauge readability of the DRECP DEIS I used two commonly used tests, Flesch Reading Ease, and Flesch-Kincaid Grade Level. Organizations such as insurance companies and government agencies use the tests when generating their documents. The Wikipedia entry provides a quick overview¹. The tests use formulas to create a numeric score based on the average number of syllables per word, and the average number of words per sentence. Microsoft Word can calculate these scores.

The Flesch Reading Ease test generates a score from 0 to 100. Higher score texts are easier to understand. One website, Readability Formulas², and Wikipedia use these score descriptions:

¹ URL for Wikipedia's description of the Flesch and Flesch-Kincaid readability tests:
http://en.wikipedia.org/wiki/Flesch%E2%80%93Kincaid_readability_tests#Flesch.E2.80.93Kincaid_Grade_Level

² <http://www.readabilityformulas.com/flesch-reading-ease-readability-formula.php>

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Flesch Reading Ease Score	Readability-Formulas	Wikipedia
90-100	Very easy	Easily understood by an average 11-year old student
80-89	Easy	
70-79	Fairly Easy	Easily understood by 13- to 15-year old students
60-69	Standard	
50-59	Fairly Difficult	
30-49	Difficult	
0-29	Confusing.	Best understood by university graduates.

Flesch-Kincaid scores are intended to correlate with US school grades. A score of 7.0, for instance, indicates an average seventh grade student can understand the text.

Below are results of testing random passages from the DEIS, copied into Microsoft Word 2013 so Word can generate the scores. Copies of passages with a page boundary include the page footers and headers – these were deleted before running the test. Some DEIS documents, when copied, treat each line of text as a separate paragraph, splitting sentences. These were not used, since they would distort the sentence length data.

Passage	Flesch Score	Flesch Rating	Flesch-Kincaid Score	Grade level
Executive Summary	5.4	Confusing	18.9	Graduate
II.1-1 to II.1-5	9.8	Confusing	19.3	Graduate
III.22-1 to .22-6	11.9	Confusing	16.7	Graduate
IV.7-506 to IV.7-513	16.9	Confusing	17.8	Graduate
VI-1, 1 st 4 paragraphs	13.1	Confusing	18.6	Graduate
Exec Summary, p.10, Components of the DRECP (1 paragraph)	13.6	Confusing	17.5	Graduate

These results are embarrassing. None of the Flesch scores come close to Standard (60-69). All are in the lowest range (0-30), described as Confusing. None even get close to the high of the Confusing range, 29. The Flesch-Kincaid grade level scores stay in the college graduate level.

The NEPA requirement to be concise is not trivial. The regulations recognize that a confusing document does not satisfy the intent of NEPA. Both the public and decisionmakers must be able to comprehend the document. With these low readability levels, comprehension is greatly compromised, with the distinct possibility of leading to flawed decisions.

Sincerely,



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Subject: DRECP NEPA/CEQA – All Reasonable Alternatives

The Draft DRECP is in violation of NEPA by omitting a distributed generation alternative.

This NEPA violation must be corrected.

NEPA requires that an EIS examine all reasonable alternatives. This requirement is summarized in answer 2a of the President's Council on Environmental Quality 40 Questions.

2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

Parallel requirements are in NEPA:

NEPA §1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental

Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

*(a) **Rigorously explore and objectively evaluate all reasonable alternatives**, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.*

By omitting a distributed generation alternative, the DEIS is declaring that a distributed generation alternative is unreasonable.

The DEIS appears to base its omission partially on the artificial and arbitrary condition that generating facilities larger than 20 MW are not considered distributed generation¹. The DEIS states that this definition comes from the 2011 Integrated Energy Policy Report. This report gives no justification for the limit. The 2011 Integrated Energy Policy Report in turn references a Dec 8 2011 presentation by Michael Picker², which also presents no justification. Additionally, an internet search finds that essentially all DG definitions have no wattage limitations. By the DEIS definition, a 21 MW PV facility, with slightly more efficient panels than an adjacent identical 20 MW facility, would not be counted while the 20 MW generator would be counted. The 20 MW limit appears to be arbitrary and artificial.

Starting on page II.8-7 is a discussion of "the most critical barriers to achieving...the goal to install 20,000 MW of new renewable capacity by 2020". Five bullet items follow describing barriers. Three (1st, 2nd, and 4th) relate to the distribution grid, *even though DG is defined as being independent of the distribution grid* (in both the DEIS (p.II.8-6) and in common knowledge). The 3rd and 5th items cite generalities, with no analysis to separate reality from opinion.

These irrelevant grid related "barriers" can be summarized:

- 1st Item - grid planning is disjointed ... does not consider grid impacts and does not consider benefits of local renewables.
- 2nd Item - reliability concerns of sending renewable generation through the grid. Discusses integration of local renewable energy with the grid.
- 4th Item - interconnection to the power grid:
 - Is a source of uncertainty
 - Fast Track is needed, else impact studies are required
 - The interconnection process is critical because of the large number of interconnections
 - Alignment between the interconnection and procurement process concerns

The other "barriers" appear to be no more challenging than issues occurring with any project, yet they are cited as unique to "local renewable energy". With no analysis, they appear to be opinion only.

3rd Item - a list of potential problems:

- Financing
- Procurement
- Many customers can't get equipment
- Many customers can't purchase renewable energy
- Tax incentives and procurement programs may expire
- Tax incentives and procurement programs may neglect key technologies
- Tax incentives and procurement programs may neglect project sizes

¹ DEIS page II.8-6.

² www.cfee.net/documents/Picker.pdf

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- Tax incentives and procurement programs may neglect project locations

5th Item - permitting:

- Permitting is challenging
- Some jurisdictions are doing renewables, some are not prepared.
- Many jurisdictions don't have renewable energy in planning codes.
- Locals have insufficient time, funds, and understanding of the technology.

The second full paragraph on page II.8-9 specifically states that the DEIS can only consider use of federal lands³. Again, this is in violation of the NEPA/CEQ requirement that all reasonable alternatives be analyzed, including "An alternative that is outside the legal jurisdiction of the lead agency..."

This second paragraph also states that a distributed energy alternative would "not respond to BLM's purpose to conserve biological, physical, cultural, social and scenic values..." The reason for this is stated as "...it would not identify and incorporate public lands managed for conservation purposes within the CDCA." Why these two statements should hold is not explained. Their logic defies credibility. Certainly the BLM could "conserve" and "manage" with a DG alternative. In fact, DG could well make conservation and management easier.

The last full paragraph on page II.8-9 states that a DG Alternative could partially meet objectives, with no analysis why it could not meet all objectives. The paragraph also repeats the illogical conclusion that a DG alternative could not provide "long term conservation and management of Covered Species within the DRECP". If anything, a DG alternative could enhance "long-term management".

Conclusion: Analysis supporting rejection of a DG alternative is completely absent; opinions only are presented. The reasons for rejecting a DG alternative are illogical and appear to be an attempt to justify a predetermined conclusion. The rejection is a clear violation of NEPA 40 CFR 1502.14(a): "Rigorously explore and objectively evaluate all reasonable alternatives..." It is in clear violation of CEQ answer 2a (A), which repeats this statement. It is in clear violation of CEQ answer 2b (A): "An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." These regulations are specifically intended to preclude rejections such as this.

This NEPA violation must be corrected.

Sincerely,



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³ "...the EIR/EIS would not advance the federal orders and mandates that compel the BLM to evaluate renewable energy projects on federally administered lands..."