

The Wilderness Society * California Wilderness Coalition *
Natural Resources Defense Council

March 22, 2018

Via electronic mail ([BLM CA DRECP@blm.gov](mailto:BLM_CA_DRECP@blm.gov))

BLM-California State Director
2800 Cottage Way, Rm W-1623
Sacramento, CA 95825

Re: Scoping Comments on Potential Amendment of the Desert Renewable Energy
Conservation Plan Land Use Plan Amendment (DRECP)

Dear Director Perez:

Please accept these scoping comments on behalf of The Wilderness Society, California
Wilderness Coalition and Natural Resources Defense Council.

The undersigned organizations have been integrally involved in the multi-year efforts that resulted in the completion of Phase I of the Desert Renewable Energy Conservation Plan (DRECP) through issuance of a Record of Decision on September 24, 2016. We are concerned that this administration is considering amending the DRECP, risking the important designations that support both conservation and renewable energy development, undermining the efforts made by a wide range of stakeholders and jeopardizing important commitments made by other parties, such as the State of California. The core aspects of the DRECP, including designations and management approaches for conservation, recreation and energy development, are based on science and a wealth of data; they must be maintained and efforts to reevaluate them cannot be justified. The DRECP must be allowed to work, not revoked or weakened. We urge the BLM to continue implementing the DRECP and to reach the inescapable conclusion that the DRECP should not be amended.

I. **REOPENING THE DRECP CANNOT BE JUSTIFIED; THE PLAN SHOULD BE ALLOWED TO WORK.**

A. The DRECP Should Be Implemented.

The DRECP has yet to be fully implemented and has not been allowed to work. The Record of Decision (ROD) was signed in September 2016, just 16 months ago. In addition, as the BLM noted repeatedly throughout the process, the BLM's ROD is Phase I of the DRECP, with Phase II to follow and address the non-federal aspects of this effort. *See, e.g.*, DRECP ROD, p. 4. BLM and other stakeholders continue to work on the other aspects of the planning process to address renewable energy development and conservation with the State of California and affected counties.

B. Amending the DRECP Cannot Be Justified.

BLM's Land Use Planning Handbook and applicable regulations confirm that an amendment is not appropriate at this point. As the Handbook states:

Plan amendments are most often prompted by the need to:

1. Consider a proposal or action that does not conform to the plan;
2. implement new or revised policy that changes land use plan decisions, such as an approved conservation agreement between the BLM and the USFWS;
3. respond to new, intensified, or changed uses on public land; and
4. consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions.

Handbook H-1601-1, p. 45; *see also* 43 C.F.R. § 1610.5-5. None of these conditions are met in relation to the DRECP. Current proposals and actions conform to the DRECP, no new policies have changed the decisions in the plan, nor are there new uses or information cited in the Federal Register Notice of Intent beginning this potential amendment process. 83 Fed.Reg. 4921-22 (February 2, 2018). In fact, the purported justifications set out in the Federal Register notice show the lack of reasonable basis for amending the DRECP, as shown in the detailed rebuttal to those statements below.

- Inaccurate BLM Statement: *“On July 29, 2011, the BLM and the Fish and Wildlife Service initiated a process to jointly prepare an Environmental Impact Statement (EIS) under the NEPA for the DRECP.”*
 - Response: This statement inaccurately describes the length of the scoping process and thus the overall DRECP process. Three Notices of Intent were issued for the preparation of the EIS supporting this decision – the first on November 20, 2009, the second on July 29, 2011, and a third on April 4, 2012. DRECP ROD, p. 79.
- Inaccurate BLM Statement: *“The BLM’s DRECP makes available just over 800,000 acres (7%) of the 10.8 million acres of land potentially available for renewable energy development ...”*
 - Response: This statement does not take into account the fact that Phase I was finalized with the expectation that more acreage would be made available for renewable energy development with Phase II of the DRECP or acknowledge that areas designated for development were those “with high-quality renewable energy potential and access to transmission in areas where environmental impacts can be managed and mitigated.” *See*, DRECP ROD, pp. 4-5.
- Inaccurate BLM Statement: *“The ROD allocated a total of 6.5 million acres (60%) as conservation areas, to include California Desert National Conservation Lands, Areas of Critical Environmental Concern, wildlife allocations, and National Scenic and Historic Trail corridors – which limit or are closed to renewable energy.”*

- Response: This statement includes designation of national monuments and other existing conservation, such as Wilderness and Wilderness Study Areas, that were not allocated as part of the DRECP. See, DRECP ROD, Executive Summary, p. page ES-8. A more accurate number is approximately 4.2 million acres (45%).
- Inaccurate BLM Statement: *“As a result of concerns voiced by multiple parties throughout the public comment periods of the DRECP planning process, the BLM seeks additional comment on the DRECP ROD ...”* (emphasis added.)
 - Response: To the extent substantive public comments were received during the many opportunities for public input, ranging from scoping through protests, BLM was required to consider and address those comments. There is no justification for BLM to amend the DRECP based on comments that it previously received, analyzed and responded to as part of finalizing the DRECP.
- Inaccurate BLM Statement: *“In 2008, Governor Schwarzenegger signed an executive order that required that 33 percent of California’s energy production be via renewable energy in 2020. In October 2015, Governor Edmund G. Brown, Jr. signed into law a measure which requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from renewable energy resources by 2030.”*
 - Response: Planning assumptions from the State of California, and estimates of acreage from the BLM in the DRECP confirm that the land use designations in the DRECP do not need to be amended to achieve California’s 50% renewable portfolio standard (RPS).

The DRECP makes available 388,000 acres as Development Focus Areas (DFA) and 40,000 acres as Variance Process Lands (VPL) for the development of utility-scale renewable energy projects, including wind, solar and geothermal. Cumulatively, DFA and VPL allocations account for 428,000 acres. The California Public Utilities Commission (CPUC), which regulates services and utilities and ensures access to safe and reliable utility infrastructure and services, recently adopted¹ a portfolio of energy resources for 2030, to guide the electric sector, which includes approximately 10,300 MW of new renewable energy resources and 2,000 MW of new battery storage resources. By technology, the portfolio of new renewable resources includes: 200MW of geothermal, approximately 9,000 MW of utility-scale solar, and 1,100 MW of in-state wind. Importantly, this 2030 portfolio surpasses 50% and results in up to 57% renewable energy by retail sales.²

Using the acreage assumptions within the BLM DRECP, the estimates of acres required for new renewable resources by 2030 are: utility-scale solar (7.1 acres/MW³) – 64,000

¹ CPUC 2017 Integrated Resource Plan ("IRP") Decision, p.65.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M209/K878/209878964.PDF>

² CPUC 2017 IRP Decision, p.48.

³ U.S. Bureau of Land Management, Land Use Plan Amendment to the California Desert Conservation Plan, Bishop Resource Management Plan, and Bakersfield Resource Management Plan.2016. Vol. II of VI, pg. II.3-85

acres; wind (24.8 acres/MW⁴) – 27,000 acres; and geothermal (5 acres /MW⁵) – 1,000 acres. Cumulatively, the estimated 10,300MW of new renewable energy resources may require approximately 92,000 acres. This renewable resource development will occur in other parts of California, not only the DRECP plan area, and a proportion is likely to come from other Western states but even if the focus is only on public lands in the DRECP, that 92,000 acres is only approximately 20% of designated DFAs and VPLs.

- Inaccurate BLM Statement: “. . . on March 28, 2017, the President issued Executive Order 13783, “Promoting Energy Independence and Economic Growth,” which directs all Federal agencies to review all actions that could ‘potentially burden the development or use of domestically produced energy resources.’ In recognition of these goals and direction” [from the RE orders and the EO ‘Promoting Energy Independence and Economic Growth’], BLM seeks comment on the potential impacts that land use designations contained in the amended RMPs will have on commercial-scale renewable energy projects, including wind, solar and geothermal. In particular, the BLM seeks comment on the Areas of Critical Environmental Concern that were designated, including where private lands lie within the external boundaries of such designations, as well as comments on increasing opportunities for increased renewable energy development, recreational and off-highway vehicle (OHV) access, mining access, and grazing.”
 - Response: This Executive Order directing identification of so-called “burdens” on energy development cannot override BLM’s obligations to protect wildlife, wilderness and historical and cultural resources as part of its multiple use mandate under the Federal Land Policy and Management Act (FLPMA), pursuant to the Omnibus Public Lands Act of 2009 (2009 Omnibus), and in accordance with the National Historic Preservation Act and Endangered Species Act. In addition, the DRECP already used best available science and information to designate areas for conservation, recreation and energy development, and determined which areas met the applicable legal criteria and, as discussed above, permitted both BLM and the State of California to meet goals for renewable energy development.

C. Supporting Rural Broadband Does Not Require Amending the DRECP.

The Federal Register notice also cites to the need to “foster rural broadband infrastructure projects.” Expanding broadband can and should be supported; it is an actual need for many communities and important for supporting economic development. However, it does not require any amendments to the DRECP. BLM can make needed commitments based on existing orders and there are opportunities to support infrastructure in implementation of the DRECP. We also note that there are different needs for analysis and approval depending on different types of facilities or equipment and the places where siting is occurring. Burying fiber optic cable along a road would involve different levels of analysis and approval than siting a tower in an area managed for wildlife habitat, as it should be, but this initiative can and should be part of implementing the DRECP, not an excuse to reopen it.

⁴ Bartridge, Jim, Melissa Jones, Eli Harland, Judy Grau. 2016. *Draft 2016 Environmental Performance Report of California’s Electrical Generation System*. California Energy Commission. Publication Number: CEC-700-2016-005-SD. Page 26.

⁵ U.S. Bureau of Land Management, Land Use Plan Amendment to the California Desert Conservation Plan, Bishop Resource Management Plan, and Bakersfield Resource Management Plan. 2016. Vol. II of VI, pg. II.3-103

D. BLM Should Terminate This Potential Amendment Process.

To the extent clarification regarding aspects of the DRECP may be needed as the plan is implemented, the agency has a range of tools it can use without dismantling the DRECP. *See, e.g.,* BLM Land Use Planning Handbook, Sections V-VII. As part of implementing the DRECP, BLM can continue to honor the collaborative efforts of all stakeholders and engage them through a public process. There is neither a need nor a justification to engage in broad amendments of the DRECP. Before engaging in the radical steps of amending the plan, BLM should permit the DRECP to work and consider other alternatives. Pursuant to BLM's Land Use Planning Handbook, the State Director may terminate an ongoing plan amendment if it is no longer necessary or appropriate. H-1601-1, p. 46. We urge BLM to take that step now and terminate this process.

II. THE CONSERVATION AND RENEWABLE ENERGY MANAGEMENT IN THE DRECP SHOW THE IMPORTANCE OF PRESERVING THE PLAN.

The DRECP is the product of many years of stakeholder participation, evaluation and analysis, fulfilling the complex goals described by the BLM below:

The [Land Use Plan Amendments] LUPA was prepared as part of the Desert Renewable Energy Conservation Plan (DRECP). The DRECP has been developed as an interagency plan by the BLM, the U.S. Fish and Wildlife Service (USFWS), the California Energy Commission (CEC), and the California Department of Fish and Wildlife (CDFW) (collectively "REAT Agencies"; Renewable Energy Action Team [REAT]) to (1) advance federal and state natural resource conservation goals and other federal land management goals; (2) meet the requirements of the federal Endangered Species Act (ESA), California Endangered Species Act (CESA), Natural Community Conservation Planning Act (NCCPA), and Federal Land Policy and Management Act (FLPMA); and (3) facilitate the timely and streamlined permitting of renewable energy projects, all in the Mojave and Colorado/Sonoran desert regions of Southern California.

The DRECP is an innovative, landscape-scale planning effort covering 22.5 million acres in seven California counties - Imperial, Inyo, Kern, Los Angeles, Riverside, San Bernardino, and San Diego. The BLM manages approximately 10 million acres of those acres. The REAT Agencies collaborated throughout the planning process to coordinate efforts across jurisdictional boundaries. The DRECP is a major component of the federal and State of California's renewable energy planning efforts. It is designed to both provide effective protection and conservation of important desert ecosystems, while also facilitating the development of solar, wind and geothermal energy projects in those unique landscapes.

DRECP ROD, p. 1. The designation and management of areas managed for conservation, recreation and energy development were evaluated and crafted to meet this variety of legal obligations and goals. These critical elements of the plans show the importance of preserving the DRECP.

A. Areas Allocated by the BLM for Conservation.

i. Areas of Critical Environmental Concern

FLPMA obligates the BLM to “give priority to the designation and protection of areas of critical environmental concern [ACEC].” 43 U.S.C. § 1712(c)(3). ACECs are areas “where special management is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” 43 U.S.C. § 1702(a). In order to designate ACECs, BLM must find areas have both relevant and important values, requiring resources of “substantial significance,” and further find that current management is not sufficient to protect those values. *See*, BLM Manual 1613. Where ACECs are designated within National Conservation Lands, the ACECs provide special management direction where that management is necessary for the ACEC values while supporting the overarching conservation goals for the nationally significant ecological, cultural, and scientific values of the National Conservation Lands. *See* DRECP BLM Land Use Plan Amendment, Appendix B. The ACECs designated in the DRECP met these high standards; there have not been changes to the values or the agency’s conclusions that would justify removing those protections.

Below, we highlight two ACECs in the DRECP that exemplify the need and support for these designations.

a. Cerro Gordo-Conglomerate Mesa ACEC

The Cerro Gordo-Conglomerate Mesa ACEC overlaps with the northern end of the project. The management goal of the Cerro Gordo-Conglomerate Mesa ACEC is to provide protection to cultural resources, rare plant and animal species, and wildlife habitat. *See* Cerro Gordo-Conglomerate Mesa Special Unit Management Plan, Basin and Range Subregion, DRECP Appendix B). Conglomerate Mesa is an extremely important Joshua tree woodland habitat where the *Yucca brevifolia* population is exhibiting vigorous regeneration. In fact, when you visit the area, this "vigorous regeneration" is readily apparent; a large percentage of the Joshua trees found in the area are very young. Conglomerate Mesa has become increasingly important for Joshua tree recruitment and survival as climate change further affects desert landscapes and eliminates Joshua tree recruitment opportunities at lower elevations. The Cerro Gordo-Conglomerate Mesa ACEC is also key to understanding the evolution of the ancient coastline of the southwestern U.S. from the Permian through the early Triassic (300 to 247 million years ago). The beds of the Conglomerate Mesa and the Santa Rosa Flat formations represent a complete geologic record of this time.

b. Dos Palmas ACEC

The Dos Palmas ACEC is located in the Coachella Valley and Lake Cahuilla California Desert National Conservation Lands ecoregion. The 14,000 acres of the Dos Palmas ACEC features a variety of unique ecosystems including sand dunes, salt flats, springs, seeps, artesian springs, and palm oases that provide sanctuary to several wildlife species. Federally endangered desert pupfish depend on the areas palm oases for shelter from predators and harsh temperatures. Dos Palmas was a historical stop along the Bradshaw Trail for stage coaches to drink water and clean up at the springs located in the area. Archaeological residential and cremation sites are known to

be present along shorelines of the ancient lake Cahuilla, oases, and near springs. The Dos Palmas ACEC also has exceptional scientific values related to the management, restoration, hydrology, and the archaeological resources within the Preserve. Ecosystem sustainability and the natural diversity of Dos Palmas are threatened by several factors including changes in the water regime, invasion of noxious plants and fish species, human-induced fires, uncontrolled off-highway vehicle use, and illegal collecting of wildlife. *See* Dos Palmas Area of Critical Environmental Concern Management Plan and Decision Record. EA No. CA-066-96-49. July 1998; *See* DRECP BLM Land Use Plan Amendment, Appendix B, p. 111-123.

ii. Wildlife Management Areas

The DRECP includes areas managed to protect wildlife habitat, which may include ACECs but also includes Desert Wildlife Management Areas (DWMAs) and Habitat Management Areas for Mohave Ground Squirrel, Flat Tailed Horned Lizard, and the Coachella Valley Fringe-toed Lizard. These allocations and management prescriptions ensure habitat is protected while ensuring other suitable activities are permitted. The data and science used to justify these allocations have not changed and the management decisions should remain in place.

iii. Lands with Wilderness Characteristics

FLPMA requires BLM to inventory and consider lands with wilderness characteristics (LWC) during the land use planning process. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2008) (holding that “wilderness characteristics are among the values the FLPMA specifically assigns to the BLM to manage in land use plans”). Lands with wilderness characteristics are identified as roadlessness, naturalness, outstanding opportunities for solitude or outstanding opportunities for a primitive and unconfined type of recreation. *See*, BLM Manual 6320, pp. 5-9.

BLM identified 1,213,000 acres of LWC in the DRECP planning area and is approximately 546,000 acres of these lands to protect their wilderness values. DRECP Land Use Plan Amendment, pp. 90, 52. BLM also acknowledged that: “[a]s part of the BLM’s multiple-use and sustained-yield mandate, Section 201 of FLPMA requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics.” DRECP Land Use Plan Amendment, p. 90. The agency further acknowledged that inventories were not completed at the time that the DRECP ROD was signed, and committed to complete inventories that “[a]t the completion of these inventories, the BLM will propose lands to be managed to protect wilderness characteristics through a plan amendment.” DRECP Land Use Plan Amendment, p. 52.

BLM has already limited the amount of lands with wilderness characteristics that are being protected and should be focusing on completing inventories and protecting additional lands. There is no justification for further reducing protections for these important areas. Further, the information generated through the ongoing inventories is significant new information that must be evaluated prior to making any changes to other designations in the DRECP.

Below, we highlight two LWC units managed to protect those values in the DRECP that exemplify the need and support for such management.

i. Conglomerate Mesa

A 1979 inventory conducted by the BLM on the Cerro Gordo Peak area, which consisted of more than 60,000 acres, found an unspecified number of acres that did not meet wilderness criteria because of excessive mining activity. The remainder of the unit was found to be natural and to have superlative wilderness character. In 2015, inventory of the California Desert Conservation Area Wilderness Inventory Unit #124 (i.e., Conglomerate Mesa) found approximately 22,500 acres (also contiguous to the Malpais Mesa Wilderness) in subunit 124-1; approximately 5,632 acres in subunit 124-2; approximately 8,963 acres in subunit 124.3; approximately 1,236 acres contiguous to the Malpais Mesa Wilderness in subunit 124-4; approximately 107.5 contiguous acres in subunit 124-5; approximately 1,327.5 contiguous acres in subunit 124-6; approximately 1,367 contiguous acres in subunit 124-7; and approximately 322 contiguous acres in 124-8.

The 2015 inventory found that the aforementioned subunits meet the wilderness criteria for natural condition, outstanding opportunities for solitude, outstanding opportunities for primitive and unconfined recreation, and supplemental values including plant and animal species and cultural resources.

ii. Milpitas Wash

Milpitas Wash contains 17,250 acres of land near the southern end of the Mule Mountains and the Opal Hill Mine. The landscape is primarily desert mountain foothills as well as wash and floodplain habitats. This area provides critical habitat for numerous species, including: the desert tortoise, mountain lion, long-eared owl, leaf nose bat, Merriam and desert kangaroo rat, long tail and little pocket mice, Bullock's and hooded orioles, towhees, white-crowned sparrow, Brewer's sparrow, warbler, black-headed grosbeak, diamondback rattler and the endangered Gila woodpecker. The area supports the largest Sonoran Desert woodland in North America. The area also supports the largest microphyll woodland in the United States. The abundance of old-growth trees, most standing over 15 feet high, gives the area a lush character rarely found in the desert. Milpitas Wash is one of the few areas in California where the Gila woodpecker is also known to nest.

B. California Desert National Conservation Lands.

BLM's National Conservation Lands are the "crown jewels" of the public lands managed by the BLM. The 2009 Omnibus congressionally established the National Landscape Conservation System, making it a permanent system of public lands conservation with the stated purpose "to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." 16 U.S.C. § 7202(a). The 2009 Omnibus defines the lands to be included in the system as including "public land within the California Desert Conservation Area [CDCA] administered by the Bureau of Land Management for conservation purposes." 16 U.S.C. § 7202(b)(2)(D). Rather than individually identifying those areas in the CDCA that would become part of the National Conservation Lands, Congress deferred to the BLM to decide which lands in the CDCA would be classified as "administered for conservation purposes" and added to the system.

In the DRECP, BLM designated these California Desert National Conservation Lands (CDNCL), stating:

The BLM is also using the [Land Use Plan Amendment] LUPA process to identify the public lands within the CDCA to be managed for conservation and identified as components of the NLCS pursuant to the Omnibus Act. The LUPA, and the accompanying environmental review, provides a comprehensive review of public land conservation in the CDCA, updating and consolidating the conservation decisions made in the CDCA Plan of 1980 and its subsequent amendments, using landscape-scale data. This review considered the criteria for National Conservation Lands, as defined in the Omnibus Act, and identified nationally significant landscapes with outstanding cultural, ecological, and scientific values. The BLM is using the DRECP planning process to formally identify those lands within the CDCA that the BLM will manage for conservation purposes in the CDCA. Those lands will be identified as California Desert National Conservation Lands, and will be managed as a component of the NLCS. The Approved LUPA identifies lands meeting the criteria of the Omnibus Act, and establishes CMAs to conserve, protect, and restore those lands. These lands are therefore included in the lands listed in Sec. 2002(b)(2) of the Omnibus Act as an “area designated by Congress to be administered for conservation purposes” and are a component of the NLCS. **Once identified, these lands can be removed from the NLCS only through an act of Congress; their designation cannot be changed through a land use plan amendment.**

DRECP ROD, pp. 13-14 (emphasis added).

Since the California Desert National Conservation Lands were identified pursuant to Congressional direction, we concur with BLM’s conclusion that these additions cannot be undone through a subsequent land use planning process: The BLM has been given the authority to identify and designate BLM lands in the CDCA for conservation purposes, but it has not been given the power to abolish or reduce those areas once established. Once identified, these lands are part of the National Conservation Lands and the statute makes no provision for them to be altered – similar to the other designated lands identified in the 2009 Omnibus as part of the National Conservation Lands, such as wilderness, national monuments, national conservation areas, wild and scenic river segments, national scenic or historic trail segments, and other identified special areas.⁶ Once again, this does not give the BLM unfettered authority to change the status of lands designated as part of the National Conservation Lands. Further, the purpose of formalizing the National Conservation Lands in the Omnibus is to turn an existing administrative structure into something permanent. The legislation explicitly makes the National Landscape Conservation System permanent. Consequently, creating a category of designation within the National Conservation Lands that can be administratively removed would undercut, and indeed contravene, the purpose of the legislation that BLM is fulfilling.

⁶ The only arguable exception is wilderness study areas (WSA), which are designated pending review by Congress. Per BLM, “Until Congress makes a final determination on a WSA, the BLM manages these areas to preserve their suitability for designation as wilderness.”

In addition, we note that Congress regularly provides direction to agencies to clarify or identify aspects of conservation areas, which does not undercut their permanence. For example, the 2009 Omnibus, for the Dominguez-Escalante National Conservation Area, provided: “[a]s soon as practicable after the date of enactment of this Act, the Secretary shall file a map and a legal description of the Conservation Area and the Wilderness...” and that “[t]he Map and legal descriptions filed under subsection (a) shall have the same force and effect as if included in this subtitle.” Public Law 111-11, Section 2404. Similar language appears in relation to the Wild Monongahela Wilderness (Public Law 111-11, Section 1001(b)) and other provisions of the Omnibus. The 2009 Omnibus also provided for the designation of Potential Wilderness, such as the Roaring River Potential Wilderness Area, providing that:

On the date on which the Secretary publishes in the Federal Register notice that the conditions in the potential wilderness area designated by subparagraph (A) are compatible with the Wilderness Act (16 U.S.C. 1131 et seq.), the potential wilderness shall be—

- (i) designated as wilderness and as a component of the National Wilderness Preservation System; and
- (ii) incorporated into the Roaring River Wilderness.

Public Law 111-11, Section 1202(c). Similar language appears in relation to the Kimberling Creek Potential Wilderness (Public Law 111-11, 1103(d)) and other provisions of the 2009 Omnibus. Once made, these designations are unquestionably permanent even though the affected agency must first identify areas or conditions that justify its status after the legislation has been passed. We provided a detailed discussion of the basis for such an understanding of the direction in the Omnibus in our comments on the Draft DRECP and incorporate this discussion herein by reference.

The CDNCLs were identified to meet the high standards set out in the 2009 Omnibus and are now a permanent part of the National Conservation Lands. Further, these lands are required to be managed “in a manner that protects the values for which the components of the system were designated.” 16 U.S.C. § 7202(c). *See also*, BLM Manuals 6100 (National Landscape Conservation System Management) and 6330 (National Monuments, National Conservation Areas, and Similar Designations). Any uses that are incompatible with the protection of the values of the National Conservation Lands must be prohibited. Protective management of the CDNCLs, as detailed in the Record of Decision must be maintained.

We also take issue with BLM’s justification for abandoning the evaluation of a mineral withdrawal for the CDNCLs. In the DRECP, BLM stated: “To achieve the purposes of FLPMA Section 601 and the 2009 Omnibus, and consistent with FLPMA’s multiple use and sustained yield mandate, the BLM will consider for mineral withdrawal any National Conservation Lands it identifies in connection with the DRECP decision.” DRECP, Final Environmental Impact Statement, Appendix Z, Section Z.2. BLM published a Notice of Proposed Withdrawal in the Federal Register regarding the Department of Interior’s proposal to withdraw 1,337,904 acres of public lands within designated CDNCLs, subject to valid existing rights, in order to “protect nationally significant landscapes with outstanding cultural, biological, and scientific values.” 81 Fed.Reg. 95738 (December 28, 2016). However, despite the agency’s recognition of the importance of the evaluation and without any actual consideration, the BLM next issued a notice

stating: “[b]ecause the BLM has determined that the lands are no longer needed in connection with the proposed withdrawal, the BLM has canceled the proposed withdrawal and its application in support thereof and has terminated the associated environmental analysis process.” 83 Fed.Reg. 5459 (February 7, 2018). BLM has not sufficiently justified abandoning the consideration it committed to in the DRECP without any justification.

The vast landscapes of the CDCA have been divided into ecoregion subareas based on similar physiography and/or ecological values. Each ecoregion subarea includes “a unique combination of specific ecological, cultural and scientific values.” See DRECP BLM Land Use Plan Amendment Appendix A.4. The reasoning for the special designations are described in detail in Appendix A.4 of the DRECP BLM Land Use Plan Amendment. Two CDNCLs are highlighted below showing the context of their uniqueness, value of protection and importance of these designations in the DRECP.

i. Basin and Range Subarea Ecoregion Subarea

The Basin and Range subarea extends from the Nevada state line west to the Sierra Nevada Mountain Range and contains approximately 377,000 acres of CDNCL. Elevations in the area range from 1,000 to 12,000 feet, leading to vast variety in plant communities. Several specially designated units within the subarea have already been designated by Congress for conservation purposes and contribute to the habitat conservation goals of the DRECP LUPA. The CDNCLs in this ecoregion subarea include some of the largest undeveloped expanses of public lands, and include habitat linkages (and climate refugia) among a number of other designated land with intact ecosystems connecting these large areas. The cultural values of the ecoregion subarea are as diverse as the ecological values and include some of the richest cultural areas in the California desert. This area falls within the traditional homelands of several tribal groups; sacred sites, traditional cultural places, and areas of religious and cultural significance to these groups are found throughout. Sensitive terrestrial and aquatic species, many of them endemic to this subarea, and prehistoric and historic cultural resources, are the focus of numerous scientific studies on the CDNCLs in this subarea ecoregion. DRECP BLM Land Use Plan Amendment Appendix A.4.1, p. 12–18.

ii. Mojave and Silurian Valley Ecoregion Subarea

The Mojave and Silurian Valley subarea lies within the east and central Mojave Desert, with Barstow just outside its southwest corner; from there it extends beyond Soda Lake in the east and the Salt Creek Hills to the northeast. The subarea contains 271,000 acres of CDNCL. The CDNCLs in this subarea include critical habitat for the federally listed desert tortoise in six dispersed parts of the Superior-Cronese ACEC and the north end of the Ord-Rodman ACEC. CDNCLs encompass large landscapes and provide habitat connectivity for terrestrial dwelling reptiles, mammals and Burrowing Owls. Important prehistoric and traditional cultural sites are abundant in this subarea, including well known sites such as: Afton Canyon, Inscription Canyon and Calico Early Man site. The Tonopah and Tidewater Railroad played an important role in the western expansion of the United States, making it possible for large-scale mining and settlement in the Death Valley region. Scientific values associated with a multitude of ecological and cultural values described in the analysis offer valuable research opportunities. Unique habitats, rare endemic plant and animal species, and the Mojave River at Afton Canyon are the focus of

many ecological studies on the CDNCLs in this subarea. Ongoing studies of rock formations and fossil beds at Rainbow Basin and the Manix area have provided scientists with valuable information about life during the middle Miocene epoch, between 12 and 16 million years ago. DRECP BLM Land Use Plan Amendment Appendix A.4.6, p. 34–39.

C. Conservation Management Actions and Disturbance Caps.

Conservation Management Actions (CMAs) and disturbance caps were developed in the DRECP to give resources in the planning area meaning and protection where needed. These measures were carefully crafted, relying on best available science. There is flexibility built in to these management approaches to permit other activities to continue while maintaining protection. Undermining this management risks the balance achieved in the DRECP and the specificity needed to ensure both protections and uses proceed.

Two examples of these management approaches are highlighted below, showing the support and need for their inclusion in the DRECP.

i. Activity-specific bird and bat CMAs

LUPA-BIO-16: For activities that may impact Focus and BLM sensitive birds, protected by the Endangered Species Act and/or the Migratory Bird Treaty Act of 1918, and bat species, LUPA-BIO-16 outlines the implementation of appropriate measures per the most up-to-date BLM state and national policy and guidance, and data on birds and bats, including but not limited to activity specific plans and actions. The goal of the activity-specific bird and bat actions is to avoid and minimize direct mortality of birds and bats from the construction, operation, maintenance, and decommissioning of the specific activities. Activity-specific measures to avoid and minimize impacts may include: siting and designing activities that will avoid high bird and bat movement areas that separate birds and bats from their common nesting and roosting sites, feeding areas, or lakes and rivers; reusing or co-locating new transmission facilities or other ancillary facilities with existing facilities and disturbed areas to reduce habitat destruction and avoid additional collision risks; when fencing is necessary, use bird and bat compatible design standards, etc. *See* DRECP BLM Land Use Plan Amendment, p. 103.

ii. Desert Tortoise (individual focus species)

Activities within desert tortoise linkages that may have a negative impact on the linkage will require an evaluation of the effects of the maintenance of long-term viable desert tortoise populations within the affected linkage. The analysis will consider the amount of suitable habitat, including climate refugia, required to ensure long-term viability within each linkage given the linkage's population density, long-term demographic and genetic needs, degree of existing habitat disturbance/impacts, mortality sources, and most up-to-date population viability modeling. Activities that would compromise the long-term viability of a linkage population or the function of the linkage, as determined by the BLM in coordination with the USFWS and CDFW, are prohibited and will require reconfiguration or re-siting. *See* DRECP BLM Land Use Plan Amendment, p. 112.

D. Development Focus Areas.

Development Focus Areas (DFA) were designated in the DRECP to be areas where “renewable energy generation is an allowable use, incentivized, and could be streamlined for approval under the DRECP LUPA. The LUPA will only streamline and provide incentives for renewable energy activities sited in a DFA.” DRECP, Land Use Plan Amendment. p. xiii. DFAs “are areas with substantial energy generation potential, access to existing or planned transmission, and low resource conflicts.” DRECP ROD, Executive Summary. p. ES-5.

The DRECP partner agencies (BLM, USFWS, CEC and CDFW) set forth a three-part vision for the DRECP, including to advance federal and state conservation and land management goals, meet the requirements of the Endangered Species Act and FLPMA, and “facilitate the timely and streamlined permitting of renewable energy projects.” DRECP ROD, Executive Summary. p. ES-1.

One of the CEC’s most important duties is helping ensure that structures are in place that ensure that California has the tools it needs to meet its renewable energy goals. A major focus of the CEC throughout the development of the DRECP has been to ensure that the plan provides such a structure, and the CEC has been consistent and clear in stating that it does, both at the time the DRECP ROD was signed and in response to BLM’s recent announcement that it is considering reopening the DRECP:

“Renewable energy is a key part of California’s approach to addressing climate change, and large scale renewable energy projects in the California desert will play an essential role in California meeting climate and renewable energy goals,” said California Energy Commissioner Karen Douglas. “The DRECP provides a clear pathway for projects on public lands, while giving the state much greater certainty about where those projects could be located.” DOI news release for DRECP ROD.⁷

"This is not needed," said Karen Douglas, who is on the state energy commission. "We have sufficient land designated in this plan to support meeting our renewable energy goals." LA Times Article on BLM’s announcement that it is considering reopening the DRECP.⁸

According to BLM, the 388,000 acres of Development Focus Areas alone have the potential to generate up to 27,000 megawatts of renewable energy.⁹ For context on how much renewable energy generation potential 58,940 megawatts is, the CEC’s November 2017 annual Renewable Portfolio Standard (RPS) Report notes that California’s three large investor-owned utilities (IOUs) have installed 15,193 megawatts of renewable energy capacity since 2003 under the RPS program. It also details how, with this level of development, the three large IOUs are on track to meet the state’s requirement for providing 50% of their electricity from renewable energy by the year 2020 – *a full decade earlier than the deadline of 3030.*¹⁰

⁷ http://www.drecp.org/documents/docs/2016-09-14_phase_1_approval.pdf

⁸ <http://www.latimes.com/politics/la-na-pol-desert-solar-20180201-story.html>

⁹ http://www.drecp.org/documents/docs/2016-09-14_phase_1_approval.pdf

¹⁰

http://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Nov%202017%20-%20RPS%20Annual%20Report.pdf

As discussed above, the current DFA acreage is sufficient to meet the increased RPS. Even if California sets more aggressive targets such as the 80% RPS under discussion, the DRECP provides more than enough land for renewable energy development to support meeting the states goals. This is even more clear given that development on BLM lands in the DRECP planning area has never been and never will be California's only tool for meeting its renewable energy goals – development on non-federal lands, development in other regions of the state, and rooftop solar will all continue to play important roles as well.

We are concerned by recent proposals to slash BLM's budget for renewable energy and redirect agency resources to fossil fuel development. Instead of questioning the allocation in the plan, this administration should commit to providing sufficient resources to support BLM's renewable energy program and implementation of the DRECP to ensure timely project approval and permitting.

Further, interference with DFAs will interfere with transmission planning and could delay needed infrastructure investments, which would ultimately lead to delays in renewable energy development. Access to transmission with available capacity within DFAs is a key incentive for renewable energy development within DFAs. Equally, failing to plan for transmission to DFAs could ultimately delay development. The integration of DRECP into transmission planning is actually moving forward, including as part of a comprehensive study being led by the California Independent System Operator to identify multiple value transmission solutions.¹¹ Reopening the DRECP will create uncertainty and delay the incorporation of the plan into long-term energy and transmission planning, which can undermine planning and building the energy infrastructure and facilities needed for the future.

Two DFAs are highlighted below to show the evaluation used to designate these areas and conclude they will support renewable energy development.

- i. East Riverside DFA

The East Riverside DFA is an example of the evaluation process leading to this important designation. The Colorado Desert Recovery Unit currently supports the most extensive solar development in the action area. The East Riverside DFA is a good example of an area that overlaps with important designations, such as the Chuckwalla Critical Habitat Unit, but with appropriate management is still agreeable as a site for development. Approximately 4,498 acres of the Chuckwalla Critical Habitat Unit overlap the East Riverside DFA. Because of the nature of the habitat in this area and the fact that the Bureau will require the maintenance of wildlife corridors in this area, the minor overlap of portions of the East Riverside DFA and the Chuckwalla Critical Habitat Unit would not have a measurable effect on the ability of the critical habitat unit to support viable populations or to provide for movement, dispersal, and gene flow. The potential exists that the placement of renewable energy facilities within the DFAs would fragment habitat, even if the proposed action did not appreciable decrease distribution of the species. The Bureau has avoided the placement of DFAs in locations identified as modeled linkages and high priority habitat and proposed the designations of linkages in the action area.

¹¹ <http://www.caiso.com/documents/paper-non-conventionalalternatives-2013-2014transmissionplanningprocess.pdf>

See Biological Opinion on the Proposed Land Use Plan Amendment under the DRECP [1340 (CA 930) P, 1150 (CA 930) P].

ii. Searles Valley DFA

The Searles Valley DFA is an excellent example of an area with substantial energy potential, access to existing transmission and low conflict in light of existing impacts to surrounding resources. The area has potential for development from various renewable energy technologies. *See* DRECP BLM Land Use Plan Amendment, Appendix D, Figure D-35, demonstrating that the Searles Valley DFA is compatible with all renewable energy technologies. In addition, this area is already subject to higher levels of surface disturbance due to mining operations on the dry lakes to mine sodium sulfate, borax, soda ash and other products, and the presence of three chemical plants and other industrial facilities. Additionally, there is already a designated transmission line and approved utility corridor coming from the DFA and there are opportunities to access existing transmission lines on Highway 395 and Highway 14. *See* DRECP BLM Land Use Plan Amendment, Appendix D, Figure D-23.

E. Mitigation.

Mitigation is a vital part of the DRECP's structure, providing a means to address impacts to habitat, wilderness and other values from authorized activities. The DRECP currently permits mitigation of impacts from activities on both federal and non-federal land to occur on public lands. In addition, mitigation may be required at more than a 1-to-1 ratio in order to address risks of success and the importance of affected values. The range of mitigation activities permitted under the DRECP must be maintained.

Evaluation of mitigation is required by the National Environmental Policy Act (NEPA).¹² Management for multiple use and sustained yield and avoidance of unnecessary or undue degradation to the uses and values of the public lands (including wildlife) is required by FLPMA.¹³

Application of strict avoidance and minimization principles is critical because impacts to protected plant and wildlife species and habitat cannot be reduced if development continues to occur. In addition, restoration resulting from compensatory mitigation continues to be challenging in the desert. The difficulty in achieving successful restoration, as well as the years of habitat loss, are also justifications for the use of a variety of ratios for mitigation. The use of multipliers provides a mechanism to address the challenges in restoration and is an important part of the State of California's mitigation program. BLM should not restrict the use of multipliers for mitigation.

Compensatory mitigation programs must include strategies to assess and manage risks and benefits. Characterization of both the risks associated with mitigation approaches and their likely benefits are necessarily predictive and require monitoring to ensure solutions are successful and durable. BLM must ensure that it continues to monitor both the risks and benefits resulting from

¹² *See* 40 C.F.R. §§ 1508.8, 1502.14, 1502.16.

¹³ *See* 43 C.F.R. §§ 1701, 1732(b).

compensatory mitigation and that it employs and requires those provisions that are shown to be most successful and durable. Notably, the State of California's agreement to "credit" mitigation on public lands, including in the DRECP, is premised on BLM's ability to provide durable conservation, including through the permanence of the CDNCLs. *See, e.g.*, Memorandum of Understanding between the Department of the Interior and the State of California on Renewable Energy.¹⁴ In order to comply with California's legal requirements and its commitments under applicable Memoranda of Understanding, BLM must continue to permit compensatory mitigation and multipliers, while also ensuring conservation allocations and management in the DRECP are sufficiently protective and durable.

F. Recreation Management Areas.

The DRECP designated both Special Recreation Management Areas (SRMA) and Extensive Recreation Management Areas (ERMA). SRMAs "are recognized and managed for their recreation opportunities, unique value and importance" and identified in order to "direct recreation funding and personnel to manage for a specific set of recreation activities, experiences, opportunities and benefits." DRECP Land Use Plan Amendment, p. xxii. ERMAs "require specific management consideration in order to address recreation use and demand and "are managed to support and sustain the principal recreation activities and associated qualities and conditions." DRECP Land Use Plan Amendment, p. xiv. These designations ensure that BLM fulfills another important part of its multiple use mandate and provides users of the public lands with direction and certainty regarding their experiences across the planning area. BLM has also recently issued a Supplemental Draft EIS for the West Mojave Route Network Project. 83 Fed.Reg. 11785 (March 16, 2018). This planning area is encompassed within the DRECP and relies on allocations made in the DRECP. These recreation management areas should be maintained.

Below, we highlight two SRMAs in the DRECP that exemplify the need and support for these designations.

i. Chuckwalla SRMA

The Chuckwalla SRMA is approximately 1 hour from the vast urban center of the Coachella Valley. The primary objective of the SRMA is to provide opportunities for area residents, visitors, and commercial recreation provides to engage in motorized and non-motorized recreation activities that are compatible with recovery efforts for the desert tortoise and other ACEC values. The primary activities for the area are motorized recreation touring and other recreational activities that rely on motorized vehicles to access public lands. The SRMA provides other primary activities such as hiking, camping, equestrian use, wildlife and wild flower viewing, sightseeing, visiting cultural/historic sites, hunting, photography, picnicking, stargazing, rock hounding, interpretive trail walking, and special recreation permitted activities such as commercial ATV touring along designated open routes. The SRMA is primitive and visitors often do not see other people traveling along routes or camping. Personal benefits include opportunities to escape the stress of an urban environment, greater self-reliance as they explore a primitive wilderness area, improved outdoor skills, and the overall enjoyment of nature. Notably, this SRMA includes an important rock collecting area called the Hauser Geode

¹⁴ https://www.doi.gov/sites/doi.gov/files/uploads/mou_-_doi_and_state_of_calif_on_renewable_energy.pdf

Beds, which is also subject to a Memorandum of Understanding between the California Federation of Mineralogical Societies and BLM. Based on public comments, BLM incorporated the entire collecting area into the boundaries of the SRMA and included a management action in the overlapping ACEC for management of the area for rockhounding recreation activities, , giving certainty to this user group. *See*, DRECP BLM Land Use Plan Amendment Appendix B, p. 150, Appendix C, p. 51.

ii. Amargosa/Grimshaw SRMA

The Amargosa/Grimshaw SRMA is managed for passive recreation, giving priority to opportunities and resources associated with the Wild and Scenic Amargosa River, and the Old Spanish National Historic Trail. The SRMA calls to develop and manage facilities that provide visitors a safe non-intrusive experience in a remote and sensitive ecological area. Activities include hiking, running, equestrian use, bike touring, mountain biking, dual sport touring, 4x4 exploration, scenic touring, bird watching, photography, celestial observations, painting, study of nature and geology, geo-caching, rock collecting, picnicking, mine exploration, and historic recreations. A popular activity is stargazing because of support facilities in a remote area with dark skies. Visitors frequent the area for a deeper, immersive desert experience. Personal benefits range from exercise and fitness to self-discovery, confidence building, and feelings of self-worth, plus healing and meditation. This area provides outstanding environmental benefits with a tremendous amount of endemic, rare, sensitive, and endangered species. This is the largest and most undisturbed free flowing river in the Mojave Desert and supports a wide range of aquatic and riparian species benefiting an entire cycle of life producing clean air, water and scenic values. DRECP BLM Land Use Plan Amendment Appendix C, p. 75-76.

III. **IF THE BLM PROCEEDS WITH CHANGES TO THE DRECP, THERE MUST BE EXTENSIVE OPPORTUNITIES FOR PUBLIC PARTICIPATION AND BLM MUST COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT BY PREPARING AN ENVIRONMENTAL IMPACT STATEMENT.**

As shown above, BLM’s stated justifications for reopening the DRECP are unsupported, and are essentially arbitrary and capricious in light of the wealth of science and analysis underlying the decisions in the DRECP. Should BLM nonetheless proceed with an amendment process, the agency must provide sufficient opportunity for stakeholder engagement and complete the robust environmental analysis required by the National Environmental Policy Act (NEPA).

NEPA, 42 U.S.C. § 4321 *et seq.*, dictates that federal agencies take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, agencies are required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

Amending elements of the DRECP would have significant impacts across the 22.5-million-acre planning area that would require substantial analysis and justification. “The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c).

A. Public Participation.

In reviewing and commenting on NEPA documents, the interested public is entitled to accurate, “high quality” information, so that they can carry out the “public scrutiny” that is considered “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). NEPA requires federal agencies to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6(a).

The DRECP planning process involved public meetings, workshops and webinars that allowed for actual public input.¹⁵ There were many opportunities to submit public comments and recommendations both orally and in writing. The end result was a plan that has not been litigated and that the public is looking to help implement. To date, this new process has provided unacceptably short opportunities for comments to be submitted and BLM has not permitted public comments to be made orally during the scoping meetings. Requests to provide sufficient time for these comments have been submitted by numerous parties, including the undersigned and members of California’s congressional delegation¹⁶, but BLM has not responded. This approach is counter to how the DRECP was created.

To the extent BLM continues this process, there should be additional opportunities to provide comments to BLM prior to release of any draft amendments, including through extended scoping periods, public meetings and release of preliminary alternatives for comment.

B. Preparation of an Environmental Impact Statement.

BLM’s Notice of Intent for this potential amendment process indicates BLM may prepare an environmental assessment or an environmental impact statement (EIS). However, should BLM proceed with any amendment of the DRECP, the agency must prepare an EIS.

NEPA requires preparation of an EIS to evaluate the environmental consequences of a proposed action when that action may significantly impact the environment. 40 C.F.R. § 1501.4. The definition of “significantly” (set out at 40 C.F.R. § 1508.27) determines whether an EIS is required or if an environmental assessment (EA) can be prepared.

“Significantly,” as used in NEPA and defined in the NEPA regulations (set out at 40 C.F.R. § 1508.27 and excerpted in part below) requires considerations of both context and intensity:

¹⁵ See <http://www.drecp.org/meetings/>

¹⁶ See https://www.feinstein.senate.gov/public/_cache/files/9/7/97f29596-173d-422e-bf7b-0df06eebdf7b/8BB660BF2C84BF282C9CCCD5F7CAD031.03.21.2018-drecp-letter.pdf

Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality, depending upon the setting of the proposed action.

Intensity refers to the severity of impact and includes consideration of:

- **Unique characteristics** of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- The degree to which the effects on the quality of the human environment are likely to be **highly controversial**.
- The degree to which the action may establish a precedent for future actions with significant effects or **represents a decision in principle about a future consideration**.
- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or **may cause loss or destruction of significant scientific, cultural, or historical resources**.
- The degree to which the action may adversely affect an **endangered or threatened species** or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- Whether the action **threatens a violation** of Federal, State, or local law or **requirements imposed for the protection of the environment**.

Amending the DRECP meets the criteria for both context, given the impact on the affected region, and intensity, in light of the unique characteristics of the landscape, controversy associated with this action, adverse effects on endangered and threatened species and potential to conflict with BLM's obligations under the 2009 Omnibus and FLPMA and laws promulgated by the State of California to protect species. An EIS is unquestionably required if BLM seeks to amend the DRECP.

C. Range of Alternatives.

NEPA requires that agencies consider a range of management alternatives, which is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires agencies to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Northwest Env'tl Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions ‘involve[] unresolved conflicts concerning alternative uses of available resources.’ 42 U.S.C. § 4332(2)(E) (1982).” *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). This requirement applies equally to EAs and EISs. *Id.* at 1228-29; *see also Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002).

An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering

more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 1122-1123 (9th Cir. 2002) (and cases cited therein).

The requirement to evaluate an actual range of alternatives prevents the EIS from becoming “a foreordained formality.” *City of New York v. Department of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983). *See also, Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002). In recent cases, courts have found NEPA violations based on an agency’s failure to evaluate a conservation-oriented alternative. *See, e.g., New Mexico v. BLM*, 565 F.3d at 710-711 (Alternative considering closing Otero Mesa to oil and gas leasing must be considered as part of oil and gas amendment to governing land use plan); *Colorado Environmental Coalition v. Salazar*, 875 F.Supp.2d 1233, 1249-1250 (D.Colo. 2012) (BLM required to consider community alternative protecting Roan Plateau from surface disturbance).

If BLM moves forward with an amendment process, the agency must consider a range of options to address concerns – not just amending the DRECP. Further, a reasonable range of alternatives to fulfill the purpose and need of the DRECP should include consideration of additional protections. In the range of alternatives evaluated as part of the DRECP, BLM identified substantial additional lands that merited protection for conservation, including ACECs, wildlife management areas and LWCs. These and other additional conservation measures should be evaluated as part of the reasonable range of alternatives.

As an example, the Daggett Ridge LWC unit was evaluated and found to have wilderness characteristics but is not being managed to protect those values in the DRECP. BLM completed the inventory during the DRECP process and California Wilderness Coalition completed field work in the area to document threats to the area’s wilderness characteristics. The information was summarized and formally submitted on January 25, 2016, in connection with the West Mojave Route Network Project, highlighting the need to protect the area. A copy of this submission is included with these comments for evaluation and incorporated by reference. The Daggett Ridge LWC unit clearly merits protection and, with the issuance of the Supplemental Draft EIS for the West Mojave Route Network Project, remains at risk. If the agency proceeds to reopen the DRECP, then BLM should consider managing the Daggett Ridge area to protect its wilderness characteristics based on its own findings and the new information and analysis we are providing.

D. Justification for Changing Designations and/or Management.

BLM cannot justify amending the DRECP by pointing to general policy statements or mischaracterizing the decisions in the plan.

As discussed in detail above, management for conservation, recreation and renewable energy development were based on substantial analysis of values in the planning area and the likely impacts of conservation or development. If BLM seeks to change allocations, designations or management prescriptions, then the agency must justify such changes by highlighting new information, circumstances or scientific information.

Further, any changes must be supported by high quality science. NEPA requires that federal agencies “insure the professional integrity, including scientific integrity, of the discussions and

analyses in environmental impact statements.” 40 C.F.R. § 1502.24. Information regarding reasonably foreseeable significant adverse impacts that is essential to a reasoned choice among alternatives shall be included in an EIS if the costs of obtaining it are not exorbitant. 40 C.F.R. § 1502.22(a). In addition, regarding the content of an environmental analysis:

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.

40 C.F.R. § 1500.1(b). (emphasis added). The Data Quality Act and BLM’s interpreting guidance expand on this obligation, requiring that BLM ensure the “quality, objectivity, utility and integrity” of the information disseminated to the public.¹⁷

In addition, BLM must evaluate the impacts of changing the DRECP in the context of new information regarding resources and supporting science. As courts have noted, a federal agency must “be alert to new information that may alter the results of its original environmental analysis, and continue to take a ‘hard look at the environmental effects of [its] planned action.’” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000); quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). Consequently, updated inventories of lands with wilderness characteristics were not considered in the existing DRECP and must be taken into account before approving actions that could harm those resources. As a federal court in Utah stated, an updated inventory is:

a textbook example of significant new information about the affected environment (the **wilderness attributes and characteristics** of the Desolation Canyon, Floy Canyon, Flume Canyon, Coal Canyon, and Flat Tops unit) that would be impacted by oil and gas development; information that was not reflected in BLM’s existing NEPA analyses.

Southern Utah Wilderness Alliance v. Norton, 457 F. Supp. 2d 1253, 1264 (D. Utah 2006) (emphasis added). New information can also change the baseline against which impacts are evaluated. NEPA requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15; *see also*, *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process,” Consequently, “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.”)

BLM must also evaluate the information and science that were already compiled. For instance, the DRECP Databasin is a compilation of data, maps and GIS layers that support the decision in the plan.¹⁸ Further, there is a considerable administrative record that was generated in connection with preparation of the DRECP. BLM must substantiate any changes to the DRECP in relation to

¹⁷ Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L.No. 106-554, § 515. *See also*, Bureau of Land Management Information Quality Guidelines, available at http://www.blm.gov/nhp/efoia/data_quality/guidelines.pdf.

¹⁸ *See* <https://drecp.databasin.org/pages/how-gateway-organized-drecp>

the data, science and analysis underlying the DRECP; to ignore this record would be arbitrary and capricious. As parties who participated in all aspects of the development of the DRECP and continue to participate in its implementation, we incorporate our previous submissions by reference and request that BLM take those into account along with the rest of the administrative record.

We hope to see BLM acknowledge that the DRECP should be maintained and not amended. If BLM continues to evaluate amendments, we look forward to continuing to provide input and request that we be included in any subsequent updates.

Very truly yours,

The Wilderness Society

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