

**Audubon California * California Native Plant Society *
Center for Biological Diversity * Defenders of Wildlife *
Desert Protective Council * Mojave Desert Land Trust *
The Wildlands Conservancy * Western Watersheds Project**

July 2, 2009

Sent via U.S. Mail and electronic mail

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: 09-Renew EO-01/Renewable Energy Executive Order/Due date 7/2/09

Dear Sir:

On behalf of the undersigned organizations, we are writing to provide comments to the Renewable Energy Action Team (REAT) for consideration in developing the Desert Renewable Energy Conservation Plan (DRECP) as required by Executive Order S-14-08. Our organizations strongly support renewable energy production and utilization in California while protecting its unique and sensitive resources including, in particular, the California Desert Conservation Area (CDCA).

The California Desert is a unique and special environment, as recognized by Federal Land Policy Management Act in establishing the California Desert Conservation Area. The vast landscape is home to diverse biological communities, cultural sites, scenic and wild places, and other valuable areas which survive despite pressures from various human activities over the past century. The desert lands also potentially sequester carbon in the fragile desert crust, a benefit in the state's effort to reduce carbon emissions. These lands also are attractive for renewable energy projects, and have fueled a rush by companies to file applications on public lands for potential projects. The need to find alternatives to carbon based energy is great.

In California, we are moving forward to meet a Renewable Portfolio Standard of 33% by 2020, a goal which is widely supported as necessary to address climate change. Our groups strongly endorse increased conservation, energy efficiency and demand-side management actions of the sort that California has pioneered, but we recognize that, despite those efforts, it is likely that some utility scale projects will be sited in the desert, potentially as early as December 2010. It is of critical importance that they be sited appropriately.

To begin with, the DRECP must be created and approved as a Natural Community Conservation Plan (NCCP) pursuant to California Fish and Game Code sections 2800, et seq. The NCCP Act is the only conservation planning statute in current law that sets forth strong standards for

conservation, independent science, collaboration, and public participation. We would strongly oppose any efforts to put together some kind of artificial NCCP in which the California Energy Commission (CEC) is not subject to the requirements and permit conditions associated with receiving take authorization under the NCCP. We would question the biological and legal basis of any NCCP that relies upon the CEC promising to carry out a conservation strategy without any binding legal document such as a permit issued under Fish and Game Code section 2835.

More specifically, we would like to offer the following specific recommendations in response to the questions posed in the CEC public workshop notice:

1. Elements of the DRECP Planning Agreement (e.g., geographic planning area, description of covered activities, species and natural communities to be addressed, biological goals and objectives, process for scientific and public input, interim project review process, and commitment of resources).

Under the NCCP Act, the planning agreement sets forth the basic framework in which an NCCP is prepared. The NCCP Act requires that planning agreement must:

- establish the geographic scope of the plan,
- identify a preliminary list of species and habitats to be considered,
- identify preliminary conservation strategies,
- establish an independent scientific review process,
- establish an interim process during plan development by which projects can be reviewed for potential conflicts with the conservation goals of the plan, and
- establish a process for public participation.

Fish and Game Code § 2810.

We understand that a planning agreement is not the ultimate plan. However, that does not mean that planning agreements are in and of themselves unimportant. Indeed, planning agreements set forth key parameters of the planning process (e.g., the species to be researched and ultimately permitted for take, the planning area, the basic conservation goals, etc.) and set the tone for the process. In addition, planning agreements also detail the critical interim project review process, the scientific review process and the public participation process. Finally, since these documents are essentially contracts and thus binding on the signatories, the commitments made in a planning agreement create both the ceiling and the floor of the planning process. Rarely will plan participants exceed the commitments in a planning agreement. With that in mind, we offer the following comments as to what should be incorporated into the planning agreement:

a. The DRECP planning area should conform to the California Desert Conservation Area (CDCA) Plan as amended, and build upon the significant conservation designations and policies for public and private lands across the entire CDCA.

b. The DRECP should cover all aspects of renewable energy development including power generation, transmission, facility decommissioning, and site rehabilitation. In order to consider the entire California Desert through a unified process, the DRECP must be coupled with the requirements for a federal Habitat Conservation Plan thus requiring a close partnership with the U.S. Fish and Wildlife Service.

c. In addition to the CEC and DFG, the DRECP should include the BLM, the Department of Defense, and the relevant counties as plan participants. The BLM is the largest land manager in the desert and, as discussed below, is already undertaking an ambitious effort to identify areas of solar energy development. The Department of Defense also controls a significant amount of land that could be available for conservation and energy development. Finally, the counties are critical to this process as they permit wind and solar PV projects on non-federal land.

d. The DRECP should create a robust Steering Committee comprised of the plan participants (as discussed above) as well as other interested parties such as conservation non-profit organizations and tribes, including those that are stakeholders within the plan boundaries.

e. The DRECP should set forth a comprehensive process for public participation, including public workshops, availability of information and making Steering Committee meetings and other technical meetings largely open to the public. We believe an open, transparent process will lead to greater success and less opposition to a final product.

f. The DRECP should set forth a vigorous independent science process with multiple workshops on key issues. Sound science is an important component to this process. We would support and encourage hiring a desert science liaison to assist the DRECP in putting together and facilitating the independent science review process.

g. The DRECP should focus renewable energy development to the maximum extent possible on degraded and disturbed lands in order to maintain and enhance existing natural communities and their biological resources.

h. Some renewable energy project applications will be processed pending the completion of the DRECP as well as the broader federal zones established through the Solar Programmatic Environmental Impact Statement and decision process. Many of these are under consideration by BLM and the CEC and occur in areas with relatively high biological resource values. We believe the BLM and CEC need to be extremely cautious in processing these existing applications in the absence of a renewable energy-based conservation plan for the California Desert. We urge a two step interim process that identifies those projects that could move forward because of low potential for causing significant impacts to important biological resources and landscapes; and those projects with high natural resource impacts that should be placed on hold pending a determination of compatibility with DRECP goals and objectives.

i. The process for scientific and public involvement should result in draft documents that maximize the use and disclosure of existing data on species occurrence, species richness and species rarity. Where existing data are inadequate to support development of an effective, long-

term plan, the REAT should seek to acquire essential new data through subject-matter experts or through short-term contracts or purchase orders. A high priority should be data collection and analysis that leads to the identification of landscape-level wildlife movement and linkage corridors.

2. Critical natural resource conservation issues that should be considered when developing the DRECP.

Maintaining the abundance, diversity and viability of naturally occurring biological resources in the California Desert should be the basic goal of the planning process. This goal necessitates that conservation strategies be developed and applied on a landscape basis rather than on a single species approach. The California Desert has a rich assemblage of animals and plants that has undergone significant degradation over the past 150 years, beginning with excessive livestock grazing, then progressing to privatization and development, followed by expansion of transportation and utilities systems that supported growth of urban and industrial areas. Some plant and animal populations have suffered under the pressure of human development and their viability and long term existence is questionable in the absence of strong conservation intervention. The number of plant and animal species listed as threatened or endangered, being considered for such listing, or otherwise considered species of concern, is a strong indicator that considerable portions of the California Desert ecosystem are failing. We urge the REAT to use this planning process to significantly stabilize and improve the overall ecosystem and health of plant and animal populations while allowing for environmentally compatible renewable energy development.

The REAT should prepare a conservation plan that is based on landscapes or ecosystems within the California Desert that are sufficient in size and number to accommodate all species, allow for continuation of ecosystem processes, and make the conservation strategies sufficiently robust to withstand the effects of climate change. We urge the REAT to consider non-listed, native species as essential components of the California Desert landscape and not simply craft a plan that is narrowly focused on species that are listed or otherwise at risk.

We urge the REAT to pay particular attention to the adequacy of DRECP for the desert tortoise, Mohave ground squirrel, bighorn sheep, flat-tailed horned lizard and birds of prey.

3. Attributes that areas in the desert should possess to be considered for development.

Our organizations have developed criteria for use in identifying areas potentially suitable for renewable energy project development. These siting criteria – which are attached – should be included in the DRECP.

4. Attributes that areas in the desert should possess to be considered for long-term conservation.

California Desert lands possessing or supporting the following characteristics, or designations should be considered by the REAT for long-term conservation and off-limits to renewable energy development:

- Designated and proposed critical habitat for federal endangered and threatened species.
- Habitat for State threatened, endangered and proposed species determined essential for long term persistence and viability throughout their ranges.
- Habitat for federal threatened, endangered, proposed and candidate species considered essential for long term persistence and viability throughout their ranges.
- Habitat for BLM designated sensitive species determined essential for long term persistence and viability throughout their ranges.
- BLM wildlife habitat management plan areas identified in the CDCA Plan.
- BLM areas of critical environmental concern for biological resources identified in the CDCA Plan.
- All highly sensitive Unusual Plant Assemblages designated in the CDCA Plan.
- Upland habitat adjacent to seeps, springs or wetlands that supports high wildlife species diversity or values. We consider upland habitat with native vegetation within two miles of seeps, springs or wetlands to be in this category.
- Wildlife and plant movement and linkage corridors required to maintain viable populations of various wide-ranging species throughout their ranges. See discussion of conservation and protection movement corridors for species occurring in metapopulations, above.

5. How to ensure effective coordination with other ongoing processes involving renewable energy development in the Mojave and Colorado Deserts, e.g., the federal Solar Programmatic Environmental Impact Statement and the Renewable Energy Transmission initiative (RETI).

We understand that renewable energy production and transmission will occur in certain portions of the California Desert, and our goal in this regard is to have those necessary facilities located in areas which will not degrade or compromise the natural biological diversity, abundance and viability throughout the entire desert region. We will continue to be a constructive participant with the regulatory agencies and renewable energy companies in determining where renewable energy facilities should be considered and permitted and where they should not.

The renewable energy project management processes or efforts underway by state and federal agencies have been somewhat independent, resulting in what appears to be conflicting or counter-productive outcomes.

We offer the following basic recommendations for making the various elements of renewable energy planning and permitting into a more effective and efficient plan:

- The Solar PEIS and Wind PEIS should be coordinated with and integrated into the DRECP because the areas covered by right of way applications are approximately equal in number and size – approximately 500,000 each for wind and solar for a total of 1,000,000 acres)
- Renewable energy permit applications that meet certain criteria regarding environmentally acceptable locations and technologies in the California Desert should be given first priority (See, e.g., attached siting criteria memorandum). All others should be put on hold until an orderly and integrated planning and permitting process is in place.
- The REAT should refine the RETI reports as it crafts a DRECP that will effectively conserve multiple species and their habitats, and desert ecosystems on a desert-wide scale, prevent further fragmentation of remaining plant communities and wildlife habitats, and identifies suitable areas for renewable energy production and transmission. In addition, since RETI did not begin its planning process with a focus on degraded or disturbed lands, the DRECP would be able to address this omission through the planning process. We expect that the DRECP would significantly reduce the number of potentially suitable energy production and transmission facilities currently identified in the RETI draft Phase 2A report.

Conclusion

We appreciate the opportunity to provide these comments on the DRECP process and will continue to remain actively involved throughout all phases of the planning effort. Our goal in this regard is to assist the state and federal agencies develop the best possible plan in a timely manner that provides effective, long-term protective policies for preserving our biological resources in the California Desert while streamlining the permitting process for renewable energy projects.

Sincerely,

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