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California Energy Commission
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Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

docket@energy.ca.gov [Comments emailed February 23rd, 2015]

Dear DRECP Team:

The Pew Charitable Trusts appreciates this opportunity to provide comments on the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for the Desert Renewable Energy Conservation Plan (DRECP). Pew works with local and regional partner organizations throughout the West to engage in the BLM's resource management planning process. In addition to advocating for planning outcomes that protect wildlife habitat, quiet recreational opportunities, and ecologically significant areas through the land planning process, we also track the status and implementation of BLM policies that affect these outcomes.

We would first like to commend the Bureau of Land Management and State of California for embarking on a planning effort that seeks to protect the California's desert's unique assemblage of wildlife and wild lands while also carefully identifying places that may be appropriate for renewable energy development. The identification of Development Focus Areas in the DRECP, which significantly refines Variance Lands as defined by the 2012 Solar Energy Development Programmatic Environmental Impact Statement, is a positive step forward in reducing potential conflicts between renewable energy development and land conservation priorities. We are also keenly aware of the direction that Congress has provided the Department of Interior regarding the identification of National Conservation Lands in the California desert, per Public Law 111-11, and look forward to the agency's final determinations in this regard.

The DRECP provides a solid blueprint for how to move forward with balancing renewable energy development and conservation priorities in the California Desert. We believe that, once a number of important changes are made to the plan, California's wild lands legacy and energy security will both be strengthened. Below, you will find the major issues we address in our comments concerning the draft plan.

- **BLM is required to inventory and assess management for all lands with wilderness characteristics within the planning area.**

- **Lands with wilderness characteristics should be explicitly protected to retain wilderness values.**
- **Remove or redraw certain Development Focus Areas that overlap lands with wilderness characteristics to ensure that these lands fall outside the DFAs.**
- **Certain areas should be added to the National Conservation Lands system.**
- **BLM should explicitly acknowledge that additions to the National Conservation Lands system cannot be reversed through agency action and can only be undone by Congress.**
- **Retain ACEC designations where they overlap with National Conservation Lands.**
- **Apply a mineral withdrawal recommendation to National Conservation Lands and ACECs.**
- **Support for the complimentary nature of the DRECP and Senator Feinstein’s California Desert Conservation and Recreation Act of 2015**

BLM is required to inventory and assess management for all lands with wilderness characteristics within the planning area.

The Federal Land Policy and Management Act of 1976 requires the BLM to inventory and consider lands with wilderness characteristics 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. 2010). IM 2011-154 and Manuals 6310 and 6320 contain mandatory guidance on implementing that requirement. That guidance directs BLM to “conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA].” This includes the “necessary forms for each area” including photo logs, route analysis forms and inventory area evaluations (Manual 6310, Appendices A-D). Manual 6310 reiterates that, “[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands.” Manual 6320 requires BLM to consider lands with wilderness characteristics in land use planning, both in evaluating the impacts of management alternatives on lands with wilderness characteristics and in evaluating alternatives that would protect those values. Wilderness inventories are to be done on a *continuing* basis and relevant citizen-submitted data is to be evaluated (BLM Manual 6310.04(C)(1)).

BLM, at Vol. III.14 of the DRECP EIS, states that approximately 638,000 of public lands were found to have wilderness characteristics. BLM also states that only “those lands that could potentially be impacted within Development Focus Areas” (DEIS at III.14.2.3) were inventoried. While we recognize the importance of identifying LWCs that might be impacted by the designation of development focus areas, there are many lands outside of these areas that also need to be inventoried and considered for management as part of the DRECP planning process. For instance, prior to the publication of the DRECP draft EIS, the BLM received new information from the California Wilderness Coalition that shows a much larger extent of lands with wilderness characteristics. This information is presented in conformance with BLM Manual 6310 and obligates the agency to assess such data and, as appropriate, include the agency’s determinations regarding such within the DRECP planning process framework (see BLM Manual 6310.04(C)(1)).

We understand that the BLM is currently engaged in additional inventories of lands with wilderness characteristics within the DRECP planning area. We fully support the agency's actions to fully identify the extent of such lands, and urge the BLM to disclose its findings and management intent within a supplemental EIS or, if possible under existing analyses, the final EIS.

Recommendation: The BLM must complete a comprehensive inventory of lands with wilderness characteristics within the DRECP planning area, assess citizen information that conforms with BLM Manual 6310, make this information available to the public, and provide management alternatives for such lands within the DRECP NEPA framework.

Lands with wilderness characteristics should be explicitly protected to retain wilderness values.

The preferred alternative proposes to explicitly protect 298,000 acres of lands with wilderness characteristics, or roughly 47% of all lands identified as such – so far – in the DRECP planning area. We support the BLM's intention to protect lands with wilderness characteristics, though believe that many areas, some of which have not yet been inventoried by the agency, should be included in the final DRECP as additional lands protected for their wilderness characteristics.

BLM Manual 6320 states “Managing the wilderness resource is part of the BLM's multiple use mission.” By managing a significant portion of the lands identified to protect their wilderness characteristics and also incorporating management to avoid, reduce or mitigate for impacts, BLM acknowledges the significance of wilderness characteristics as an important value and multiple use. As BLM identifies additional lands with wilderness characteristics based on ongoing inventory and comments provided on its current inventory, we expect BLM to identify additional lands to be managed to protect those characteristics. BLM should maximize protection of this valuable resource. We believe that protection of wilderness characteristics can be effective as a standalone management approach but is also effective along with designation of ACECs, NCLs and other conservation-oriented designations, as well as portions of special and extensive recreation management areas.

Specific areas we recommend for protection of wilderness characteristics, including areas that have yet-to-be inventoried by the BLM are listed below. We incorporate by reference the California Wilderness Coalition's description and location of these areas:

- **Middle Knob** (currently acknowledged by BLM as having wilderness characteristics);
- **Riggs Wash** – Silurian Valley (currently acknowledged by BLM as having wilderness characteristics, see additional comments below regarding the presence of a Special Analysis Area);
- **Big Maria Mountains Wilderness Additions** (need to be inventoried by BLM for wilderness characteristics, see additional comments below regarding overlap with a Development Focus Area);
- **Danby Lake** (need to be inventoried by BLM for wilderness characteristics)
- **Iron Mountains/Cadiz Valley** (need to be inventoried by BLM for wilderness characteristics);

- **Kingston Range Additions and Riggs Wash** (former are currently acknowledged by BLM as having wilderness characteristics, the latter needs to be assessed based on new information provided by the California Wilderness Coalition);
- **Little Chuckwalla Mountain Wilderness Additions, north unit** (needs to be assessed based on new information provided by the California Wilderness Coalition);
- **Mule Mountains** (needs to be assessed based on new information provided by the California Wilderness Coalition, see additional comments below regarding overlap with a Development Focus Area);
- **Turtle Mountains Wilderness Additions** (needs to be assessed based on new information provided by the California Wilderness Coalition); and
- **McCoy Wash** (currently acknowledged by BLM as having wilderness characteristics, see additional comments below regarding overlap with a Development Focus Area)

Remove or redraw certain Development Focus Areas that overlap lands with wilderness characteristics to ensure that these lands fall outside the DFAs.

The BLM's Solar Energy Development Programmatic EIS (herein referred to as PEIS) released in October 2012 lists lands with wilderness characteristics as a screening criteria used to identify Variance Lands where development may or may not be allowed. Essentially, the PEIS strove to avoid conflicts with lands with wilderness characteristics and solar development, which we fully support. Unfortunately, the DRECP's identification of Development Focus Areas, which further refines the PEIS analysis, includes several conflicts with lands with wilderness characteristics. We strongly urge the agency to avoid all spatial overlap between lands with wilderness characteristics and Development Focus Areas. The areas where we recommend removing or changing Development Focus Areas boundaries include:

- The public lands identified by the California Wilderness Coalition adjacent to the **Big Maria Mountains Wilderness Area** are prime Sonoran Desert wild lands that host a healthy bighorn sheep herd. The southern and western portions of this area are slated as a Development Focus Area in the preferred alternative. These places have outstanding wilderness characteristics and wholly complement the rugged, natural values of the designated wilderness. We urge the BLM to remove the portions of the Development Focus Areas here that abut the designated wilderness and/or conflict with lands otherwise identified for the wilderness characteristics.
- The **northwestern bajada of the Mule Mountains** has been identified by the California Wilderness Coalition as having lands with wilderness characteristics, though is proposed as a Development Focus Area in the preferred alternative. While much of this Development Focus Area may be appropriate, we urge the BLM to remove the portions that overlap with citizen-identified lands with wilderness characteristics.
- The Palen Lake Development Focus Area includes almost 5000 acres of overlap with the California Wilderness Coalition's and BLM's lands with wilderness characteristics. The **McCoy Wash, Palen-McCoy, and East Palen Valley** wilderness units are either partially or wholly overlapped by the development area. While we believe that a portion or majority of this Development Focus Area may be appropriate for renewable energy, we urge the BLM to remove those areas with wilderness characteristics from the potential development footprint.

Furthermore, we note that the preferred alternative includes a Special Analysis Area that is overlaid with high priority conservation lands in the Silurian Valley (Riggs Wash unit). This valley, within which lie the majestic Avawatz Mountains and Kingston Range reside, contains intact wild places where renewable energy development should not be located. In the preferred alternative, a Special Analysis Area acts as a “donut hole” within the proposed National Conservation Lands and overlaps with lands identified for their wilderness characteristics, including the California Wilderness Coalition’s Riggs Wash unit. The final DRECP plan should remove the Special Analysis Area and add these public lands to the conservation reserve area and protect the lands with wilderness characteristics that occur there.

Certain areas should be added to the National Conservation Lands system

The Omnibus Public Land Management Act of 2009 (P.L. 111-11) made the BLM’s National Conservation Lands a permanent system of protected areas with the purpose to “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). As acknowledged in the draft plan at II.3.2.2.1, the Omnibus defines the lands to be included in the system as “public land within the California Desert Conservation Area 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.

We appreciate the BLM’s identification of proposed National Conservation Lands in the DRECP Draft EIS and believe that the preferred alternative provides a positive vision for protecting a network of public lands outside of previously designated conservation areas. There are, however, places that are left out of the preferred alternative and we believe the agency should add to its network of National Conservation Lands, primarily because of the wilderness values that they possess. These areas include:

- **Iron Mountains and Cadiz Valley.** This complex of wild lands is heralded as the largest remaining unprotected roadless area in California, exhibiting outstanding wilderness characteristics as documented by the California Wilderness Coalition. The area south of the Cadiz Dunes Wilderness Area and north of the Granite Mountains is currently proposed as an ACEC in the preferred alternative due to its wildlife habitat value. Within this complex exists almost 200,000 acres of citizen-identified lands with wilderness characteristics, including two Iron Mountain units and the Danby Lake unit. Classifying this large roadless area as National Conservation lands would, among other things, connect three large wild land complexes to the north, east, and south, providing contiguity and uniformity to the system of protected areas. We urge the BLM to include this area as National Conservation Lands in the final DRECP.
- **Sacramento Mountains.** This wild land complex southwest of the town of Needles contains about 100,000 acres of citizen-identified lands with wilderness characteristics and spans almost 3000 feet of elevation from the low desert floor near the railroad line southwest to the peak of the range. The preferred alternative inexplicably omits the majority of this area from any conservation classification, despite its outstanding naturalness, opportunities for solitude, and intact ecology. Other than the access road and

lands immediately encompassing the Needles airport, we strongly urge the BLM to include all of the public lands within these citizen-identified wilderness lands in the National Conservation Lands footprint of the final DRECP.

- **Bristol Lake.** This large, flat ephemeral lake north of Sheephole Valley Wilderness area, south of the evaporation ponds, and east of Amboy Road is a unique unroaded area of approximately 50,000 acres in size. The area provides visitors with an incredible opportunity to explore the flat, remote expanse of the California desert that bursts with life after monsoon rains. The preferred alternative does not provide any conservation classification for this area, despite being citizen-identified wilderness lands. The northern portion is classified as a Future Assessment Area. We strongly urge the BLM to include this area with the National Conservation Lands System and protect the area for its wilderness values, which would include the removal of the Future Assessment Area.
- We also urge the BLM to assess the appropriateness of adding other citizen-identified lands with wilderness characteristics to the National Conservation Lands system that are currently not afforded protection in the preferred alternative. Deserving desert wild lands such as the Valley Mountain, Vidal, and Whipple Mountain units – as identified by the California Wilderness Coalition – should be included as part of BLM’s National Conservation Lands legacy in the California Desert. We incorporate by reference the California Wilderness Coalition’s comments regarding these areas.

BLM should acknowledge that additions to the National Conservation Lands system cannot be reversed through agency action and can only be undone by Congress.

A plain interpretation of the 2009 Omnibus Public Land Management Act demonstrates that Congress did not intend or suggest that BLM’s identification and designation of National Conservation Lands in the California Desert Conservation Area should be ephemeral and exposed to administrative boundary changes at a later date.

The 2009 Omnibus provides that the National Conservation Lands “shall include each of the following areas administered by the Bureau of Land Management,” which explicitly includes “public land within the California Desert Conservation Area administered by the Bureau of Land Management for conservation purposes.” 16 U.S.C. § 7202(b). 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, such as wilderness, national monuments, national conservation areas, wild and scenic river segments, national scenic or historic trail segments, and other identified special areas. 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.”¹ Once again, this does not give the BLM unfettered authority to change the status of lands designated as part of the National Conservation Lands.

The 2009 Omnibus explicitly makes the National Landscape Conservation System permanent. Consequently, creating a category of designation within the National Conservation Lands that

¹ http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/wilderness_study_areas.html

can be administratively removed would undercut, and indeed contravene, the purpose of the legislation that BLM is fulfilling.

Recommendation: The 2009 Omnibus establishes the status of the National Conservation Lands units and does not envision the BLM being able to change that status. Therefore, once the agency designates lands within the CDCA as part of the National Conservation Lands, the BLM cannot change that status through land use plan revisions or amendments. Interpreting these designations otherwise would undermine the purpose of the National Conservation Lands. The fact that BLM is using the ongoing DRECP planning process to identify applicable lands does not mean that the designations are somehow subject to future planning or change the permanence of their status as part of the National Conservation Lands. As a result, we strongly urge BLM to expressly state within the DRECP that National Conservation Lands designations are permanent in the sense that these designations cannot be undone except through an act of Congress.

Retain ACEC designations where they overlap with National Conservation Lands.

The draft DRECP, at II.3.2.2.1.1.3, states that if there is overlap of NCLs and ACECs, “it is the BLM’s expectation that it will identify these areas solely as National Conservation Lands.”

Because of FLPMA’s strong direction towards the prioritization of ACECs and their growing role as a tool to protect ecosystem attributes at a landscape scale, it is prudent to retain their classification regardless of whether they overlap National Conservation Lands. FLPMA states that the agency “*give priority* to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3) (emphasis added). ACECs are areas “where special management is required (when such areas are developed or used or where no development 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.” *Id.* § 1702(a). In this sense, ACECs are complimentary to National Conservation Lands, especially where the agency has specific goals in mind to protect habitat for listed or special status species.

There are numerous examples of the BLM layering protective overlays, including ACECs within National Conservation Lands. These include areas within a similar ecotype, such as the Sonoran Desert National Monument where the Vekol Valley Grassland ACEC resides, or the San Pedro Riparian National Conservation Area, which also contains ACECs to protect specific ecological features.

As for management, we recognize the variability that occurs within ACECs depending on the specific values intended for protection. While National Conservation Lands generally have a similar management schema throughout, the layering of ACECs allows the agency to provide tailored management protections for the value that occurs within its boundaries. In instances where overlap between ACECs and National Conservation Lands occurs, the more protective management prescriptions should apply to the area in order to ensure the identified value(s) are appropriately conserved.

Recommendation: To comply with FLPMA and provide the agency with increased flexibility to protect specific and variable values across the DRECP planning area, the BLM should retain ACEC designations where they may overlap with National Conservation Lands.

Apply a mineral withdrawal recommendation to National Conservation Lands and ACECs.

Across the system of BLM's National Conservation Lands, varying management is applied depending on the resources that the designation is intended to protect, though certain activities, such as locatable mineral entry, are wholly acknowledged as a use that is not compatible with protecting the many resources that National Conservation Lands encompass. Unfortunately, the preferred alternative does not recommend mineral withdrawal for National Conservation Lands, potentially risking the integrity and health of these lands and departing from standard approaches that deter mineral entry within BLM's premier conservation system. We strongly support language related to mineral withdrawals in alternatives 2,3, and 4 which provides for a phased, eco-regional approach to processing mineral withdrawals within National Conservation Lands, with the caveat that all lands within the system are eventually covered by a withdrawal order. We believe this approach should also be applied to ACEC designations outside of National Conservation Lands where a withdrawal order has not yet occurred.

Recommendation: Subject to valid existing rights, the BLM should include a phased mineral withdrawal recommendation for all National Conservation Lands and other protective overlays where mineral entry is not compatible with the identified resources. Phased withdrawals should be completed within four years of the DRECP Record of Decision.

Support for the complementary nature of the DRECP and Senator Feinstein's California Desert Conservation and Recreation Act of 2015.

For certain areas of the DRECP planning area, Senator Feinstein has introduced legislation that would Congressionally designate two national monuments and additional wilderness lands, while also identifying certain areas appropriate for off-highway vehicle recreation. The Senator's legislation comprises a smaller, though no less important, proportion of lands within the desert. This legislative effort is similar to the DRECP in the sense that both initiatives acknowledge the importance of the desert's amazing natural and cultural resources, but differs from DRECP in the scope and extent of lands involved. Pew fully supports both Senator Feinstein's and the BLM's efforts, via the DRECP, to protect sensitive areas of the California desert.

The Pew Charitable Trusts looks forward to working with the BLM to bring a successful conclusion to this DRECP planning process. If you have any questions, please do not hesitate to contact us.

Best,



Ken Rait, Director
U.S. Public Lands Program