



March 22, 2018

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

Submit via email to: BLM_CA_DRECP@blm.gov

Re: Notice of Intent to Amend the California Desert Conservation Area, Bakersfield, and Bishop Resource Management Plans and Prepare Associated Environmental Impact Statements or Environmental Assessments

Dear Mr. Perez,

Introduction

Friends of the Inyo is a locally-based nonprofit conservation organization dedicated to the stewardship, exploration and preservation of the Eastern Sierra's public lands and wildlife. Established in 1986, Friends of the Inyo has become an active partner with the Bishop and Ridgecrest Field Offices of the BLM, the National Park Service and other public lands agencies in the California Desert. Friends of the Inyo became involved in the Desert Renewable Energy Conservation Plan (DRECP or Plan) when the organization provided comments on the draft Plan in February 2015, most notably concerning Development Focus Areas (DFA's), the National Conservation Land System (NCLS) and Areas of Critical Environmental Concern (ACEC's). We were also a stakeholder in Inyo County's Renewable Energy General Plan Amendment (REGPA)¹, for which we submitted comments on the Program Environmental Impact Report in January 2015.

The Eastern Sierra's iconic landscapes in Inyo and Mono Counties are home to unparalleled recreational opportunities, world-renowned cultural resources and many rare and sensitive plant and animal species. Friends of the Inyo's comments represent a local and regional membership of over 800 and thousands of supporters

¹ <http://www.inyoplanning.org/projects/documents/DRAFTProgramEnvironmentalImpactReport-InyoCountyRenewableEnergyGeneralPlanAmendment.pdf>

and volunteers who care about the landscapes and values of the Eastern Sierra and the California Desert.

The Amargosa Conservancy is committed to standing up for the wilds, waters, and communities of the Amargosa Basin and Eastern Mojave. For the last 15 years, we have used the tools of science, stewardship, and education to demonstrate the importance of this rare ecosystem and to preserve its character.

The Amargosa Basin is an ecologically unique area of the California desert, with the Mojave Desert's only free-flowing river. This place is host to dozens of endemic species who are critically dependent on the ecological health of the landscape. The Amargosa Conservancy approaches policy issues from a science-based viewpoint and supports balanced decision making and compromise. In 2015 we became involved in the planning process for the DRECP.

Consideration of Plan Amendments is Premature and Unnecessary

Both Friends of the Inyo and the Amargosa Conservancy are strongly opposed to any amendments of the DRECP. Any amendments to the Plan are unnecessary and unwarranted at this time. The Plan was finalized a mere 16 months ago. Implementation efforts are just beginning and projects have yet to be tested on the ground. Not only have no specific problems with the Plan emerged, there exists a range of tools available to BLM to solve issues of implementation and make project level decisions through administrative avenues without Plan amendments. Below, we address some specific concerns we are aware some may point to regarding the current version of the DRECP.

DRECP's Disturbance Caps and Conservation Management Actions Do Not Unduly Burden Project Development. Disturbance caps (DC's) and Conservation Management Actions (CMA's) are the DRECP's ACEC and NCLS conservation delivery mechanism – a critical component to protecting the resources identified by BLM as needing protection and ensuring their management prescriptions. We want to remind BLM that DC's and CMA's only apply to permitted projects. They do not and cannot prevent projects from occurring but simply, in some cases, trigger the requirement of mitigation measures.

DRECP's Designation of California Desert National Conservation Lands (CDNCL's) Are Appropriate and Desirable. Designation of these lands was required by the Omnibus Public Lands Act of 2009, and they are now part of BLM's National Conservation Lands. Per the language in the Record of Decision, these designations are permanent and cannot be reevaluated through a planning process (ROD, Sec. 1.4 Page 10):

The Omnibus Act provides for permanent inclusion of these lands in the NLCS, and therefore, can only be removed from the NLCS by an act of Congress. These lands cannot be removed from the NLCS through a land use plan amendment.

BLM is obligated, under the FLPMA, the Omnibus and the agency's policy and guidance, to manage these lands to protect their conservation values above all other uses. The purpose of formalizing the National Conservation Lands in the Omnibus was to make a system that had only existed previously as an administrative structure, into something permanent. The legislation explicitly makes both the National Conservation Lands permanent and identifies its components as permanent designations. As such, it would be an illegal act for BLM to modify or rescind the CDNCL's. Of the roughly 14,000 comments received during the DRECP NEPA process, most were in favor of NCLS designations and many made specific comments on places for inclusion. Furthermore Inyo County supported the NCL's within the County, provided mineral rights remained preserved (which they now are with the lifting of the mineral segregation).

Additionally, the public lands encompassed by conservation designations serve the dual purpose of helping to remove pressure, particularly on private lands, to accommodate mitigation for residual impacts on public and private lands including renewable energy and related projects (substations, transmission, etc.). Renewable energy companies and counties themselves requested that the BLM use the extensive public lands in the desert to help accommodate needed mitigation for disturbance activities on private lands.

DRECP's ACEC Designations are Appropriate, Science-Based, and Supported by the Public. The Federal Land Policy and Management Act (FLPMA) obligates BLM to "give priority to the designation and protection of areas of critical environmental concern (ACEC's)." 43 U.S.C. § 1712(c)(3). BLM identified and designated 134 ACEC's under the DRECP. These areas exhibit a wide-range of important historic, cultural or scenic values, fish and wildlife resources, and other natural systems and processes found in the desert. In designating these areas as ACEC's, BLM acknowledged that these areas require special management. ACEC's are considered unique areas where special, individualized management is necessary "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). As a result, in order to meet its obligations under FLPMA, BLM must prioritize the management prescriptions for designated ACEC's.

The BLM decided after public comment and discussions with stakeholders, to institute stronger disturbance mitigation standards for all ACEC's. We support these disturbance mitigation measures in their current form and believe they were backed by scientific information on individual unit resource needs, sensitivity to impacts, and current landscape conditions as explained in detail in FEIS Appendix L. The overlap of ACEC's with congressionally designated WSA's in the Owens valley was a well thought out strategy to allow BLM to protect the defined resources and identify any special management needs in the event of future congressional release. There is no new information since the ROD was signed to indicate changes need to be made

to ACEC's designated through the DRECP, and the BLM has provided no justification for doing so.

DRECP Provides for Development Focus Areas Sufficient to Meet California's Renewable Energy Needs. The state guidance cited by BLM as justification for reopening the DRECP states that California governor Brown mandated 50% of California's energy production to be from renewable energy resources by 2015. The careful crafting of the DRECP's DFA locations and boundaries was based on many years of science, negotiation and compromise. The California Energy Commission, a key cooperator with BLM in the development of the DRECP, has publically stated that the 388,000 acres available in DFA's and 40,000 of variance lands for renewable energy are more than adequate for meeting the state's renewable energy goals. The state wants the DRECP to be implemented and work towards achieving these energy goals. Furthermore, we do not believe it is the true intent of this administration to increase or even promote renewable energy production, but rather to open up the desert to other traditional forms of energy production and resource extraction. Unfortunately, Executive Order 13783 fails to recognize the role the protected lands of the California desert play in the state's multi-billion dollar outdoor economy. The economic growth brought to rural desert communities by planning processes such as the DRECP cannot be overstated. Additionally, the Executive Order directing identification of so-called "burdens" on energy development do not usurp BLM's obligations to protect biological, historical and cultural resources.

DRECP Does Not Burden Development of Broadband Services. For BLM to adhere to the President's Executive Order on Streamlining and Expediting Requests to locate broadband telecom facilities in rural America, which directs Federal agencies: "... to reduce barriers to capital investment, remove obstacles to broadband services, and more efficiently employ Government resources" in order to foster rural broadband infrastructure projects" a Plan amendment process would be necessary only *after* an analysis is completed and specific recommendations are made that require a Plan amendment. There are different needs for analysis depending on the facilities or equipment needed for a project and the places where siting is occurring (i.e. burying cable in an already disturbed area such as a road or siting a tower in a raptor ACEC). A Plan amendment is unnecessary at this time because these analyses have not been done. Further, issues of right of ways should be dealt with through BLM headquarters, as this is where right of way regulations for telecom are promulgated. The DRECP did not change ROW requirements for telecom. There is also no general prohibition on rural wireless broadband infrastructure in Conservation Areas; however, some individual units may have limitations, as they should to protect the resources identified in the designation. We do not view these limitations as creating barriers or obstacles to broadband services.

The DRECP changed certain Visual Resource Management (VRM) Classes to better protect visual resources in conservation areas. However, VRM classes are

informational in nature and provide the basis for considering visual values in the RMP process. They do not establish management direction and should not be used as a basis for constraining or limiting surface disturbing activities. Thus, changes to classes do not result in a prohibition on siting. Revisiting the argument that DRECP has not been tested yet on the ground, there is currently no example of a telecom ROW application that has been denied due to the change in VRM classifications in the DRECP. Lastly, communities in eastern Inyo County do not want broadband brought to their community and the BLM's decisions on broadband permitting should consider the desires of these surrounding communities.

No Plan Amendments are Necessary to Facilitate Special Recreation and Extensive Recreation Management Areas. The Notice of Intent specifies BLM would like comments on opportunities for "increased recreational and off-highway vehicle (OHV) access". This indicates a false perception there was not enough land for OHV recreation designated in the DRECP. The DRECP allocated 2,691,000 acres of Special Recreation Management Areas (SRMA's) and 903,000 acres of ERMA's (Extensive Recreation Management Areas) (ROD pg 41 table 2a), which recognizes the importance of recreation in the California desert. Both these designations grant priority to recreation, in particular OHV use. The California Off-Road Vehicle Association has stated they were listened to in the creation of the first plan, and that revisiting it might be complicated. All route/road decisions will be left to travel management plans that are tiered under BLM's CA Desert Conservation Plan, which the DRECP amended. Furthermore, the CDNCL's are also open and used for OHV and other forms of recreation. These existing designations should be retained as set forth in the DRECP to provide recreation users of all interests with certainty regarding their experiences in the area.

Conclusion

Friends of the Inyo and the Amargosa Conservancy recommend the BLM keep the DRECP as is, and choose to have stakeholder working groups, as recommended by Inyo County, where we can identify issues of implementation together. Regardless of the decision to move forward with this approach or with Plan amendments, adequate public participation is required and BLM must adhere to NEPA regulation. Since any changes to the DRECP will have a significant impact on the environment, BLM must prepare an environmental impact statement in connection with this process; an environmental assessment will not be sufficient and cannot be used. Consistent with the collaborative nature of this plan we are eager to engage with BLM to clarify issues around implementation.

Respectfully Submitted,



Jora Fogg

Policy Director
Friends of the Inyo



Tanya Henderson
Executive Director
Amargosa Conservancy