Appendix D

Comments and Responses to Comments

Appendix D.1

Introduction to Comments and Responses Appendix

Appendix D. Comments and Responses to Comments

D.1 Introduction to Comments and Responses Appendix

The Final EIR includes the Oberon Draft EIR (August 2021) as revised, comments received on the Draft EIR, and responses to those comments. The Final EIR has been prepared pursuant to CEQA, Public Resources Code section 21000 et seq., and in accordance with the Guidelines for the Implementation of CEQA, California Code of Regulations, tit. 14., section 15000 et seq., Receiving and responding to comments on the Draft EIR is an essential part of the environmental review process, with comments and responses becoming part of the Final EIR. The Colorado River Basin Regional Water Quality Control Board (RWQCB) will determine whether to certify the Final EIR and whether to issue a Waste Discharge Requirements permit to the Applicant.

D.1.1 Organization of this Appendix

This Appendix is organized as follows:

- Section D.1, Introduction to Comments and Responses Appendix
- Section D.2, General Responses to Common Comments
- Section D.3, Comment Letters
- Section D.4, Responses to All Comments

Information on BLM's NEPA process, including the Oberon Environmental Assessment, Plan of Development, and associated appendices can be found on the BLM's Oberon Project ePlanning website at: https://go.usa.gov/xfdH5.

D.1.2 Summary of Comments Received

This section presents responses to the comments received during the public review period for the Oberon Renewable Energy Project Draft EIR (August 13 to September 30, 2021). RWQCB received 48 public comments from the various State agencies, organizations, tribes, and the public.

Table D-1 lists the persons and agencies that submitted comments on the Draft EIR. The individual comments are numbered, and responses immediately follow the comments. It is important to note that only the substantive comments raised on the merits of the environmental analysis are identified, numbered, and responded to, while comments such as those related to the commenter's interest in or opinions about the project, or a summary of the project itself were noted but not included. If revisions were made to the EIR based on the comments, the revisions are summarized with the response to the specific comment and are indicated in the text of this Final EIR with ~~strikeout~~ for deletions of text, and in <u>underline</u> for new text.

Table D-1. Comments Received on the Oberon Draft EIR

Commenter	Date	Comment Set
Public Agencies		
California Department of Fish and Wildlife	9/30/21	A1
Groups, Organizations & Companies		
Friends of the Desert Mountains	9/13/21	B1
Mojave Desert Land Trust	9/15/21	B2
Desert Tortoise Council	9/18/21	B3
California Native Plant Society, California Wilderness Coalition, Center for Biological Diversity, Defenders of Wildlife, Mojave Desert Land Trust, Sierra Club	9/27/21	B4
Basin & Range Watch and Western Watersheds Project	9/27/21	B5
Audubon	9/27/21	B6
Private Citizens		
Form Letter – Sierra Club San Gorgonio Chapter (35 commenters)	various	C1
Thomas Budlong	9/11/21	C2
Katie Quint	9/12/21	C3
Steve Bardwell	9/12/21	C4
Robert Taylor	9/14/21	C5
Robin Kobaly	9/14/21	C6
Tribal Governments		
Colorado River Indian Tribes	9/24/21	D1

Recipients of the Final EIR include the commenters listed in Table D-1. The Final EIR will also be sent to the State Clearinghouse and posted on the project website at http://www.aspeneg.com/oberon-renewable-energy-project/.

The following individuals signed a Form Letter (Comment Set C1) regarding potential impacts of the project and support for an alternative that does not require a Land Use Plan Amendment.

- Melodye Allen
- Mary Ames
- Leslie Appling
- Ron Askeland
- Jessica Barlow
- Hugh Bialecki
- Valerie Blain
- Deidre Braun
- Joyce Burk
- Susan Calvert
- Megan Close
- Kris Cordova
- Alison Denning
- Stephen Falgout
- Shirley Harris

- Christine Hayes
- Anne Henny
- Brendan Hughes
- Mark Jenne
- John Kerby
- Georgia Labey
- John Livingston
- Erika Mann
- Jayne Martin
- Joseph McDonough
- Dianna McNair
- Pamela Newcomb
- Sofia Okolowicz
- Matthew Ramirez
- Sheridan Sonne Rice
- Shaul Rosen-Rager
- Joan M. Scott
- W. Alex Sheafe
- Janet Wheeler
- Jenny Wilder

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Appendix D.2

General Responses to Common Comments

D.2 General Responses to Common Comments

This section presents detailed responses to comments that were made by many commenters. General Responses address the following topics:

- GR-1. CDCA LUPA and Impacts to Desert Dry Wash Woodland
- GR-2. DFA Development Feasibility
- GR-3. Northern Parcel Group (Original Application)
- GR-4. Multi-species Linkage Corridor
- GR-5. Adequacy of Environmental Documents

D.2.1 General Response GR-1: CDCA Land Use Plan Amendment and Impacts to Desert Dry Wash Woodland

Many commenters expressed concern about the proposed project-specific land use plan amendment (LUPA), which may be required to permit impacts to desert dry wash (microphyll) woodland and its buffer that would not qualify as "minor incursion."[1]

The Oberon Project is located entirely on BLM-administered public lands. The BLM's responsibility for management of public lands and a determination of whether to require and/or issue a project-specific LUPA is outside of the scope of CEQA and the RWQCB's jurisdiction. However, information on BLM, compliance with Desert Renewable Energy Conservation Plan (DRECP) Conservation and Management Actions (CMAs), and the National Environmental Policy Act (NEPA) process has been included herein as it relates to impacts to microphyll woodland.

DRECP CMAs Compliance

As part of the Federal Land Policy and Management Act (FLPMA), Congress designated the California Desert Conservation Area (CDCA) within which the Oberon Renewable Energy Project is located. The BLM has a responsibility under FLPMA and the management principles of the CDCA to act as a steward for the development, conservation, and protection of federal lands. The BLM implements multiple use principles and recognizes, among other values, the Nation's need for development of renewable energy from the public lands. Section 501(a)(4) of FLPMA specifically authorizes the BLM to issue right-of-way (ROW) grants for the generation, transmission, and distribution of electric energy; this authorization would also be

[1] The DRECP Glossary of Terms defines "minor incursion" as small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.

consistent with the Development Focus Area (DFA) within which the proposed project is located.

A Draft Environmental Assessment (EA) was prepared by the BLM separately to disclose impacts of the proposed project per NEPA. The EA tiers to the DRECP Final Environmental Impact Statement (FEIS). The FEIS supporting the DRECP Record of Decision (ROD) comprehensively evaluated utility-scale renewable energy development in the California desert at a landscape level including the DFA where the project is located (see General Response GR-2). The DRECP FEIS covers a full range of impacts on all resources potentially impacted by renewable energy development. The DRECP FEIS and LUPA included Conservation and Management Actions (CMAs) designed to reduce the effects of development on sensitive resources as well as highlighting other types of mitigation that might be required to further reduce impacts.

Solar projects in a DFA that are consistent with CMAs specified in the DRECP LUPA do not require a land use plan amendment for development. However, if a project is not consistent with all the CMAs specified in the DRECP then a project-specific LUPA to the CDCA, as amended, would be required. As part of its project review process, BLM will be making the determination of whether or not a project-specific LUPA is required. BLM's determination will be based on whether or not the intent of the DRECP CMAs for resource protection have been met and the function of the habitat has been maintained.

The Plan of Development (POD) (Appendix C in the POD; IP Oberon, 2021[2]) includes the text of each applicable CMA that pertains to impacts and setbacks from desert dry wash woodland as well as a discussion of the Oberon Project's compliance, including the Applicant's proposed 5:1 mitigation of impacts to the desert dry wash woodland (DDWW) buffer. Applicable CMAs include:

- CMA LUPA-BIO-SVF-6 requires that impacts to microphyll woodland be avoided, except for minor incursions.
- CMA LUPA-BIO-RIPWET-1 similarly requires that developers avoid a variety of riparian and wetland vegetation types and related features "to the maximum extent practicable," allowing only minor incursions.
- LUPA-BIO-RIPWET-1 further requires a 200-foot setback from microphyll woodland to avoid and minimize adverse effects.
- CMA LUPA-BIO-3 establishes the measurement guidelines for setbacks from sensitive resources, including riparian vegetation (i.e., microphyll woodlands) (it does not, as represented in the EA, require avoidance to the maximum extent practicable, except for allowable minor incursions).

The DRECP CMAs are applied to mitigate project related impacts on specific resources. Several of these CMAs contain exemptions to required setbacks or avoidance measures

[2] Oberon Renewable Energy Project. https://go.usa.gov/xfdH5.

using terms such as “to the maximum extent practicable” or “except for minor incursions.” BLM’s evaluation of the CMAs indicates that impacts to microphyll woodland in a limited set of circumstances could be considered by BLM in conformance with the land use plan provided certain criteria are met to maintain the intent of resource protection under the CMAs.

Since publication of the Draft EIR, the Applicant has proposed additional offsite mitigation for the indirect impacts to 138 acres of solar panel development that would be within the 200-foot DDWW buffer area. The Applicant will mitigate these indirect (buffer) impacts with higher value offsite compensation lands at a 5:1 ratio, in addition to offsite compensation at a 5:1 for direct impacts to microphyll woodland as required by CMA LUPA-BIO-COMP-1. Using aerial photo interpretation with field spot verification, the compensation land management company, Wildlands, Inc., was able to preliminarily conclude that up to 1,245 acres of microphyll woodlands are present on the mitigation properties, which is enough to fully mitigate the project’s direct and indirect impacts at a ratio of at least 5:1. Using the DRECP planning layer for microphyll woodlands, as many as 2,600 acres of microphyll woodlands may occur on the mitigation properties, enough to mitigate the project’s direct and indirect impacts at a greater than 15:1 ratio.

In addition to offsite compensation, implementation of project-specific mitigation measures and DRECP CMAs would maintain the biological and hydrological function of the onsite habitat. The project was designed to strategically avoid the largest, most intact areas of microphyll woodlands and wildlife linkages that are correlated with significant surface water flows during large storm events. The total direct impacts to microphyll woodland (less than 100 acres) include impacts to many small, isolated fingers of microphyll woodlands that are not correlated with important surface hydrology. To comply with the DRECP CMAs, the Applicant must demonstrate to BLM’s satisfaction that it has avoided DDWW and the 200-foot buffer to the “maximum extent feasible.” That is, any further reduction to the distance between solar trackers would exclude the use of construction machinery between rows and an unsafe working space for multiple personnel; thus, the only remaining option to reduce incursions into the setback would be to further reduce the capacity of the project by removing solar photovoltaic modules.

As part of the NEPA and FLPMA process outside of CEQA, BLM will consider the Applicant’s proposed mitigation and avoidance package to offset direct and indirect impacts to desert dry wash woodland in making its determination as to whether or not a project-specific LUPA would be required.

Alternate Mitigation Strategies

The EIR includes descriptions of the following proposed alternate methods and mitigation strategies, which meet the purpose and objectives of the CMAs and “protect the function and value of the resource.”

- **Efficient Design within a DFA.** As discussed in General Responses GR-2 and GR-3, the project has been proposed in a DFA targeted for renewable energy development and it has been strategically designed to avoid the largest, most intact areas of microphyll woodland and other vegetation types. The proposed project represents a land-efficient design (efficient solar PV layout at 5.4 acres per megawatt, in comparison to the industry standard, at 7 acres per megawatt).
- **Effective Avoidance of Contiguous DDWW Habitat.** The project design avoids large contiguous swaths of DDWW that maximize opportunities for critical north-south wildlife movement through the project site and through the underpasses under Interstate 10 (Figure 2-6, Fencing Plan, in EIR Appendix B), and that preserve most occurrences of desert tortoise and other sensitive wildlife signs (see Appendix F in the POD; IP Oberon, 2021).
- **Setbacks from Highest Quality Habitat Areas**. Development areas were designed to be set back from microphyll woodland habitats that provide important hydrologic functions within the application area. The areas avoided by the project have significant increases in surface flows compared to the areas of direct impacts (POD Appendix CC in IP Oberon, 2021). In coordination with USFWS, the development footprint was refined to avoid desert dry wash woodland areas with a minimum 50-foot and average of 134-foot buffer between such areas and the nearest solar panels, rather than the 200-foot buffer required by the LUPA-BIO-RIPWET-1 CMA. While the proposed buffer averages less than 200 feet, which was identified for the DRECP based on a large-scale analysis, site specific buffer areas that were delineated at 50 feet were determined to have lower habitat quality, whereas areas delineated with over 200-foot buffers had higher quality and function. Further, in consultation with BLM and stakeholders, the Applicant has proposed additional mitigation for indirect impacts to desert dry wash woodland from panel development within the buffer areas (138 acres) at a ratio of 5:1.
- **Maintenance of Resource Function**. Per CMA LUPA-BIO-SVF-6, the purpose of the buffer is to maintain the function and value of identified resource features. The role of the proposed buffer in reducing indirect impacts to adjacent DDWW habitat during temporary construction would be retained. Implementation of mitigation measures related to revegetation (MM BIO-5) and reducing dust (MM AQ-1), invasive weeds (MM BIO-4), noise and vibration, night lighting, and trash (MM BIO-8) would support the functions of the buffer where the 200-foot setback is not achieved. Further, the Applicant is proposing additional mitigation for indirect panel impacts within the buffer areas (138 acres) at a ratio of 5:1 (MM BIO-6b, Compensation for Desert Tortoise Habitat Impacts). After construction, impacts and activity in the buffer would be minimal, related to long-term O&M maintenance of solar panels.
- **Development of Isolated Habitat Areas**. After the DDWW buffer was delineated for the project, neighboring DDWW avoidance areas were combined to maintain the larger swaths of higher quality DDWW. Approximately 90 acres of remaining DDWW “islands”

were added to the solar panel development footprint, as their function would be compromised by "edge effect" and being surrounded by the solar facility and isolated from other habitat areas in the project footprint.

- **Ensuring Wildlife Movement**. Installation of wildlife friendly fencing (EIR Section 2.2.3.3, Figure 2-6) would allow movement of small terrestrial wildlife throughout those portions of the project area during operation. Temporary desert tortoise exclusion fencing would be modified or reconfigured after construction, after vegetation is substantially reestablished within the array areas in accordance with the Revegetation Plan. Wildlife friendly fencing would contribute to maintaining the function of DDWW linkage habitats and the long-term viability of small terrestrial wildlife populations.
- **Protection of Habitat from Unauthorized Recreation Use**. Where wildlife friendly fencing is proposed, cattle fencing would be installed across undeveloped open desert dry wash woodland segments along BLM Open Route DC379 to discourage off-highway vehicle (OHV) use in high value DDWW habitat areas.
- **Concentration of Development**. The proposed project concentrates development on 2,700 acres of land (including nearly 90 acres of DDWW) at a 47 percent ground-coverage ratio, while avoiding over 1,200 acres of microphyll woodlands and an additional 1,100 acres of desert pavement and creosote bush scrub vegetation.
- **Valuable Compensatory Mitigation Lands Permanently Protected**. The project's proposed compensatory habitat package includes approximately 6,200 acres of off-site habitat. The microphyll woodland throughout the project site contains a high percent cover of invasive (non-native) plants, namely Sahara mustard, which is primarily due to disturbed lands and roadways across and surrounding the project area. On the other hand, the remote nature of the mitigation properties have revealed very low anthropogenic impacts such as trash, OHV use, evidence of dispersed camping, or invasive species. These lands would be permanently protected under a durable, perpetual conservation easement, including adoption of a long-term management plan and establishment of a non-wasting endowment.

EIR Significance Conclusion

Desert dry wash woodland has been avoided to the maximum extent practicable and approximately 1,200 acres within the application area would be avoided through project design. Direct and indirect impacts to DDWW habitat would be minimized with implementation of mitigation measures (see EIR Section 3.4.7) and applicable DRECP CMAs, and loss of DDWW would be compensated offsite at a ratio of at least 5:1. As demonstrated through the practices described above, the proposed project has been carefully sited, designed, and mitigated, in coordination with the RWQCB, BLM, and resource agencies to provide alternative methods to meet the purpose and objectives of the DRECP CMAs and reduce potential impacts to desert dry wash woodland to a less than significant level in the CEQA EIR.

Cumulative Impacts

EIR Section 3.1.2 (Cumulative Scenario) describes the cumulative methodology and scenario and presents a comprehensive list and description of all past, present, and reasonably foreseeable actions for cumulative effects that apply to all alternatives and for all resource impacts. Direct, indirect, and cumulative impacts from the proposed project are detailed under 17 different issue areas in EIR Chapter 3.

Section 3.4.6 of the Final EIR describes by resource type that cumulative impacts of the projects identified in the cumulative scenario to biological resources would be cumulatively significant. However, with avoidance through project design and implementation of mitigation measures and DRECP CMAs, the Oberon Project's contribution to cumulative impacts would not be considerable.

That is, for the project, MMs BIO-1 through BIO-14 (see EIR Section 3.4.7) would be implemented to minimize and compensate for its project-specific impacts as well as its contribution to regional cumulative effects to vegetation and wildlife resources, including sensitive habitat. These mitigation measures would be implemented along with DRECP CMAs and project design to minimize impacts to sensitive habitat by avoiding most of the desert dry wash woodland. Because the Oberon Project would not significantly affect the overall function of the desert dry wash woodland in the area for the reasons described above and in EIR Section 3.4.5, direct and indirect impacts would be compensated at a 5:1 ratio, and it is assumed that the other projects would comply with the DRECP CMAs and undergo their own CEQA and NEPA reviews with implementation of mitigation as needed, the project's incremental contribution to cumulative impacts to sensitive vegetation and habitat, including desert dry wash woodland would be less than significant and not cumulatively considerable.

Compensation for Impacts to Buffers

Compensation in the DDWW buffer area is not required under the DRECP CMAs. The buffer is not sensitive habitat; its value comes from the ways in which it protects other adjacent habitat (i.e., DDWW). However, as described above, the Applicant is proposing additional mitigation for panel development impacts within the buffer areas (223 acres) which constitute a potential indirect impact desert dry wash woodland habitat at a ratio of 5:1.

Setting Precedent

As described above, BLM will consider the Applicant's proposed mitigation and avoidance package to offset direct and indirect impacts to desert dry wash woodland in making its determination as to whether or not a project-specific LUPA would be required. This determination will consider the Applicant's recent proposal for additional mitigation of indirect (buffer) impacts at a 5:1 ratio (since the time of the Draft EIR publication), implementation of project-specific mitigation measures, as well as their demonstration that they have avoided DDWW and the 200-foot buffer to the "maximum extent feasible". BLM will make determination if a project-specific LUPA is required based on whether or

not the intent of the DRECP CMAs for resource protection have been met and the function of the habitat has been maintained. Further, the EIR has concluded that there would be no significant unmitigable impacts to biological resources due to construction, operation, and decommissioning of the Oberon Project (see General Response GR-5). See Section 3.4.5 of the EIR for a description of CEQA conclusions related to biological resources.

Commenters also expressed concern about whether BLM's approval of a project-specific LUPA may establish a precedent for other developers to make similar requests to impact DDWW habitat. As noted above, BLM will make the determination of whether or not a project-specific LUPA is required based on the Applicant's mitigation and avoidance package as presented above. No revisions are proposed to the DRECP LUPA itself that would affect the application of the DRECP LUPA to future projects. If a LUPA is required for the Oberon Project, it would be a project-specific LUPA applicable only to the Oberon Project and would not affect other projects.

The CEQA Guidelines do provide that "[w]here an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project." (CEQA Guidelines, § 15165.) A project-specific LUPA; however, does not set a precedent for any future actions with regard to the DRECP. When it adopted the DRECP, BLM did not, nor could it, relinquish its authority under FLPMA to dynamically manage public lands for their highest and best use. There are very few, if any, steps that BLM (as opposed to Congress) can take that permanently encumber public land. In continuing to exercise its authority to conduct plan maintenance and plan amendments, BLM would not be acting inconsistent with the DRECP.

The Oberon Project more specifically does not undermine the objectives of the DRECP LUPA, because it is located in a DFA, would fully comply with a strict interpretation of 118 out of 121 applicable CMAs, and would meet the intent of the remaining three CMAs by largely complying with the CMA requirements and adding supplemental measures to ensure that the biological values guarded by the CMAs are protected.

D.2.2 General Response GR-2: DFA Development Feasibility

Commenters suggested development in other areas within the East Riverside Development Focus Area (DFA) and/or other DFAs within the DRECP Planning Area. Both private and federal land alternatives in the project area were considered and eliminated from full consideration in EIR Section 4.4 (see also Section ES.6.2). The EIR concludes that an alternative site elsewhere on BLM-managed lands would not present significant environmental advantages over the proposed project and has potential feasibility issues associated with site control.

The DRECP LUPA is administered by BLM and has two primary goals. One is to provide a streamlined process for the development of utility-scale renewable energy generation

and transmission in the deserts of southern California consistent with federal and state renewable energy targets and policies. The other is to provide for the long-term conservation and management of special-status species and desert vegetation communities, as well as other physical, cultural, scenic, and social resources within the DRECP Plan Area using durable regulatory mechanisms. As a result, DRECP planning decisions, adopted as an amendment to the CDCA Plan via the DRECP ROD, were "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."

The DRECP LUPA and supporting Final Environmental Impact Statement (FEIS) identified lands within the California desert that would be appropriate for conservation and lands that would be appropriate for renewable energy development. The conservation component of the DRECP involved the allocation of 6,527,000 acres of protected lands within areas defined as Areas of Critical Environmental Concern (ACECs) and California Desert Conservation Lands (CDCL), and it maintained the prior Congressional designations of Wilderness. These conservation lands were balanced with identification of less than 400,000 acres of DFAs. The FEIS supporting the DRECP Record of Decision (ROD) comprehensively evaluated utility-scale renewable energy development in the California desert including the East Riverside DFA where the project is located.

Although the DRECP did not anticipate that all of the 388,000 acres of DFAs would be developed to accommodate the 27,000 MW of generation intended for the plan area, it nevertheless presumed about half of the DFAs would be developed. Indeed, assuming solar generation at 7 acres per MW (the current average productivity of solar panels), 189,000 acres would be needed to generate 27,000 MW. This is 49 percent of the available lands designated as DFA in the DRECP LUPA ROD. As shown in Figure 2.1 (EA Appendix D) and EIR Table 4-1, the proposed project would develop 54 percent of the land within its overall boundaries (< 2,700 acres of 5,000 acres) – a development density that is consistent with this estimate, especially taking into account the following circumstances.

Since the DRECP ROD was issued in September 2016, the state and federal greenhouse gas emissions goals have continued to grow. The Energy Act of 2020 (P.L. 116-260) requires the Department of the Interior to permit 25 gigawatts of solar, wind, and geothermal production on public lands no later than 2025. Executive Order 14008, issued January 27, 2021, "Tackling the Climate Crisis at Home and Abroad" directs the Secretary of the Interior to identify steps that can be taken to increase renewable energy production on public lands and manage federal lands to support robust climate action (see sections 204 and 207). Furthermore, California State SB 100 requires 60 percent renewable energy portfolio standard by 2030, and Governor Newsom's Executive Order N-82-20 supports a global effort to protect of 30% of our planet's lands and water by 2030 to combat the climate crisis, conserve biodiversity and boost climate resilience. The DRECP's scope, in contrast, was defined based on the then current 50

percent California Renewable Portfolio Standard (RPS) established under Senate Bill (SB) 350 in 2015.

The East Riverside DFA where the Oberon Project is located is an area that BLM identified for potential renewable energy development under DRECP LUPA, and renewable energy development has been concentrated in this target area. DFA land in eastern Riverside County (covering nearly 148,000 acres, or about 38 percent of total DFA land in the CDCA) is the most economic for solar development, which is evident based on the large number of solar generation projects and applications in that area.

Development in some of the other DFAs is limited by environmental constraints (e.g., North of Kramer Junction, where Mohave ground squirrel habitat currently prevents development), lack of proximity to transmission with capacity to carry additional power (e.g., Trona area), and military operations (parts of Imperial County). Within the Riverside East DFA, a range of other constraints limit development on the remaining available acreage. These include presence of desert dry wash woodland and buffer areas, hydrologic risks (100-year flow depth of 4 feet or greater), presence of State jurisdictional waters, BLM-designated utility corridors, a major sand transport corridor with both protected species and engineering challenges, among other constraints.

CEQA requires that an EIR identify alternatives to the project, but does not require that it discuss alternative locations for the project. (Pub. Res. C. §§ 21001, subd. (g), 21002.1, subd. (a), 21061.) An EIR must include "a range of reasonable alternatives to the project, *or* to the location of the project." (CEQA Guidelines, § 15126.6, subd. (a) (emphasis added).) Particularly relevant here, courts have recognized that off-site alternatives need not be considered where the project is consistent with the land use plan in effect at the project site. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 (dicta); (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491 (holding).)

While outside of the scope of CEQA, development of renewable energy in the East Riverside DFA is analyzed in the DRECP FEIS and is necessary for California to meet its RPS targets and for BLM to meet its DRECP renewable energy objectives.

D.2.3 General Response GR-3: Northern Parcel Group (Original Application)

The original Oberon project area encompassed approximately 6,500 acres of BLM-administered land for the solar facility, including the currently proposed site, as well as a parcel group to the north of the proposed project. The southern and northern parcel groups would have been connected by a 3.3-mile 34.5 kV medium voltage collector line across private land and State Highway 177/Rice Road. Several commenters suggested that the Applicant should utilize this 1,500-acre northern parcel group rather than relinquishing it for a separate project by the same developer.

The northern parcel group and associated 34.5 kV collector gen-tie line were eliminated from the project in late 2020 by the Applicant due to financial and ROW constraints and to consolidate the development footprint, greatly shorten the length of generation-tie lines required, and locate the project entirely on federal land. Crossing private lands would trigger county jurisdiction, which would in turn trigger a mandatory Development Agreement with Riverside County, which would include a mandatory payment of the County's B-29 ordinance fees, commonly referred to as the "Sun Tax," which is an annual per-acre charge to offset impacts to County resources and which adds up to many millions of dollars of costs without benefits and would make the project infeasible.

Specifically, at the current rate of $175.75 per acre, the 2,700-acre proposed project would start out paying $474,525 per year, with an increase of 2% each year for the life of the project. If the project were to be operational next year and operate for the minimum expected life of 35 years, the cost of this fee would exceed $24 million dollars. With the additional gen-tie line area and a less compact footprint, a 500 MW project that incorporated the limited developable area of the northern parcel group (see below) would also have a larger footprint and accordingly pay even more in fees. This cost is particularly unsustainable in light of the massive increase in rental rates for solar right of way grants on BLM land in Riverside County[3], which increased from $384.91 per acre in 2020 to $971.84 per acre in 2021[4]. All this furthermore does not take into account the cost of the additional infrastructure that would need to be constructed to connect the proposed project site to the northern parcel group.

The Applicant has since submitted a right-of-way application to BLM for a project that includes the northern parcel group called the Easley Solar and Green Hydrogen Project. Due to many environmental constraints on the northern parcel group sites, use of this property will minimize impacts desert dry wash woodland and the sand transport corridor, while providing a critical supplement of land to make the Easley Project economically feasible and compliant with the DRECP CMAs. The market economics of the proposed Easley Project are currently less competitive, but it would have a 2025-2026 commercial operation date so the Applicant hopes it will be competitive with future (2026) power prices and be able to absorb the costs of the County fees. The northern parcel group is much less desirable than the Oberon project footprint properties because it has high flood depths that require elevated equipment and deeper foundations, all of which impair project economics.

The Applicant implemented design measures within the current Oberon application area to avoid constraints[5] to the maximum extent feasible by reducing the quantity of solar

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[3] BLM Solar and Wind Rent Schedule Zone Re-Assignments for Counties in Select States. https://www.blm.gov/sites/blm.gov/files/policies/IM2021-005_att3.pdf.

[4] Calendar Years 2016-2025 Solar Energy Development Acreage Rent Schedule. https://www.blm.gov/sites/blm.gov/files/policies/IM2021-005_att5.pdf.

[5] These constraints can include existing easements and infrastructure, biological, cultural and archaeological resources, and topographical and hydrological features.

PV modules by ~10% and reducing the distance between the rows of solar trackers to such a degree that it challenges the project's physical constructability. These design measures have resulted in a decreased energy output and exhaust the project's ability to absorb any further reduction to the constructible area. However, they have also reduced impacts to microphyll woodlands, as discussed under General Response GR-1. The Applicant's engineering and procurement contractor has indicated that any further reduction to the distance between solar trackers would exclude the use of construction machinery between rows and create an unsafe working space for multiple personnel.

Finally, a Full Build Alternative that includes development of the northern parcel group was considered and eliminated from full consideration in EIR Section ES.6.2 and Section 4.4. The larger sized project would have allowed for additional flexibility in areas of desert dry wash woodland and other constraints when siting the 500 MW project within the project site, but it would have resulted in greater overall ground disturbance related impacts, because the project would be spread across a greater area with the same generation output. That is, while the amount of MW proposed for construction at the project site has not changed since the original larger footprint (6,500 acres), the MW hours (MWh) are fewer than originally proposed due to a constrained panel layout. This is because the proximity of the solar panels under the proposed smaller footprint (2,700 acres) increases shading and other technical constraints compared with a more wide-spread layout, as discussed above. The full build alternative at a lower ground cover ratio and with a longer gen-tie line would have increased impacts to desert tortoise habitat and wildlife connectivity habitat.

D.2.4 General Response GR-4: Multi-species Linkage Corridor

Several commenters raised concerns about construction of the Oberon Project impeding wildlife movement, fragmenting corridor habitats, and reducing the function of a 1.5-mile-wide DRECP-designated multi-species wildlife connectivity corridor between the Chuckwalla Mountains and the Chuckwalla Valley. Per the DRECP FEIS, approximately 14,000 acres of the desert linkage network could be adversely impacted in DFAs and transmission corridors in the Cadiz Valley and Chocolate Mountains ecoregion subarea, where the project is located (DRECP FEIS, page IV.7-149).

A portion of the multi-species linkage, 1,044 acres or 41% of the area of the linkage, occurs within the Oberon application area as identified in the DRECP LUPA (EIR Section 3.4.1). The Oberon development footprint proposes to avoid 87% of the linkage (68% of the portion of the linkage within the application area) to protect north-south wildlife movement (EIR Section 3.4.5, Impact BIO-4). The proposed project would avoid development on approximately 936 acres of the biological linkage within the project area, including primarily DDWW habitat leading to freeway underpasses to maintain north/south connectivity under the I-10.

As explained in the DRECP, "[t]he desert linkage network is a comprehensive and detailed habitat connectivity analysis for the California deserts identified "swaths" of habitat of uniform physical conditions that will interact with uncertain climate changes to maintain habitat for species and species' movement." (DRECP FEIS, p. IV.7-149.) In the Cadiz Valley and Chocolate Mountains ecoregion subarea, where the project is located, BLM-designated DFAs that overlap with "the portion of the desert linkage network that connects the Palen McCoy Mountains to Little Picacho and Chocolate Mountains." (*Id.*) Of the 707,000 acres of public land within this subarea, 6,000 acres were identified for solar development and 7,000 acres were identified for transmission. (DRECP FEIS at IV.7-164.) With 87% of this subarea conserved through the use of National Landscape Conservation System (NLCS), Areas of Critical Environmental Concern (ACECs) and other land use designations, BLM concluded that the desert linkage network in the area of the project "is almost entirely conserved."

Where DFAs and wildlife linkages overlap, the DRECP further requires preservation of the functionality of the linkage. (DRECP FEIS at p. IV.7-150; see also CMA LUPA-BIO-13 [projects along the edges of the biological linkages must maximize the retention of microphyll woodlands in order to maintain connectivity].) In the linkage at issue here, BLM expected that "the Riparian and Wetland vegetation and Focus Species CMAs will contribute to maintaining and promoting habitat connectivity and wildlife movement." (*Id*.) The project's preservation of ribbons of microphyll woodlands within the linkage accordingly is a critical component to ensuring the functionality of the corridor.

A table of the acreages of impacts in the wildlife corridor under each action alternative has been added to the Final EIR as Table 3.4-1 in Section 3.4.5. The proposed project would comply with all of the DRECP CMAs related to development in the wildlife corridor.

Due to the project features described below, the wildlife linkage corridor would continue to allow wildlife passage for many species across or around the Oberon Project.

- **North-South Connectivity Corridors.** The avoidance of microphyll woodland maintains approximately 68% of the wildlife linkage that overlaps the project area. The project design preserves the connectivity of the larger, more functional woodlands in part to protect north-south movement of wildlife through the woodland areas to the I-10 freeway underpasses (see Section 3.4.5 and Figure 2-6), which is consistent with preserving the value of the desert dry wash woodland resource. Additionally, project disturbance areas will be flagged prior to construction, and the project will use existing roads and shared infrastructure where feasible.
- **Setback from Interstate 10 Underpasses**. As described in EIR Section 3.4.1 and shown on Figure 12 in the BRTR (POD Appendix F in IP Oberon, 2021), seven box culvert underpass crossings (ranging from 10 feet wide to 75 feet wide), large enough to pass large mammals including burro deer, are located along I-10 adjacent to the project site to the south. An additional 10 crossings are located within 5 miles. These crossings provide connectivity and safe movement corridors between habitat to the

north and south of I-10, providing an opportunity for dispersal and gene flow between wildlife populations, including within the wildlife linkage. The project would be set back 300 feet from I-10 to preserve the federal Section 368 utility corridor. This would also support wildlife movement north and south of the freeway and between the I-10 underpass crossings north of I-10, where the value of linkage habitat for some terrestrial wildlife species is dependent on its width.

- **Wildlife Friendly Fencing**. As described in EIR Section 2.2.3.3, approximately 3 years post-construction when vegetation is determined to be substantially reestablished within the array areas in accordance with the project Revegetation Plan (required by MM BIO-5 [Vegetation Resources Management Plan]), the Applicant has proposed to remove desert tortoise exclusion fencing over a portion of the project site shown in EIR Figure 2-6 (Proposed Fencing Plan) and replace it with wildlife friendly fencing. This wildlife friendly fencing is generally proposed in the eastern half of the project area, where the project overlaps with the multi-species linkage, and in locations where habitat values are higher and sensitive wildlife sign has been observed.

  In these areas, the security fence would leave a 6- to 8-inch gap between the lower fence margin (rail or mesh) and the ground. The bottom of the fence fabric (chain link or similar material) would be wrapped upward so that no sharp edges are exposed along the lower fence margin. It is anticipated that reptiles, birds, small and medium sized mammals including desert kit fox would easily pass through the fence gap, but that larger animals, including mule deer, and desert bighorn sheep would be excluded by the presence of the security fence. Operations and maintenance (O&M) safety practices would be developed in consultation with BLM and USFWS to maximize long-term safety of desert tortoises and other wildlife present at the site.

  Wildlife friendly fencing would provide movement opportunities between revegetated habitats in the development footprint and the adjacent undeveloped DDWW, maintaining a level of habitat functionality and minimizing fragmentation for small terrestrial wildlife in the multi-species linkage corridor.

- **Night Lighting.** With implementation of Mitigation Measure MM AES-1 (see EIR Section 3.2.7), long-term night lighting that could affect nocturnal and other wildlife and wildlife movement would be minimized to the maximum extent feasible and coordinated with the BLM.

Project design elements would avoid and minimize impacts in the multi-species linkage corridor, as described. The project would not threaten the long-term viability and function of the corridor (per DRECP CMA LUPA-BIO-IFS-1).

Note that much of the multi-species linkage corridor overlaps with desert tortoise critical habitat and/or desert dry wash woodland. Direct impacts to these and other habitats in the linkage, would be compensated by IP Oberon, LLC, in a comprehensive mitigation package of approximately 6,200 acres compiled and managed by Wildlands, Inc. While the compensation lands would not be in the immediate vicinity of the wildlife corridor on

the Oberon site, preservation of offsite habitat would be located in the same designated desert tortoise critical habitat unit in accordance with CMA LUPA-BIO-COMP-1, which is reiterated in MM BIO-6b (Compensation for Desert Tortoise Habitat Impacts) (EIR Section 3.4.7).

Cumulative Impacts. Cumulative impacts are addressed in EIR Section 3.4.6 (Cumulative Impacts).

Development of renewable energy is anticipated in the project vicinity as it is within a DRECP DFA and this development would potentially result in adverse impacts to habitat linkages and wildlife movement corridors, including migratory bird corridors. Renewable energy development in DFAs could potentially fragment intact and interconnected landscapes resulting in isolated patches of habitat, isolated species populations, reduced gene flow, disruption of migratory patterns, and remaining habitat that may be more exposed to the edge effects of adjacent development. To minimize habitat fragmentation and population isolation, DFAs were sited through the DRECP LUPA within areas with greater degradation to avoid intact habitats. Through compliance with the DRECP CMAs, renewable energy activities would be sited and designed to maintain the function of wildlife connectivity within linkages (DRECP FEIS, pages IV.25-72 to IV.25-74[6]).

The Oberon EIR cumulative analysis for biological resources (see EIR Section 3.4.6) acknowledges that both the Victory Pass and Oberon proposed projects would be sited in the multi-species linkage area. Implementation of project mitigation measures, avoidance and minimization CMAs, and compensation CMAs established to offset the impacts of renewable energy activities would also reduce adverse impacts to wildlife movement. The DRECP CMAs and project mitigation include seasonal restrictions, survey requirements, and setbacks necessary to avoid and minimize impacts. The DRECP CMAs and mitigation contribute to the overall conservation strategy, which includes conservation within BLM land designations. Implementation of the DRECP CMAs as part of the overall conservation strategy would reduce adverse effects to habitat linkages and wildlife movement corridors.

All reasonably foreseeable actions would be subject to further review and evaluation in compliance with federal, state, and local regulations, and that additional mitigation measures would be imposed on these projects as a result of the approval process. These measures, along with the resource conservation and protection plans, would reduce cumulative effects to habitat linkages and wildlife movement corridors.

The proposed project would comply with all of the DRECP CMAs related to development in the wildlife corridor. For the project, MMs BIO-1 through MM BIO-14 as detailed in EIR Section 3.4.7, would be implemented to minimize and compensate for its project-specific impacts as well as its contribution to regional cumulative effects to vegetation and wildlife resources. These mitigation measures, along with conservation within

[6] DRECP Final EIS. https://go.usa.gov/x7hdj.

proposed BLM land designations and biological resource CMAs per the DRECP LUPA and FEIS and offsite compensation would ensure the project's contribution to cumulative effects to biological resources would not be cumulatively considerable.

Resource Avoidance Alternative. Finally, as pointed out by commenters, the RWQCB has analyzed the Resource Avoidance Alternative that would avoid construction of the solar facility in the wildlife linkage corridor. EIR Section 4.2.4 concludes that by avoiding the multi-species linkage corridor, a larger area would be available for wildlife movement in DDWW and adjacent to the I-10 underpass culverts. However, long-term desert tortoise exclusion fencing of the entire site would restrict wildlife including special-status species from using and moving through the site, and any vegetation within the fence line would not be available for shelter or foraging.

D.2.5 General Response GR-5: Adequacy of Environmental Documents

Several comments suggested that BLM's Draft Environmental Assessment (EA) and LUPA and the RWQCB's EIR should be recirculated, or an Environmental Impact Statement (EIS) should be prepared by BLM to support the proposed LUPA.

Suggestions regarding the adequacy of the NEPA document will be considered by BLM and are outside of the scope of CEQA and the RWQCB's jurisdiction. General Response GR-1 discusses DRECP CMA compliance and a project-specific LUPA. General informational details on BLM's NEPA process area included below.

Recommendations for EIR recirculation that are in the context of comments that generally state that the EIR analysis is inadequate for specified reasons have been responded to in individual responses to comments. Discussion of individual environmental concerns are addressed in individual responses to comments, clarifications in the Final EIR, and General Responses GR-1 through GR-4.

EIR Recirculation

Under CEQA, a lead agency is required to recirculate an EIR prior to certification when there are significant new circumstances or information relevant to the environmental concerns related to the proposed project or its impacts.

> ***15088.5. Recirculation of an EIR Prior to Certification***
>
> *(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project*

or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

> *(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
>
> *(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
>
> *(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.*
>
> *(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)*

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

Therefore, the critical issue in determining whether recirculation is required, is whether there is significant new information and failure to include the information in the draft deprived the public of a meaningful opportunity to comment on the project. A significant purpose of Draft EIR circulation and comment process is to elicit information and to allow the agency to provide refined analysis and to make adjustments to the project that reduce impacts in the Final EIR. Thus, not all changes in response to public comments constitute new information. Changes that amount to new information are generally the exception under CEQA, not the rule.

As reflected in General Responses GR-1 through GR-4, individual responses to comments, and changes shown in tracking within the Final EIR, there have been no significant revisions to the proposed project or alternatives and only insignificant clarifications and revisions have been made to the Final EIR. The inclusion of new information and clarifications that do not affect the environmental concerns and conclusions analyzed in the Draft EIR does not support recirculation. Rather, these can be reported in the Final EIR.

The information and analysis presented in the Final EIR have not changed such that any of the situations warranting recirculation exist here. The limited new information and

analysis presented in the Final EIR clarifies and strengthens the information and analysis presented previously in the Draft EIR. Under these circumstances, CEQA does not support recirculation.

Preparation of an EIS

Through the separate NEPA process BLM will evaluate whether the conditions and environmental effects described in the DRECP FEIS are still valid and the BLM EA will address any exceptions (43 CFR § 46.140). If the BLM determines that the project or an alternative would result in any new significant, unmitigable, impact not disclosed in the DRECP FEIS, then the BLM would prepare a project-specific EIS before authorizing the project. If the BLM determines there are no new significant impacts (after mitigation), as presented in the EA, then the BLM will issue a Finding of No New Significant Impact (FONNSI) documenting the reasons why implementation of the selected alternative would not result in significant environmental impacts that were not previously analyzed and disclosed in the DRECP FEIS.

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Appendix D.3

Comment Letters

D.3 Comment Letters

All comment letters received during the public comment period on the Draft EIR are included herein.

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Comments Received from

Public Agencies

Comment Set A1 – California Department of Fish and Wildlife

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

September 30, 2021

Logan Raub
Colorado River Basin Regional Water Quality Control Board
235 Montgomery Street, Suite 640
San Francisco, California 94104
(Logan.Raub@Waterboards.ca.gov)

Subject: Draft Environmental Impact Report
Oberon Renewable Energy Project, State Clearinghouse No. 2021030426

Dear Mr. Raub:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Colorado River Basin Regional Water Quality Control Board (Lead Agency) for the Oberon Renewable Energy Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines[1]. CDFW appreciates the opportunity to provide comments regarding activities involved in the Project that may affect California's fish and wildlife resources, and by law, CDFW may be required to carry out or approve those activities through exercise of its own regulatory authority under the Fish and Game Code.

ROLE OF CDFW

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish &

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Comment Set A1 – California Department of Fish and Wildlife (cont.)

G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION

CEQA Lead: Colorado River Basin Regional Water Quality Control Board

Applicant: IP Oberon, LLC, a subsidiary of Intersect Power, LLC

Location:

The project site is located in Riverside County, California, north of the I-10 freeway and adjacent to the community of Lake Tamarisk in Desert Center. The gen-tie transmission line would run north and south of the I-10 freeway to connect into the existing Southern California Edison Red Bluff Substation. The gen-tie line would be located within one 175-foot right-of-way (ROW), running approximately 0.5 miles southeast from the solar facility, across BLM land, to the Red Bluff Substation.

Description:

The purpose of the Project is to construct, operate, maintain, and decommission a 500 megawatt (MW) solar photovoltaic (PV) electricity generating station, battery energy storage facility, electrical substation, 500 kilovolt (kV) generation tie (gen-tie) lines and associated access roads on approximately 5,000 acres of land managed by the U.S. Bureau of Land Management (BLM). The Project would operate for a minimum of 35 years and up to 50 or more years. The Project involves installation of several million PV solar panels mounted on either fixed-tilt or tracking technology. Types of panels may include thin-film panels (cadmium telluride and copper indium gallium diselenide), crystalline silicon panels, or other commercially available PV technology. Project activities will include construction and installation of solar array, inverters, transformers, electrical collection system, substations, switchyards, gen-tie lines, operation and maintenance building, a new overhead or underground distribution line, telecommunications facilities, battery energy storage system, meteorological data collection system with stations, access roads, fencing, security and lighting fencing.

Panels would be electrically connected into panel strings using wiring secured to the panel racking system. Underground cables would be installed to convey the direct current (DC) electricity from the panels via combiner boxes located throughout the PV arrays, to inverters to convert the DC to alternating current (AC) electricity. The output voltage of the inverters would be stepped up to the collection system voltage via transformers located in close proximity to the inverters. The 34.5 kV level collection cables would primarily be buried underground within the solar facility, with some segments potentially installed overhead on wood poles outside of the solar facility connecting the two parcel groups.

Comment Set A1 – California Department of Fish and Wildlife (cont.)

Construction is anticipated to occur over an approximately 15 to 20 month period, depending on power purchase agreement and financing requirements. The on-site workforce would consist of laborers, craftsmen, supervisory personnel, supply personnel, and construction management personnel. The on-site workforce is expected to reach its peak of approximately 530 individuals with an average construction-related on-site workforce of 320 individuals.

Operational activities at the Project site would include solar module washing, vegetation, weed, and pest management, security, responding to automated electronic alerts based on monitored data, including actual versus expected tolerances for system output and other key performance metrics; and communicating with customers, transmission system operators, and other entities involved in facility operations. At the end of the Project's useful life, the solar arrays and gen-tie line would be decommissioned and dismantled.

Decommissioning activities would involve dismantling and removal of all above-ground equipment including solar panels, track units, transformers, inverters, substations, operation and maintenance buildings, switchyard, excavation and removal of all above-ground cables, removal of solar panel posts, removal of primary roads, break-up and removal of concrete pads and foundations, removal of septic system and leach field, removal of 34.5 kV distribution lines, and dismantling of 500 kV gen-tie line. A1-1

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those biological resources. CDFW offers comments to assist the Lead Agency for adequately identifying, avoiding, and mitigating the Project's significant or potentially significant impacts on biological resources. CDFW recommends that the DEIR addresses the ensuing comments.

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following 2009 or current version of The Manual of California Vegetation. Adjoining habitat areas should also be included in this assessment where Site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions. CDFW's California Natural Diversity Database (CNDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project. CDFW recommends that CNDDB Field

Comment Set- A1 – California Department of Fish and Wildlife (cont.)

Survey Forms be completed and submitted to CNDDB to document survey results. It should be noted that CNDDB is not exhaustive in terms of the data it houses, nor it is an absence database. The assessment should include a comprehensive, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511). **A1-1 cont.**

Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought. **A1-2**

CDFW recommends timely protocol level surveys for desert tortoise (*Gopherus agassizii*). CDFW approved desert tortoise pre-construction surveys cover 100 percent of the project area and adjacent habitat using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. CDFW also recommends surveys for burrowing owl (*Athene cunicularia*), a Species of Special Concern. Survey recommendations and guidelines are provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) or current version. **A1-3**

Development of a desert kit fox and American badger mitigation and monitoring plan is recommended. Desert kit fox is a protected species, and American badger is a Species of Special Concern. CDFW also recommends a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. **A1-4**

CDFW recommends that the DEIR provides a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. The DEIR should include appropriate and adequate avoidance, minimization, and mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be **A1-5**

Comment Set A1 – California Department of Fish and Wildlife (cont.)

biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat acquisition, enhancement, conservation, and management in perpetuity should be addressed. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring, management for invasive species, control of illegal dumping, water pollution, increased human intrusion, and other factors that diminish the habitat value for the target species.

A1-5 cont.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

A1-6

The Project may potentially result in substantial adverse impacts on CESA-listed species, and also on lake and streambed subject to Fish and Game Code section 1600 et seq. The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by zoning of development Projects or other Project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

A1-7

3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and long-term operational and maintenance needs.

A1-8

4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and

A1-9

Comment Set A1 – California Department of Fish and Wildlife (cont.)

Logan Raub
Colorado River Basin Regional Water Quality Control Board

anticipated future Projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats. A1-9 cont.

5. The project has several decades long life-span, and potential loss in habitat expansion and population density changes with time should be accounted for considering fully mitigated standards. For adequacy of mitigation determination, there is a need to analyze spatial and temporal changes in habitat for desert tortoise and other species as well as cumulative impacts of project activities on habitat biodiversity under changing climatic conditions with time. Any variance analysis should include hypothesis-driven risk assessment considering spatial and temporal variability of determinant parameters affecting habitat quality and sustainability over time. CDFW recommends inclusion of risk analysis showing comparative evaluation of adverse impacts from the proposed project footprint and alternative project designs on various species and their habitat quality and sustainability through the life-cycle of the project. A1-10

Burrowing Owl is a CDFW species of special concern and occurs as a year-round resident and winter visitor. Habitat for the burrowing owl includes dry, open, short-grass areas with level to gentle topography and well-drained soils, as well as agricultural areas. These areas are also often associated with burrowing mammals. The burrowing owl is diurnal and perches during daylight at the entrance to its burrow or on low posts. It is typically found in dry open areas with few trees and short grasses; it is also found in vacant lots near human habitation. It uses uninhabited mammal burrows for roosts and nests. A1-11

Northern harrier (*Circus hudsonius*) is a CDFW species of special concern. This species is typically found in open habitats with dense ground cover including grasslands, agricultural fields, and marshes. Northern harriers nest on the ground, preferring wetland habitat for cover. A1-12

Black-tailed gnatcatcher (*Polioptila melanura*) is a CDFW watch List species. This species remains in pairs all year, defending permanent territories. Black-tailed gnatcatchers prefer dry washes or desert brush with varied growth of mesquite, acacias, and paloverdes, but are also known to inhabit tamarisk scrub. A1-13

Loggerhead Shrike (*Lanius ludovicianus*) is a CDFW species of special concern. This species inhabits most of the continental U.S. and Mexico and is an uncommon year-round resident of southern California. It prefers washes with scattered trees or shrubs, or valley floors with scattered thickets of mesquite (*Prosopis* spp.) or saltbush (*Atriplex* spp.). Outside the desert this species inhabits grasslands, agricultural fields, open sage scrub, and chaparral. The loggerhead shrike requires open habitat with tall shrubs or trees to use as perches for hunting and fairly dense shrubs for nesting. It may also use fences or power lines for hunting perches. Loggerhead shrikes are highly territorial and usually lives in pairs in permanent territories. This species feeds on small reptiles, mammals, smaller birds, amphibians, and insects that they often impale on A1-14

Comment Set A1 – California Department of Fish and Wildlife (cont.)

sticks or thorns before eating. This bird may also be associated with freshly plowed or mowed fields, as these activities create foraging opportunities for this species. Loggerhead shrike populations are declining, likely due to urbanization and loss of habitat and, to a lesser degree, pesticide use.

A1-14 cont.

Le Conte's Thrasher (*Toxostoma lecontei*) is a CDFW species of special concern. It is a permanent resident in the San Joaquin Valley, Mojave and Colorado Deserts of California, the Sonoran Desert in Arizona, as well as Utah, Nevada, and Baja California, Mexico. This sensitive bird requires undisturbed substrate for foraging under desert shrubs. Ideal habitat throughout this species' range consists of sparsely vegetated desert flats, dunes, sandy alluvial fans below desert mountains, alkaline dry lakes, or gently rolling hills.

A1-15

American Badger (*Taxidea taxus*) is a CDFW species of special concern. American badgers are widespread, ranging from the Great Lakes to the Pacific Coast, and from the Canadian Prairie provinces to the Mexican Plateau. This species can be found in a variety of habitats, which include shrub steppes, agricultural fields, open woodland forests, and large grass and sagebrush meadows and valleys. Its breeding season occurs from mid- to late summer, after which egg implantation is delayed until December to February. Declines in American badger populations and distribution have resulted from habitat fragmentation from urbanization and development of roads.

A1-16

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW recommends consideration of the following comments.

A1-17

Fully Protected Species

Several Fully Protected Species (Fish and Game Code § 3511) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis appropriate avoidance, minimization and mitigation measures to reduce any possible indirect impacts to fully protected species.

Comment Set A1 – California Department of Fish and Wildlife (cont.)

Sensitive Plant Communities

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in the 2009 or current version of The Manual of California Vegetation. The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. Minimization measures may include transplanting perennial species, seed collection and dispersal from annual species, and other conservation strategies that will protect the viability of the local population. If minimization measures are implemented, monitoring of plant populations will be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation will be no net reduction in the size or viability of the local population.

A1-18

Western Joshua tree

Western Joshua tree (*Yucca brevifolia*) is a candidate for threatened species (see 2020 Cal. Reg. Notice Register, No. 41-Z, pp. 1349, October 9, 2020) under CESA. CDFW recommends that the DEIR should include risk analysis showing comparative evaluation of adverse impacts of design layouts on various species and their habitat quality and sustainability over time. Edge effects should be considered. The determination should be based on factors including an assessment of the importance of the habitat in the Project area, the extent to which the covered activities will impact the habitat, and estimation of the acreage required to provide for adequate compensation. Avoidance of western Joshua tree and its associated habitat would be a preferred approach. When considering impacts that involve removal of western Joshua tree, including its potential seedbank, impacts to habitat adjacent to western Joshua tree and other suitable habitat should also be evaluated. CDFW recommends the assessment area cover all Project areas that may be impacted and an additional 200-foot-wide area outside of the Project impact area to assess the habitat quality parameters. High quality habitat adjacent to an impact area would generally factor into a quality determination for the impact area. CDFW recommends that assessment of impacts and associated mitigation should evaluate the number and size of western Joshua trees impacted, and the overall quality and extent of habitat that may support western Joshua tree. Generally, areas with greater density, range of size classes, and recruitment of western Joshua tree, along with larger, intact, and connected habitat areas represent high habitat quality areas. The assessment should consider edge effects that may exist from Project design. Areas with larger edge effect and narrow corridors should be considered as having greater indirect impacts on adjacent areas.

A1-19

Impacts include removal of western Joshua tree and its seedbank, and loss of occupied and suitable habitat. Removal of western Joshua tree to "salvage" or relocate elsewhere should be considered an impact at the removal site. Relocation of western Joshua tree

Comment Set A1 – California Department of Fish and Wildlife (cont.)

is disfavored as relocation is likely to impact habitat at a relocation site and affect other fish and wildlife resources, potentially including special-status species, and a relocation site may not have all required habitat elements for successful reproduction on site, potentially limiting the biological effectiveness of such as measure. CDFW recommends the amount of compensatory mitigation is related to the extent and type of impacts to the species and the quality of the habitat being affected for the biological resources that may be potentially impacted. CDFW recommends mitigation for western Joshua tree be based on acres of impact to occupied and suitable habitat for wester Joshua tree, rather than number of trees impacted. CDFW does not view relocation as adequate mitigation for impacts to western Joshua tree and its habitat. For desert tortoise, for example, compensatory mitigation ratios from 1:1 to 5:1 of mitigation acres to impacted acres are most typical. The higher mitigation ratios are often used for impacts that most affect the species, such as impacts to high quality, connected, other important habitat areas, and impacts to areas with a greater distribution and presence of the species. The lower mitigation ratios are often used for impact areas with low habitat value and low to very low presence of the species. The Lead Agency may choose to take a similar approach with western Joshua tree.

A1-19 cont.

CDFW recommends the mitigation site is occupied and is of equivalent of higher value for western Joshua tree than the impact site. For compensatory mitigation, CDFW recommends permanent protection through a conservation easement, development of a long-term management plan, and funding sufficient to implement management plan tasks in perpetuity should be completed before starting Project ground-disturbing activities. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

Mitigation

CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and

A1-20

Comment Set A1 – California Department of Fish and Wildlife (cont.)

indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, land dedications, long-term monitoring and management, control of illegal dumping, water pollution, and human intrusion. A1-20 cont.

Moving out of Harm's Way

The proposed project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss. A1-21

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act. A CESA ITP is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Protocol level surveys are needed for such species. CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. Proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the Project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard. A1-22

Desert Tortoise

CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to desert tortoise, a CESA-listed species as threatened and a candidate for endangered species. The measures need to include specificity on who will perform the A1-23

Comment Set A1 – California Department of Fish and Wildlife (cont.)

survey, what type of survey will be performed, and what actions will be taken should desert tortoise presence be confirmed during the survey. The measures need to address avoidance, minimization, or mitigation measures should desert tortoise enter the Project site during the life of the Project. Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085). Project activities have the potential to take desert tortoise. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an ITP. CDFW recommends inclusion of a protocol level survey and a measure for a qualified biologist in the environmental document. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in U.S. Fish and Wildlife Service Desert Tortoise Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities. All clearance surveys need to be conducted during the active season for desert tortoise. Any variance analysis should include hypothesis-driven risk assessment considering spatial and temporal variability of determinant parameters affecting habitat quality and sustainability over time.

A1-23 cont.

Burrowing Owl

Burrowing owl is a CDFW Species of Special, and potential construction-related direct impacts to burrowing owl could result from destruction of burrowing owl dens, destruction of nests, eggs, and young; and entombment of adults. CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to burrowing owls, a Species of Special Concern. The measures need to include specificity on who will perform the burrowing owl survey, what type of survey will be performed, and what actions will be taken should burrowing owl presence be confirmed during the survey. It is necessary to address avoidance, minimization, or mitigation measures. Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code Section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress

A1-24

Comment Set A1 – California Department of Fish and Wildlife (cont.)

on burrowing owls and could depress reproduction, increase predation, and introduce risks posed by having to find and compete for available burrows. A1-24 cont.

Eviction of burrowing owls is a potentially significant impact under CEQA. CDFW recommends including a measure for a qualified biologist in the environmental document. Burrowing owl surveys shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300- foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

Le Conte's Thrasher

Le Conte's thrasher is a CDFW Species of Special Concern. During the nesting season, January 15 through June 15, prior to the start of construction activities, a Qualified Biologist will conduct surveys within the Whitewater Floodplain Conservation Area, within 500 feet of the impact area, or to the property boundary if less than 500 feet. If nesting Le Conte's thrashers are found, an exclusion buffer will be established around the nest site in any location where work may occur within 500 feet of the active nest. The exclusion buffer will be staked and flagged. No construction will be permitted within the buffer during the breeding season of January 15 through June 15 or until the young have fledged. A1-25

Nesting Birds and Migratory Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; A1-26

Comment Set A1 – California Department of Fish and Wildlife (cont.)

Section 3503.5 states that is it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA. CDFW recommends that the analysis includes the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The measures should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. For pre-construction surveys, CDFW recommends that the surveys be required no more than three days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

A1-26 cont.

Special Status Plant Species

The Biological Resources Assessment needs to include an explanation of methodology and results of the survey of special status plants. CDFW recommends California Natural Diversity Database be used as a starting point in gathering information about the potential presence of species within the general area of the Project Site, and surveys should not be restricted or limited to generated lists. It is unclear if a botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was performed. Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity. Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment. Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085).

A1-27

Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners. To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends a thorough floristic-based assessment of special status plants and natural communities. Note that CDFW generally considers biological field assessments for rare

Comment Set A1 – California Department of Fish and Wildlife (cont.)

plants valid for a period of up to three years. Pre-construction botanical surveys shall be conducted at the appropriate time of year by a qualified biologist following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, March 2018) or most recent version. Should special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population. CDFW also recommends that the Lead Agency reviews the listing status of Western Joshua Tree prior to finalizing the DEIR and implements appropriate measures. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an ITP. Should any CESA-listed plant species be present at the Project Site, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities.

A1-27 cont.

American Badger and Desert Kit Fox

American badger is a Species of Special Concern. Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Project activities may have the potential to take American badger and desert kit fox individuals, and development may result in loss of habitat and/or foraging habitat. CDFW recommends inclusion of pre-construction American Badger and Desert Kit Fox survey and suggests the following measure be included in the environmental document. No more than 30 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project Area. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5-day period. After the qualified biologist has determined there are no active burrows the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

A1-28

Wildlife in Pipes and Construction Materials

Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in

A1-29

Comment Set A1 – California Department of Fish and Wildlife (cont.)

the trench and attached together or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

A1-29 cont.

Escape Ramp in Trench

At the end of each workday, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees.

A1-30

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. It should be noted that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). These include ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a Project subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lakes, streams, dryland channels, riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments.

A1-31

Environmental Data

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB).

A1-32

Comment Set A1 – California Department of Fish and Wildlife (cont.)

Filing Fees

Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

A1-33

CDFW appreciates the opportunity to comment on your Project. Questions regarding this letter should be directed to Dr. Shankar Sharma, Senior Environmental Scientist Specialist and Renewable Energy Lead at Shankar.Sharma@wildlife.ca.gov or 909-228-3692.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84F8B8273E4C480...

Alisa Ellsworth
Environmental Program Manager

ec: Dr. Shankar Sharma, CDFW, Shankar.Sharma@wildlife.ca.gov

State Clearinghouse, State.clearinghouse@opr.ca.gov

Habitat Conservation Planning Branch, CEQAcommentletters@wildlife.ca.gov

Comments Received from

Groups, Organizations, and Companies

Comment Set B1 – Friends of the Desert Mountains

Friends of the Desert Mountains

51-500 Highway 74
P.O. Box 1281
Palm Desert, CA 92261

September 13, 2021

Brandon Anderson
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92262 BLM_CA_PS_OberonSolar@blm.gov

Logan Raub
Colorado River Basin Regional Water Quality Control Board
c/o Aspen Environmental Group

235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920 logan.raub@waterboards.ca.gov

Re: Environmental Assessment (EA) and Draft Environmental Impact Report (DEIR) for the Proposed Oberon (CACA- 58539) Solar Project.

Dear Mr. Anderson and Mr. Raub,

The Oberon Solar project is proposed for construction on 2700 acres of public land in the Riverside East renewable energy zone designated by the Desert Renewable Energy Conservation Plan (DRECP). Friends of the Desert Mountains was a seated stakeholder in DRECP and supports its conservation protections, which were carefully negotiated over many years by a range of stakeholders—environmentalists, the renewable energy industry, local and state governments, recreationists, Tribes and more across nearly eleven million acres of BLM public lands in the California desert —to ensure solar projects can be built without destroying sensitive habitats, migration corridors, cultural sites, and climate values. B1-1

The other recent projects in this renewable energy zone have complied with DRECP's conservation protections. But Oberon wants an exception to the rules so they can expand onto 600 acres that would encroach on a sensitive microphyll woodland. Microphyll woodland is a rare habitat, and one of the richest biological resources in the desert, so the DRECP requires developers to avoid microphyll and maintain buffers to sustain this rich habitat. It is important for the EA to explain that there are another 148,000 acres in the same renewable energy zone for developers to choose from, and the vast majority of those acres have no microphyll woodlands.

Encroaching a square mile—over 600 acres--into rare microphyll woodland and buffers just to expand the area of solar panels does not qualify as a "minor incursion" that might be allowed under DRECP. Minor incursions as defined by DRECP were contemplated only for essential infrastructure such as roads and transmission lines which could not be sited elsewhere. In any event, destroying B1-2

A 501(c)3 nonprofit corporation
Federal Tax identification #33-0241242

Phone: (760)568-9918
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Comment Set B1 – Friends of the Desert Mountains (cont.)

Friends of the Desert Mountains

51-500 Highway 74
P.O. Box 1281
Palm Desert, CA 92261

600 acres that was slated for preservation under DRECP is not a minor impact by any definition of the word minor.

B1-2 cont.

Further, the notion that the acquisition of lands offsite in the Chuckwalla Bench somehow reduces this impact to a level of insignificance fails to recognize the unique value of the resources on the Oberon project site itself, a substantial portion of which is in a DRECP-designated multi-species wildlife connectivity corridor. The DRECP itself recognizes and protects those unique values, and they cannot simply be "replaced" or "offset" by buying land elsewhere in the Chuckwalla Bench. Friends of the Desert Mountains and others have acquired many thousands of acres in the Chuckwalla Bench and environs, and we will continue to do so. Those offsite resources are actively being preserved, so the suggestion that destroying sensitive habitat in one location is OK because it will allow for protection in another location is incorrect.

B1-3

In sum, Friends requests that the EA and DEIR be revised to fully acknowledge and analyze the harm from the proposed project, and to only approve a project that fully avoids onsite microphyll woodlands and buffers, as required by the DRECP, while also maintaining a functioning multispecies corridor wide enough to accommodate threatened desert tortoise traversing the site.

Thank you for the opportunity to comment.

Sincerely,

Tammy Martin

Tammy Martin,
Executive Director

Comment Set B2 – Mojave Desert Land Trust

September 13, 2021

Mr. Brandon Anderson
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Palm Springs, CA 92262
BLM_CA_PS_OberonSolar@blm.gov

Mr. Logan Raub
Colorado River Basin Regional Water Quality Control Board
c/o Aspen Environmental Group
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RE: Proposed Oberon (CACA- 58539) Solar Project
Comments for Environmental Assessment and Draft Environmental Impact Report
Environmental Assessment DOI-BLM-CA-D060-2020-0040-EA

Dear Mr. Anderson and Mr. Raub,

I am writing on behalf of Mojave Desert Land Trust (MDLT) to comment on the proposed Oberon solar project. Founded in 2006, MDLT is a nonprofit conservation organization headquartered in Joshua Tree, CA. MDLT acquires, restores, and protects biologically and culturally important lands throughout a 26-million-acre service area in the California Desert. To date, we have conserved over 100,000 acres of desert conservation lands, and we have conveyed over 54,000 acres to federal and state agencies. We also hold a long-term interest in areas that we manage and monitor. These include Palisades Ranch on the Mojave River, Desert Springs in the Western Mojave, and habitat linkages in the Morongo Basin. B2-1

The proposed Oberon Solar project would construct facilities on 2,700 acres of public lands near Desert Center in eastern Riverside County in the Riverside East renewable energy zone of the Desert Renewable Energy Conservation Plan (DRECP). The DRECP was developed with the goal of providing for renewable energy development while ensuring the protection of the deserts' natural resources and ecosystems. It was negotiated over many years by a range of interests including conservation groups, the renewable energy industry, local and state governments, tribes, and recreationalists.

The proposed project is intended to produce 500 MW of photovoltaic solar energy, enough to power 200,000 homes, helping to achieve the Biden Administration's goal of a carbon pollution-free power sector by 2035. While achieving climate goals is important, this must be done in a way that does not result in significant degradation of desert species, communities, and ecosystems. To ensure this, the project needs to ensure consistency with the Desert Renewable Energy Conservation Plan (DRECP) and its conservation elements, goals, and actions.

The project, as proposed, requests exemptions from provisions of the Plan, Conservation Management Actions (CMAs), which are essential to its integrity of the conservation elements of the Plan. These exceptions would result in a 600-acre encroachment into a microphyll woodland, a rare and important habitat while at the same time compromising a designated multi-species wildlife corridor which is essential to ecosystem function. This is not a "minor incursion" as defined by the DRECP. The loss of B2-2

Comment Set B2 – Mojave Desert Land Trust (cont.)

connectivity would be in an area where existing renewable energy projects have already created an impediment to movement and one which will be further reduced by future developments. The proposed encroachment into the wildlife corridor must be viewed in this context. Coupled with past losses, and reasonably foreseeable future losses, it would have significant effects on the health of plant and animal populations due to reductions in gene flow and subsequent loss of genetic variation.

B2-2 cont.

To mitigate for the proposed encroachments, the project proponents have suggested acquiring replacement or offset parcels elsewhere within the Chuckwalla Bench region. The loss of connectivity which would occur, cannot be compensated for or offset by preserving land elsewhere on the Chuckwalla Bench. It is not comparable and thus not adequate mitigation.

B2-3

Moreover, such a program is not necessary. Conservation land acquisition goals are are already being achieved on the Chuckwalla Bench by both MDLT and the Friends of the Desert Mountains. They each have active and successful acquisition programs in partnership with the BLM. For example, MDLT has 5,518 acres in combination that it owns, it has conveyed or is conveying to the BLM, or that are pending acquisitions.

In summary, while MDLT recognizes the threats and impacts of climate change and recognizes the importance of meeting renewable energy goals, this cannot, nor does it need to be done at the expense of our irreplaceable desert species and ecosystems, many of which are of national importance (see Appendix L of the DRECP). We ask that that the BLM not support or approve a project alternative that would make exceptions to the CMAs, but instead choose one which avoids the microphyll woodland and maintains the designated multi-species wildlife corridor. It is essential to the future health of the areas' ecosystems and to the future integrity of the DRECP that an alternative be approved which keeps the CMAs in place, and which maintains the resources they were designed to protect.

B2-4

Sincerely,

Geary Hund
Executive Director
Mojave Desert Land Trust

Comment Set B3 – Desert Tortoise Council

DESERT TORTOISE COUNCIL
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Via email only

18 September 2021

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RE: Oberon Renewable Energy Project Draft EIR Comments (SCH#2021-03-0462)

Dear Mr. Raub, et al.,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities authorized by the Colorado River Basin Regional Water Quality Control Board (Water Board), which we assume will be added to the Decision Record as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project. We also appreciate that Aspen Environmental Group extended a personal invitation to comment on this project, which was received by email on August 13, 2021.

Comment Set B3 – Desert Tortoise Council (cont.)

Despite our numerous requests of the Bureau of Land Management (BLM) to inform the Council of projects that may affect desert tortoises[1], BLM did not contact us; rather we received notice of the BLM's solicitation for comments on an environmental assessment (EA) from a third party on August 13, 2021. It is unfortunate that comments were due to BLM by September 14, 2021, and then to the Water Board on the Draft Environmental Impact Report (EIR) by September 27, 2021. Although we have missed the August 13 deadline, we are still providing these comments to BLM before the September 27 deadline. B3-1

On April 15, 2021, the Council submitted scoping comments on the Notice of Preparation (NOP; Desert Tortoise Council 2021[2]), which are incorporated by reference. In the March 18, 2021 NOP we did not find the words, "critical habitat," although another member of the environmental community indicated that 600 acres of desert tortoise critical habitat is proposed for development and therefore adversely degraded or destroyed (and there are numerous places in Appendix A to the DEIR where this acreage is substantiated). The Council was very outspoken that this unprecedented intent to place a renewable energy project in critical habitat was unacceptable, and that the project should be redesigned to avoid critical habitat. We see that our concerns have not only been ignored, but that the proponent now intends to develop more acres in critical habitat than envisioned in March 2021. The project proponent now proposes to develop 817 acres of critical habitat, which is a discretionary action that could have been avoided, and we believe should still be avoided.

It is unconscionable that with thousands of acres of impaired habitats and Development Focus Areas (DFAs) designated by the Desert Renewable Energy Conservation Plan (DRECP; BLM 2016) for energy development, that the proponent, BLM, and the Water Board have disregarded the planning, science, and coordination that numerous federal and state agencies participated in to produce the DRECP. These entities are disregarding information in scientific journal articles, agency reports, and rulemaking documents that support our assertion that all critical habitat, which is deemed essential habitat for the recovery of tortoises (USFWS 1994a), is necessary given the persisting declines in tortoise populations in the region (Allison and McLuckie 2018). This assertion is further supported by the U.S. Fish and Wildlife Service's (USFWS) publication of the final critical habitat designation in which they said, "The [U.S. Fish and Wildlife] Service expects that proposed actions that are inconsistent with land management recommendations for DWMAs in the Draft Recovery Plan [for the desert tortoise] would likely be considered to adversely modify critical habitat" (USFWS 1994a). Critical habitat designations overlay DWMAs, now included in Tortoise Conservation Areas. B3-2

Range-wide, densities of adult Mojave desert tortoises declined more than 32% between 2004 and 2014 (USFWS 2015). In the Colorado Desert, the annual decline was 4.5% or 36.25% between 2004 and 2014 (Allison and McLuckie 2018). In the Chuckwalla DWMA/TCA/critical habitat unit, adult tortoise densities declined 37.43%. Densities of juvenile desert tortoises have been decreasing in all five recovery units since 2007 (Allison and McLuckie 2018). In addition, adult tortoise numbers or abundance declined in this recovery unit by 36% between 2004 and 2014 (Allison and McLuckie 2018).

[1] https://www.dropbox.com/s/m1wg60u9kxhy56/BLM%20CDCA%20District%20Manager%20DTC%20to%20m%20Affected%20Interest.11-7-2019.pdf?dl=0
[2] https://www.dropbox.com/s/981zy5wnymvvwu8/Ocron%20Solar.4-15-2021.pdf?dl=0

Comment Set B3 – Desert Tortoise Council (cont.)

Like the NOP, the DEIR appears to minimize, even camouflage, that 817 acres of tortoise critical habitat would be destroyed because of the proposed development. The words "critical habitat" appear only one time in the Executive Summary; not in the context of a project impact, but as a statement as to how a dismissed alternative avoids critical habitat. The first-time critical habitat is mentioned is 161 pages into the document, where the following vague description is given: "The southern portion of the project site is within designated critical habitat for desert tortoise (Figure 3.4-1, Project Location)." For the first time, 185 pages into the document, the DEIR divulges that 817 acres of critical habitat would be lost to project development on page 3.4-25. B3-3

Even there, the loss of critical habitat, which at the very least comprises a CEQA-significant impact, is de-emphasized by the DEIR as not being in an Area of Critical Environmental Concern (ACEC) or Tortoise Conservation Area (TCA), is compromised by existing development, is within a designated DFA, and is isolated from other critical habitat south of Interstate 10. We see in Figure 2-2 in Appendix B that given the amount of tortoise habitat that has already been lost to solar development north of I-10, that it absolutely increases the importance of critical habitat located to the north, as between this and the Arica/Victory Pass, all critical habitat north of I-10 would be eliminated in this critical habitat unit. *But for* these two projects, and particularly Oberon, desert tortoise critical habitats, which were deemed essential in 1994 before the ongoing declines since before listing in 1990 and particularly the catastrophic declines documented since 2004, would be eliminated from areas immediately north of I-10. B3-4

Additionally, this statement about critical habitat not being in a TCA is incorrect. TCA is a term used by the USFWS in the 2011 Recovery Plan. It includes ACECs and DWMAs from the 1994 Recovery Plan (USFWS 1994b). The USFWS identified and designated critical habitat to follow the DWMA boundaries. Thus, the Chuckwalla DWMA/TCA and critical habitat unit includes land north of I-10. B3-5

On page 2 of our comment letter (Desert Tortoise Council 2021), we specifically asked that "the Draft EIR/EIS must adequately assess the status and trends of desert tortoise populations in the affected region, particularly in adjacent and nearby critical habitats located south of Interstate 10. At a minimum, data analyses in Allison and McLuckie (2018) and USFWS (2014, 2015, and 2017) must be reported in the draft document as baseline information. The Council believes that these status and trend data clearly show why **600** acres of critical habitat should not be sacrificed to this development" (**bold emphasis added**). So, not only is this requested analysis missing from the DEIR, but the amount of critical habitat has also increased since the March 2021 NOP, and rather than a realistic accounting of lost critical habitat, the loss is de-emphasized in the DEIR as inconsequential. In so doing, the DEIR fails to adequately and accurately assess impacts. Again, we request that the DEIR and NEPA document include an analysis of the direct, indirect, and cumulative impacts to the Chuckwalla tortoise population in the Chuckwalla TCA and critical habitat unit, the Colorado Desert recovery unit, and the Mojave desert tortoise (see *Union Neighbors United, Inc. v. Jewell* below). B3-6 B3-7

For example, page ES-1 reveals that the site is in a DFA but not that it is also within critical habitat. Project Objectives in Section ES.2, point 4 claims, "Minimize environmental impacts and land disturbance associated with solar development," which is disingenuous when it is revealed, not until page 3.4-25, that this objective of minimizing impacts does not extend to B3-8

Comment Set B3 – Desert Tortoise Council (cont.)

critical habitat, which should be and can be avoided *but for* the proponents unwillingness to avoid these essential habitats. In our comment letter (Desert Tortoise Council 2021), we dedicated three paragraphs expressing our concern with the unprecedented loss of critical habitat, yet there is no mention in Section ES.4.3 where "Areas of Controversy/Public Scoping Issues" are vetted that this loss would occur. B3-8 cont. B3-9

Section ES.5.1 Project Location identifies three constructed solar facilities, one currently being developed, and three more being planned (the Arica/Victory Pass facility would also develop critical habitat) in the immediate area, which brings into question the need for this eighth project. We conclude that the focus of solar energy development has changed to favor development anywhere the project proponent wants it. This conclusion is supported by the statement at the bottom of page ES-9, which states, "...because most of the land within the DFA is already in use." Finally, the No Action Alternative fails to reveal that *but for* this project, 817 acres of critical habitat would not be lost to solar development in a full DFA. Nor do we agree with the statement that the proponent's intent in Section ES.6.1 is to comply with the DRECP, which envisioned development on impaired habitats in DFAs, not designated critical habitat. B3-10

In our scoping comments (Desert Tortoise Council 2021), we asked that rooftop solar be analyzed as an alternative, which is given in Section ES.6.2 on pages ES-11 and ES-12, where the discussion is subjective and presents the proponent in an unrealistically favorable light. For example, the proponent indicates that the number of solar panels distributed across rooftops would "...be similar in size to the proposed project;" yes, but it would be in residential and commercial neighborhoods where 5,000 acres of tortoise habitat, including 817 acres of critical habitat, are not at risk. Development of rooftop solar may not benefit "...firms that are in the business of developing utility-scale facilities" but it does preserve intact the ecological resources of native public lands, including essential critical habitats. We find that this is one of many examples of pro-proponent rhetoric that fails to reveal the negative, long-term environmental impacts that would result with project development. We request that the CEQA and NEPA documents compare the loss of carbon sequestration from solar development in desert habitat to rooftop development with no loss of carbon sequestration. B3-11

Unless otherwise noted, the following page numbers refer to the draft environmental impact report (DEIR), entitled "IP Oberon LLC's Oberon Renewable Energy Project," dated August 2021. B3-12

In Section 1.4 Public Review and Noticing, pages 1-3 to 1-5, we expected to see an explanation for how a project like this that occurs exclusively on public lands managed by the Bureau of Land Management (BLM) can be certified in an EIR without explaining why the analysis is not in a combined EIR/EIS (environmental impact statement). It is our belief that a combined EIR/EIS would have garnered more public review and input, that an EIS component still needs to be added, and that the Final EIR/EIS should explain why an EIR-only analysis was pursued for this project. The statements on page 1-9 that the BLM "is not participating as a joint preparer of this document" and that an environmental assessment (EA) will be prepared instead, does not adequately address the serious nature of this project to plan for and facilitate the *adverse modification* of 817 acres of critical habitat, which crosses a significance threshold that warrants completion of an EIS.

Comment Set B3 – Desert Tortoise Council (cont.)

Section 2.2.1.3 Off-site Habitation Mitigation on page 2-8 states that an "…off-site compensation package consists of a total of approximately 5,500 acres." Given that 5,000 acres of public lands would be lost (theoretical decommissioning notwithstanding), we ask if the California Department of Fish and Wildlife (CDFW) was consulted when this 1 to 1.1 compensation ratio was determined? We note that the compensation ratio given in the DRECP for loss of critical habitat is 5:1, which is tabulated on page 3.4-46, but that typical compensation ratios acceptable to CDFW for non-critical habitat are 3:1 at a minimum. The Council's 15-member Board includes five biological consultants and two recently retired agency biologists, and none of us has ever heard of a 1:1 compensation ratio for lost tortoise habitats in the last 10 years. We expect the Final EIR/EIS to report a realistic compensation ratio that documents agency-concurrence (with evidence that CDFW was consulted) on the final ratio decision. Also note that the 5,500 acres stated on page 2-8 for habitat compensation is different from the 6,808 acres shown on page 3.4-46. B3-13

Given the tone of the EIR to de-emphasize the impacts to critical habitat, it is a significant concern to us that the proponent may opt to fence approximately 12 miles of Interstate 10 (Option 1 on page 3.4-47) rather than purchase the 6,808 acres of compensation habitats (Option 2 on page 3.4-48). The Final EIS/EIR needs to estimate the costs associated with these options. Further, we know that the Recovery Implementation Teams (RITs) have identified fencing transportation corridors as a high priority, and that it may already be planned by Caltrans to complete this fencing, thereby making the fencing portion of Option 1 obsolete. Option 3 seems even less effective than the first two and perhaps less expensive, pending the cost estimates to be published in the Final EIS/EIR. If some form of fencing is to be used, the proponent would need to contact Caltrans to discuss right-of-way issues. Also, funds would need to be set aside for fence maintenance. B3-14

With regards to Section 2.2.2.1 Construction Schedule and Workforce, which states, "Construction is anticipated to occur over an approximately 15- to 20-month period dictated by the Applicant's Power Purchase Agreement (PPA) and financing requirements," we believe that this statement should be augmented in the Final EIS/EIR by a phrase like, "and issuance of a Section 2081 incidental take permit." One of our Board members submitted a 2081 permit application for a 160-acre solar project in March 2020, and that permit, 18 months later, has yet to be issued. Given this and similar experiences with delayed permit issuance, we question the proponent's unrealistic expectation that "high-voltage components of the project … be constructed and interconnected no later than April 30, 2023." This presumption seems to anticipate fast-tracking approval of this highly controversial project before its impacts can be fully assessed, and denies the possibility that the footprint should be modified to avoid development of critical habitats. Note that collapsing tortoise burrows as described in the middle of page 2-12 cannot occur until both the U.S. Fish and Wildlife Service (USFWS) biological opinion and CDFW 2081 permit are issued. B3-15

The project proponent may need to obtain a section 10(a)(1)B) incidental take permit (ITP) from the USFWS if the BLM has no regulatory authority over the proposed action on parcels that are not public land. This requirement should be discussed in the CEQA and NEPA documents for this proposed project. Again, the issue of when a federal ITP would be issued should be discussed in the timeline. B3-16

Comment Set B3 – Desert Tortoise Council (cont.)

Mitigation requirements for a section 2081 permit from CDFW and ITP are similar. Page 3.4-22 states that impacts would be minimized by implementing mitigation measures. CDFW code section requires that impacts be both minimized and fully mitigated. So, we note that minimization measures are not mitigation. Section 2081(a)(2) of the California Fish and Game Code requires that the impacts of the authorized take shall be minimized and fully mitigated. All required measures shall be capable of successful implementation. B3-17

Section 783.2, Incidental Take Permit Applications requires the following information for an application to be considered – "An analysis of the impacts of the proposed taking on the species. An analysis of whether issuance of the incidental take permit would jeopardize the continued existence of a species. This analysis shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (A) known population trends; (B) known threats to the species; and (C) reasonably foreseeable impacts on the species from other related projects and activities. (8) Proposed measures to minimize and fully mitigate the impacts of the proposed taking. (9) A proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures. (10) A description of the funding source and the level of funding available for implementation of the minimization and mitigation measures." We request that the project proponent obtain a section 2081 permit from CDFW before initiating any activity that may result in take of the tortoise. This commitment should be in the NEPA and CEQA documents for the proposed project. B3-18

Before the USFWS may issue an ITP, the permit applicant must demonstrate that their implementation of the Habitat Conservation Plan (HCP) would "minimize and mitigate to the maximum extent practicable" for the covered species. To do this, the HCP must first fully analyze the impacts of the take that it is requesting. In *Union Neighbors United, Inc. v. Jewell*, (2016 U.S. App. LEXIS 14377; D.C. Cir, August 5, 2016), the Court gave deference to the HCP Handbook, rejecting USFWS request to apply Chevron. The Court determined "that the term 'impacts' refers to the population or subpopulation of the species as a whole, rather than the discrete number of individual members of the species," rejecting Plaintiff argument to minimize impacts to individuals. On Maximum Extent Practicable, the Court again gave deference to the Handbook. B3-19

In *Friends of the Wild Swan v. Jewell*, 2014 U.S. Dist. LEXIS 116788 (D. Mont., Aug. 21, 2014) the court faulted USFWS's conclusion that take would be fully mitigated, finding that there was "limited scientific support" for that conclusion and providing deference to the HCP Handbook. Citing the HCP Handbook guidance that, where adequacy of mitigation is a "close call," the record must support a finding that the mitigation is the maximum practicable, the court found that USFWS made no independent analysis of whether more mitigation was impracticable. The court faulted USFWS for relying entirely on the applicant's representations as to practicability.

Consequently, we request that the project proponent develop and submit an HCP and application for an ITP for the proposed project that complies with the HCP handbook including fully mitigating the take (USFWS and NMFS 2016).

Comment Set B3 – Desert Tortoise Council (cont.)

With regards to the fifth bullet on page 2-13, "Protective measures, including Best Management Practices [BMPs], being implemented to conserve the desert tortoise during construction activities," herein we provide the proponent with a set of BMPs[3] completed by the Council in 2017 that may be helpful. These BMPs reduce some direct and indirect impacts to tortoises; they do not eliminate these impacts or impacts not addressed. For example, the BMPs do not address the temporal degradation/loss of tortoise habitat that results from construction, operation and maintenance, and decommissioning activities. B3-20

With regards to Section 2.2.5.1 Environmental Resources on page 2-24, which states, "Biological and cultural resources pedestrian surveys will be conducted after coordination with BLM, USFWS, and Native American tribes," we ask that this statement be augmented in the Final EIR/EIS to coordinate these and other actions with the CDFW. B3-21

With regards to the following statement on page 3.4-6, "They [larger creosote bush rings] are considered rare and 'sensitive' by federal and state agencies, including BLM, but they do not have any formal protections in place." It is our understanding that there are specific measures identified in the DRECP for protection of creosote bush rings larger than 15 feet (4.5 meters) in diameter, which the proponent is obligated to implement. We request that the Final EIR/EIS disclose applicable protective measures. B3-22

With regards to MM BIO-1, page 3.4-39, first bullet, "Lead Biologist: The Applicant shall assign a Lead Biologist, **approved by BLM**, as the primary point of contact for the BLM and resource agencies regarding biological resources mitigation and compliance" (**bold emphasis added**). Please note that the CDFW will also need to review and approve the Lead Biologist and must be given that opportunity before the BLM's approved person can implement certain actions, including collapsing tortoise burrows or handling tortoises. This comment also pertains to the statements at the top of page 3.4-52 identifying a "USFWS Approved Biologist." B3-23

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during any authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other Water Board and BLM-authorized projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project. B3-24

Regards,

Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc: California State Clearinghouse, state.clearinghouse@opr.ca.gov

[3] https://www.dropbox.com/s/fbx0uw43hs44i1w/%23DTC%20Construction%20Best%20Management%20Practices%20082117.pdf?dl=0

Comment Set B3 – Desert Tortoise Council (cont.)

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Comment Set B4 – California Native Plant Society et al.

California Native Plant Society • California Wilderness Coalition

Center for Biological Diversity • Defenders of Wildlife

Mojave Desert Land Trust • Sierra Club

September 27, 2021

Logan Raub
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Sent via email to: Logan.Raub@Waterboards.ca.gov

Re: Comments on Draft Environmental Impact Report for the Oberon Solar Energy Project

Dear Logan:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for the proposed Oberon Renewable Energy Project (Oberon). Comments included in this letter are submitted by the California Native Plant Society (CNPS), California Wilderness Coalition (CalWild), Center for Biological Diversity (Center), Defenders of Wildlife (Defenders), Mojave Desert Land Trust (MDLT) and the Sierra Club.

CNPS is a statewide, non-profit organization dedicated to conserving California native plants and their natural habitats, and to increase the understanding, appreciation, and horticultural use of native plants. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices. CNPS has more than 10,000 members in 35 chapters throughout California.

CalWild is a California non-profit conservation organization founded in 1976. CalWild works to protect and restore the state's wildest natural landscapes and watersheds on federal public lands. These important wild places provide clean air and water, refuges for wildlife, mitigation against the effects of climate change, and outstanding opportunities for recreation and spiritual renewal for people. CalWild works with local communities to identify wild places that need protection, and then builds coalitions to support permanent protection for forests, mountains, rivers, deserts and other natural areas. CalWild has thousands of members in California.

The Center is a non-profit public interest organization with offices located across the country including offices in California, representing more than 1.7 million members and online activists nationwide dedicated to the conservation and recovery of species at-risk of extinction and their habitats.

Defenders is a national conservation organization founded in 1947 and dedicated to protecting all native animals and plants in their natural communities. To this end, it employs science, public

Comment Set B4 – California Native Plant Society et al. (cont.)

education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction. Defenders has 2.2 million members in the U.S., including 323,000 in California.

The Mojave Desert Land Trust (MDLT) is a nonprofit conservation organization founded in 2006 and headquartered in Joshua Tree, California. MDLT acquires, restores, and protects biologically and culturally important lands throughout a 26-million-acre service area in the California Desert. To date, MDLT has conserved over 100,000 acres of desert conservation lands, and conveyed over 54,000 acres to federal and state agencies.

The Sierra Club is a national nonprofit organization of approximately 2.5 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

Oberon Background

Oberon is a proposed 500 MW photovoltaic electricity generating facility and related infrastructure located on approximately 2,700 acres of public land managed by the Bureau of Land Management (BLM) in a portion of the southwestern portion of the Chuckwalla Valley near Desert Center, California, and within a Development Focus Area (DFA) designated in the Desert Renewable Energy Conservation Plan (DRECP). Intersect Power has applied for a right of way grant from BLM for the construction and operation of Oberon.

The DEIR includes an analysis of the effects of construction, operation and decommissioning of Oberon on the environment, including public lands and their resources. The DEIR also includes an analysis of the effects of alternatives to Oberon that are considered reasonable and feasible under the California Environmental Quality Act (CEQA).

To date, Oberon is one of three solar project applications in the DFA that are subject to all of the requirements and the Conservation Management Actions (CMAs) in the DRECP. Oberon is unique among the three proposed projects because it does not fully comply with the DRECP CMAs designed to avoid and minimize adverse impacts to unique and sensitive biological resources and would set a precedent by requiring the BLM to issue a Land Use Plan Amendment for the first time for the DRECP.

The California Department of Fish and Wildlife (CDFW) is identified in the DEIR as the designated Trustee agency and will provide expert review and comment on the Oberon DEIR to the Colorado River Basin Regional Water Quality Control Board (Colorado River Board). CDFW will also exercise its authorities under the Fish and Game Code and the California Endangered Species Act (CESA) for issuing any discretionary permits or authorizations for the incidental take of threatened or endangered species and protection of lakes and streambeds under the Lake and Streambed Alteration Program.

Comment Set B4 – California Native Plant Society et al. (cont.)

Comments on the Oberon DEIR

Our organizations, individually and collectively, submit the following comments on the Oberon DEIR:

B4-1

1. Relationship of Oberon to the DRECP and other Regulatory Requirements

The DRECP was approved by BLM in 2016 and became a comprehensive amendment to the California Desert Conservation Area (CDCA) Plan, which is the governing land use plan for BLM-managed public lands in the California Desert. Ultimately, Oberon, and any other proposed project, must comply with the DRECP and its CMAs for the applicant to receive a right-of-way grant or other form of authorization from BLM for the use of public lands. This was made clear in the Record of Decision (ROD) for the DRECP signed by the BLM State Director in California:

BLM-authorized activities on public land must conform to the applicable land use plan. If the BLM receives an application for a project that does not conform to the land use plan, it may reject the application without additional analysis. If the BLM determines, however, that the proposal warrants further analysis, it must undertake a plan amendment, which includes a public process, as described in the land use planning regulations at 43 CFR 1610.2.

BLM's right of way regulations (43 CFR 2801.2) specify the intent of the regulations regarding the use and management of public: *(a) Protects the natural resources associated with public lands and adjacent lands; (b) Prevents unnecessary or undue degradation to public lands; (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans* [e.g., the CDCA Plan]*; and (d) Coordinates, to the fullest extent possible, all BLM actions with state and local governments and interested individuals.*

The DRECP was developed by an interagency team comprised of subject-matter experts from the BLM, CDFW, California Energy Commission and U.S. Fish and Wildlife Service (USFWS). The interagency goal of the DRECP is *to provide a streamlined process for the development of utility-scale renewable energy generation and transmission consistent with federal and state renewable energy targets and policies, while simultaneously providing for the long-term conservation and management of Special Status Species and vegetation types as well as other physical, cultural, scenic and social resources within the DRECP Plan Area through the use of with durable regulatory mechanisms.* (DRECP, page 2).

Objective 1.4 of the DRECP is to *Conserve unique landscape features, important landforms, and rare or unique vegetation types identified within the BLM Decision Area, including desert riparian and wetland resources in the planning area, including microphyll woodlands, desert playas, and seeps/springs*. It is important to understand the DRECP definition of Conserve: *The protection and management of resources and values BLM is managing with land allocations and CMAs. In the DRECP biological conservation strategy, this term is applied more narrowly to the protection and management of ecological processes, Focus and BLM Special Status Species, and vegetation types.*

As proposed, Oberon does not comply with some of the DRECP's CMAs. Rather than reject the Oberon right-of way-application, BLM chose to accept it for further analysis by way of an Environmental Assessment (EA) claiming that it was the only alternative that would allow for a 500 MW solar project to be built and operate, which met the applicant's purpose and need. However, BLM had the authority to outright reject Intersect Power's 500 MW solar project application under both the DRECP ROD and its right-of-way regulations in 43 CFR 2800.

Comment Set B4 – California Native Plant Society et al. (cont.)

Compliance with the DRECP and its CMAs is extremely important to each of our organizations. Representatives from many of our organizations devoted an extraordinary amount of time and funding over an eight year period from 2009 through 2016 in supporting the development of the DRECP and its CMAs as stakeholders in the plan. Although some of our organizations were concerned over some of the allowable impacts to sensitive resources, we all agreed that the DRECP represented a reasonable balance between the need to support renewable energy generation and transmission, the conservation of various key species and their habitats and adhering to the legal requirements for managing public lands in the CDCA under Section 601 of the Federal Land Policy and Management Act (FLPMA).

B4-1 cont.

Our organizations are unified in our strong support for the DRECP and will resist any attempt to weaken its resource conservation provisions through an amendment to the plan as a whole or to exempt an individual project from compliance with the CMAs.

2. Oberon Objectives

B4-2

Regarding Oberon objectives, page 1-2 of the DEIR simply states what the applicant's objectives are, not any of the independent, unbiased objectives of the State of California as represented by the Colorado River Board and the CDFW. In doing so, the DEIR suffers from a fatal flaw, namely that only one project could satisfy the project objectives and also meet the definition of preferred alternative, namely that proposed by the applicant. Two of the stated objectives for Oberon on pages 4-16 and 4-17 of the DEIR are significant contributors to this issue in the DEIR: 1) *Deliver 500 MW of affordable wholesale renewable energy to California ratepayers under long-term contracts with electricity service providers*; and 8) *Conform with the Desert Renewable Energy Conservation Plan's Conservation and Management Actions to the maximum extent practicable, while also optimizing the balance between renewable energy generation and protection and conservation of sensitive habitat.*

Under the applicant's objectives, any project generating less than 500 MW would be excluded from consideration by the Colorado River Board as the preferred alternative, and would not conform to the DRECP and its CMAs. Insertion of the term "to the maximum extent practicable" appears to have been inserted by the applicant or on its behalf by Aspen Environmental. The phrase "optimizing the balance between renewable energy generation and protection and conservation of sensitive habitat" is a condition from the applicant associated with its objectives for Oberon in an effort to render the project as acceptable or reasonable even though the DEIR shows that at least three DRECP CMAs would not be complied with (LUPA-BIO-SVF-6, which requires avoiding impact to microphyll woodland, except for minor incursions; LUPA-BIO-RIPWET-1, which requires a 200-foot setback from the edge of microphyll woodland; and LUPA-BIO-3, which requires avoidance to the maximum extent practicable).

The primary issue our organizations have with Oberon is its failure to comply with one of the critically important DRECP CMAs designed specifically to protect the ecologically significant Desert Dry Wash Woodland or microphyll woodlands and the key species utilizing this habitat and a 200 foot-protective setback or buffer. This issue will be addressed in greater detail elsewhere in this letter.

Comment Set B4 – California Native Plant Society et al. (cont.)

The applicant's proposed project is inconsistent with the goals and objectives of the DRECP, the CMAs and BLM's right-of-way grant regulations. Accordingly, we request that the Colorado River Board reject it when considering a final decision on Oberon. B4-3

3. Alternatives Analyzed in the DEIR

We appreciate the inclusion of two action alternatives to the applicant's proposed project, the Land Use Plan Compliant Alternative, and the Resource Avoidance Alternative with Prehistoric Resources/TCR [Tribal Cultural Resources] Option. Both alternatives would fully comply with the DRECP and its CMAs. They are essentially the same as the action alternatives analyzed in the BLM's EA for Oberon. They would result in the project generating 375 MW and 300 MW, respectively, demonstrating that projects within the Oberon application area can be developed in a manner that is fully compliant with the DRECP, generate a substantial amount of electricity and contribute to renewable energy needs and goals of California and the U.S. Based on a review of 11 existing and proposed solar projects in the East Riverside DFA, MW generation for each ranges from 150-750, averaging about 400. In proximity to Oberon are the proposed Arica and Victory Pass solar projects that would generate 265 MW and 200 MW, respectively. Both were designed by their applicant to comply with the DRECP and its CMAs. The DRECP-compliant alternatives to Oberon, generating 375 MW and 300 MW, are within the range of utility-scale solar projects in this DFA and greater than Arica and Victory Pass. B4-4

The DEIR portrays Oberon alternatives as inferior to the proposed project because they would not meet the applicant's objective of a project generating 500 MW, by use of this statement, *This* [the Resource Avoidance Alternative with Prehistoric Resources/TCR Option] *would result in the project being able to generate* ***only 300 MW of solar power, only 60 percent of its objective of 500 MW under the proposed project***. (emphasis added).

In comparing the applicant's proposed project (beginning on page 2-14 of the DEIR) with the action alternatives (beginning on page 4-6 of the DEIR), it appears to have been designed to make it appear more environmentally-friendly due to the other action alternatives having been arbitrarily defined to exclude the same design features. For example, in the proposed project, vegetation within the solar panel array areas would be mowed and rolled or crushed to a height of 12 inches and allowed to substantially recover to provide wildlife habitat; the perimeter fence in portions of the eastern half of the project site would be elevated to allow small-sized wildlife, including the desert tortoise, to move freely across the solar array areas and access microphyll woodlands in washes; gravel on interior roads between solar panel arrays would be periodically interrupted to allow safe crossing by desert tortoises and other wildlife; and wire range fencing would be installed across undeveloped open desert dry wash woodland segments along BLM open route DC 379 to exclude off-highway vehicle use to protect this sensitive habitat. In addition, solar panel arrays would be set back 300 feet from the I-10 Freeway right-of-way to reduce visual impact. B4-5

The applicant's proposed project fence modification to allow desert tortoises and other wildlife to reoccupy or be translocated back to the site and move freely during the operations and maintenance phase of the project would likely expose them to high risk of injury or mortality from a variety of motorized vehicles used in inspecting, operating and maintaining the project on a daily basis over the life of the project. This fence modification is predicated on the unlikely approval by CDFW and B4-6

Comment Set B4 – California Native Plant Society et al. (cont.)

USFWS to allow reoccupation of the active project area by the desert tortoise. To date, all other solar projects within suitable desert tortoise habitat in California, including every project within the East Riverside DFA, have been required to install permanent desert tortoise exclusion fences to ensure that project construction, operation and maintenance activities avoid injury and mortality to the species over the operational life of the projects. The proposed Arica and Victory Pass solar projects adjacent to Oberon include installation and maintenance of USFWS-approved desert tortoise exclusion fence around the solar project except for the linear generation tie line to the Red Bluff substation.

B4-6 cont.

In contrast, the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative with Prehistoric Resources/TCR Option, solar array perimeter fences would exclude all desert tortoises and other wildlife for the life of the project (estimated at several decades), and no fence would be installed across route DC 379 where it crosses washes supporting microphyll woodland habitat. We consider these alternatives environmentally superior to the proposed project for reasons given above, and because all microphyll woodland washes would remain accessible to all wildlife, including burro mule deer. The Resource Avoidance Alternative with Prehistoric Resources/TCR Option is the same, except that desert tortoise critical habitat and the multi-species habitat linkage are also avoided, and prehistoric cultural resources on approximately five acres would be avoided. We find no reason why these two action alternatives to the proposed project cannot incorporate the same design features of vegetation mowing and regrowth, and fences across microphyll woodland to exclude off-highway vehicle use. By arbitrarily limiting these favorable modifications to the applicant's proposed project – and thereby finding it environmentally superior – the DEIR fails to meet the standard of an unbiased objective CEQA document.

B4-7

The apparent basis for keeping BLM-designated route DC 379 open for public use is the presence of two contemporary campfire rings located within the 2,700 acre project area assumed to be associated with off-highway vehicle access provided by the designated route. This, in turn, led to the applicant proposing to block off-highway vehicle use in washes supporting microphyll woodland with wire range fencing where they intersect route DC 379. No evidence was provided in the DEIR that off-highway vehicle use in these washes, which BLM designated as closed to such use, is occurring or is considered by BLM as a management issue. Our organizations support the closure of route DC 379 to the public because it would provide little or no recreation benefits and would be surrounded on both sides by landscape-scale solar panel arrays, and it would potentially be a source of fugitive dust and interfere with the natural flow of water in braided washes.

B4-8

During the virtual public scoping meeting for Oberon, the BLM project manager stated that placement of solar panel arrays within the BLM-designated utility corridor is considered by BLM to be compatible with continued use and function of the corridor. This is in contrast with the statement on page 4-6 of the DEIR that *...under the proposed project, solar panels would be set back 300 feet from the I-10 freeway* ***to help preserve BLM's Section 368 utility corridor.*** (emphasis added). Under the Land Use Plan Compliant Alternative, however, solar panel arrays would be placed within the utility corridor to offset the effect of the CMA prohibiting development within the 200 foot protective setback or buffer surrounding microphyll woodland habitat. We do not think portraying the effect of the CMA prohibiting development in the microphyll woodland protective setback as an adverse impact needing to be offset is appropriate. All of the CMAs have a specific purpose in

B4-9

Comment Set B4 – California Native Plant Society et al. (cont.)

allowing renewable energy projects to be developed while protecting sensitive resources. The California Energy Commission has determined that the acreage available for renewable energy development in DRECP is more than enough to accommodate the public land portion of renewable energy expected to occur through 2040. See https://www.energy.ca.gov/sites/default/files/2019-12/DRECP_FAQs_ada_0.pdf. Therefore, CMAs provide BLM and developers a clear and consistent process for streamlined project approval while meeting BLM's conservation and land management responsibilities; CMAs should not be viewed as an impact to renewable energy project anywhere within the DRECP area.

B4-9 cont.

The DEIR includes a description of the effects of the No Project Alternative and both action alternatives, the Land Use Plan Compliant Alternative and the Resource Avoidance Alternative with Prehistoric Resources/TCR Option. Its analysis of effects includes speculative outcomes that appear unreasonable given the competitive market for renewable energy-generated electricity in California and that the Oberon project does not comply with DRECP CMAs for the protection of microphyll woodlands and the multi-species wildlife linkage. First, the speculative outcome of the No Project Alternative assumes that the MWs not generated by Oberon would be sourced from other projects or sources utilizing fossil fuel and not renewable energy sources. This is a false assumption given California's mandated renewable portfolio standards and the carbon-free electricity generation mandates in SB 100, and the recent California Public Utilities Commission (CPUC) approving an order in June of 2021 for procurement of 11,500 MW of electricity from renewable energy sources, not fossil fuel, by regulated electricity utilities in California.[1] The CPUC procurement order specified 2000 MW by 2023, 6000 MW by 2024, etc.

B4-10

Second, the DEIR speculates that another solar energy project proposed within the same land area as Oberon would result in a similar project with similar impacts. This is also unreasonable and speculative. The reasonable expectation is that another project proposed in the same location as Oberon would fully comply with the DRECP and the CMAs, would receive streamlined permitting and contribute substantially to meeting California's renewable energy portfolio standards. It is noteworthy that two utility-scale solar project applications adjacent to Oberon, Arica and Victory Pass fully comply with the DRECP and the CMAs and would generate 265 MW and 200 MW, respectively. Furthermore, there are many solar energy projects in the CPUC's interconnection queue for the Red Bluff substation.

B4-11

The DEIR is also speculative and unreasonable in the effects analysis of the smaller (i.e., 375 MW and 300 MW) alternatives to Oberon. It describes Oberon as having *an energy need*, and that anything less than the 500 MW may result in the need to develop an additional solar project in another location within the same DFA to offset the reduced MW generation. This conclusion suggests that the Oberon applicant has made commitments for delivery of 500 MW prior to the completion of the environmental review and permitting processes by the Colorado River Board, CDFW and, especially the BLM.

B4-12

The applicant for Oberon is affiliated with two other solar projects within the East Riverside DFA: the 450 MW IP Athos Renewable Energy Project that is approved and under construction on 3,200 acres of private land; and the proposed Easley Solar and Green Hydrogen project located on

B4-13

[1] https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF

Comment Set B4 – California Native Plant Society et al. (cont.)

approximately 3,100 acres of BLM-managed public land. Both projects are planned to deliver electricity to the Red Bluff substation.

B4-13 cont.

The DEIR speculates that alternatives to Oberon would have environmental impacts equal to or greater than Oberon. It goes on to suggest there would be economic and wildlife ramifications because *...there would be no mobilization of a workforce or equipment to create wildlife-friendly fencing during operations as would occur under the proposed project. No cattle wire fencing would be installed along segments of BLM Open Route DC379, which would allow for continued public and recreational access to desert dry wash woodland crossings.* As stated above, although the DEIR arbitrarily applies this effect only to Oberon, we find no reason the same wildlife-friendly fence and wire fencing along segments of route DC 379 could not be included in the two action alternatives for smaller projects.

B4-14

As we noted elsewhere in the DEIR, the analysis implies that the loss of 60 acres of microphyll woodland and up to 600 acres of the 200 foot protective buffer to solar panel arrays is an unavoidable minor incursion that can be simply mitigated to a level of insignificance by compensatory mitigation elsewhere. We strongly disagree. Microphyll woodland habitat and the multiple species it supports was afforded special protection throughout the DRECP area, including in DFAs, as a sensitive habitat that occupies five-percent of the landscape but supports 90 percent of the native species occurring in the greater Colorado-Sonoran region of the CDCA. We ask that an accurate and transparent account of the acres of impact or loss to sensitive habitats, including acres within the 200 foot protective setback or buffer surrounding all microphyll woodlands be provided for Oberon and each of the action alternatives.

B4-15

Lastly, we are concerned that compensatory mitigation is erroneously portrayed in the DEIR as a component of Oberon that makes it environmentally superior to the two action alternatives that fully comply with the DRECP. In the absence of successful habitat enhancement on compensation lands, there will always be a net loss of the target resource which, for Oberon, are primarily microphyll woodlands and desert tortoise habitat, both designated critical habitat and other suitable habitat. The DEIR compares the acres of compensatory mitigation habitat requirement for each of the alternatives: 6,800 for Oberon, 5,400 for the Land Use Plan Compliant Alternative and 1,800 acres for the Resource Avoidance with Prehistoric Resources/TCR Option. The greater conservation benefits of Oberon are attributed to the compensation land under consideration being of higher quality than that which would be lost due to the project. However, the compensation land locations within existing conservation areas and surrounded by public lands managed by BLM makes it highly unlikely they would be developed, and most likely those lands would be acquired for conservation purposes by a variety of options through, for example, the federal Land and Water Conservation Fund, state Wildlife Conservation Board, direct purchases by conservation organizations and to satisfy compensatory mitigation requirements for legitimate unavoidable impacts. In the absence of Oberon, those same lands would very likely be eventually conserved through means other than compensatory mitigation. Our organizations support compensatory mitigation commensurate with established policies, including that project impacts requiring such mitigation are fully consistent with governing land use plans (i.e., the CDCA Plan as amended by the DRECP and its CMAs). Regarding impact mitigation in general, our organizations support mitigation priority sequencing associated with CEQA[2] (i.e., avoid, minimize, compensate). For

B4-16

[2] https://coastal.ca.gov/weteval/we3.html

Comment Set B4 – California Native Plant Society et al. (cont.)

Oberon, we recommend this mitigation sequencing be applied in full, which will result in a project that is fully compliant with the DRECP and its CMAs. B4-16 cont.

4. DEIR Section 2.2.5/2.2.5.1: Environmental Considerations/Resources B4-17

The Environmental Considerations/Resources section of the DEIR states that *No known environmental resource conflicts have been identified. Biological and cultural resources pedestrian surveys will be conducted after coordination with BLM, USFWS, and Native American tribes, in accordance with all procedures and field work authorizations, as appropriate. Desktop paleontological, geotechnical, hydrologic, and other studies will be conducted to identify, minimize, and mitigate land use conflicts.*

We disagree with this statement. As proposed, Oberon would not comply with several DRECP CMAs designed to protect sensitive microphyll woodland habitat and the species of wildlife it supports, and the multi-species habitat linkage, which clearly constitutes *environmental resource conflicts.* The proposed project would result in the loss of approximately 60 acres of sensitive microphyll woodland. Further, based on an independent analysis of the effects of Oberon by the Center's GIS analysts, 140 acres of microphyll woodland, 349 acres of the 200 foot protective buffer or setback, and 325 acres of the multi-species habitat linkage to accommodate solar panel arrays would occur. Since the proposed project does not comply with the DRECP CMAs for protection of microphyll woodland, this statement on page 3.4-17 of the DEIR is incorrect: *The boundaries of the project were specifically designed to meet the CMAs through avoidance of desert dry wash woodland (LUPA-BIO-RIPWET-1).* Meeting this CMA would result in zero acres of microphyll woodland lost, except for allowable minor incursions.[3] In contrast, under Section 3.4.1 (Regional Setting), the DEIR states, *The boundaries of the project's disturbance areas were designed to minimize impacts to desert dry wash woodland to achieve the intent of desert tortoise protection as provided in the DRECP LUPA, which amended the BLM California Desert Conservation Area Plan, as amended.* This statement contradicts the previous one, and fails to recognize that microphyll woodland is a sensitive wildlife habitat that supports many more key species than just the desert tortoise. Avoidance of microphyll woodland under the DRECP was not solely to benefit the desert tortoise, but for multiple species including resident and migratory birds, small and medium sized mammals and other animals, and the larger burro mule deer. As stated above, microphyll woodland is a sensitive habitat occurring on approximately 5 percent of the DRECP landscape area but utilized by 90 percent of the resident and migratory birds.

The loss of 60 acres of microphyll woodland due to solar panel arrays (which can be located and arranged to avoid nearly any object or sensitive resource) does not meet the DRECP definition of a minor incursion because it does not *...prevent or minimize greater resource impacts from an alternative approach to the activity.* In the Final Environmental Impact Statement for the DRECP, BLM concluded that no microphyll woodland would be lost due to allowable activities because of the protective CMAs. B4-18

Furthermore, the DEIR's reliance on post-EIR-certification biological and cultural resources surveys in coordination with agencies, Native American tribes and performing surveys according to established protocols; and performing computer-based studies alone do not, by themselves, result in

[3] DRECP defines minor incursions as "Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.

Comment Set B4 – California Native Plant Society et al. (cont.)

the avoidance, minimization or mitigation of resource conflicts associated with Oberon. This is deferral of analysis; these studies need to be performed and the impacts addressed as part of the public review CEQA process. B4-18 cont.

Among the requirements of CEQA is for the lead agency to identify and analyze a range of reasonable alternatives to the proposed action. CEQA requires lead agencies to adopt alternatives to a proposed project that would substantially lessen the significant adverse environmental impacts, as required by Public Resources Code Sections 21002 and 21081. B4-19

We are concerned that the applicant's proposed project, according to pages ES-7 and 4-22 of the DEIR, *is considered preferred* because the two action alternatives *...would achieve the project objectives, which include the provision of environmental benefits,* ***to a lesser extent compared with the proposed project*** (emphasis added). We conclude that the DEIR lacks a definitive statement from the Colorado River Board as to which alternative is the Preferred Alternative under CEQA. As written, it appears the term *considered preferred* may actually refer to the applicant's opinion about its proposed project. The Colorado River Board should identify a Preferred Alternative after consulting with the CDFW, the Trustee Agency for all matters involving plants, animals and their habitats affected by Oberon. B4-20

5. DEIR Section 3.11.2 Regulatory Framework B4-21

FLPMA: We found that the description of the FLPMA is incomplete because Title VI, Designated Management Areas, and specifically the CDCA isn't included. The key requirements of Section 601, which applies to the entire CDCA, should be included in the Final EIR, as follows:

- The California [Desert Conservation Area] contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;
- The California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;
- The California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;
- It is the purpose of [Section 601] to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality;
- The Secretary [of the Interior]...shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development.

State Law, Regulations, and Policies: The DEIR states, *The project would be located entirely on BLM-administered public lands; state laws, regulations, and policies do not apply*. This is incorrect. The DEIR for B4-22

Comment Set B4 – California Native Plant Society et al. (cont.)

Oberon is proof that state laws and regulations apply. Both the Colorado River Board and CDFW have jurisdiction over water quality and wildlife, respectively. Their jurisdictional authorities are specified in the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, CEQA, CESA and the Fish and Game Code. The Colorado River Board will consider issuing discretionary Waste Discharge Requirements for the protection of water quality; and the CDFW will consider issuing a discretionary Incidental Take Permit for the threatened desert tortoise, and entering into a discretionary Lake and Streambed Alteration Agreement for effects of Oberon on jurisdictional dry streambeds, including those supporting microphyll woodlands.

B4-22 cont.

Conclusion

We hope that our comments, including recommendations, on the Oberon DEIR are helpful to both the Colorado River Board and the CDFW. Because of the inconsistencies and lack of clarity in the proposed project and alternatives, we request a revised DEIR be prepared that addresses the issues identified in this letter and recirculated to the public for comment. The DEIR should state the basic objectives of the responsible lead agency (Colorado River Board) and the Trustee agency (CDFW), which should reflect the basic objectives of the activity, and that is the generation of electricity from renewable energy sources to contribute to California's renewable portfolio standards while simultaneously providing long-term conservation and management of Special Status Species and vegetation types as well as other physical, cultural, scenic and social resources.

Throughout our comment letter, we stress the importance of renewable energy projects proposed in the East Riverside DFA to conform to the requirements of the DRECP, including all of its CMAs. We appreciate the inclusion of two alternatives to Oberon that would fully comply with the DRECP and its CMAs. If the Colorado River Board choses to finalize the DEIR, it should adopt one of the proposed alternatives as the Preferred Alternative under CEQA and not the Oberon proposed project because it does not comply with the DRECP CMAs for the protection of microphyll woodlands and the multi-species wildlife linkage. We have attached the comment letter we sent to the BLM on its Environmental Assessment for Oberon because it may provide additional information useful in preparing the Final EIR.

B4-23

Please contact any of us if you would like to discuss our letter or need additional information.

Sincerely,

Isabella Langone
Conservation Analyst
California Native Plant Society
ilangone@cnps.org

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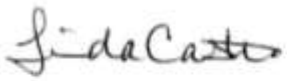

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Attachment: Comment letter to BLM on the Oberon solar project EA

Comment Set B4 – California Native Plant Society et al. (cont.)

California Native Plant Society • California Wilderness Coalition

Center for Biological Diversity • Defenders of Wildlife • Sierra Club

September 14, 2021

Brandon G. Anderson
Bureau of Land Management
1201 Bird Center Drive
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Sent via email to: BLM_CA_PS_OberonSolar@blm.gov, bganderson@blm.gov

Re: Oberon Solar Project Environmental Assessment

Dear Brandon:

Thank you for the opportunity to provide comments on Environmental Assessment (EA) for the proposed Oberon Renewable Energy Project (Oberon). Comments included in this letter are submitted by the California Native Plant Society (CNPS), California Wilderness Coalition (CalWild), Center for Biological Diversity (Center), Defenders of Wildlife (Defenders) and the Sierra Club.

CNPS is a statewide, non-profit organization dedicated to conserving California native plants and their natural habitats, and to increase the understanding, appreciation, and horticultural use of native plants. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices. CNPS has more than 10,000 members in 35 chapters throughout California.

CalWild is a California non-profit conservation organization founded in 1976. CalWild works to protect and restore the state's wildest natural landscapes and watersheds on federal public lands. These important wild places provide clean air and water, refuges for wildlife, mitigation against the effects of climate change, and outstanding opportunities for recreation and spiritual renewal for people. We work with local communities to identify wild places that need protection, and then we build coalitions to support permanent protection for forests, mountains, rivers, deserts and other natural areas. CalWild has thousands of members in California.

The Center for Biological Diversity is a non-profit public interest organization with offices located across the country including offices in California, representing more than 1.7 million members and online activists nationwide dedicated to the conservation and recovery of species at-risk of extinction and their habitats.

Defenders is a national conservation organization founded in 1947 and dedicated to protecting all native animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction. Defenders has 2.2 million members in the U.S., including 323,000 in California.

Comment Set B4 – California Native Plant Society et al. (cont.)

The Sierra Club is a national nonprofit organization of approximately 2.5 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

Oberon Background

B4-24

Oberon is a proposed 500 MW photovoltaic electricity generating facility and related infrastructure located on approximately 2,700 acres of public land managed by the Bureau of Land Management (BLM) in a portion of the southwestern portion of the Chuckwalla Valley near Desert Center, CA, and within a Development Focus Area (DFA). Intersect Power has applied for a right of way grant from BLM for the construction and operation of Oberon.

The EA includes an effects analysis of the construction and operation of Oberon on the environment, including public lands and their resources. It also includes an analysis of the effects of a possible "...draft LUPA[1] to facilitate approval of the project." BLM decided to include the possible LUPA in the EA because one alternative in the EA (the applicant's proposed project), if ultimately approved by BLM, would require exempting Oberon from certain requirements in the 2016 Desert Renewable Energy Conservation Plan (DRECP), namely specific Conservation Management Actions or CMAs. Without exempting Oberon from compliance with certain CMAs, BLM determined that the 500 MW Project would not be able to be constructed.

To date, Oberon is one of three solar project applications in the DFA that are subject to all of the requirements and the CMAs in the DRECP. Oberon is unique because it is the first and only project where the applicant requested a right of way grant from BLM for a project that would not comply with the DRECP, and apparently decided that a fully-compliant project was not practicable.

Comments on the EA

Our organizations, individually and collectively, submit the following comments on the Oberon EA (Note: statements or text taken from the DRECP are shown in bold italic):

1. Alternatives Analyzed in the EA

B4-25

We appreciate the inclusion of Alternative 3 and Alternative 4 in the Oberon EA, both of which fully conform to the DRECP and its CMAs. Alternative 3 (Land Use Plan Compliant Alternative) would result in a 375 MW solar project with a footprint of 2,100 acres that is intended to avoid development in sensitive habitats (i.e., microphyll woodland, protective buffers, wildlife corridors); and Alternative 4 (Resource Avoidance Alternative), would additionally avoid development in designated critical habitat for the threatened desert tortoise located north of Interstate 10, resulting in a project that would generate 300 MW with a footprint of 1,600 acres.

Alternative 2 (applicant's proposed project), would generate 500 MW with a project footprint of 2,700 acres. It does not conform to the DRECP and its CMAs. The EA does not include a reasonable justification why BLM determined that Alternative 2 deserved analysis. As Defenders and the California Wilderness Coalition stated in their Oberon scoping comment letter, the Record of Decision (ROD) for the DRECP stated, in part, ***BLM-authorized activities on public land must conform to the applicable land use plan. If the BLM receives an application for a project***

[1] LUPA is an acronym for Land Use Plan Amendment, referring to a possible amendment of the California Desert Conservation Area Plan of 1980 (as amended by the Desert Renewable Energy Conservation Plan).

Comment Set B4 – California Native Plant Society et al. (cont.)

that does not conform to the land use plan, it may reject the application without additional analysis. If the BLM determines, however, that the proposal warrants further analysis, it must undertake a plan amendment, which includes a public process, as described in the land use planning regulations at 43 CFR 1610.2.

B4-25 cont.

The only reason BLM gave for deciding to analyze Alternative 2 was because it was the only alternative that would allow for a 500 MW solar project to be built and operate, which is what the applicant wanted. BLM had the authority to outright reject Intersect Power's 500 MW solar project application under both the DRECP ROD and its right-of-way regulations in 43 CFR 2800.

B4-26

The BLM's right of way grant regulations, specifically 43 CFR 2801.2, requires, in part, that allowable uses of the public lands be done in a manner that: (a) Protects the natural resources associated with public lands and adjacent lands; (b) Prevents unnecessary or undue degradation to public lands; (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans (i.e., the California Desert Conservation Area Plan, as amended); and (d) Coordinates, to the fullest extent possible, all BLM actions with state and local governments and interested individuals.

B4-27

The DRECP, including its CMAs, were developed over a period of approximately eight years by BLM in cooperation with the California Department of Fish and Wildlife (CDFW), California Energy Commission, U.S. Fish and Wildlife Service (USFWS), counties, and conservation organizations. Certain biological resources on the public lands within the DRECP area were identified as significant or sensitive, and warrant enhanced protection. Among those resources given enhanced protection within the Oberon project area are microphyll woodlands, their associated special status or sensitive species, desert tortoise critical habitat and a multi-species wildlife linkage.

B4-28

Objective 1.4 of the DRECP is to ***Conserve unique landscape features, important landforms, and rare or unique vegetation types identified within the BLM Decision Area, including:***

- ***Desert riparian and wetland resources in the planning area, including riparian habitat (including microphyll woodlands), desert playas, and seeps/springs.***

It is important to understand the definition of Conserve: ***The term "conserve" (or "conservation") as used in the DRECP LUPA applies to the protection and management of resources and values BLM is managing with land allocations and CMAs. In the DRECP biological conservation strategy, this term is applied more narrowly to the protection and management of ecological processes, Focus and BLM Special Status Species, and vegetation types.***

It is clear that Alternative 2 is inconsistent with the DRECP, the ROD, the CMAs and BLM's right of way grant regulations. Accordingly, we recommend that BLM reject it when considering a final decision on Oberon. In addition, the significant adverse impacts associated with Alternative 2 would require further analysis under an Environmental Impact Statement for multiple reasons.

B4-29

We provide additional comments on the manner in which Alternative 2 is inconsistent with the CDCA Plan (as amended by DRECP) under comments on CMAs.

2. Applicable DRECP CMAs

B4-30

Comment Set B4 – California Native Plant Society et al. (cont.)

B4-30 cont;.

There are numerous DRECP CMAs associated with biological resources that are applicable to Oberon that are of primary importance to our organizations. Below, we identify each of those CMAs and describe whether or not Oberon complies with them.

A. ***LUPA-BIO-1: Conduct a habitat assessment (see Glossary of Terms) of Focus and BLM Special Status Species' suitable habitat for all activities and identify and/or delineate the DRECP vegetation types, rare alliances, and special features (e.g., Aeolian sand transport resources, Joshua tree, microphyll woodlands, carbon sequestration characteristics, seeps, climate refugia) present using the most current information, data sources, and tools (e.g., DRECP land cover mapping, aerial photos, DRECP species models, and reconnaissance site visits) to identify suitable habitat (see Glossary of Terms) for Focus and BLM Special Status Species. If required by the relevant species specific CMAs, conduct any subsequent protocol or adequate presence/absence surveys to identify species occupancy status and a more detailed mapping of suitable habitat to inform siting and design considerations. If required by relevant species specific CMAs, conduct analysis of percentage of impacts to suitable habitat and modeled suitable habitat.***

Based on our review of the Biological Resources Technical Report (BRTR) for Oberon, prepared by Ironwood Consulting under contract with Aspen Environmental Group, it is questionable if the delineation of microphyll woodlands was based on the most current, existing information, and specifically the 2013 inventory of DRECP vegetation communities.[2] As a result of this possible omission, the analysis of impacts in the Oberon EA on microphyll woodlands appears to significantly underestimate loss of this sensitive vegetation community under Alternative 2.

Using the inventory data for the microphyll woodland vegetation community in the 2013 inventory report,[3] Geographic Information System (GIS) scientists at the Center conducted an independent analysis of the effects of Oberon on microphyll woodland for Alternative 2. The results are presented in the following table along with corresponding acres of impact reported in the Oberon EA. The 2013 inventory of microphyll woodlands included each stand exceeding one acre in size and 90 feet in width as depicted on 1-meter resolution 2010 color National Agricultural Imagery Program imagery along with ancillary data and imagery sources.

Oberon Component	Acres of Microphyll Woodland within the Oberon Footprint		
	BRTR	Center GIS Analysis	Notes
Solar Panel Arrays	56.53	140	This difference may also result in inaccurate analysis of impacts to the required 200 foot setback or buffer for microphyll woodlands.

[2] Menke, J., E. Reyes, A. Glass, D. Johnson, and J. Reyes. 2013. 2013 California Vegetation Map in Support of the Desert Renewable Energy Conservation Plan. Final Report. Prepared for the California Department of Fish and Wildlife Renewable Energy Program and the California Energy Commission. Aerial Information Systems, Inc., Redlands, CA.
[3] https://filelib.wildlife.ca.gov/Public/BDB/GIS/BIOS/Public_Datasets/700_799/ds735.zip

Comment Set B4 – California Native Plant Society et al. (cont.)

We recommend BLM perform an independent review of the impact analysis of Oberon on microphyll woodlands to determine if the EA needs to be revised based the 2013 vegetation community inventory completed specifically for use in the DRECP and subsequent impact analyses for activities proposed within the planning area, which was funded by BLM, CDFW and the California Energy Commission.

B4-30 cont.

B. ***LUPA-BIO-3: Resource setbacks have been identified to avoid and minimize the adverse effects to specific biological resources. Setbacks are not considered additive and are measured as specified in the applicable CMA. Allowable minor incursions (see Glossary of Terms), as per specific CMAs do not affect the following setback measurement descriptions. Generally, setbacks (which range in distances for different biological resources) for the appropriate resources are measured from:***

- ***The edge of each of the DRECP desert vegetation types, including but not limited to those in the riparian or wetland vegetation groups (as defined by alliances within the vegetation type descriptions and mapped based on the vegetation type habitat assessments described in LUPA-BIO-1).***
- ***The edge of the vegetation extent for specified Focus and BLM sensitive plant species.***
- ***The edge of suitable habitat or active nest substrates for the appropriate Focus and BLM Special Status Species.***

B4-31

The EA confirms that Oberon will not comply with this CMA, with this statement on page 10: *...the Applicant refined the development footprint to avoid desert dry wash woodland areas by imposing a minimum 50-foot and average of 134-foot (rather than 200-foot) buffer between such areas and the nearest solar panels. After the 50-foot buffer was imposed, the Applicant combined some of the nearby avoidance areas to create larger swaths of higher quality dry wash wood-land. To offset this acreage, less than 60 acres of the smaller "fingers" of DDWW were added to the solar panel development footprint.*

The applicant purposely chose to violate this CMA and substituted the required 200 foot setback or buffer with a 50 foot setback. Then, the applicant chose to place solar panels within the microphyll woodland to *offset* what it claims to have lost due to the requirements of the DRECP itself. The applicant clearly never intended to develop a project that complies with the DRECP. Again, we are pleased BLM developed Alternatives 3 and 4 and analyzed them in the EA, which demonstrates that a viable solar project can be developed in the Oberon application area that fully complies with the DRECP, although both would generate less electricity than what the applicant desires, 375 and 300 MW, respectively.

C. ***LUPA-BIO-13: Implement the following CMA for project siting and design:***

B4-32

To the maximum extent practicable site and design projects to avoid impacts to vegetation types, unique plant assemblages, climate refugia as well as occupied habitat and suitable habitat for Focus and BLM Special Status Species (see "avoid to the maximum extent practicable" in Glossary of Terms).

In applying this CMA, it is essential to refer to the DRECP definition of maximum extent practicable, which is ***A standard that applies to implementation of activities. Under this***

Comment Set B4 – California Native Plant Society et al. (cont.)

standard, implementation of the CMA is required unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity. Although Alternative 2 was reportedly designed to avoid microphyll woodland, it fails to comply with this CMA. In fact, Appendix C of the Oberon EA (Applicability of DRECP Conservation and Management Actions) states, *The Oberon Project will avoid impacts to unique plant assemblages and climate refugia to the extent practicable.* We call attention to omission of the term "maximum." Further, EA Appendix C states, *The Oberon Project would maximize retention of microphyll woodlands to the extent feasible.*

B4-32 cont.

The siting of projects along the edges (i.e. general linkage border) of the biological linkages identified in Appendix D (Figures D-1 and D-2) will be configured (1) to maximize the retention of microphyll woodlands and their constituent vegetation type and inclusion of other physical and biological features conducive to Focus and BLM Special Status Species' dispersal, and (2) informed by existing available information on modeled focus and BLM Special Status Species habitat and element occurrence data, mapped delineations of vegetation types, and based on available empirical data, including radio telemetry, wildlife tracking sign, and road-kill information. Additionally, projects will be sited and designed to maintain the function of Focal and Special Status Species connectivity and their associated habitats in the following linkage and connectivity areas:

- ***Within a 1.5-mile-wide linkage across Interstate 10 to connect the Chuckwalla Mountains to the Chuckwalla Valley east of Desert Center.***

B4-33

Appendix C of the EA addresses this CMA as follows: *The eastern area of the Oberon Project partially overlaps the 1.5-mile-wide linkage to connect the Chuckwalla Mountains and the Chuckwalla Valley. The Applicant is coordinating with the BLM to maintain the connectivity function and associated habitat including microphyll woodland in that area. The Applicant has redesigned the solar facility to pull panels out of microphyll woodland in the wildlife corridor area and is proposing installation of fencing that would allow desert tortoise movement throughout the area during operation. The Oberon Project would maximize retention of microphyll woodlands to the extent feasible. The avoidance of microphyll woodland in the eastern project area maintains a portion of the wildlife linkage.*

The Center's GIS analysis of the impact of Alternative 2 in the Oberon EA revealed that approximately 325 acres of the DRECP multi-species wildlife linkage would be lost due project facilities. This loss is the result of Alternative 2 failing to site project facilities along the edge of the identified linkage. In addition, the applicant failed to recognize that the 1.5-mile-wide linkage is not limited to just microphyll woodland, but all native plant communities that constitute the linkage, including the more widespread Sonoran Creosote Bush Scrub.

D. LUPA-BIO-RIPWET-1: The riparian and wetland DRECP vegetation types and other features listed in Table 17 will be avoided to the maximum extent practicable, except for allowable minor incursions (see Glossary of Terms for "avoidance to the maximum extent practicable" and "minor incursion") with the specified setbacks.

B4-34

Comment Set B4 – California Native Plant Society et al. (cont.)

- ***Sonoran-Coloradan Semi-Desert Wash Woodland Scrub 200 feet***

For minor incursion into the DRECP riparian vegetation types, wetland vegetation types, or encroachments on the setbacks listed in Table 17, the hydrologic function of the avoided riparian or wetland communities will be maintained.

- ***Minor incursions in the riparian and wetland vegetation types or other features including the setbacks listed in Table 17 will occur outside of the avian nesting season, February 1 through August 31 or otherwise determined by BLM, USFWS and CDFW if the minor incursion(s) is likely to result in impacts to nesting birds.***

The Oberon EA ignores the DRECP mandate to avoid impacts to microphyll woodlands and simply states that *...direct and indirect impacts to habitat would be minimized through habitat compensation and revegetation, pre-construction surveys, management plans, and construction crew training.* The DRECP allowed for minor incursions only, which are defined as ***Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.***"

In applying this CMA, it is essential to consider the DRECP definition of Unavoidable Impacts to Resources: ***Small-scale impacts to sensitive resources, as allowed per specific CMAs, that may occur even after such impacts have been avoided to the maximum extent practicable (see definition). Unavoidable impacts are limited to minor incursions (see definition), such as a necessary road or pipeline extension across a sensitive resource required to serve an activity.*** It is clear that the definition of minor incursions was intended to include infrastructure necessary to allow a solar project to be functional which, for Oberon and any other project, includes access roads, gen-tie or other linear facilities, and not the solar generating facility itself.

B4-34 cont.

The EA states, *While the Applicant designed the project to minimize impacts to woodland areas, the project, as proposed, may not comply with the requirement for a 200-foot setback along such areas and if so would require a LUPA to the CDCA Plan, as amended.* The applicant chose to ignore the DRECP CMA designed to avoid loss of microphyll woodland and the associated 200 foot protective buffer by designing a project that would result in the direct loss of approximately 60 acres of microphyll woodlands and approximately 349 acres of the 200 foot buffer due to photovoltaic solar panels. These impacts do not meet the definition of minor incursions, which are small-scale residual impacts allowed to occur only if there is no reasonable or practicable means to avoid the subject resource, which is addressed in the DRECP definition of unavoidable impacts and avoiding impacts to the maximum extent practicable. Photovoltaic solar panels are modular and can be configured to avoid sensitive areas.

B4-35

Comment Set B4 – California Native Plant Society et al. (cont.)

Page 7 of the Oberon EA states, *If this disturbance* [placement of solar panels into microphyll woodland] *is considered to be minor incursion by BLM, the project would comply with this CMA, because otherwise the solar panels, substation, and BESS have been designed to avoid desert dry wash woodland. If BLM determines that the impact does not qualify as minor incursion, then a LUPA would be required.*" It appears BLM has yet to make a determination if the loss of 60 acres of microphyll woodland and 349 acres of its buffer constitute a minor incursion, or that this is an unresolved issue because the EA was prepared by a contractor and not BLM staff. We argue it is not a minor incursion because it is fully avoidable. B4-35 cont.

In addition, the impact analysis for the DRECP in the Final Environmental Impact Statement (FEIS) concluded that all microphyll woodlands, including their 200 foot protective setbacks or buffers, would remain protected due to CMAs that allowed for only minor incursions. As a result, the FEIS concluded there would be no loss of or impact to microphyll woodlands. For microphyll woodlands, the DRECP LUPA FEIS states, *Impacts to the dune, riparian, arid west freshwater emergent marsh, and Californian warm temperate marsh/seep would be avoided through implementation of CMAs.* (FEIS p. IV.7-142). Further, the FEIS states, *...impacts to riparian vegetation would not occur under the Preferred Alternative since application of the CMAs would require that riparian vegetation be avoided to the maximum extent practicable in DFAs. In addition, setbacks from riparian vegetation would be required that range from 200 feet for Madrean warm semi-desert wash woodland/scrub, Mojavean semi-desert wash scrub, and Sonoran-Coloradan semi-desert wash woodland/scrub to 0.25 mile for Southwestern North American riparian evergreen and deciduous woodland and Southwestern North -American riparian/wash scrub.* (FEIS p. IV.7-172). B4-36

E. LUPA-BIO-SVF-6: Microphyll woodland: impacts to microphyll woodland (see Glossary of Terms) will be avoided, except for minor incursions (see Glossary of Terms). B4-37

In applying this CMA, we found it is critical to keep definitions of key terms in mind, as they are often interdependent. Key terms relative to microphyll woodland CMAs are:

Microphyll woodland: Synonymous with desert dry wash woodland or Sonoran-Coloradan semi-desert wash woodland/scrub. Drought-deciduous, small-leaved trees occurring in bajadas and washes where water availability is somewhat higher than the plains occupied by creosote bush and has been called the "riparian phase" of desert scrub. Composed of the following alliances: desert willow, mesquite, smoke tree, and the blue palo verde-ironwood.

Minor incursions: Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.

Buffer or Setback: A defined distance, usually expressed in feet or miles, from a resource feature (such as the edge of a vegetation type or an occupied nest) within which an activity would not occur. The purpose of the buffer or setback is to maintain the function and value of the resource features identified in the DRECP LUPA CMAs.

Comment Set B4 – California Native Plant Society et al. (cont.)

Based on the analysis in the EA, Alternative 2 would not comply with this CMA because it would result in the loss of 60 acres of microphyll woodland (140 acres using the Center's GIS analysis) and 349 acres of the designated setback or buffer that do not meet the definition of a minor incursion.

B4-37 cont.

F. LUPA-BIO-SVF-1: For activity-specific NEPA analysis, a map delineating potential sites and habitat assessment of the following special vegetation features is required: Yucca clones, creosote rings, Saguaro cactus, Joshua tree woodland, microphyll woodland, Crucifixion thorn stands. BLM guidelines for mapping/surveying cactus, yuccas, and succulents shall be followed.

B4-38

Although the Oberon BRTR included the results of an inventory of microphyll woodland, which was used in the impact analysis, an independent analysis by the Center using the 2013 vegetation community inventory completed specifically for use in the DRECP showed that 140 acres of microphyll woodland would be lost under Alternative 2 compared to 60 acres using the inventory from the BRTR. We recommend that BLM perform an independent assessment of the effects of Alternative 2 on microphyll woodland, including its 200 foot protective buffer or setback, to determine the accuracy of the impact analysis in the EA.

G. LUPA-CUL-11: Promote and protect desert microphyll woodland vegetation type/communities to ensure Native American cultural values are maintained.

B4-39

Regarding this cultural CMA, Appendix C of the Oberon EA states, *The Oberon Project will avoid microphyll woodland where feasible. The project will comply with this CMA.* Avoiding microphyll woodland only where feasible does not equate to promoting and protecting this sensitive vegetation community. As noted elsewhere in our comment letter, the DRECP requires avoiding this resource to the maximum extent practicable.

3. Detailed Comments on Impacts of Oberon on Wildlife Linkages and Connectivity

B4-40

The Oberon EA fails to adequately analyze and mitigate impacts to the multi-species wildlife linkage and connectivity. Wildlife connectivity corridors and linkages are place-based areas that are often unmitigable if impacts occur in them (Spencer et al. 2010). The DRECP identified and established three wildlife connectivity corridors/linkages, two of them within the boundaries of the Riverside-East DFA (See Figure 1, taken from DRECP LUPA/FEIS, Appendix H-1).

Oberon is located partially within the most westerly wildlife connectivity corridor. Figure 1 shows the overlap of the proposed Oberon project's solar array field into the BLM-designated Wildlife Connectivity Corridor. The EA fails to identify the impact to the multi-species linkage from the proposed project. Based on GIS layers from the DRECP, the fenced solar arrays cover 325 acres of the multi-species linkage. In addition, it fragments the linkage, making the linkage less functional for wildlife to move unimpeded through it (Ibid). We recommend that the EA be revised to fully analyze impacts to the multi-species linkage and comply with the DRECP.

Comment Set B4 – California Native Plant Society et al. (cont.)

B4-40 cont.

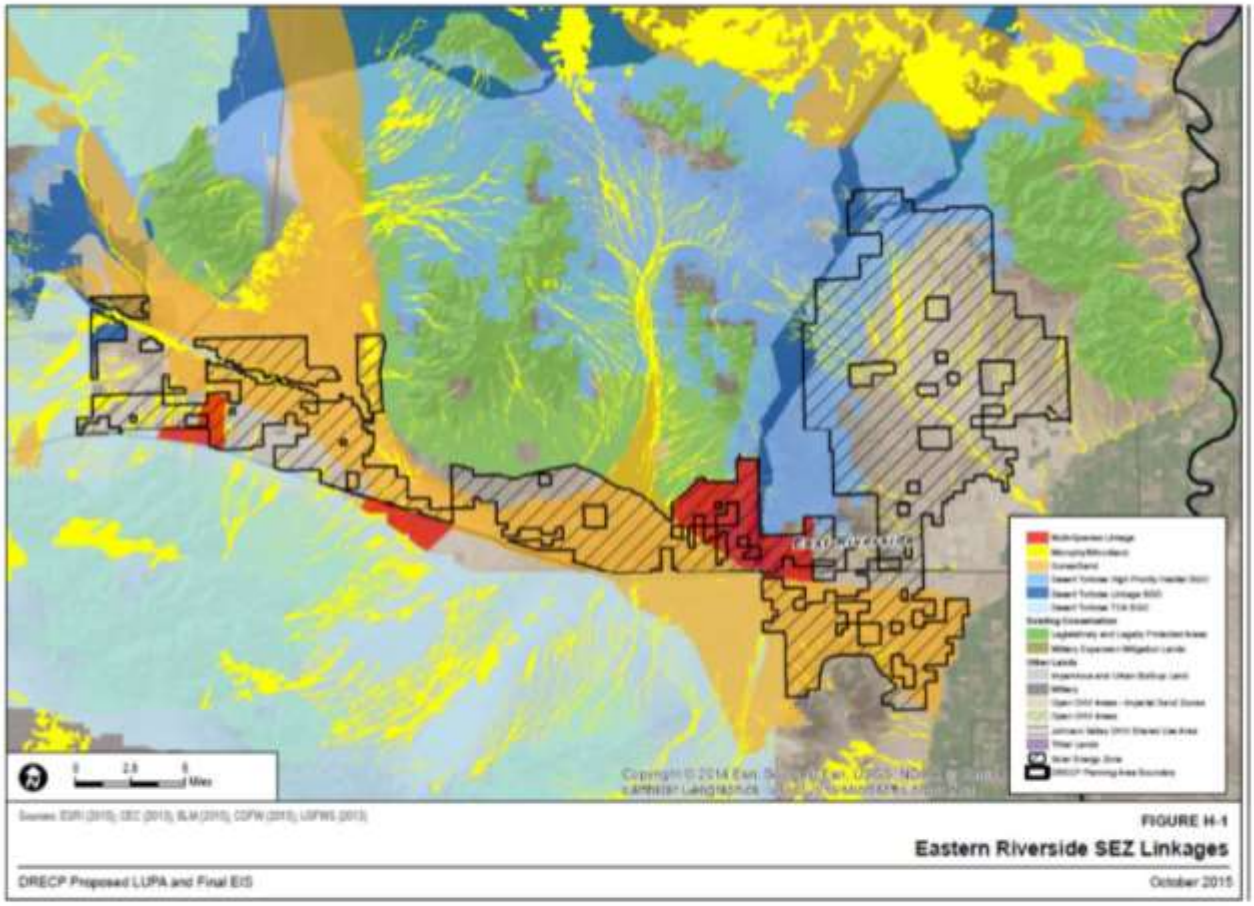

Figure 1. BLM-designated multi-species wildlife linkages (shown in red) in DRECP LUPA/FEIS.

B4-41

The Oberon EA Figure 2-1 identifies the location of the proposed gen-tie from the project to the Red Bluff substation. However, it fails to identify that most of the gen-tie will be routed through the multi-species linkage, an impact that is analyzed in the EA in the context of only construction and avian impacts from collisions. Both the gen-tie towers and lines as well as the array fencing provide new perching opportunities for predatory birds (Barrows et al. 2006). This impact is not identified or analyzed in the EA. Nor is the option of co-locating the project gen-tie with the Eagle Crest gen-tie identified in the EA.

B4-42

The EA states in Table C-1, pp. 7-8:

The eastern area of the Oberon Project partially overlaps the 1.5-mile-wide linkage to connect the Chuckwalla Mountains and the Chuckwalla Valley. The Applicant is coordinating with the BLM to maintain the connectivity function and associated habitat including microphyll woodland in that area. The Applicant has redesigned the solar facility to pull panels out of microphyll woodland in the wildlife corridor area and is proposing installation of fencing that would allow desert tortoise movement throughout the area during operation. The Oberon Project would maximize retention of microphyll woodlands to the extent feasible. The avoidance of microphyll woodland in the eastern project area maintains a portion of the wildlife linkage.

Comment Set B4 – California Native Plant Society et al. (cont.)

The EA fails to recognize that the BLM's designation is a multi-species linkage, yet it focuses on desert tortoise movement, while many other rare and common terrestrial and aerial species also rely on this linkage area for movement and use it in different ways. As noted previously, the EA assumes the multi-species linkage is based only on microphyll woodlands in washes, which is incorrect.

B4-42 cont.

More importantly, the DRECP was carefully crafted to retain wildlife connectivity through the Riverside-East DFA to address species needs as climate change progresses, maintain genetic connectivity and reduce inbreeding caused by habitat fragmentation. The DRECP LUPA/FEIS states: *Figure H-1 depicts the wildlife linkages in the Eastern Riverside SEZ/DFA that are required to implement CMA LUPA-BIO-13.*

B4-43

The EA fails to adequately address measures to maintain the function of the multi-species linkage. Simply *...coordinating with the BLM to maintain the connectivity function and associated habitat* (EA, Appendix C, Table C-1 pp. 7-8) fails to ensure the functionality of this multi-species wildlife corridor over the long-term. BLM must ensure that the function of this important multi-species corridor is retained, must require changes in the proposed project layout to remove infrastructure from the multi-species linkage and must fully analyze the new proposal.

Figure 2.2 in Appendix B of the Oberon EA is troubling because it reveals the potential extent of cumulative impacts from other existing and proposed renewable energy projects in the western Chuckwalla Valley. One of those is the Easley Project, proposed by Intersect Power, which is also the proponent of Oberon. The Easley Project is located just to the north of the Athos and Victory Pass projects. Victory Pass would impact the multi-species linkage by placing solar arrays within the linkage. The Athos project, which is not on BLM-managed land and is currently under construction, has already constricted over half of the northern part of the linkage on the west. The proposed Easley project's southern or northern areas have the potential to block the northern part of the linkage, thereby completely eliminating the functionality of the multi-species linkage. BLM must comply with the DRECP and maintain the wildlife linkages and analyze all the known direct, indirect and cumulative impacts to the multi-species wildlife linkage.

B4-44

Comment Set B4 – California Native Plant Society et al. (cont.)

B4-44 cont.

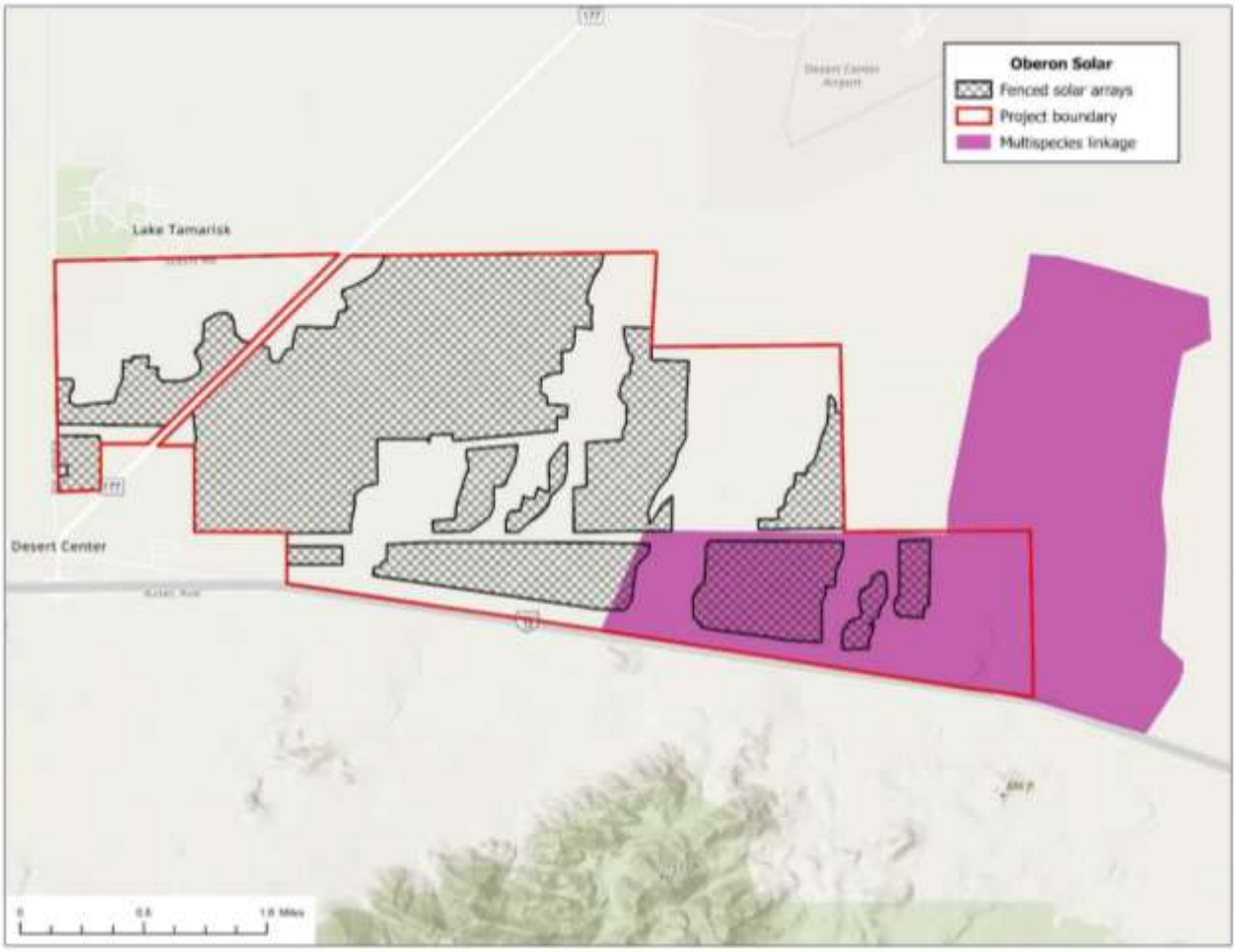

Figure 2. Proposed Oberon Project's overlap with BLM-designated Multi-species Linkage in the Riverside-East DFA.

B4-45

4. Appendix C: Applicability of DRECP Conservation and Management Actions

The Oberon EA Appendix C includes statements that are misleading, incorrect or subjective. It is unclear if these defects originated with the Oberon applicant or proponent or the consultant that prepared the EA. We recommend BLM correct these defective statements in Appendix C, which are as follows:

A. *IP Oberon, LLC, the Applicant, has designed the Oberon Renewable Energy Project (project) to conform to the Desert Renewable Energy Conservation Plan (DRECP) Conservation and Management Actions (CMAs) and proposes to employ applicable construction- and operation-phase CMAs identified in the DRECP Record of decision (ROD) on U.S. Bureau of Land Management (BLM)-administered lands.*

The applicant's version of Oberon, Alternative 2, does not conform to the DRECP and its CMAs. If this statement were true, then Alternative 2 and Alternative 3 would be essentially the same, but they are not. This becomes evident upon further reading of Appendix C, Table C-1, which lists the applicable CMAs.

Comment Set B4 – California Native Plant Society et al. (cont.)

LUPA-BIO-3/ Resource Setback Standards: *The project cannot comply with this CMA, because Sonoran-Coloradan Semi-Desert Dry Wash Woodland occurs throughout the project site making complete avoidance of its buffer area infeasible. The project's direct impacts to desert dry wash woodland by solar panels is approximately 60 acres and in places the project extends into the required 200-foot buffer under LUPA-BIO-RIPWET-1, so the Applicant is seeking a Land Use Plan Amendment, if required.*

B4-46

A correct and factual response would have been that Oberon **does not comply with this CMA**. Further, the Sonoran-Coloradan Semi-Desert Dry Wash Woodland community (microphyll woodlands) **does not** occur throughout the project site. According to the BRTR, Figure 5, Vegetation Communities, the most abundant vegetation community within Oberon Survey Area A (corresponding to the revised right of way application area) is Sonoran Creosote Bush Scrub, totaling 3,679 acres. Within Survey Area A, Dry Desert Wash Woodland (synonymous with microphyll woodlands) totals 1,182 acres, or approximately 1/3rd the area occupied by Sonoran Creosote Bush Scrub.

Based on an analysis performed by the Center's staff GIS experts (previously described), Oberon Alternative 2 overlaps 140 acres of microphyll woodland and 349 acres of the required 200 foot setback or buffer for microphyll woodlands with solar panel arrays.

LUPA-BIO-13/General Siting and Design: *The Oberon Project will avoid impacts to unique plant assemblages and climate refugia to the extent practicable. The eastern area of the Oberon Project partially overlaps the 1.5-mile-wide linkage to connect the Chuckwalla Mountains and the Chuckwalla Valley.*

B4-47

LUPA-BIO-13 requires avoiding impacts to **maximum extent practicable**, not simply to the extent practicable, the latter of which is not used or defined in the DRECP.

LUPA-BIO-RIPWET-1/Riparian and Wetland Vegetation Type CMAs: *The riparian vegetation type on the Oberon site is Sonoran-Coloradan Semi-Desert Wash Woodland (mapped as desert dry wash woodland). It will be avoided where feasible. The Applicant has coordinated with BLM to develop and analyze a solar field layout alternative that is consistent with allowable minor incursion (see Glossary of Terms), and hydrologic function will be maintained.*

The project cannot achieve a 200 foot setback across the entire site, because Sonoran-Coloradan Semi-Desert Wash Woodland occurs throughout the project site making complete avoidance of its buffer area infeasible. The Applicant is seeking a Land Use Plan Amendment, as needed.

B4-48

This CMA requires that microphyll woodland and its associated 200 foot protective setback or buffer be avoided to the **maximum extent practicable**. It would be more accurate to state that Oberon **does not comply** with this CMA. Based on the DRECP definition of maximum extent practicable and minor incursion, the loss of 140 acres of microphyll woodland and 349 acres of the buffer are not minor incursions. The definition of minor incursion in the DRECP is ***Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater***

Comment Set B4 – California Native Plant Society et al. (cont.)

resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts.

B4-48 cont.

Microphyll woodland does not occur throughout the project site. As noted above, it occupies approximately 1/3rd of Study Area A where Oberon is located, or 1,182 acres.

B4-49

LUPA-BIO-RIPWET-3/BLM Special Status Riparian Bird Species: *The Applicant will perform a pre-construction/activity nesting bird survey and will establish setbacks as necessary.*

For Oberon, this CMA requires surveys in microphyll woodlands that are within 0.25 mile of any project activity that has the potential to disrupt the nesting activity of Special Status Species of bird. If such bird species are found to be nesting, a 0.25 mile setback or buffer will be established where no activities are allowed that would disrupt nesting from February 1-August 31. Compliance with this CMA appears to be based on compliance with other CMAs that require avoidance of project facilities within microphyll woodlands and the 200 foot protective setback or buffer, except for minor incursions. We recommend BLM address this potential issue in a revised EA after conferring with CDFW.

B4-50

LUPA-BIO-SVF-6/Avoidance of microphyll woodland except for minor incursions: *The Applicant will coordinate with BLM to develop and analyze solar field layout alternatives for consistency with allowable minor incursion (see Glossary of Terms). Hydrologic function will be maintained.*

The panels have been designed to avoid desert dry wash woodland with the exception less than 60 acres of solar panel development in areas deemed to have little or no residual habitat value. If BLM determines that the small impact does not qualify as minor incursion, then a Land Use Plan Amendment would be required.

Our comment on this CMA is addressed above. Additionally, it appears by this statement that the project description is not clear and finite as required.

B4-51

LUPA-BIO-IFS-1: Individual Focus Species (IFS)/Desert Tortoise: Activities within desert tortoise linkages identified in DRECP Appendix D: *The eastern area of the southern parcel of the Oberon Project partially overlaps a 1.5-mile-wide wildlife linkage to connect the Chuckwalla Mountains and the Chuckwalla Valley... The Applicant is coordinating with the BLM to maintain the connectivity function and associated habitat including microphyll woodland in that area. The Applicant has redesigned the solar facility to pull panels out of microphyll woodland in the wildlife linkage area...*

In the DRECP, this CMA includes additional details and requirements: ***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 USFWS and CDFW, are prohibited and would require reconfiguration or re-siting.*** The applicant coordinating with the BLM in response to this CMA is misplaced. It is BLM's responsibility to determine if Oberon will compromise the long-term viability of both the desert tortoise population utilizing the linkage and the linkage function, in coordination with CDFW and the USFWS.

B4-52

LUPA-CUL-11/Promote and protect desert microphyll woodland vegetation type/communities to ensure Native American cultural values are maintained: *The intent of this*

Comment Set B4 – California Native Plant Society et al. (cont.)

CMA is accomplished through compliance with NEPA, EX13175, EX13007 and all other applicable laws, regulations, and policies. The Oberon Project will avoid microphyll woodland where feasible.

B4-52 cont.

Oberon fails to meet this standard because it will not avoid microphyll woodlands to the maximum extent practicable.

5. Impacts to BLM-designated Wildlife Habitat Management Areas

B4-53

Even after the DRECP amendment to the CDCA Plan was adopted, some aspects of the previous 2002 Northern and Eastern Colorado Desert (NECO) Plan Amendment to the CDCA Plan remain in effect. Under the NECO Plan Amendment, Wildlife Habitat Management Areas (WHMAs) *...address other special status species and habitat management* (NECO Plan Amendment at 2-2). The NECO Plan Amendment also states that *The existing restricted areas, DWMAs* [Desert Wildlife Management Areas for desert tortoise conservation] *and WHMAs form the Multi-species Conservation Zone* (NECO Plan Amendment at 2-2) which is the conservation basis of the plan amendment. Oberon overlaps one multi-species WHMA that connects the Palen and Mule Mountains, and the DWMA Continuity WHMA. Management emphasis for the multi-species WHMA is on active management of specific species and habitats mitigation, and restoration from authorized allowable uses. The DWMA Continuity WHMA is designed to provide for desert tortoise connectivity from the Chuckwalla Mountains to suitable habitat to the north and extending under I-10. The overlap and impacts of Oberon on these WHMAs are not addressed in the EA. The NECO Plan Amendment goals and objectives for *Other Special Status Animal and Plant Species, Natural Communities, and Ecological Processes* are very specific and focus on conservation. The goals for special status animal and plant species, natural communities, and ecological processes are as follows:

- Plants and Animals: *Maintain the naturally occurring distribution of 28 special status animal species and 30 special status plant species in the planning area. For bats, the term "naturally occurring" includes those populations that might occupy man-made mine shafts and adits.*
- Natural Communities: *Maintain proper functioning condition in all natural communities with special emphasis on communities that a) are present in small quantity, b) have a high species richness, and c) support many special status species.*
- Ecological Processes: *Maintain naturally occurring interrelationships among various biotic and abiotic elements of the environment.*

The corresponding objectives (NECO Plan at 2-52) are to:

- *Protect and enhance habitat*
- *Protect connectivity between protected natural communities*

Further, the NECO Plan Amendment adopted action items to promote the plan objectives, including to *Protect and enhance habitat* (NECO Plan at 2-55), and *Protect connectivity between protected communities* (NECO Plan at 2-58). See also NECO Plan Amendment ROD at D-1, D-3.

For the plan objective to *Protect and enhance habitat*, the first action required was to:

B4-54

- *Designate seventeen multi-species WHMAs (totaling 555,523 acres) such that approximately 80 percent of the distribution of all special status species and all natural community types would be included in the Multi-*

Comment Set B4 – California Native Plant Society et al. (cont.)

species Conservation Zone (NECO Plan, Appendix A, Map 2-21). See Appendix H for a description of the process used to define the WHMA and the concept of conservation zones. (NECO Plan at 2-55)

B4-54 cont.

For the second objective, to *Protect connectivity*, one of the actions required was:

- *The fragmenting effects of projects should be considered in the placement, design, and permitting of new projects.*" (NECO Plan at 2-58)

Other relevant actions required include:

- *Require mitigation of impacts of proposed projects in suitable habitat within the range of a special status species and within natural community types using commonly applied mitigation measures and conduct surveys in the proposed project area for special status species as follows (also see range maps 3-6a-f and 3-7a-f Appendix A).* (NECO Plan Amendment at 2-55)

Thus, under the NECO Plan Amendment, the impacts to multi-species WHMAs, and to sand, playa and Mojave fringe-toed lizard habitat, should be avoided. The Oberon EA does not mention, much less analyze, impacts to the WHMAs as required by the NECO Plan Amendment. We recommend BLM prepare a revised EA that addresses impacts of Oberon on the NECO Plan WHMAs and required actions to achieve plan goals and objectives.

6. The Analysis of Cumulative Impacts in the DEA Is Inadequate

B4-55

A cumulative impact is *...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.* 40 C.F.R. § 1508.7. The Ninth Circuit Court rulings require federal agencies to *catalogue* and provide useful analysis of past, present, and future projects. *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809-810 (9th Cir. 1999).

In determining whether a proposed action will significantly impact the human environment, the agency must consider '[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.' 40 C.F.R. § 1508.27(b)(7)." *Oregon Natural Resources Council v. BLM*, 470 F.3d 818, 822-823 (9th Cir. 2006). NEPA requires that cumulative impacts analysis provide *some quantified or detailed information*, because *"[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide."* *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1988); *see also id.* (*very general* cumulative impacts information was not the hard look required by NEPA).

The discussion of future foreseeable actions requires more than a list of the number of acres affected, which is a necessary but insufficient component of a NEPA analysis; the action agency must also consider the actual environmental effects that can be expected from the projects on those acres. See *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 995-96 (9th Cir. 2004) (finding that the environmental review documents "*do not sufficiently identify or discuss the incremental impact that can be expected from each [project], or how those individual impacts might combine or synergistically interact with each other to affect the environment. As a result, they do not satisfy the requirements of the NEPA.*). Finally, cumulative

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impact analysis must be done as early in the environmental review process as possible, it is not appropriate to "*defer consideration of cumulative impacts to a future date. NEPA requires consideration of the potential impacts of an action before the action takes place. Neighbors*, 137 F.3d at 1380 *quoting City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9th Cir. 1990) (emphasis in original).

B4-55 cont.

The DEA fails to adequately identify the numerous cumulative projects and does not meaningfully analyze the cumulative impacts to resources in the California Desert Conservation Area from the many proposed projects (including renewable energy projects and others). Moreover, because the initial identification and analysis of impacts is incomplete, the cumulative impacts analysis cannot be complete.

Conclusion

B4-56

Oberon is the first of three proposed solar energy projects within the East Riverside DFA that is fully subject to the DRECP and its CMAs. Unfortunately, Intersect Power, the applicant for a right of way grant for the project, designed Oberon in a manner that does not comply with the DRECP and its CMAs. Intersect Power attempted to persuade BLM that it complied with the intent of the DRECP CMAs by indicating, for example, that it designed Oberon to avoid microphyll woodlands to the extent it considered *feasible* or *practicable*, rather than to meet the DRECP CMA requirement to avoid this sensitive natural community to the *maximum extent practicable*.

Fortunately, BLM developed Alternative 3 and Alternative 4 to Intersect Power's proposed project, both of which comply with the DRECP CMAs, demonstrating that they are both feasible and practicable, contrary to Intersect Power's position. Further, Intersect Power appeared unwilling to propose or consider a project generating anything less than 500 MW, suggesting it had made premature commitments for a minimum amount of power generation prior to completion of the environmental review and final decision for the proposed project by the BLM. Based on our review of the EA, the DRECP and its CMAs and other legal and regulatory requirements, Intersect Power's proposed Oberon would result in impacts that would prevent BLM from making a Finding of No Additional Significant Impact, and requiring the preparation of an Environmental Impact Statement and proposed amendments to the DRECP.

We strongly encourage BLM to uphold the provisions of the DRECP and only consider and approve an alternative to Oberon that fully complies with the DRECP and its CMAs. Our organizations and many other stakeholders participated in development of the DRECP from its inception in 2009 through its adoption by BLM in 2016. A decision to approve Intersect Power's version of Oberon would constitute a significant weakening of the DRECP, disrespect the years of constructive contributions to the plan by multiple agencies and stakeholders, and result in unnecessary and undue degradation of the public lands and resources in the California Desert Conservation Area.

Again, we thank you for your consideration of these comments. In light of the shortcomings in the EA, we urge the BLM to revise and re-circulate a supplemental EA that addresses the issues raised in the comments above before making any decision regarding the proposed plan amendment and right-of-way application. In the event BLM chooses not to revise the EA and provide adequate analysis, the BLM should reject the proposed project right-of-way application and the plan amendment. Please feel free to contact us at the contact information below if you have any

Comment Set B4 – California Native Plant Society et al. (cont.)

questions about these comments or the documents provided. Please add us to the list of interested parties for all notices associated with this project.

Sincerely,

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Comment Set B4 – California Native Plant Society et al. (cont.)

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Comment Set B5 – Basin & Range Watch / Western Watersheds Project

Basin and Range Watch

Western Watersheds Project

Via E-mail: *logan.raub@waterboards.ca.gov*

September 27, 2021

Logan Raub
Colorado River Basin Regional Water Quality Control Board
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920

RE: Oberon Renewable Energy Project Draft EIR Comments; SCH No. 2021030426

Dear Mr. Laub:

Basin and Range watch and Western Watersheds Project (conservation groups) submit comments on the proposed Oberon Solar Energy Project Environmental Impact Report (DEIR). The Oberon Solar Project Environmental Impact Report proposes a 500 megawatt utility-scale solar photovoltaic electricity generating station, battery energy storage facility, electrical substation, possible on-site groundwater well, generation intertie (gen-tie) line, and associated access roads on 2,700 acres on public lands managed by the BLM. BLM would need to consider a project-specific Land Use Plan Amendment to the California Desert Conservation Area (CDCA) Plan, as amended, because the Oberon Renewable Energy Project does not comply with all of the Conservation and Management Actions (CMAs) to the CDCA Plan, as amended by the Desert Renewable Energy Conservation Plan (DRECP). B5-1

Basin and Range Watch is a 501(c)(3) non-profit working to conserve the deserts of Nevada and California and to educate the public about the diversity of life, culture, and history of the ecosystems and wild lands of the desert. Federal and many state agencies are seeking to open up millions of acres of unspoiled habitat and public land in our region to energy development. Our

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

ecosystems, open spaces, and quality of life for local communities. We support energy efficiency, better rooftop solar policy, and distributed generation/storage alternatives, as well as local, state and national planning for wise energy and land use following the principles of conservation biology. We have visited the site of the proposed Oberon Solar Project. We have taken photos of the region, hikes on the site and have observed unique flora and fauna on the site. Western Watersheds Project is a non-profit conservation organization with more than 12,000 members and supporters. Our mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy.

B5-1 cont.

Our organizations seek to conserve public lands and biodiversity, and support renewable energy placed on degraded lands, and in the built environment. We have never supported utilizing pristine desert on public lands for large scale utility development. Instead of massive bulldozing of desert ecosystems and fragmentation of rural communities, we proposed an alternative that would have utilized the California Energy Efficiency Strategic Plan, which is already state law. Enough rooftop and parking lot sites exist to more than fulfill the California electricity need combined with more energy efficiency. However, the BLM did not adopt our proposal. The BLM's Desert Renewable Energy Conservation Plan Land Use Plan (LUP"), which was developed in collaboration with other federal, state, and local agencies, tribal governments and the public, was approved by the BLM in 2016. The DRECP LUP is supposed to provide a process for utility scale renewable energy while providing for the long-term conservation and management of special-status species and desert vegetation communities, as well as other physical, cultural, scenic, and social resources within the DRECP LUP Area through the use of "durable regulatory mechanisms" (DRECP LUP Executive Summary for the Record of Decision (ROD), page ES-2). The Oberon Solar Energy Project (Project) seeks to completely destroy the premise of the DRECP LUP by violating the fundamental basis upon which the development of renewable energy on public lands was found to be balanced with long-term conservation of resources

Although located on federal land and under review by the BLM, the project is subject to review and approval by the Colorado River Basin Regional Water Quality Control Board (RWQCB) and the California Department of Fish and Wildlife (CDFW) under the California Environmental Quality Act (CEQA). The BLM is conducting separate review under the National Environmental Policy Act (NEPA) to determine whether it will approve the project and issue required right-of-way (ROW) grants.

The BLM's EA is 138 pages, with over 25 appendices totaling thousands of pages. The Board's DEIR is 500 pages, thankfully with fewer appendices, although the DEIR references the numerous technical appendices of the EA. These two documents were released almost simultaneously, with overlapping review periods. While this may have been inadvertent, the end result has been that the overlapping review periods have overwhelmed and confused the public. While the issues should have been addressed comprehensively in both documents, the EA and DEIR were written by the same consultant, share identical analyses in many instances, and each document failed to adequately address the significant environmental impacts that will result from implementation of the project. We have previously submitted a letter to the BLM commenting on the many inadequacies of the EA. A copy of the letter is attached, and we ask that it be made part of the administrative record for this project.

B5-2

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

The DEIR fails to adequately disclose the impacts that will result from the Oberon Solar Energy Project, as set forth in the detailed comments below: B5-3

1. **The Project Description is not stable and finite, as selection of the battery storage and gen tie line have not been made. No explanation of why the facility cannot use the eagle gen-tie line is provided.**

   A. **Several components of the project have yet to be decided and are subject to change due to ongoing negotiations**.

The DEIR description of the proposed project includes several areas that are not yet finalized, including the location of the battery storage area:

> *"If provided, the storage system would be housed in electrical enclosures and buried electrical cable. The battery system would be concentrated on approximately 25 acres;* DEIR, page 2.6)

and the location of the Gen-Tie line:

> *The exact location of the gen-tie line will be determined during final engineering based on SCE's interconnection requirements and the locations of other solar project gen-tie lines. The Applicant is currently coordinating with existing and pending ROW holders in the area.* (DEIR, page 2.9))

These components have the potential to increase impacts.

> *Should the southeastern substation location be developed, then the unused 500 kV gen-tie corridor from the central substation option (approximately 80 acres) would be developed with solar panels. Likewise, should the Eagle Crest gen-tie line be relocated outside of the Oberon application area, then this area (approximately 60 acres) may also be developed with solar panels*. (EA, page 21)

We also note that, according the Environmental Assessment prepared for the Bureau of Land Management and distributed concurrently public review, the project is negotiating land uses in ways that could increase the project impacts: B5-4

> *The Applicant is in negotiations to purchase a private inholding within the center of the project site. Should the property be acquired in advance of project construction, the current property owner would not need separate dedicated access east from SR-177 to the property. If the portion of the approved gen-tie ROW for the Eagle Mountain Pumped Storage Project that overlaps the Oberon Project application area is moved outside of the Oberon application area, then solar panels may be developed in this area* (see Figure 2-1, Project Area). (EA, page 14)

> *Should the southeastern substation location be developed, then the unused 500 kV gen-tie*

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

corridor from the central substation option (approximately 80 acres) would be developed with solar panels. Likewise, should the Eagle Crest gen-tie line be relocated outside of the Oberon application area, then this area (approximately 60 acres) may also be developed with solar panels. (EA, page 21)

B5-4 cont.

The DEIR has failed to provide a stable, finite project description.

B. The Gen-Tie Line is not adequately explained.

B5-5

The Oberon Project's 500 kV gen-tie line would cross into the Chuckwalla Area of Critical Environmental Concern (ACEC) south of I-10, to tie into the existing Red Bluff Substation, rather than co-locating with other gen-tie lines.

Approximately 500 feet of the gen-tie line would be within an ACEC and would require ground disturbance for the transmission structure(s) but would remain within an existing designated utility corridor. There is no feasible route to interconnect with the Red Bluff Substation, which is located withing the ACEC, without entering the ACEC. The proposed gen-tie line would parallel existing gen-tie lines to the extent feasible. The project and the gen-tie line would be consistent with the CDCA as amended by the DRECP LUPA, and its CMAs for the ground disturbance within the ACEC. Since this land is specifically designated for development, such as the proposed project, there would be no conflicts with BLM land use, and the action would not conflict with federal policies, regulations, and goals. (DEIR, page 3.11-8)

The DEIR fails to explain why the project gen-tie line is not co-locating with the Desert Harvest, Desert Sunlight or Eagle Crest Gen-Tie Lines, which would reduce impacts to the ACEC, and is instead proposing to co-locate with a project that "is in early stages of review" (DEIR, page 3.11-1).

Where there are multiple gen-tie lines, the preference is that they be in the same or adjacent ROWs where feasible. IP Oberon, LLC, is proposing that the Easley Project would share the Oberon gen-tie line. (DEIR, page 3.11-1)

The DEIR has failed to explain why the project cannot co-locate with an existing gen-tie line.

2. The Project has been piecemealed in violation of CEQA.

B5-6

The Oberon Project as presented in the DEIR has gone through multiple permutations and manipulations before becoming the configuration presented in the DEIR. According to the DEIR:

Most often, when an agency is considering a utility solar project, the agency reviews the location proposed for the project, identifies the most substantial impacts, and develops a reduced footprint alternative to avoid these locations. To meet the requirements of the CDCA Plan, as amended by the DRECP, this process was completed prior to defining the project and resulted in the removal of approximately 3,800 acres from the original 6,500-acre ROW application. (DEIR, page 4-23)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-6 cont.

The assumption from the above DEIR text is that the project was revised to remove areas that were undevelopable for various environmental reasons. In fact, the DEIR states the following:

> *The full build alternative would have greatly increased impacts to desert dry wash woodland, desert tortoise habitat, and wildlife connectivity habitat. Additionally, solar panels would be developed adjacent to I-10 further restricting the utility corridor in desert tortoise critical habitat, and a greater number of prehistoric cultural resources would be directly affected. Given that this alternative would have much greater environmental impacts and would comply with the BLM's DRECP CMAs to a less extent than the project, this alternative was eliminated from consideration. (DEIR, page 4-23, emphasis added)*

However, the truth is that the Intersect Power removed the northern property from this application so that the property could be added to a different Intersect Power development application[1]. The EA lists this separate project as "H" in the cumulative project list on page 3.1-14, Table 3.1-2). It is called the "Easley Solar & Green Hydrogen Project".

> *"The project on BLM land adjacent and north-northeast of the Oberon site would generate and store up to 650 MW of solar PV energy. The project would include a green hydrogen electrolyzer to convert water into hydrogen gas and oxygen."*
> (DEIR, Table 3.1-2)

The DEIR deliberately misleads the public into believing that the northern portion of the project would not have met the applicant's goal, when in fact, the applicant already has another application on file to develop the northern portion as another solar project. The fact that Intersect Power is still proposing to develop the northern portion at some point is made clear in the Plan of Development Mitigation Package, Appendix AA, which clearly identifies that there are two projects (Oberon I and Oberon II):

> *The applicant proposes a mitigation plan which includes approximately 6,800-acres of pre-identified private lands ("Preserve") (See attached map) selected as suitable to meet the **Oberon I** Solar Energy Project & **Oberon II** Solar Energy Project* (POD, Appendix AA, emphasis added)

The reality is that the Applicant has piecemealed the project and manipulated the acreage of the proposed project described within the DEIR, in order to claim that it cannot comply with the DRECP CMA's.

[1] The original application, which was filed under a different name in 2019 was for 3470 acres as BLM Application Number CACA 58539. The application was amended, and the project acreage became 6920. In April of 2020, the acreage was reduced from 6920 acres to 4579.84 acres. Finally, the Application was again amended in November of 2020 to be 4584.84 acres. At this time, the northern segment became part of a distinct separate and larger project, called the Easley Project with Application Number CACA 57822.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

3. The environmental setting fails to adequately describe the resources on site.

B5-7

A. The environmental setting grossly underestimates the acreage and quality of microphyll woodland on site.

Basin and Range Watch has previously visited this site, but in the context of its review of the EA, Basin and Range Watch visited the proposed Oberon Project site on September 4, 2021. Kevin Emmerich of Basin and Range Watch hiked through the proposed project site and observed extensive areas of dense and abundant microphyll woodland, as the southern portion of the project site is a higher alluvial fan pouring off the Chuckwalla Mountains to the south, and slopes downward to the north towards Palen Dry lake. Emmerich recorded a high diversity of plants along these washes, including desert ironwood (*Olneya tesota*) and Blue palo verde (*Parkinsonia florida*). In an ocular estimate, he observed that parts of the project site could have up to 30 trees per acre. The microphyll woodland was widespread across the project site, and not confined to washes. He found very high quality habitat, with dense and lush desert ironwoods, palo verdes, and smoke trees. Photos demonstrating the quality of the habitat are included in an Appendix to this letter.

This woodland is relatively undisturbed, old-growth, with large trees to 40 feet tall, and hundreds of years old. This plant community is uncommon in California, and the site presents a unique example of dense Dry Desert Wash Woodland. These ironwood-rich microphyll habitats are excellent bird habitat for nesting and wintering habitat. The area is excellent wildlife connectivity corridor habitat, and herds of burro deer, bobcats, and other wildlife have been photographed in trail cameras on the Project site (see EA Plan of Development ("POD") Appendix F).

The DEIR has failed to adequately map the Desert Dry Wash Woodland onsite, which is much more extensive that illustrated in DEIR Figure 3.4-2. For example, the applicant has conceded that the desert dry wash woodland occurs throughout the site:

> *The project cannot achieve a 200 foot setback across the entire site, because Sonoran-Coloradan Semi-Desert Wash Woodland occurs* ***throughout the project site*** *making complete avoidance of its buffer area infeasible.* (Oberon Plan of Development (POD), Appendix C, emphasis added)

The DEIR fails to adequately describe the resources on site in the environmental setting.

B5-8

Furthermore, we are aware of an independent review conducted by others, which raised questions regarding the accuracy of the delineation of microphyll woodlands in the DEIR.

> Based on our review of the Biological Resources Technical Report (BRTR) for Oberon, prepared by Ironwood Consulting under contract with Aspen Environmental Group, it is questionable if the delineation of microphyll woodlands was based on the most current, existing information, and specifically the 2013 inventory of DRECP vegetation

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

communities.2 As a result of this possible omission, the analysis of impact sin the Oberon EA on microphyll woodlands appears to significantly underestimate loss of this sensitive vegetation community under Alternative 2.

B5-8 cont.

Using the inventory data for the microphyll woodland vegetation community in the 2013 inventory report,3 Geographic Information System (GIS) scientists at the Center conducted an independent analysis of the effects of Oberon on microphyll woodland for Alternative 2. The results are presented in the following table along with corresponding acres of impact reported in the Oberon EA. The 2013 inventory of microphyll woodlands included each stand exceeding one acre in size and 90 feet in width as depicted on 1-meter resolution 2010 color National Agricultural Imagery Program imagery along with ancillary data and imagery sources.

Oberon Component	***Acres of Microphyll Woodland within the Oberon Footprint***		
	BRTR	***Center GIS Analysis***	***Notes***
Solar Panel Arrays	*56.53*	*140*	*This difference may also result in inaccurate analysis of impacts to the required 200 foot setback or buffer for Microphyll woodlands.*

2 Menke, J., E. Reyes, A. Glass, D. Johnson, and J. Reyes. 2013.2013 California Vegetation Map in Support of the Desert Renewable Energy Conservation Plan. Final Report. Prepared for the California Department of Fish and Wildlife Renewable Energy Program and the California Energy Commission. Aerial Information Systems, Inc., Redlands, CA.

3 https://filelib.wildlife.ca.gov/Public/BDB/GIS/BIOS/Public_Datasets/700_799/ds735.zip

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

(September 14, 2021 letter from California Native Plant Society, California Wilderness Coalition, Center for Biological Diversity, Defenders of Wildlife and Sierra Club to the BLM commenting on the Draft EA)

B5-8 cont.

The DEIR must be revised to accurately depict the environmental setting.

B. <u>The environmental setting grossly underestimates the value of the desert tortoise critical habitat on site.</u>

B5-9

Our field visits indicate the project site, including the area designated as desert tortoise critical habitat, is excellent desert tortoise habitat, as it is on a slightly higher rise close to the adjacent Chuckwalla Mountains on the south side of the highway. It is higher elevation Colorado Desert with abundant ironwood trees, compared to lower portions of the Chuckwalla valley. The Critical Habitat site contains numerous washes flowing out of the nearby Chuckwalla Mountains, with desert ironwood trees (*Olneya tesota*)—the seed pods of which are a favored food item for tortoises. During rainy years, spring wildflower displays here are excellent, providing more sources of tortoise forage species. The current extreme drought in the southwestern deserts will bias any surveys in spring 2021, and will only show a snapshot of poor forage conditions on this usually biodiverse Colorado Desert ecosystem. Simply eyeing a map of GIS layer will not be able to show the "value" of tortoise habitat, and tortoises often prefer habitats that to the untrained human eye appear low in value.

The DEIR fails to adequately describe the resources on site in the environmental setting.

C. <u>The environmental setting fails to identify that the project is habitat for Mojave fringe-toed lizards.</u>

B5-10

Kevin Emmerich, an expert in California desert herpetology, observed an adult Mojave fringe-toed lizard (*Uma scoparia*) on the Oberon Project site, on September 4, 2021. The lizard ran into a burrow. The substrate was not fine loose sand or dune habitat, as is typical for this species, but was former sand with more gravel and desert pavement. The metapopulation in Chuckwalla Valley may have differing habitat requirements than other populations of this species. The DEIR fails to identify the potential for this species to occur on-site.

The DEIR fails to adequately describe the resources on site in the environmental setting.

D. <u>The environmental setting underestimates the potential for bat roosting near the project site.</u>

B5-11

The DEIR at page 3.4-11discusses sensitive bat species found on the project site and indicated that

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

mention the potential for nearby areas to provide roosting habitat for bats. The Chuckwalla Mountain are about 3-4 miles from the project site while the Eagle Mountains are about 8 to 10 miles from the site and could provide roosting areas for bats that may forage on-site.

B5-11 cont.

The DEIR fails to adequately describe the resources on site in the environmental setting.

E. <u>The linkage area within the project site is not clearly defined.</u>

B5-12

The DEIR acknowledges the presence of the linkage area but fails to quantify how much acreage is within the project site.

> *The DRECP identifies a wide multi-species linkage area that overlaps with the southeastern and northern portions of the project area (Figure 3.4-10, Wildlife Connectivity). Desert tortoise is known to use this linkage area in the southeastern portion of the project.* (DEIR, Page 3.4-13)

4. <u>The DEIR failed to include CEQA thresholds regarding compliance with the Conservation Management Actions (CMAs) of the Desert Renewable Energy Conservation Plan Land Use Plan ("DRECP LUP").</u>

B5-13

The DEIR failed to include a CEQA threshold in the biological resources analysis of impacts regarding whether the project will conflict with the provisions of the DRECP. This was not an oversight, but a specific omission:

> *The following CEQA significance criterion from Appendix G was not included in the analysis:*
>
> • *Conflict with the provisions of an adopted Habitat Conservation Plan; Natural Community Conservation Plan; or other approved local, regional, or state habitat conservation plan.*
>
> *The project site is not within an area covered by an adopted Habitat Conservation Plan; Natural Community Conservation Plan; or other approved local, regional, or state habitat conservation plan.* ***<u>The project site and surrounding public lands are managed by BLM under the DRECP, a federal land management plan not included among the types of plans identified in this criterion.</u>*** (page 3.4-19, emphasis added)

This analysis fails to acknowledge that the CDFW recognizes DRECP as a land use plan and relevant regional plan for purposes of CDFW's review as a Trustee Agency under CEQA. The DEIR for Arica and Victory Pass, the concurrent solar projects on BLM land immediately adjacent to Oberon correctly identifies this fact.

B5-14

> ***Desert Renewable Energy Conservation Plan Land Use Plan Amendment to the CDCA.*** *The purpose ofthe Desert Renewable Energy Conservation Plan (DRECP) Land*

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Use Plan Amendment (LUPA) is to conserve and manage plant and wildlife communities in the desert regions of California while facilitating federal permitting of compatible renewable energy projects. The DRECP covers over 10 million acres of BLM land. The BLM Record of Decision for the DRECP was issued in September 2016. Projects that comply with the Conservation and Management Actions (CMAs) specified in the DRECP can be approved by BLM in a Development Focus Area (DFA) without the need for a LUPA. BLM describes the DRECP as a landscape level plan that streamlines renewable energy development while conserving unique and valuable desert ecosystems and providing outdoor recreation opportunities. No state or local agency, including CDFW, has adopted or approved the DRECP. CDFW recognizes the DRECP under federal law as a land use plan for BLM. It is also a relevant regional plan for purposes of CDFW's lead agency review of the Projects under CEQA, including the DRECP's landscape-level focus on the conservation of, among other things, unique desert ecosystems in the plan area, which includes the Project sites. (DEIR for the Arica Solar Project and Victory Pass Solar Project, page 3.4-3)

B5-14 cont.

In addition to the above omission, the DEIR would lead one to believe that it can only use the threshold as exactly written in Appendix G. However, Appendix G is merely the beginning of analysis. In fact, Appendix G specifically states:

B5-15

NOTE: The following is a sample form that may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. ***Substantial evidence of potential impacts that are not listed on this form must also be considered.*** *The sample questions in this form are intended to* ***encourage thoughtful assessment of impacts****, and do not necessarily represent thresholds of significance. (CEQA Appendix G, emphasis added)*

It is the responsibility of lead agencies to choose the thresholds of significance to be applied using a thoughtful assessment. (CEQA Guidelines, § 15064.7.) When an agency has not published a threshold of significance for a particular impact, it must adopt a threshold of significance during its evaluation of the project. This flexibility is allowed because "[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting." (Guidelines, § 15064, subd. (b)(1).).

While a lead agency has discretion on deciding which threshold it uses, it cannot ignore impacts by failing to adopt a threshold. The CEQA Lead Agency must prepare an EIR that provides a detailed statement setting forth all significant effects on the environment of the proposed project and mitigation measures proposed to minimize significant effects on the environment." (Pub. Resources Code, § 21100, subd. (b); see also Guidelines, § 15126)

The BLM may be responsible for enforcing the DRECP, but that does not mean that the Lead Agency under CEQA can turn a blind eye to whether the project does or does not comply with the DRECP LUP, because, as detailed in this letter, non-compliance results in significant impacts that

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-15 cont.

have not been addressed in the DEIR. This is a major omission of the DEIR that should result in a major revision and recirculation of the document.

The omission cannot be cured by the discussion in the land use section, which only addressed land use and not the resulting biological impacts. The land use section of the DEIR includes the following threshold:

> *Impact LU-1. Would the project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect? (DEIR, page 3.11-7)*

The conclusion in the land use section is that there will be no conflict if the plan is changed.

> *Conclusion. The proposed project would not conflict with applicable land use plans, policies, and regulations upon approval by BLM of a LUPA to the CDCA, and it would not result in an alteration of the present or planned land use of the area. The project is not inconsistent or incompatible with the site's existing, proposed, or surrounding land uses. As a result, any impacts with the use of the land and other conflicts would be less than significant.* (DEIR, page 3.1-19, emphasis added)

Beyond a mere conclusory statement, the land use section did not address whether or not the conflict will result in biological significant impacts. In fact, the DEIR claims that compliance with the DRECP "may needlessly prevent development". This arbitrary and conclusive statement in effect constitutes re-defining the DRECP by an EIR consultant.

> ***LESS THAN SIGNIFICANT.*** *This impact considers both the use of the land and the existing rights and potential conflicts with the project.*
>
> ***Project's Use of Land.*** *The project would be located entirely on BLM-administered land within a DFA. The DFA designation allows for development of renewable energy facilities and associated infrastructure including gen-tie lines without requiring a land-use plan amendment if the project complies with relevant DRECP CMAs.*
>
> *While the solar facility has been designed to optimize solar panel layout while minimizing impacts to microphyll woodland to the maximum extent practicable (aside from minor incursion), a 200-foot setback along all ribbons of microphyll woodland habitat **may needlessly prevent the development** of lands that are otherwise suitable for solar development and near transmission infrastructure. To consider these lands for construction of the Oberon Renewable Energy Project, as proposed, BLM may consider a Land Use Plan Amendment (LUPA) to the CDCA that would allow a project-specific variance to a portion of this CMA, as well as CMAs LUPA-BIO-3 and LUPA-BIO-SVF-6.* (DEIR, page 3.11-7 to 3.11-8).

The DEIR fails to provide adequate thresholds of significance.

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B5-16

5. Failure to comply with the DRECP CMA's will result in significant unmitigated impacts not analyzed in the DEIR which were not addressed in previous environmental review for the DRECP.

A. Instead of completely avoiding Microphyll Woodlands as called for in the DRECP LUP, the Project proposes to destroy approximately 80 acres of this protected habitat.

The DRECP is clear on impacts to desert dry wash woodland:

> ***LUPA-BIO-SVF-6:*** *Microphyll woodland: impacts to microphyll woodland (see Glossary of Terms) will be avoided, except for minor incursions (see Glossary of Terms).* (DRECP BLM LUP. Page 111, emphasis added)

> *"Impacts to riparian vegetation would be* ***avoided*** *under the Preferred Alternative through application of the riparian CMAs (LUPA-BIO-RIPWET-1 through LUPA-BIORIPWET-7, LUPA-BIO-13). In addition, setbacks from riparian vegetation would be required that range from 200 feet for Madrean warm semi-desert wash woodland/scrub, Mojavean semi-desert wash scrub, and Sonoran-Coloradan semi-desert wash woodland/scrub to 0.25 mile for Southwestern North American riparian evergreen and deciduous woodland and Southwestern North American riparian/wash scrub. Compensation CMAs would offset any impacts determined to be unavoidable (LUPA-BIOCOMP-1, DFA-VPL-BIO-COMP-1, DFA-VPL-BIO-COMP-2).* (DRECP LUP and Final EIS for the DRECP LUPA, CHAPTER IV.7. BIOLOGICAL RESOURCES, Vol. IV of VI, page IV.7-116; see also Table IV,7-18)

Impacts are to be avoided "to the maximum extent practicable or feasible", which means that they are to be avoided unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity[4]. The Biological Opinion for the DRECP relied on the CMAs and incorporated all of the CMAs by reference. (Biological Opinion, page 23).

[4] ***Maximum extent practicable or feasible (as utilized in the LUPA CMAs).*** *A standard identified in the LUPA CMAs and applied to implementation of activities. Under this standard, implementation of the CMA is required unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity. The term "maximum extent practicable" as used here in the DRECP LUPA is applicable only to its use in the CMAs; it does not apply to the term as it is used in the Endangered Species Act of 1973.* (DRECP LUP, page xviii)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Unavoidable impacts[5] are limited to minor incursions[6]. However, the proposed project is not limiting its impacts to minor incursions. The Oberon project is "mostly avoiding" desert dry wash woodland instead of avoiding to the maximum extent practicable or feasible. B5-17

> *Construction of the solar facilities would **mostly avoid** desert dry wash woodland in accordance with CMA LUPA-BIO-RIPWET-1 which requires avoidance of desert dry wash woodland with a 200-foot setback except for minor incursions. The project would impact approximately 81.2 acres of desert dry wash woodland habitat* (Table 3.4-1). (DEIR, page 3.4-30, emphasis added)

Furthermore, the Applicant deliberately added microphyll woodland "fingers" to the project footprint:

> *Therefore, in coordination with BLM and USFWS, the Applicant refined the development footprint to avoid desert dry wash woodland areas by imposing a minimum 50-foot and average of 134-foot (rather than 200-foot) buffer between such areas and the nearest solar panels. After the 50-foot buffer was imposed, the Applicant combined some of the nearby avoidance areas to create larger swaths of higher quality dry wash woodland. To offset this acreage, **less than 60 acres of the smaller "fingers" of DDWW were added to the solar panel development footprint.*** (EA, page 10, emphasis added, emphasis added)

In fact, the EA conceded that impacts will be greater than those assumed under the DRECP, but failed to identify the impacts as significant and adverse.

> *Because the project would not be in compliance with DRECP CMA LUPA-BIO-SVF-6, CMA LUPA-BIO-RIPWET-1, and CMA LUPA-BIO-3 related to desert dry wash woodland, cumulative impacts to habitat and species would be **relatively greater than those described in the FEIS**....* (EA, page 113, emphasis added)

The DEIR also concedes that state-regulated jurisdictional waters found along the ephemeral washes would still be impacted but fails to identify the significance of the impacts (page (DEIR 3.4-31 to 3.4-32). The DEIR must disclose whether the impact is significant. The DEIR also concedes that there will be a significant cumulative impact to desert dry wash woodland and B5-18

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[5] ***Unavoidable impacts to resources.*** *Small-scale impacts to sensitive resources, as allowed per specific CMAs, that may occur even after such impacts have been avoided to the maximum extent practicable (see definition). Unavoidable impacts are limited to minor incursions (see definition), such as a necessary road or pipeline extension across a sensitive resource required to serve an activity.* (DRECP LUP, page xxiv)

[6] *Minor incursion. Small-scale allowable impacts to sensitive resources, as per specific CMAs, **that do not** individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that **warrants** development and application of more rigorous CMAs or a **DRECP LUPA amendment**. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts. (DRECP BLM Land Use Plan Amendment xix September 2016)*

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

unvegetated ephemeral dry wash. The DEIR asserts that the impact will not be cumulatively considerable because the project is "avoiding most" of the desert dry woodland,

B5-18 cont.

> *The effects of the proposed project would contribute incrementally to the cumulative impacts to sensitive habitat and jurisdictional waters of the State, but this incremental contribution would not be considerable because the project has been designed to minimize impacts to sensitive habitat by **avoiding most** of the desert dry wash woodland, per the DRECP CMAs, and because mitigation measures identified under Impact BIO-4 and BIO-5 would reduce the impacts so that residual effects would be minimal. (DEIR, page 3.4-35)*

The DEIR fails to disclose that that the project fails to comply with the DRECP will result in direct significant impacts.

B5-19

B. Instead of providing Aa200 foot Buffer from Microphyll Woodlands as called for in the DRECP LUPA, the Project proposes a mere 50 foot Buffer in some locations.

However, the impacts do not stop with the destruction of microphyll woodland. The DRECP required setbacks[7] from microphyll woodlands specifically to avoid significant impacts:

> *DRECP LUPA-BIO-RIPWET-1: The riparian and wetland DRECP vegetation types and other features listed in Table 17 will be avoided to the maximum extent practicable, except for allowable minor incursions... with the specified setbacks*
>
> **Table 17**
> **Riparian and Wetland Avoidance and Setbacks**
> *Madrean Warm Semi-Desert Wash Woodland/Scrub 200 feet*
> *Mojavean Semi-Desert Wash Scrub 200 feet*
> *Sonoran-Coloradan Semi-Desert Wash Woodland/Scrub 200 feet*
> *(DRECP LUPA, page 106)*

Only minor incursions into the setback area are permitted. The Oberon Solar Project proposes to reduce the setbacks to the remaining microphyll woodland not destroyed during construction to, in some cases, only 50 feet, instead of the required 200 feet.

> *[T]he project has been designed with a 50-foot setback of solar panels from desert dry wash(microphyll) woodland and to avoid historic properties that are eligible for listing on the National Register of Historic Places. (DEIR, page 2-3)*

[7] **Setback:** A defined distance, usually expressed in feet or miles, from a resource feature (such as the edge of a vegetation type or an occupied nest) within which an activity would not occur; otherwise often referred to as a buffer. The purpose of the setback is to maintain the function and value of the resource features identified in the DRECP LUPA CMAs. (DRECP LUPA, page xxii)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

The DEIR fails to disclose that that the project failure to comply with the DRECP will result in direct significant impacts. B5-19 cont.

The DEIR concedes that cumulative impacts to vegetation and habitat are significant. (Page 3.4-35) The DEIR asserts that impacts would be off-set by off-site compensation and by the areas set aside by the DRECP. B5-20

> *Sonoran desert scrub, a widespread and common habitat type, would be offset at a 1:1 ratio, while desert dry wash woodland, a sensitive community, would be offset at a 5:1 ratio. (Page 3.4-35)*

The DEIR failed to state if its contribution was cumulatively considerable. In addition, we do not believe it is appropriate for the project to claim the benefit of DRECP compensation lands when it fails to comply with the DRECP.

Due to the severity and quantity of impacts we have detailed in this letter, there DEIR fails to support the conclusion that the project's incremental impacts are not cumulatively considerable. Furthermore, the residual impacts will not be adequately minimized by measures discussed in IMPACT BIO 4 and IMPACT BIO-5.

In sum off-site compensation cannot adequately mitigate for the loss of important habitat and its function for wildlife connectivity and other ecological services on site. Additionally, the DEIR failed to quantify all significant impacts to desert dry wash woodland onsite, so the total impacts of the project remain opaque.

C. The EA fails to include a clearly understandable analysis of impacts

B5-21

For example, although the EIR indicates that only 60 acres of microphyll woodlands are impacted (DEIR, page 4-3), or alternately, 81.2 acres (DEIR, page 3.4-22), the DEIR has failed to quantify the acreage of buffer area that would be lost as a result of the project. Since the land use plan compliant alternative removes a net 600 acres from development but it also adds significant developable acreage in the 368 Corridor, the assumption must be that at least 600 acres of buffer is being lost/impacted by the project. (DEIR, page 4-6). Certainly 600 acres of impact cannot be determined to be a minor incursion. The DEIR has failed to provide any mitigation for the impact to buffers. Mitigating for the additional 600 acres of lost buffer at 5:1 would mean that an additional 3,000 acres should be set aside for off-site preservation.

However, the DEIR is only proposing off-site preservation of 406 acres of desert dry wash woodland. (DEIR, page 4.4-45). Furthermore, because the DRECP assumed compliance with the CMA except for minor incursions, no amount of offsite compensatory mitigation can reduce this adverse significant impact to a level of insignificance.

The DEIR has separated the impacts from the solar arrays from the impacts from the collector lines, gen-tie line and access roads (DEIR, page 3.4-22). The DEIR has failed to quantify the impacts to microphyll woodland from the electrical substation and battery storage system. These types of facilities would both need 100 percent grading. B5-22

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

The substation, storage container, O&M facility, and internal and external road locations would require mowing, grubbing, grading and compaction. (DEIR, page 2-14)

The proposed BESS area (approximately 25 acres) would be cleared and graded. (DEIR, page 2-17)

B5-22 cont.

Whether the DEIR chooses to quantify the impacts separately or not, all of the project's impacts to microphyll woodlands and buffers, including the collector lines, gen-tie line and access roads, BESS and substation must still be attributed to the Applicant, and given the total number of acres impacted, cannot be considered minor incursions.

D. The DEIR fails to consider whether the hydrologic and biologic function of the riparian areas will be maintained.

B5-23

The DRECP states that for minor incursions or encroachments on the setbacks listed in Table 17, the hydrologic function of the avoided riparian or wetland communities will be maintained. (DRECP LUP, page 106) . Subsurface water is an important consideration for maintaining the hydrologic function of microphyll woodlands:

Colorado Desert: *.....* ***Subsurface moisture in desert washes*** *supports stands of microphyll woodlands with old-growth stands of blue paloverde and ironwood.* (DRECP LUP, Colorado Desert Area, Pages 38-39)

The EA also concedes that microphyll woodlands will have no habitat value if surrounded by solar arrays:

CMA LUPA-BIO-RIPWET-1, project design includes an average 134-foot buffer and minimum 50-foot buffer around the desert dry wash woodland, with the exception of a limited amount of small "finger" areas determined to have ***little to no habitat value once surrounded by the solar development.*** (EA, page 123, emphasis added)

However, the DEIR fails to address how the hydrologic function of the desert dry wash woodland will be maintained in the proposed project, particularly with its greatly diminished buffer of only 50 feet in places, instead of the required 200 feet.

6. Compensation lands are not adequately identified, and the selection of mitigation lands is deferred until after impacts have occurred.

B5-24

The EA claims that the mitigation lands have been selected and are of higher quality than the existing site.

CMA LUPA-BIO-COMP-1 require permanent protection of comparable off-site habitat to offset the project's impacts to native habitat and designated critical habitat. IP Oberon,

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

LLC and Wildlands compiled a comprehensive mitigation package. The proposed compensation lands within the Wildlands mitigation package are much higher quality habitat than the designated critical habitat on the Oberon site. (IP Oberon, 2021, Appendix AA). (DEIR, page 3.4-22)

B5-24 cont.

However, the offsite habitat mitigation package in POD Appendix AA, at least the version available to the public, only mentions "Potential Mitigation Properties" without any description of the properties at all. The map indicates numerous disjointed properties separated by several miles may be selected (POD Appendix AA, pages 1 and 2). In fact, the actual mitigation lands will not be selected until after project construction has begun, allowing impacts to occur before mitigation.

Within 18 months of completing construction, the Applicant or an approved third party will prepare a Compensation Plan, identifying the proposed compensation lands. (DEIR, page 3.4-45)

7. <u>The EIR fails to address the potential cumulative impacts that could result from the precedent of ignoring CMA's within the DRECP, which undermines the fundamental premise of the DRECP.</u>

B5-25

The DEIR alleges that cumulative impacts to the DRECP are less than significant.

Local policies and ordinances. *The BLM is reviewing the proposed project to ensure they are consistent with the applicable BLM policies, including the DRECP LUPA. Cumulative impacts to policies and ordinances would be less than significant.* (DEIR, page 3.4-38)

The DEIR provided this conclusory statement without any analysis. The DRECP has two primary goals. One is to provide a streamlined process for the development of utility-scale renewable energy generation and transmission in the deserts of southern California consistent with federal and state renewable energy targets and policies. The other is to provide for the **<u>long-term conservation and management</u>** of special-status species and desert vegetation communities, as well as other physical, cultural, scenic, and social resources within the DRECP Plan Area using **<u>durable regulatory mechanisms</u>**. (DRECP LUP Executive Summary for the ROD, page ES-2, emphasis added).

DRECP planning decisions are "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 LUP ROD, page 1)

Until the Oberon Project was proposed, all other projects subject to the DRECP CMAs (and even one "grandfathered" project) have complied with the CMA's. Compromising the CMAs which were designed to avoid significant impacts would be a precedent setting action that could result in several more requests from solar developers to amend the plan and/or seek exemptions. The Applicant may make the same request for the Easley project, proposed on land that the Applicant

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

(DEIR, page 4-23). The DEIR has failed to address the potential for the Oberon project to create a cumulatively considerable impact to desert dry wash woodland that was not addressed in the environmental review for the DRECP, because the DRECP EIS assumed compliance with the CMA's.

B5-25 cont.

8. The EIR has failed to identify other significant impacts.

B5-26

A. Instead of avoiding on-site Critical Habitat for the desert Ttrtoise, the Project proposes to develop the Critical Habitat

The Proposed project impacts Critical Habitat for the Federally Threatened Agassiz's desert tortoise on the north side of Interstate-10 in Chuckwalla Valley as well as occupied habitat throughout the project site. The DEIR fails to disclose that the project violates CMA LUPA-BIO-13, General Siting and Design which requires projects to avoid impacts to the maximum extent practicable "*occupied habitat and suitable habitat for Focus and BLM Special Status Species (see "avoid to the maximum extent practicable" in Glossary of Terms).*" (DRECP LUP. Page 100)

The project does not avoid, to the maximum extent practicable, the *occupied and suitable* habitat of desert tortoise. In fact, the DEIR fails to disclose the amount of occupied and suitable desert tortoise habitat that is lost from implementation of the project. The DEIR only discloses the amount of critical habitat that will be impacted.

> *Approximately 817 acres of critical habitat (including 46.6 acres of dry desert wash woodland) would be impacted.* (DEIR, page 3.4-25)

If we assume that the entire site is habitat for desert tortoise, then the project will eliminate at least 2,700 acres, based on the project footprint. (DEIR, page 3.1-2). However, the project is only proposing to mitigate for tortoise impacts by mitigating for desert tortoise critical habitat. (DEIR, page 3.4-46). There is no assurance that all mitigation lands will be occupied desert tortoise habitat.

B5-27

The DEIR concedes that impacts to desert tortoise will be cumulatively significant. The DEIR concludes that the incremental contribution is not cumulatively considerable because no lethal take would occur, and habitat loss would be offset. (DEIR page 3.4-36 to 3.4-37) Even if we believed off-site compensation was appropriate, as indicated elsewhere, there is insufficient detail in the DEIR regarding mitigation lands to confirm that they will adequately compensate for the project's impacts. Furthermore, because the DEIR failed to quantify all significant impacts to desert tortoise, the off-site mitigation acreage cannot be calculated.

Even though CMA LUPA-BIO-COMP-1 allows compensation acreage requirements to be fulfilled through non-acquisition (i.e., restoration and enhancement), land acquisition (i.e., preservation), or a combination of these options, the non-acquisition methods have failed to actually mitigate for desert tortoise.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Mojave desert tortoises continue to decline range wide, despite attempts to fence roads, close illegal routes, put of signs warning drivers of tortoises crossing roads, and other mitigation measures which are not efficacious in recovering the tortoise.

B5-27 cont.

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km²)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km² (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	***115***	***0.45***	***15.3 (6.0)***	***–26.57 decline***
Red Cliffs Desert	*115*	*0.45*	*15.3 (6.0)*	*–26.57 decline*
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**25,678**	**100.00**		**–32.18 decline**

Table 1. The area of each Recovery Unit and Tortoise Conservation Area (TCA), percent of total habitat, density (number of breeding adults/km2 and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km2 (10 breeding individuals per mi2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red (after Desert Tortoise Council).

Note that the Chuckwalla Critical Habitat Unit has declined 37.43% from 2004 to 2014, when the last population monitoring surveys were completed.

However, given the results above, there is no adequate assurance is given that mitigation measures will help stave off continued declines in this highly imperiled species. In addition, the application of herbicides along will significantly impact tortoise Critical Habitat, reducing and elimination important food plants such as annual forbs and grasses. The disturbance of heavy machinery, solar panel installation, construction and operation activities will significantly impact soil surfaces, burrows, and vegetation important to tortoises, on Critical Habitat, setting a very bad precedent for the incursion of development into designated protected habitat zone.

Furthermore, the impacts will be allowed to occur before the mitigation is provided.

B5-28

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Consistent with mitigation timing described in CMA LUPA-COMP-1, compensation must be initiated within 12 months from the time the resource impact occurs (e.g., habitat removal). (DEIR, page 3.4-46)

B5-28 cont.

B. Instead of avoiding the on-site Multi-Species Habitat Linkage Area as required by the DRECP LUP, the Project proposes to develop within the Linkage Area.

B5-29

The DRECP addressed the need to maximize microphyll woodlands and maintain the function of linkage connectivity.

> *The siting of projects along the edges (i.e. general linkage border) of the biological linkages identified in Appendix D (Figures D-1 and D-2) will be configured (1) to **maximize the retention of microphyll woodlands** and their constituent vegetation type and inclusion of other physical and biological features conducive to Focus and BLM Special Status Species' dispersal, and (2) informed by existing available information on modeled focus and BLM Special Status Species habitat and element occurrence data, mapped delineations of vegetation types, and based on available empirical data, including radio telemetry, wildlife tracking sign, and road-kill information. Additionally, projects will be **sited and designed to maintain the function** of Special Status Species connectivity and their associated habitats in the **following linkage and connectivity areas**. Within a 1.5-mile-wide linkage across Interstate 10 to connect the Chuckwalla Mountains to the Chuckwalla Valley east of Desert Center.* (DRECP LUP, pages 100 to 101, emphasis added)

The DEIR fails to quantify the impacts to the linkage area, simply stating that it "mostly avoids" the area.

> *The proposed development footprint **mostly avoids** this area, leaving portions of the multiple-species linkage area within the project boundaries open to wildlife movement.* (DEIR, page 3.4-42, emphasis added)

The Biological Technical Report appears to conflict with the EA. The POD Appendix F, written by Ironwood Consulting, states:

> *The DRECP identifies a wide multi-species linkage area that partially overlaps with the southern parcel of the Project site on its eastern boundary. (Figures 1 and 12). The final design of the Project will follow all CMA requirements and may avoid or have a reduced footprint within the multi-species linkage boundaries.* (POD Appendix F at 28).

The DEIR concedes in the cumulative analysis section that, as a result of the project, only very narrow corridors will be retained.

> *Portions of the multi-species linkage and desert dry wash woodland on the site would be avoided, leaving **several narrow corridors** that connect to the I-10 under-pass crossings.*

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> *An additional portion of the linkage between the Victory Pass and Oberon Solar Projects would remain undeveloped.* (DEIR, page 3.4-38, emphasis added)

B5-29 cont.

The DEIR fails to address how the remaining "narrow corridors" will maintain the function and connectivity of the linkage for various species including desert tortoise, Burro deer, bighorn sheep, and other species. Desert tortoises and other wildlife, including desert bighorn sheep, have been photographed in camera trap surveys as using freeway underpasses. The narrowing of the linkage, in combination with other projects that also narrow the linkage would result in blocking and fragmenting genetic linkages, and indirectly causing impacts due to edge effects, construction and operation disturbance, altered surface hydrology of washes, invasive species, and facilitating raven predation.

B5-30

The DEIR concedes that the cumulative loss of habitat and access to water sources would cause a cumulatively significant impact to burro deer. (DEIR, page 3.4-37). The DEIR also makes the contrary conclusion that, although wildlife movement in the vicinity of the project will be inhibited, cumulative impacts to wildlife movement are not significant because narrow corridors are left and access to the I-10 under crossings are retained.

> *Further, while the project site overlaps with the multi-species linkage area, the site is within a DFA, as presented in the DRECP LUPA. Undeveloped lands would remain in the ACECs that surround the project site, which in combination with avoidance of desert dry wash woodland, would allow for* ***limited wildlife movement*** *through and around the project and* ***would retain access the I-10 crossings****. Therefore, cumulative impacts to wildlife movement would be less than significant.* (DEIR, page 3.4-38)

With regard to burro deer, the DEIR concludes that the incremental impact would not be considerable because no take would occur and because the loss of habitat for wildlife movement will be offset by off-site compensation and the minimization of impacts to desert dry wash woodland. (DEIR, page 3.4-37). However, the DEIR has failed to demonstrate that the very narrow corridors will mitigate wildlife movement impacts to burro deer or other animals on a project specific or cumulative bases to below significance. More importantly, by definition off-site habitat cannot possibly serve as habitat connectivity through the site itself.

C. Instead of minimizing impacts to the Desert Pavement on-site as required under the DRECP LUP, the Project proposes to destroy most of the on-site Desert Pavement.

B5-31

The DEIR does not address the significant impacts to desert pavement. On our site visit, Basin and Range Watch found Desert Pavement natural soil types commonly interspersed with microphyll wash vegetation communities on portions of the project site. This important soil type in the California Desert district sequesters carbon in large quantities, in association with Biological Soil Crusts. Disturbance of desert pavement could impact desert runoff by making the soil less stable, which could, in turn, impact the functionality of desert dry wash woodland.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

> *The significance of desert pavement is their long-term stability. When desert pavement is disturbed and broken up, the very fine particulate matter immediately beneath the stable pavement that has accumulated by infiltration through the pavement over centuries becomes exposed to air currents. The result is high inputs of fugitive dust into the air and subsequent soil loss on site. If left undisturbed, desert pavements restrict the infiltration of water into the underlying soils and allow for desert runoff to playas near Desert Center.* (DEIR, Page 3.7-4)

B5-31 cont.

The importance of the desert pavement was recognized in the DRECP LUP, which has a CMA for desert pavement intended to cap the amount of disturbance:

> *The extent of desert pavement within the proposed boundary of an activity shall be mapped if it is anticipated that the activity may create erosional or ecologic impacts. Mapping will use the best available standards as determined by BLM. Disturbance of desert pavement within the boundary of an activity shall be limited to the extent possible. If disturbance from an activity is likely to exceed 10% of the desert pavement mapped within the activity boundary, the BLM will determine whether the erosional and ecologic impacts of exceeding the 10% cap by the proposed amount would be insignificant and/or whether the activity should be redesigned to minimize desert pavement disturbance.* (DRECP CMA LUPA-SW-9)

The DEIR fails to disclose that the proposed project exceeds the 10% cap imposed by the DRECP.

B5-32

> *A total of approximately 175 acres of isolated areas of desert pavement were identified in the eastern portion of the project site within and near areas of desert dry wash woodland during the biological survey for the project, with about 71 acres of desert pavement underlying project development areas (Ironwood 2021 in IP Oberon, 2021, Appendix F).* (DEIR, page 3.7-3)

The Oberon Solar Project intends to impact approximately 71 acres[8] of desert pavement or about 41% of the 175 acres of total desert pavement within the total project area, which is a violation of the DRECP LUP.

D. Significant impacts to Mojave fringe-toed lizard are not avoided or mitigated

B5-33

The DEIR failed to provide any analysis of Mojave fringe-toed lizards, despite its presence on site. The project will no doubt result in destroying fringe-toed lizard habitat, disturbance and blockage of sand flows, and the increase of invasive weeds. It is likely that this group of populations could be a new undescribed taxon when finer genetic studies are undertaken in the future. The DEIR fails to provide any analysis of the direct, indirect, or cumulative impacts from this project, which are potentially significant.

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[8] *Development of the Eagle Crest gen-tie line area with solar panels would add an additional 10 acres of Disturbance to desert pavement depending on final design.* (EA, page 84)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Cumulative impacts to this sand endemic lizard have been considerable in the Chuckwalla Valley, with the construction of the Desert Sunlight Solar Farm, Desert Harvest Solar Project, Palen Solar Project, Genesis Solar Energy Project, Blythe Solar Project, McCoy Solar Project, and proposed Crimson Solar Project, Arica and Victory Solar Projects, and Desert Quartzite Solar Project, along with new transmission and substation infrastructure.

B5-33 cont.

Because the DEIR failed to analyze impacts to this species, it also fails to provide any mitigation for the impacts to this species.

E. <u>Significant impacts to Emory's crucifixion thorn are not adequately analyzed and mitigated because mitigation may not be feasible.</u>

B5-34

The project violates CMA LUPA-BIO-13, General Siting and Design, in not avoiding impacts to unique plant assemblages such as Emory's crucifixion thorn (*Castela emoryi*) communities.). This unique plant assemblage is classified as Crucifixion Thorn Stand in Sawyer et al. (2008), scattered in the Colorado and Mojave Deserts, and the authors say more information is needed about this plant community. The DEIR Mitigation Measures for the species that includes off-site habitat and experimental procedures that have no guarantee of success (See MM BIO-7, page 3.4-49):

> *Salvage. The Applicant will consult with Rancho Santa Ana Botanic Garden (RSABG) regarding the success of salvage efforts for this species at the Desert Sunlight Solar Farm project site. If the strategy has been shown to be feasible and certain individuals have been judged suitable for relocation, then the Applicant will prepare and implement an Emory's Crucifixion representative), CDFW, and BLM prior to disturbance of any occupied Emory's crucifixion thorn habitat. Emory's crucifixion thorn on private lands may also be subject to the provisions of the California Desert Native Plants Act. The Applicant will contract with RSABG or another entity with comparable experience and qualifications, to salvage at minimum 75 percent of Emory's crucifixion thorn individuals from the proposed project site and transfer them to a suitable off-site location.*
>
> *Horticultural propagation and off-site introduction. If salvage and relocation is not believed to be feasible for Emory's crucifixion thorn, then the Applicant will consult with RSABG or another qualified entity, to develop and implement an appropriate experimental propagation and relocation strategy.* (DEIR, page 3.4-49)

The DEIR gives no assurance that any private lands with Emory's crucifixion thorn are even available, and could be purchased in this 1:1 mitigation scheme. In fact, the mitigation measure has no requirement that mitigation land actually contain Emory's crucifixion thorn. The DEIR presents no analysis that Emory's crucifixion thorn salvage from other solar projects was successful, nor any reports from Rancho Santa Ana Botanic Garden (now California Botanic Garden) regarding success or failure of salvage and relocation efforts. The DEIR has failed to demonstrate that the impacts will be reduced to below significance.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

The DEIR also concedes that there will be a cumulatively significant impact to regional special status plants. (DEIR, page 3.4-35). The DEIR concludes that the impact is not cumulatively considerable to Emory's crucifixion thorn because of the limited number of plants on site, and that the measures discussed in IMPACT BIO-1 will reduce the residual impacts. (DEIR, page 3.4-35). As discussed, the mitigation measures for Emory's crucifixion thorn are not adequate to ensure impacts are reduced to below significance due to their experimental nature. B5-35

F. <u>Significant impacts to other wildlife are not adequately analyzed or mitigated.</u> B5-36

Mojave Fringe Toed Lizard

The impacts of fences and sand piling up on fences, and the impacts to the sensitive species Mojave fringe-toed lizard (*Uma scoparia*) should be analyzed in the DEIR.

Couch's Spade Foot Toad B5-37

Couch's spadefoot toad was not observed during surveys, but eight areas were identified as potential breeding habitat where water may accumulate after rainfall. (DEIR, page 3.4-7). The DEIR conceded that it does not have enough information to conclude that the species is absent from the site.

> *However, sufficient rainfall in warmer temperatures has yet to occur making it difficult to determine whether the identified areas hold enough water for breeding or any occupancy of the species. (DEIR, page 3.4-7)*

Therefore, the significance of the impact to this species is unknown. Despite the potential to impact couch's spadefoot toad, no mitigation was provided.

Desert Kit Fox B5-38

The DEIR fails to identify the potentially significant impacts to desert kit fox, which are a fully protected mammal. The mitigation measures do not ensure no mortality to kit fox, but instead are designed to "prevent or minimize" injury to desert kit fox.

> *MM BIO-13 (Desert Kit Fox and American Badger Relocation) would prevent or minimize potential injury to desert kit fox. (Page 3.4-29)*

The DEIR concedes that the cumulative impact to desert kit fox and American badger is significant. (DEIR, page 3.4-37). The DEIR asserts that its impact is not cumulatively considerable because individuals would be relocated out of harm's way to an off-site location and native habitat loss would be offset. However, as indicated, the Desert Kit Fox is a fully protected mammal, and the mitigation measures do not ensure no mortality. (DEIR, page 3.4-37)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Gila Woodpecker

B5-39

The DEIR failed to identify impacts to or mitigation for the California state endangered Gila Woodpecker. There are some very large palo verde trees on the site. We also have data that confirms Gila woodpeckers nest in ironwood trees. Gila woodpecker numbers have declined drastically in southern California. Breeding habitat consists of Columnar cactus, especially saguaro; less common in cottonwood, willow, paloverde, ironwood, mesquite, and residential shade trees, trees > 10 inches DBH, riparian patches > 50 acres (Arizona Bird Conservation Initiative and Sonoran Joint Venture. 2020). Softer woods are preferred for excavating nest cavities, such as saguaro and palo verde. We found several large palo verde trees on the Oberon site. Loss and fragmentation of riparian woodland is one of the main threats facing Gila woodpeckers (CDFW no date).

Bats

B5-40

The DEIR concedes that construction of the project could impact special-status bats through the elimination of desert shrubland foraging habitat or potential loss of roost sites in desert dry wash woodland habitat on the site which could disturb, injure or kill bats. (DEIR, pages 3.4-37-3.4-38) However, the DEIR failed to identify the project's significant impacts to bats. (DEIR, page 3.4-30). The DEIR concedes that the cumulative impact to special-status bats is significant but that the projects incremental contribution is not cumulatively considerable. (DEIR, page 3.4-37-3.4-38)

It is impossible to assess the project's contribution to cumulative impacts when the DEIR fails to adequately address project-specific impacts.

Birds

B5-41

The bird diversity in this microphyll habitat has not been analyzed or mitigated. The importance of this intact habitat for Colorado Desert birds needs more study. Appendix D to the Biological Resources Technical Report, POD Appendix F lists over 80 species of birds observed at the Project site. Breeding birds may include Black-tailed gnatcatcher, Ladderback woodpecker, Verdin, Ash-throated flycatcher, Black-throated sparrow, Burrowing owl, Cactus wren, Common poorwill, Lesser nighthawk, Costa'a hummingbird, Gambel's quail, House finch, Lesser goldfinch, Loggerhead shrike, Mourning dove, Northern mockingbird, Say's phoebe, Western kingbird, and Vermilion flycatcher.

The DEIR discloses that some bird mortality would occur.

> *[P]roject-related bird mortality is likely to range from a low of 0.4 birds per acre per year up to 1.7 birds per acre per year (BLM, 2018). DEIR, page 3.4-26)*

The DEIR concludes that "

> *While bird fatalities may be expected to occur due to collisions with project facilities and equipment, the risk of significant impact to avian populations is minimal.* (DEIR, page

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-41 cont.

However, given the project footprint is 2,700 acres, the project could result in the mortality of 4,590 birds per year. There is no basis for the DEIR claim that the risk of a significant impact is minimal, given the sheer number of birds that could die annually.

Other scientific research has supported deaths of birds in the thousands. Argonne National Laboratory (2016) summarized multiple agency findings of widespread impacts to birds from utility-scale solar projects. Mortality monitoring and reporting is required by lead agencies on many projects. Data from 7 projects in Southern California (4 Photovoltaic, 2 Solar Trough, 1 Power Tower), reported from 2012-April 2016 showed that significant bat and insect mortality, including Monarch butterflies was occurring on solar projects. A total of 3,545 mortalities from 183 species (2012-April 2016) were recorded, from a mix of reports from incidental finds and systematic surveys. Many mortalities occur due to dehydration/heat stress after the initial injury/stranding.

Mortality to birds of Conservation Concern and Federal Endangered/Threatened species (including California Desert solar projects) impacted Yuma Ridgeway's (Clapper) Rail, Willow Flycatcher, Yellow-billed Cuckoo, Peregrine Falcon, Bank Swallow, Western Grebe, Horned and Eared Grebes, American White Pelican, Burrowing Owl, and Calliope Hummingbird. The DEIR states that the *"highest percentage of fatalities across all studies were common species"* (DEIR, page 3.4-27). It is obvious that more common species will have greater numbers, precisely because they occur in greater numbers. Endangered and Species if Special Concern have traditionally lower numbers, but the mortality of fewer individuals is significant.

As other large-scale solar projects in the DFA have resulted in the mortality due to "lake effect" impacts, resulting in collisions. The DEIR concedes that:

> *Carcasses of water-associated birds (e.g., herons and egrets) and water obligate birds (e.g., loons and grebes) have been found at PV solar facilities in the Sonoran and Mojave Deserts, primarily found at sites within **60 miles of the Salton Sea**. Water associated (6.3 percent) and water obligate species (7.8 percent) each compose less than 10 percent of the detections. (DEIR, page 3.4-27, emphasis added)*

The project site is approximately 60 miles from the Salton Sea. The potential for this to result in impacts was dismissed without analysis within the DEIR *"This effect has not been verified."* (DEIR, page 3.4-27). This is a growing concern with waterbirds that fly across the desert from the Salton Sea and Gulf of California, to Colorado River water bodies. The DEIR failed to address this potentially significant impact, and as a result, failed to require mitigation measures such as requiring the applicant to create a bigger space between solar panels, create an uneven, wavy surface for the panels to break up the lake effect and finally, surround each panel with a white rim to break up this lake effect.

The DEIR concedes that there will be a cumulatively significant impact to migratory birds.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-41 cont.

> *Migratory birds are expected to occur throughout the area during construction and O&M. Land use conversion for the project and any of the cumulative projects would result in habitat loss and degradation, displacement, decreased foraging activities, and potentially disruption or failure of nesting, increased predation, or mortality. Solar panels and the gen-tie line of the proposed project as well as other solar PV projects may cause collision hazards, such as a "lake effect," leading to bird mortality. Taken together, the projects would result in a cumulatively significant impact for native birds.* (DEIR, page 3.4-36)

With regard to the potential for migratory birds to collide with solar facilities resulting in mortality, the DEIR indicates that MM BIO-10 (Bird and Bat Conservation Strategy) would ensure that cumulative impacts would not be considerable. (DEIR, page 3.4-36 The DEIR fails to demonstrate that the cumulative impacts are mitigated such that its contribution is not cumulatively considerable. First, the MM BIO-10 allows the impacts to occur prior to proposing any mitigation, beyond anti-reflective coating, because "uncertainty remains" (Bird and Bat Conservation Strategy, POD Appendix K, page 25). Furthermore, POD Appendix K fails to propose any measures to deal with the lake effect, if it is found to occur. The proposed measures address issues regarding perching or nesting near solar arrays but not fatalities related to the lake effect.

> *Installation of remedial avian protection equipment (perch, dissuaders, or fence markers)*
>
> *Manage, monitor and remove potential bird nesting materials near solar arrays*
>
> *Modification of existing equipment to prevent nesting, perching or other undesired bird access*
>
> *Obtain necessary federal and state permits for problem nest removal*
>
> *Formal, systematic fatality monitoring along the gen-tie line or within problem areas at the array facilities*
>
> *Employ a dedicated and qualified site biological monitor either full-time or seasonally, depending on the specific issue identified (POD Appendix K, Bird and Bat Conservation Strategy, page 40)*

Finally, once a measure is implemented, monitoring will occur for one year before any additional change is made, allowing potential mortalities to continue. (POD Appendix K, Bird and Bat Conservation Strategy, page 40)

Heat Island

B5-42

The potential Heat Island Effect was not analyzed in the DEIR. A recent study (Lu et al. 2020) showed that covering 20 percent of the Sahara Desert with solar farms raises local temperatures in the desert by 1.5 degrees Celsius, according to a model. At 50 percent coverage, the temperature increase is 2.5 degrees Celsius. This warming is eventually spread around the globe by atmosphere and ocean movement, raising the world's average temperature by 0.16 degrees Celsius for 20 percent coverage, and 0.39 degrees Celsius for 50 percent coverage. The global temperature shift

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

is not uniform, though — the polar regions would warm more than the tropics, increasing sea ice loss in the Arctic. This could further accelerate warming, as melting sea ice exposes dark water which absorbs much more solar energy.

B5-42 cont.

The Oberon Solar Project would be 2,700 acres or 4 square miles. A possible temperature increase could impact the public health of Desert Center. It could also impact the microphyll ecosystem. Temperatures are already on the increase due to climate change. Geoengineering the landscape with millions of solar panels could make the area's average temperatures even hotter.

9. The DEIR fails to adequately address hydrology related impacts.

B5-43

A. The DEIR fails to adequately address Significant impacts to hydrological connections with the Colorado River Basin area.

Utility-scale photovoltaic solar projects at times need more groundwater than originally estimated.

For example, on August 26, 2014, BLM send Basin and Range Watch a letter (scanned below) concerning a solar developer requesting more groundwater pumping in Chuckwalla Valley, Riverside County, CA. This was during one California's worst drought in recorded history, and First Solar's Desert Sunlight Solar Farm Project requested a 50 acre-feet increase in the amount of groundwater the project is allowed to pump from the desert aquifer. The Bureau of Land Management prepared an Environmental Assessment to evaluate the effects of this action. Remediation efforts from recent heavy summer rains were part of the need.

This is the letter sent to Basin & Range Watch by BLM (no web link):

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-43 cont.

U. S. Department of the Interior
Bureau of Land Management

News Release

For Immediate Release: August 21, 2014 CA-CDD-14-xx
Contact: Stephen Razo 951-697-5217; email: srazo@ca.blm.gov

BLM Announces Scoping Meeting and Notice of Intent to Prepare Environmental Assessment for Solar Project Water Variance Request

SACRAMENTO Calif. - The Bureau of Land Management (BLM) intends to prepare an Environmental Assessment (EA) to evaluate the effects of a variance request for a 50-acre foot (AF) increase in the amount of groundwater authorized for the Desert Sunlight Solar Farm Project, a BLM-approved 550-megawatt solar photovoltaic generating facility now under construction in the westernmost portion of the Chuckwalla Valley, Riverside County, California.

The August 2011 Record of Decision documents the project's authorized allowance of up to 1,400 AF of water during the 26-month construction period and 6 AF (total) and 0.2 AFY (annual average) for the 30-year operation and maintenance period.

On August 1, 2014, Desert Sunlight 250, LLC and Desert Sunlight 300, LLC (Desert Sunlight) requested BLM approval of an additional 50 AF of groundwater to support general construction and maintenance, including the potential need for water to support structural remediation efforts for onsite storm water retention ponds if needed to respond to significant rain events. The proposed increase, combined with the previously-approved 100 AF increase, warrants new public participation and environmental review. Community participation is a critical part of the environmental review process.

A public scoping meeting to aid the public's understanding of the proposed action, has been **scheduled for Tuesday, September 9, 2014 from 4:00 p.m. to 6:00 p.m. at the Palm Desert Graduate Center, University of California Riverside, 75080 Frank Sinatra Drive, Palm Desert, CA 92211**

Written comments will be accepted at this meeting and also may be mailed, faxed or emailed to: Frank P. McMenimen: BLM Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262. Fax: (760) 833-7199. E-mail: CAPSSolarFirstSolarDesertSunlight@blm.gov

Further details about the Desert Sunlight Solar Farm Project can be found at: http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Desert_Sunlight.html

-- BLM --

Visit our website at www.ca.blm.gov
California Desert District Office – 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553- (951) 697-5217

There are unanalyzed questions concerning the complex groundwater hydrological connections of Chuckwalla Valley, and how groundwater may flow into the Colorado River basin. Overuse of groundwater and pumping for solar project construction and operation needs could impact the Colorado River.

B5-44

Basin and Range Watch attended an evidentiary hearing for the Genesis Solar Energy Project on July 12 and 13, 2010 in Sacramento, California. This utility-scale 250-MW solar thermal project was proposed (and now in operation) in Chuckwalla Valley, Riverside County, at Ford Dry Lake. During the hearing the solar company agreed to change its cooling technology from water-

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

intensive wet-cooling towers, to dry-cooling, which uses less water. This would save pumping groundwater, as the California Energy Commission argued that Chuckwalla Valley is actually part of the Colorado River groundwater basin.

B5-44 cont.

Disagreement over groundwater models between the three basins regionally went unresolved in this hearing. The Genesis solar project would dig wells in the Chuckwalla Valley groundwater basin, which communicates to the east with the Palo Verde Mesa groundwater basin, and in turn to the southeast to the Palo Verde Valley groundwater basin along the Colorado River, a large area of irrigation. Genesis contended that the amount of water it would offset should be taken at the Chuckwalla Valley-Palo Verde Mesa boundary, and that an entitlement to adjudicated Colorado River groundwater was not needed at this time. Genesis said this would be a higher level of mitigation.

The California Energy Commission (CEC) agreed with this, but had differing models of groundwater and argued on how to mitigate under the California Environmental Quality Act. They disagreed with the impacts, stressing that the Colorado River was already overdrawn, and that the project would indeed impact the river.

One model showed an outflow of 400 acre-feet/year (afy) from Chuckwalla Valley basin to the Palo Verde basin, and Genesis would mitigate around 50 afy.

When the project pumps 202 afy, the applicant admitted that there will be some increase of inflow as the well draws in water, and this will be noticed in the western Chuckwalla Valley and the tributary to the north. This will result in less flow (estimated to be approximately 52 afy) to the east, to Palo Verde Mesa.

Construction water use for three years was incorporated into their model, according to Genesis. After three years there would be 9 afy less flow east from Chuckwalla Valley groundwater basin east to Palo Verde basin; after 5 years this would increase to 29 afy, and at 33 years it would amount to 52 afy. It was assumed that no recharge occurred in the Chuckwalla Valley basin. The drawdown would take some time to propagate to the Chuckwalla Valley-Palo Verde Mesa boundary. The applicant did no modeling *in* the Palo Verde Mesa basin, but predicted a "very slight" lowering of the water table there.

Impacts would hit in the areas of subsidence, water quality, the local well-owner's ability to use the well, and impacts to biological resources.

After the 30 or so year lifespan of the solar project, recovery of the groundwater might take 5-6 years after cessation of pumping, mirroring the initial drawdown. CEC recommended including recovery recharge in the model, and as part of their Conditions of Certification.

Photovoltaic projects such as the proposed Oberon Solar Project may use less water than concentrated solar power projects, yet groundwater will still need to be pumped, and the cumulative impacts to these connected groundwater basins and to the Colorado River need to be analyzed.

B5-45

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B. The DEIR fails to analyze Significant impacts from stormwater runoff and flash floods.

B5-46

The Chuckwalla Valley is subject to periodic, large monsoonal rainstorms and accompanying flash floods. These flood runoff events have destroyed portions of solar fields in the past, and an analysis of impacts to desert habitats, as well as any needed stormwater management measures should be analyzed.

For example, on August 6, 2012, in a conversation with Bureau of Land Management, Basin and Range Watch learned that a huge flash flood, typical of the Colorado Desert, hit the Genesis Solar Energy Project within the last few weeks. The damage was described as "massive".

Pylons for the trough mirrors were knocked over, foundations uprooted, whole erosion terraces were overwhelmed and are gone. There is an estimated tens of millions of dollars-worth of damage to the solar thermal project.

BLM met with the project owner NextEra to assess the damage. Chuckwalla Valley is prone to large flood events during the summer monsoon season, as large thunderstorms swirl over from Arizona and Mexico, releasing inches of rain in a few hours. BLM also assessed any damage to sensitive archaeological sites in the project area, that may be impacted by altered surface geology from development and erosion control structures.

Photo of the massive flash flood washing across the desert in a sheet flow, over the Geneis Solar Energy Project in Chuckwalla Valley, CA. More photos archived from a California Energy Commission compliance report can be seen at this link: https://www.basinandrangewatch.org/Genesis-Flood.html

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-46 cont.

On September 17, 2013, Basin and Range Watch received this report from the Bureau of Land Management:

Desert Sunlight Solar Project

Between August 22nd and August 25th, numerous small rain events occurred in the western Chuckwalla Valley. On August 25th, a storm cell produced significant rainfall on the Eagle Mountains, focused roughly due west of the Desert Sunlight Solar Project. Significant runoff resulted, filling washes, flooding roads, and inundating the project site. Associated wind damage contributed to the overall impacts by knocking over trailers and downing power lines including one line that laid across the main project access road for some time.

Surface water flows passed through the project site in an easterly direction before emptying into Pinto Wash. These flows resulted in damage to the security and desert tortoise fences and the retention ponds along the northwest side of the project. Some damage also occurred to the desert tortoise fencing on the southern edge of the project.

Sediment ponds were also significantly impacted; those along the southern edge primarily experienced scour and gullying along their flanks, while those along the western edge were partially to completely filled with sediment.

Overall, the engineered "sheet flow" grading design at Desert Sunlight appears to have been effective in handling runoff from this storm. Recommended improvements under consideration include increased armoring of retention basins at locations where washout damage occurred. In addition, retention basins along the western side of the project could be enlarged to accommodate more water flow.

Genesis Solar Project

Between August 22nd and August 25th, numerous rain events occurred in the Chuckwalla Valley. These events led to onsite damage at the Genesis Solar Project including standing water within the site and access road areas; damage to perimeter security and desert tortoise fencing; breaching of several levees; improper functioning of detention basins resulting in concentrated water flows and erosion; along with offsite flows in several other areas where the storm water drainage system was inadequate to channel runoff as designed.

An assessment of these issues has taken place and improvements are proposed to eliminate any further problems. These include installation drain outlet piping, improving up to 400 feet of level weir to produce sheet flow in lieu of the present concentrated flows and resultant down-cutting, and installation of erosion resistant materials where breaching had occurred.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

In addition, the drain apron at the end of Channel A, located on the western side of the project, functioned in a manner that allowed for concentrated water flows to enter and flow through a recorded archaeological site. This drain apron, however, was designed to discharge storm water at lower velocity sheet flows that would approximate natural storm runoff. Redesign measures are being assessed to insure that the archaeological site is protected.

We continue to work with these projects on their storm water drainage systems in order to make them more effecient and reduce the potential for additional unanticipated off-site damage.

Please feel free to contact us again on these matters.

--
John R. Kalish, Acting Dep. District Manager, Resources
Bureau of Land Management
California Desert District
22836 Calle San Juan de Los Lagos
Moreno Valley, CA 92553-9046
951-697-5252

B5-46 cont.

There are many unanswered questions regarding how a large solar project built at the Oberon desert site would impact microphyll woodland, surficial wash hydrology, and other resources if a similar flash flood were to hit the area. A discussion of the connectivity of wash plant communities needs to be included in the DEIR, because the solar field would block flow of flood waters in washes, potentially cutting off water-dependent microphyll woodland and killing patches on the other side of the proposed solar fields. This area receives monsoonal summer thunderstorms that are at times heavy, with flash floods flowing down washes into basin playas. Analysis of stormwater runoff needs to be undertaken related to the connectivity of microphyll habitats in ephemeral washes. The washes often change course over the years as distributaries shift in unpredictable but natural ways. The EA needs to provide this analysis.

B5-47

10. <u>The EIR compresses the analysis of impacts with mitigation.</u>

B5-48

The DEIR fails to disclose whether impacts to biological resources are significant or less than significant prior to providing mitigation. Instead, the DEIR concludes "less than significant with mitigation".

> *Impact BIO-1: Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?*
> *LESS THAN SIGNIFICANT WITH MITIGATION. (DEIR, page 3.4-20)*

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-48 cont.

Impact BIO-2: Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?
LESS THAN SIGNIFICANT WITH MITIGATION.(DEIR, page 3.4-30)

Impact BIO-3: Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
LESS THAN SIGNIFICANT WITH MITIGATION. (DEIR, page 3.4-31)

Impact BIO-4: Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
LESS THAN SIGNIFICANT WITH MITIGATION.(DEIR, page 3.4-32)

Impact BIO-5: Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
LESS THAN SIGNIFICANT WITH MITIGATION. (DEIR, page 3.4-34)

This compression of the analysis and mitigation measures into a single issue disregards the requirements of CEQA. (See Pub. Resources Code, §§ 21100, subd. (b), 21081; Guidelines, §§ 15126, 15091) The corresponding text is no help to the reader, as the text refers to "adverse effects" rather than significant impacts. Absent a determination of significance, along with a discussion of the extent and severity of the impact, it is impossible to determine whether the mitigation measures are adequate.

B5-49

11. The DEIR fails to disclose why impacts cannot be avoided.

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be avoided or mitigated. Pub Res C §§21002.1(a), 21081(a)(1). Compliance with DRECP CMAs has been required on all projects subject to the DRECP. In fact, adjacent solar projects are avoiding all impacts to desert dry wash woodland except for necessary infrastructure "required to serve an activity," and are proceeding simultaneously without the need to amend the DRECP. For example, the Arica and Victory Pass Projects are adjacent to the Oberon Solar Project and are completely avoiding microphyll washes.

*The Arica and Victory Pass Projects were redesigned to **entirely avoid** the desert dry wash woodland with a 200 foot buffer, reducing the projects from 4,000 acres to 2,700 acres. The access roads and gen-tie line ROW, which are considered minor incursions, would cross desert dry wash woodland but Clearway is engineering the gen-tie lines to avoid siting the poles within the desert dry wash woodland almost entirely and using existing roads for both the gen-tie line with new spur roads and the main access road with some widening and improvement. The Projects will comply with this CMA.* (Arica and Victory Pass Solar Projects POD Appendix I, Page 15, emphasis added)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

The DEIR fails to disclose why compliance with CMA's and avoidance of significant impacts is not possible for the proposed project. Without this discussion, the DEIR jumps directly to mitigation in the form of off-site compensation. But the resources cannot be replaced by off-site compensation, as the habitat and its on-site function cannot be simply replanted elsewhere. Furthermore, the DEIR lacks specificity with regard to quality of the habitat on site, the magnitude of the impacts, and the location and quality of offsite mitigation in order for the public to determine if the mitigation is reasonable.

B5-49 cont.

12. The DEIR analysis of alternatives is fundamentally flawed.

B5-50

A. The proposed project is not a reasonable alternative under CEQA because it conflicts with the DRECP.

According to the DRECP LUPA ROD:

> *"BLM-authorized activities on public land must conform to the applicable land use plan. If the BLM receives an application for a project that does not conform to the land use plan, it may reject the application without additional analysis."* (DRECP, ROD, page 16)

Rather than rejecting the Oberon application for failure to comply with the DRECP LUP, BLM allowed Oberon's developer, Intersect Power, to relinquish 1500 acres of the original application to a separate Intersect Power application and also acquiesced to process Oberon's non-conforming application. The DEIR fails to address this conflict. (DEIR, page 3.4-19)

As detailed in this letter, the conflict is not simply a paper issue, as it results in significant impacts that have not been addressed in the DEIR. This is a major omission of the DEIR that should result in a major revision and recirculation of the document.

B. The Land Use Compliant Alternative

B5-51

The DEIR includes two alternatives that avoid impacts to microphyll woodlands. The first alternative, entitled the Resource Avoidance Alternative would establish the 200-foot setback from microphyll woodland as required under the DRECP. (DEIR, page 4-6). This does not apply to impacts from the substation, BESS and gen-tie line, which would remain the same. (DEIR, page 4-10) This would reduce the project footprint by 600 feet. (DEIR, page 4-8). The DEIR indicates that the smaller amount of habitat impacts will result in a smaller amount of off-site compensation lands. The DEIR quantifies this as a reduction of 6,800 acres to only 5,400 acres (DEIR, page 4-10). The DEIR claims that the impacts from the land use compliant alternative would be "qualitatively similar" even though "by increasing the buffer distance, this alternative would avoid development near desert dry wash woodland, and would thus, allow for increased wildlife movement in the desert dry wash woodland corridors across the project site." (DEIR, page 4-10)

The DEIR indicates that the development footprint of this alternative would be increased near the I-10 freeway, because the solar panels would be installed within the utility corridor area north of and adjacent to I-10 instead of being 300 feet from the corridor (DEIR, page 4-6). The DEIR

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does not quantify the increase in footprint next to the I-10 freeway. The DEIR claims that because the project footprint would extend toward the I-10, wildlife movement would be restricted between the freeway underpass culverts along the north side of I-10. (DEIR, page 4-10). However, since the project will be avoiding microphyll woodland and buffer areas near the I-10 freeway, and the culverts are aligned to capture flood flows of the very washes where microphyll woodland occurs it is questionable how much restriction will result from moving the project closer to the I-10 freeway. A review of the DEIR figures does not clearly identify the difference between the proposed project and the Land Use Compliant Alternative and the I-10 freeway (Figure 2.1 versus Figure 4.1), nor does it supply acreages. No comparison can be made.

B5-51 cont.

The Land Use Compliant Alternative would facilitate wildlife movement.

> *Therefore, by increasing the buffer distance, this alternative would avoid development near desert dry wash woodland, and would thus, allow for increased wildlife movement in the desert dry wash woodland corridors across the project site.* (DEIR, page 4-8)

B5-52

Without any explanation as to why, the Land Use Compliant Alternative would no longer include fencing that would "facilitate desert tortoise movement through areas of high-quality habitat to their preferred desert dry wash woodland habitat corridors" and instead would only include "tortoise exclusion fencing" throughout the project (DEIR, page 4-7). The DEIR claims that use of exclusion fencing, instead of the modified fencing of the proposed project

> "would protect desert tortoise, desert kit fox, and other wildlife from O&M activities (e.g., potential collisions from O&M vehicles, disturbance from solar panel maintenance, etc.); however, their movement patterns would be restricted through the site and any vegetation within the fence line would not be available for shelter or foraging."

The DEIR does not quantify how much acreage would be excluded from travel under the land use compliant alternative, compared to the proposed project, which also includes some exclusion fencing (DEIR, page 2-22; Figure 2.6). Furthermore, "wildlife permeable" fencing of solar fields are completely experimental, and have not been shown to successfully allow free passage of wildlife through a developed industrial energy project with mechanized activity, disturbed ground and vegetation. The DEIR's arbitrary decision to exclude "wildlife permeable" fencing and other purportedly beneficial elements from the Land Use Compliant alternative, and its statements regarding the reduced wildlife movement from the Land Use Compliant Alternative appear to be an arbitrary, capricious and unsupportable attempt to counteract the benefits to wildlife movement that will occur if the Land Use Compliant alternative is approved.

The ultimate conclusion of the DEIR is that both the land use compliant alternative and the proposed project can mitigate impacts to below significance although impacts to biological resources "*would be somewhat less*" with the Land Use Compliant alternative, but the habitat compensation package would not be substantially reduced. (DEIR, page 4-8)

Because the failings within the DEIR outlined in this letter, the analysis of this alternative is fundamentally flawed. The DEIR failed to identify the significant impacts resulting from

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development within the microphyll woodlands and buffer areas, and therefore underestimates the value of avoiding the microphyll woodlands on site. The statements regarding the qualitative impacts being the same, and that the impacts are only "somewhat less" cannot be supported given the significant impacts of the project. Additionally, the DEIR fails to provide evidence that the Land Use Compliant Alternative will result in less wildlife movement.

B5-52 cont.

C. The Resource Avoidance Alternative with Prehistoric Resources/TCR option

B5-53

The Resource Avoidance Alternative with Prehistoric Resources/TCR Option would be similar to the Land Use Plan Compliant Alternative in requiring a 200-foot setback from desert dry wash woodland, but would further reduce the development footprint by also excluding development in desert tortoise critical habitat and the multi-species linkage corridor (see Figure 4-2, Resource Avoidance Alternative with Prehistoric Resources/TCR Option).(DEIR, page 4-10)

In addition, based on tribal concerns raised under Assembly Bill (AB 52) tribal consultation process, this alternative would also include an option to avoid all identified Tribal Cultural Resources (TCR) within the fenced development. Specifically, prehistoric archaeological resources within the fenced development areas would be fenced and avoided under this alternative. To avoid these prehistoric resources, a total of approximately 5 acres (18 artifact scatters) across the alternative site would be removed from development. Therefore, this alternative would eliminate the project's significant and unmitigable direct impacts to TCR resources. (DEIR, page 4-10)

Removing desert tortoise critical habitat and the multi-species linkage corridor (which overlaps the desert tortoise critical habitat at the eastern end of the project area) from development and avoiding identified prehistoric archaeological resources that are also Tribal Cultural Resources would eliminate approximately 1,100 acres from the project. The southeastern substation and BESS secondary options with a shorter gen-tie line would not be possible, as they are located in desert tortoise critical habitat and the wildlife linkage corridor. (DEIR, page 4-11) The amount of compensation land needed would be reduced under the Resource Avoidance Alternative with Prehistoric Resources/TCR Option to less than 1,800 acres, compared with over 6,800 acres under the proposed project. Again, the DEIR claimed that the impacts between the Resource Avoidance Alternative and the proposed project would be "qualitatively similar" (DEIR, page 4-13).

> *However, approximately 1,100 acres of the proposed development footprint would no longer be impacted, including the utility corridor north of I-10. Therefore, a larger area would be available adjacent to the I-10 underpass culverts for wildlife movement as well as within the desert dry wash corridors across the project site.* (DEIR, page 4-13)

As in the Land Use Compliant Alternative, Desert tortoise exclusion fencing would restrict wildlife movement through the project site. (DEIR, page 4-13)

For the first time, the DEIR claims that the area surrounding the project site is degraded and that the desert tortoise critical habitat is "compromised":

B5-54

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-54 cont.

Much of the area surrounding the project site, including portions of the designated critical habitat, is degraded and contains anthropogenic features and land uses, such as agriculture, residential, renewable energy, transmission lines, historic military operations, recreational development/limited dispersed camping, BLM designated OHV open routes, and the I-10 freeway. (DEIR, page 4-13).

The statement in the DEIR directly contradicts the environmental setting statements within the DEIR.

Wildlife migration corridors and movement routes are areas that connect suitable habitat in a region that may otherwise be fragmented by human disturbance, difficult terrain, or unsuitable vegetation. Natural features, including drainages, ridgelines, or contiguous natural habitat may provide routes or corridors for wildlife movement. Wildlife movement routes are critical to survival and reproduction for wildlife populations, as they provide expanded access to mates, food, and water across broad geographic areas; allow for dispersal from high-density areas; and facilitate gene flow among populations.

Accessibility between habitat areas (i.e., "connectivity") is important to long-term genetic diversity and demography of wildlife populations. In the short term, connectivity may be important to individual animals' ability to occupy their home ranges, if their ranges extend across a potential movement barrier. (DEIR, page 3.4-12)

Furthermore, the whole idea of the linkage is to provide an essential connection between landscape "blocks" for long term-genetic diversity and demography of wildlife populations:

The California Desert Connectivity Project identified a Desert Linkage Network to maintain habitat for movement between landscape blocks. The landscape blocks (i.e., large, relatively natural habitat areas that support native diversity) identified in the project vicinity are the Palen–McCoy Mountains to the northeast and the Chocolate Mountains to the southwest. Broad habitat linkages connect these landscape blocks. The DRECP identifies a wide multi-species linkage area that overlaps with the southeastern and northern portions of the project area (Figure 3.4-10, Wildlife Connectivity). (DEIR, page 3.4-13)

The DEIR environmental setting recognized the importance of the wildlife linkage on the project site to support stable, long term populations of target species and failed to indicate that it was "compromised":

In largely undeveloped areas, including the Chuckwalla Valley, wildlife habitat is available in extensive open space areas throughout much of the region, but anthropogenic barriers and land uses may impede or prevent movement for many terrestrial wildlife species. In these landscapes, wildlife movement planning focuses on specific sites where animals can cross linear barriers (e.g., wash crossings beneath Interstate 10), and on broader linkage areas that may support stable, long-term populations of target species and allow demographic movement and genetic exchange among populations in distant habitats (e.g., surrounding mountains). (DEIR, page 3.4-12)

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> *The California Essential Habitat Connectivity (CEHC) Project identified areas surrounding the project site as Natural Landscape Blocks, including the Coxcomb Mountains to the north, the Eagle Mountains to the west, Palen Mountains to the east, and Chuckwalla Mountains to the south. The CEHC identifies the project site and surrounding areas as Essential Connectivity Areas.* (DEIR, page 3.4-13)

B5-54 cont.

Furthermore, the DEIR recognized that the Interstate 10 freeway restricts north-south wildlife movement except for the freeway underpasses at wash crossings. (DEIR, 3.4-13) The presence of such underpasses and the intact microphyll woodland on the project site no doubt contributed to its designation as a wildlife linkage area. Our recent site visit indicates that the resources on site are extremely high quality and that there was excellent connectivity on the site.

B5-55

The DEIR claims that the mitigation lands will set aside much better critical habitat.

> *Therefore, the proposed project would be required mitigate approximately 700 acres of compromised desert tortoise critical habitat on the Oberon site at a 5:1 compensation ratio (in compliance with DRECP CMA LUPA-BIO-COMP-1) with much better value critical habitat.*

As we have indicated elsewhere, the DEIR fails to provide evidence of the quality and mitigation lands. There is no support for the DEIR illogical conclusion that by avoiding significant impacts, the Resource Avoidance Alternative would result in greater impacts because its mitigation package is smaller.

> *A major reduction in the acreage of the compensation land package under the Resource Avoidance Alternative with Prehistoric Resources/TCR Option would result in greater overall impacts to biological resources. With mitigation, the impacts to biological resources would be reduced to less than significant under both the proposed project and the Resource Avoidance Alternative with Prehistoric Resources/TCR Option.* (DEIR, page 4-13)

D. The Land Use Compliant and the Resource Avoidance Alternatives will still achieve most of the applicant's objectives.

B5-56

The DEIR cites the following Applicant objectives:

> *The purpose of the project is to generate, store, and transmit 500 MW of renewable energy to the statewide wholesale electricity grid. The Applicant's project objectives are as follows:*
>
> *1. Deliver 500 MW of affordable wholesale renewable energy to California ratepayers under long-term contracts with electricity service providers;*

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B5-56 cont.

2. Assist with achieving California's renewable energy generation goals under the Clean Energy and Pollution Reduction Act of 2015 (Senate Bill 350) and the 100 Percent Clean Energy Act of 2018 (Senate Bill 100), as well as greenhouse gas (GHG) emissions reduction goals of the California Global Warming Solutions Act of 2006 (AB 32), as amended by Senate Bill 32 in 2016;

3. Bring living-wage renewable energy construction jobs to eastern Riverside County including Native American construction and monitoring jobs;

4. Minimize environmental impacts and land disturbance associated with solar development by siting the facility on relatively flat, contiguous lands receiving high solar insolation, that are in close proximity to established utility corridors, existing transmission lines with available capacity to facilitate interconnection, and road access;

5. Further the purpose of Secretarial Order 3285A1, establishing the development of environmentally responsible renewable energy as a priority for the Department of the Interior;

6. Assist the nation to meet its Nationally Determined Contribution commitments under Article 4 of the Paris Climate Agreement to achieve a 50 to 52 percent reduction in U.S. greenhouse gas pollution from 2005 levels by 2030, and to achieve 100 percent carbon pollution-free electricity by 2035 in the electricity sector;

7. Enhance California's fossil-free resource adequacy capabilities and help to solve California's "duck curve" power production problem by installing up to 500 MW of 2-hour and/or 4-hour battery energy storage capacity;

8. Conform with the Desert Renewable Energy Conservation Plan's Conservation and Management Actions to the maximum extent practicable, while also optimizing the balance between renewable energy generation and protection and conservation of sensitive habitat; and

9. Support before-after/control-impact (BACI) scientific research at the project site to further the public's understanding of the interactions between wildlife and solar energy facilities. (DEIR, page 1-3)

As demonstrated by these comments, the Proposed Project does not meet objective number 8, because it does not conform to the DRECP. It does not even conform "to the maximum extent practicable", nor does it balance energy generation with conservation of sensitive habitat. The DRECP, with CMA's, balanced energy production with conservation, and the proposed project seeks to undo that balance. It does not minimize environmental impacts and so does not meet objective 4. It does not meet objective number 5, because Secretarial Order 3285A1 required the Department of Interior *"develop best management practices for renewable energy and transmission projects on the public lands to* ***ensure the most environmentally responsible development*** *and delivery of renewable energy."* (Secretarial Order 3285A1, emphasis added). Given that the project is not complying with the DRECP, it is not ensuring the most

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environmentally responsible development and delivery of renewable energy. The proposed project fails to meet objectives 4, 5 and 8. B5-56 cont.

On the other hand, both the Land Use Plan Compliant alternative and the Resource Avoidance alternative would meet all of the Applicant's objectives except number 1. Therefore, there is no basis to reject these alternatives for failure to comply with the Applicant's objectives. B5-57

Both alternatives would result in less land being available for the power generation goal listed as objective 1 (375 MW or 300 MW respectively, compared to 500 MW). However, the objective of a 500MW facility is an artificial objective because it pertains to the Applicant only, and not the basic objectives of the responsible agencies. Furthermore, the Applicant on its own initiative gave up 1500 acres that it could have used towards reach its objective.

> *The larger sized project would have allowed for additional flexibility when siting the 500 MW project within the project site or could have accommodated more MW. (DEIR, page 4-23)*

The application fails to comply with the DRECP because Intersect wants to squeeze 500 MW out of the smaller site and lacks enough DRECP-compliant acreage to do so; yet Intersect relinquished 1500 acres that it could have used towards its megawatt goal for Oberon to yet a third project of its own.

Conclusion: B5-58

The DEIR is woefully inadequate and must be revised and recirculated.

Thank you for considering these comments. Western Watersheds Project and Basin and Range Watch thank you for this opportunity to assist the Board by providing comments for this project. Please keep Western Watersheds Project and Basin and Range Watch informed of all further substantive stages in this and related NEPA processes and documents by contacting us at lcunningham@westernwatersheds.org and atomicquailranch@gmail.com.

Sincerely,

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

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Attachments:

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Site Photos

BLM Case Recordation

Comment Letter to BLM

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Western Watersheds Project

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September 14, 2021

RE: Comments on Oberon Solar Project Environmental Assessment. DOI-BLM-CA-D060-2020-0040-EA

Dear Mr. Anderson:

Basin and Range watch and Western Watersheds Project (conservation groups) submit comments on the proposed Oberon Solar Energy Project Environmental Assessment (EA).

The Oberon Solar Project Environmental Assessment proposes to approve a 500 megawatt utility-scale solar photovoltaic electricity generating station, battery energy storage facility, electrical substation, possible on-site groundwater well, generation intertie (gen-tie) line, and associated access roads on 2,700 acres on public lands managed by the BLM. BLM would need to consider a project-specific Land Use Plan Amendment to the California Desert Conservation Area (CDCA) Plan, as amended, because the Oberon Renewable Energy Project does not comply with all of the Conservation and Management Actions (CMAs) to the CDCA Plan, as amended by the Desert Renewable Energy Conservation Plan (DRECP).

Basin and Range Watch is a 501(c)(3) non-profit working to conserve the deserts of Nevada and California and to educate the public about the diversity of life, culture, and history of the ecosystems and wild lands of the desert. Federal and many state agencies are seeking to open up millions of acres of unspoiled habitat and public land in our region to energy development. Our goal is to identify the problems of energy sprawl and find solutions that will preserve our natural ecosystems, open spaces, and quality of life for local communities. We support energy efficiency, better rooftop solar policy, and distributed generation/storage alternatives, as well as

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local, state and national planning for wise energy and land use following the principles of conservation biology. We have visited the site of the proposed Oberon Solar Project. We have taken photos of the region, hikes on the site and have observed unique flora and fauna on the site.

Western Watersheds Project is a non-profit conservation organization with more than 12,000 members and supporters. Our mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy.

Our organizations seek to conserve public lands and biodiversity, and support renewable energy placed on degraded lands, and in the built environment. We have never supported utilizing pristine desert on public lands for large scale utility development. Instead of massive bulldozing of desert ecosystems and fragmentation of rural communities, we proposed an alternative that would have utilized the California Energy Efficiency Strategic Plan, which is already state law. Enough rooftop and parking lot sites exist to more than fulfill the California electricity need combined with more energy efficiency. However, the BLM did not adopt our proposal. The BLM's Desert Renewable Energy Conservation Plan Land Use Plan (LUP"), which was developed in collaboration with other federal, state, and local agencies, tribal governments and the public, was approved by the BLM in 2016. B5-59

The DRECP LUP is supposed to provide a process for utility scale renewable energy while providing for the long-term conservation and management of special-status species and desert vegetation communities, as well as other physical, cultural, scenic, and social resources within the DRECP LUP Area through the use of "durable regulatory mechanisms" (DRECP LUP Executive Summary for the Record of Decision (ROD), page ES-2).

The Oberon Solar Energy Project (Project) seeks to completely destroy the premise of the DRECP LUP by violating the fundamental "durable regulatory mechanisms" upon which the long-term conservation of resources within the DRECP was based.

The Oberon Solar Energy Project as proposed has numerous problems associated with its application in this Development Focus Area: B5-60

1. **The EA grossly underestimates the acreage and quality of microphyll woodland on site.**
2. **Instead of completely avoiding microphyll woodlands as called for in the DRECP LUP, the project proposes to destroy approximately 80 acres of this protected habitat.** B5-61
3. **Instead of providing a 200 foot buffer from microphyll woodlands as called for in the DRECP LUP, the project proposes a mere 50 foot buffer in some locations.** B5-62
4. **Instead of causing only minor incursions into buffer areas, as required under the DRECP LUP habitat, the project would cause major incursions that amount to hundreds of acres of buffer.** B5-63
5. **Instead of avoiding on-site critical habitat for the desert tortoise, the project proposes to develop the critical habitat.** B5-64

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6. **Instead of avoiding the on-site multi-species habitat linkage area as required by the DRECP LUP, the project proposes to develop within the linkage area.** B5-65
7. **Instead of minimizing impacts to the desert pavement on-site as required under the DRECP LUP, the project proposes to destroy most of the on-site desert pavement.** B5-66
8. **The EA fails to analyze several potentially significant adverse impacts.** B5-67
9. **The EA fails to include a clearly understandable and stable project description and analysis of impacts.** B5-68
10. **In failing to comply with the LUP, the project violates the entire premise of the Desert Renewable Energy Conservation Plan.** B5-69

Given all of the problems, we propose that the project be reviewed with an environmental impact statement, and that a new alternative be considered by the BLM that includes an amendment to the DRECP LUP for this property that designates this part of Chuckwalla Valley as a solar exclusion zone. However, because the proposal before the BLM is a request for issuance of a right-of-way with an EA, we explain our concerns to the Oberon Solar Energy project in more detail below. B5-70

1. The EA Threatens the Durability of Conservation Agreements in the CDCA Plan as Amended by the DRECP. B5-71

The DRECP has two primary goals. One is to provide a streamlined process for the development of utility-scale renewable energy generation and transmission in the deserts of southern California consistent with federal and state renewable energy targets and policies. The other is to provide for the long-term conservation and management of special-status species and desert vegetation communities, as well as other physical, cultural, scenic, and social resources within the DRECP Plan Area using durable regulatory mechanisms. (DRECP LUP Executive Summary for the ROD, page ES-2).

> *DRECP planning decisions are "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 LUP ROD, page 1)

Amending the CDCA Plan and DRECP Plan and compromising the CMAs would be a precedent setting action that could result in several more requests from solar developers to amend the plan. Other solar projects to date have complied with the DRECP LUP, including the adjacent Victory Pass Project. Because the project is proposed on environmentally sensitive BLM lands and would have significant impacts to these resources, combined with the potential for the approval to set a precedent that could undermine the entire DRECP LUP, we believe the Oberon solar application should have been reviewed utilizing a full Environmental Impact Statement ("EIS"). The Oberon Project should not qualify for streamlined review under the LUP that it seeks to undermine. The proposed amendment should not qualify for streamlined review and should be subject to a full EIS which analyses the impact of the proposed amendment. To date, the amendment has not been made available for public review.

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2. The Project Needs To Be Reviewed With an Environmental Impact Statement.

B5-72

This utility-scale solar project has several concerning proposals: the applicant is seeking to construct an industrial solar energy project with storage in Federally Threatened Mojave Desert tortoise Critical Habitat, in a Multispecies Wildlife Connectivity Corridor designated in the Desert Renewable Energy Conservation Plan, and on approximately 80-plus acres of microphyll woodland that would be inconsistent with Conservation Management Actions (CMAs) listed in the DRECP, the latter requiring a Land Use Plan Amendment (LUPA).

For this reason, we requested an Environmental Impact Statement (EIS) in our scoping comments in order to fully analyze the specific significant impacts to this location. BLM is currently proposing to analyze this massive energy project with simply an Environmental Assessment (EA), tiering to the DRECP EIS of 2015. But the level of specific detail was not analyzed in that earlier EIS, which assumed compliance with the CMAs. We doubt whether the DRECP EIS for the Riverside East DFA included significant impacts analysis of solar projects overlapping with Critical Habitat to this unprecedented extent.

The large and new impacts, not previously analyzed, require an EIS with 45-day comment period, and not a brief EA with 30-day comment period. This would better match the more detailed analysis under the California Environmental Quality Act (CEQA) of a proposed Environmental Impact Report being undertaken by the Colorado River Basin Regional Water Quality Control Board. The project will require a waste discharge permit from the water board, and significant impacts were admitted to require a full EIR with 45-day public comment.

The direct and cumulative impacts from the Oberon Solar Project justify a full Environmental Impact Statement review. According to BLM's NEPA Handbook:

> 7.2 ACTIONS REQUIRING AN EIS Actions whose effects are expected to be significant and are not fully covered in an existing EIS must be analyzed in a new or supplemental EIS (516 DM 11.8(A)). You must also prepare an EIS if, after preparation of an EA, you determine that the effects of the proposed action would be significant and cannot be mitigated to a level of nonsignificance (see section 7.1, Actions Requiring an EA). If you determine during preparation of an EA that the proposed action would have significant effects and cannot be mitigated to a level of nonsignificance, you do not need to complete preparation of the EA before beginning preparation of an EIS (516 DM 11.7(E)) (See section 8.4.1, Significant Impacts – Transitioning from an EA to an EIS)

Significance is defined as effects of sufficient context and intensity that an environmental impact statement is required. The CEQ regulations refer to both significant effects and significant issues (for example, 40 CFR 1502.2(b)).

B5-73

Intensity. This refers to the severity of effect. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action…." (40 CFR 1508.27). The Oberon Solar Project meets some of the ten considerations defining "Intensity" and justifying an EIS. These include:

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

- **Public health and safety (40 CFR 1508.27(b)(2)):** Fugitive dust from the project could compromise the public health of the community of Desert Center. Dust can cause respiratory problems, Valley Fever and complicate health issues associated with Covid 19. B5-73 cont.

- **Unique characteristics of the geographic area (40 CFR 1508.27(b)(3)). "Unique characteristics" are generally limited to those that have been identified through the land use planning process or other legislative, regulatory, or planning process;** The site has old growth microphyll woodlands containing desert ironwood trees over 1,000 years old. B5-74

- **Degree to which effects are likely to be highly controversial (40 CFR 1508.27(b)(4)):** Amending the CDCA and DRECP are very controversial. Developing desert tortoise Critical Habitat is very controversial. Destroying microphyll woodlands is very controversial. B5-75

- **Degree to which effects are highly uncertain or involve unique or unknown risks (40 CFR 1508.27(b)(5)):** Big risks are associated with fugitive dust and public health. There is also a risk of extirpating local populations of plant and animal species. B5-76

- **Consideration of whether the action may establish a precedent for future actions with significant impacts (40 CFR 1508.27(b)(6)):** Amending the DRECP to reduce the requirements of the CMA's and allowing solar developers to access a Critical Habitat will set the precedent of other developers making similar requests. B5-77

- **Consideration of whether the action is related to other actions with cumulatively significant impacts (40 CFR 1508.27(b)(7)):** Development and removal of wildlife connectivity corridors could impact the desert tortoise, burro deer, bighorn sheep and other wildlife. Furthermore, this disturbance will cause a spike of invasive weed proliferation such as Sahara mustard. This will cause a weed invasion to adjacent microphyll woodlands and the Chuckwalla Critical Habitat. B5-78

- **Scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)):** This entire region is considered a "Cultural Landscape for all of the Native American Tribes in the area. B5-79

- **Threatened or endangered species and their critical habitat (40 CFR 1508.27(b)(9)):** The proposed action would develop 600 acres of the Chuckwalla Critical Habitat for the Desert Tortoise! B5-80

- **Any effects that threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment (40 CFR 1508.27(b)(10)):** Surface hydrology altercations would violate the Clean Water Act. Fugitive dust would violate the Clean Air Act and developing a Critical Habitat for the Desert Tortoise would violate the Endangered Species Act. B5-81

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

3. The Project Grossly Underestimates The Acreage And Quality Of Microphyll Woodland On Site.

B5-82

Basin and Range Watch has previously visited this site, but in the context of its review of the EA, Basin and Range Watch visited the proposed Oberon Project site on September 4, 2021. Kevin Emmerich of Basin and Range Watch hiked through the proposed project site and observed extensive areas of dense and abundant microphyll woodland, as the southern portion of the project site is a higher alluvial fan pouring off the Chuckwalla Mountains to the south, and slopes downward to the north towards Palen Dry lake. Emmerich recorded a high diversity of plants along these washes, including desert ironwood (*Olneya tesota*) and Blue palo verde (*Parkinsonia florida*). In an ocular estimate, he observed that parts of the project site could have up to 30 trees per acre. The microphyll woodland was widespread across the project site, and not confined to washes. He found very high quality habitat, with dense and lush desert ironwoods, palo verdes, and smoke trees. Photos demonstrating the quality of the habitat are included in an Appendix. This woodland is relatively undisturbed, old-growth, with large trees to 40 feet tall, and hundreds of years old. This plant community is uncommon in California, and the site presents a unique example of dense Dry Desert Wash Woodland. The destruction of this habitat cannot be replaced by off-site compensation, as the habitat cannot be simply replanted elsewhere.

These ironwood-rich microphyll habitats are excellent bird habitat for nesting and wintering habitat. The area is excellent wildlife connectivity corridor habitat, and herds of burro deer, bobcats, and other wildlife have been photographed in trail cameras on the Project site (see EA Plan of Development ("POD" Appendix F).

4. Instead Of Completely Avoiding Microphyll Woodlands As Called For In The DRECP LUP, The Project Proposes To Destroy Approximately 80 Acres Of This Protected Habitat.

B5-83

The DRECP is clear on impacts to desert dry wash woodland:

> ***LUPA-BIO-SVF-6:*** *Microphyll woodland: impacts to microphyll woodland (see Glossary of Terms) will be avoided, except for minor incursions (see Glossary of Terms).* (DRECP BLM LUP. Page 111, emphasis added)

> *"Impacts to riparian vegetation would be* ***avoided*** *under the Preferred Alternative through application of the riparian CMAs (LUPA-BIO-RIPWET-1 through LUPA-BIO-RIPWET-7, LUPA-BIO-13). In addition, setbacks from riparian vegetation would be required that range from 200 feet for Madrean warm semi-desert wash woodland/scrub, Mojavean semi-desert wash scrub, and Sonoran-Coloradan semi-desert wash woodland/scrub to 0.25 mile for Southwestern North American riparian evergreen and deciduous woodland and Southwestern North American riparian/wash scrub. Compensation CMAs would offset any impacts determined to be unavoidable (LUPA-BIO-COMP-1, DFA-VPL-BIO-COMP-1, DFA-VPL-BIO-COMP-2).*

> (DRECP LUP and Final EIS for the DRECP LUPA, CHAPTER IV.7. BIOLOGICAL RESOURCES, Vol. IV of VI, page IV.7-116; see also Table IV,7-18)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Impacts are to be avoided "to the maximum extent practicable or feasible", which means that they are to be avoided unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity[1]. The Biological Opinion for the DRECP relied on the CMAs and incorporated all of the CMAs by reference. (Biological Opinion, page 23). Unavoidable impacts[2] are limited to minor incursions. The Oberon project is only avoiding microphyll woodlands "to the extent feasible" instead of the to the maximum extent feasible.

B5-83 cont.

> *The Oberon Project would maximize retention of microphyll woodlands to the extent feasible.* LUPA-BIO-13: General Siting and Design (POD, Appendix C, emphasis added)

Adjacent solar projects are avoiding all impacts to desert dry wash woodland except for necessary infrastructure "required to serve an activity," and are proceeding simultaneously without the need to amend the DRECP. For example, the Arica and Victory Pass Projects are adjacent to the Oberon Solar Project and are completely avoiding microphyll washes.

> *The Arica and Victory Pass Projects were redesigned to entirely avoid the desert dry wash woodland with a 200 foot buffer, reducing the projects from 4,000 acres to 2,700 acres. The access roads and gen-tie line ROW, which are considered minor incursions, would cross desert dry wash woodland but Clearway is engineering the gen-tie lines to avoid siting the poles within the desert dry wash woodland almost entirely and using existing roads for both the gen-tie line with new spur roads and the main access road with some widening and improvement. The Projects will comply with this CMA.* (Arica and Victory Pass Solar Projects POD Appendix I, Page 15)

5. Instead Of Providing A 200 Foot Buffer From Microphyll Woodlands As Called For In The DRECP LUPA, The Project Proposes A Mere 50 Foot Buffer In Some Locations.

B5-84

However, the impacts do not stop with the destruction of microphyll woodland. The DRECP required setbacks from microphyll woodlands specifically to avoid impacts:

---

[1] **Maximum extent practicable or feasible (as utilized in the LUPA CMAs).** A standard identified in the LUPA CMAs and applied to implementation of activities. Under this standard, implementation of the CMA is required unless there is no reasonable or practicable means of doing so that is consistent with the basic objectives of the activity. The term "maximum extent practicable" as used here in the DRECP LUPA is applicable only to its use in the CMAs; it does not apply to the term as it is used in the Endangered Species Act of 1973 (DRECP LUP, page xviii)

[2] **Unavoidable impacts to resources.** Small-scale impacts to sensitive resources, as allowed per specific CMAs, that may occur even after such impacts have been avoided to the maximum extent practicable (see definition). Unavoidable impacts are limited to minor incursions (see definition), such as a necessary road or pipeline extension across a sensitive resource required to serve an activity. (DRECP LUP, page xxiv)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

DRECP LUPA-BIO-RIPWET-1: The riparian and wetland DRECP vegetation types and other features listed in Table 17 will be avoided to the maximum extent practicable, except for allowable minor incursions… with the specified setbacks[3].

B5-84 cont

Table 17
Riparian and Wetland Avoidance and Setbacks

Madrean Warm Semi-Desert Wash Woodland/Scrub	*200 feet*
Mojavean Semi-Desert Wash Scrub	*200 feet*
Sonoran-Coloradan Semi-Desert Wash Woodland/Scrub	*200 feet*

(DRECP LUPA, page 106)

The DRECP Setbacks were identified to avoid and minimize the adverse effects to specific biological resources. (DRECP LUPA, page 106). Only minor incursions into the setback area are permitted. The DRECP definition of Minor Incursion: "Small-scale allowable impacts to sensitive resources, as per specific CMAs, that do not individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that warrants development and application of more rigorous CMAs or a DRECP LUPA amendment. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts." (DRECP LUPA, pages xviii and xix)

The Oberon Solar Project proposes to reduce the setbacks to the remaining microphyll woodland not destroyed during construction to, in some cases 50 feet, instead of the required 200 feet.

B5-85

While the BLM can consider modifications to the CMAs, the modifications must result in lesser impacts, not greater impacts, as in this case:

The BLM California State Director will review such requests, in collaboration with USFWS, CEC, and CDFW, and may analyze, as appropriate, whether any proposed alternative approach or design feature to avoid, minimize, or mitigate impacts: (i) meets the goals and objectives for which the CMA was established, (ii) and provides for a similar ***or lesser*** *environmental impacts* (EA, page 100, emphasis added)

Impacts to microphyll woodlands do not meet the goals and objectives for which the CMA was established, and certainly do not result in similar or lesser environmental impacts compared to the analysis in the EIS for the DRECP LUPA.

When evaluating the project in the EA, if the BLM determines that the project or an alternative would result in any new significant impact not disclosed in the DRECP FEIS,

[3] **Setback:** A defined distance, usually expressed in feet or miles, from a resource feature (such as the edge of a vegetation type or an occupied nest) within which an activity would not occur; otherwise often referred to as a buffer. The purpose of the setback is to maintain the function and value of the resource features identified in the DRECP LUPA CMAs. (DRECP LUPA, page xxii)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-85 cont.

> *then the BLM would prepare a project-specific EIS before authorizing the project.* (EA, page 2)

In fact, the EA conceded that impacts will be greater than those assumed under the DRECP, but failed to identify the impacts as significant and adverse.

> *Because the project would not be in compliance with DRECP CMA LUPA-BIO-SVF-6, CMA LUPA-BIO-RIPWET-1, and CMA LUPA-BIO-3 related to desert dry wash woodland, cumulative impacts to habitat and species would be* ***relatively greater than those described in the FEIS****....* (EA, page 113, emphasis added)

The fact that the Oberon project proposes to destroy microphyll woodland and reduce the buffer area beyond a minor incursion, resulting in greater impacts than those described in the FEIS for the DRECP LUPA, should be enough to trigger the need for an EIS for the Oberon Solar Project.

B5-86

The DRECP states that for minor incursions to the DRECP riparian vegetation types, wetland vegetation types, or encroachments on the setbacks listed in Table 17, the hydrologic function of the avoided riparian or wetland communities will be maintained. (DRECP LUP, page 106)

The EA concedes that ground disturbance can impact microphyll woodlands.

> *Ground disturbance undermines the stability of soil and biotic crusts, leading to greater potential for erosion; affects soil density and water infiltration, cutting off water supplies to plant roots; and promotes invasion by exotic plant species. These factors contribute to habitat quality for native wildlife and plant species, and disturbance can affect the ability of an area to support these species.* (EA, page 100).

The EA also concedes that microphyll woodlands will have no habitat value if surrounded by solar arrays:

> *CMA LUPA-BIO-RIPWET-1, project design includes an average 134-foot buffer and minimum 50-foot buffer around the desert dry wash woodland, with the exception of a limited amount of small "finger" areas determined to have* ***little to no habitat value once surrounded by the solar development.*** (EA, page 123, emphasis added)

However, the EA also claims the opposite, that the reduced buffer distance would not result in impacts to microphyll woodlands.

> *The proposed smaller buffer may offer the same functional protection to the woodlands as the CMA's 200-foot buffer, because (1) the distance is great enough to protect beds and banks,* ***preserve hydrologic function****, and avoid disturbance to vegetation (including roots) and wildlife, and (2) additional protections specific to this project, including exclusion of recreational access (including OHVs) to the protected habitat and specific project conditions to avoid O&M disturbance within the protected habitat. (EA, pages 100-101)*

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

… but would not affect the overall function of the desert dry wash woodland in the area for the reasons described in Section 3.12.2. (EA, page 113)

B5-86 cont.

However, there is no scientific data to confirm that a distance of 50 feet is great enough to preserve hydrologic function. Subsurface water is an important consideration for microphyll woodlands:

Colorado Desert: *….. **Subsurface moisture in desert washes** supports stands of microphyll woodlands with old-growth stands of blue paloverde and ironwood.* (DRECP LUP, Colorado Desert Area, Pages 38-39)

A discussion of the connectivity of wash plant communities needs to be included in the EA, because the solar field would block flow of flood waters in washes, potentially cutting off water-dependent microphyll woodland and killing patches on the other side of the proposed solar fields. This area receives monsoonal summer thunderstorms that are at times heavy, with flash floods flowing down washes into basin playas. Analysis of stormwater runoff needs to be undertaken related to the connectivity of microphyll habitats in ephemeral washes. The washes often change course over the years as distributaries shift in unpredictable but natural ways. The EA needs to provide this analysis.

B5-87

In fact, the Joshua Tree National Park comment letter was concerned that ground disturbance at this project and other nearby projects could cause significant adverse impacts:

Current research suggests that microphyll woodlands provide essential ecosystem services. The woodlands and their seasonal washes (streams) transport water, seeds, and other nutrients to nearby desert ecosystems. Microphyll woodlands comprise only a small portion of desert acreage but account for a much larger portion of the habitat for migrating birds.

Concern: The surface alteration related to this project and nearby solar projects may divert water from microphyll woodlands or otherwise affect the hydrology and survival of these vital migratory bird support areas.

*Recommendation: The NPS recommends **analysis of changes in water flow** resulting from nearby solar projects, as well as hydrological surface modeling to determine how water flow and erosion will affect microphyll woodlands on the project site and downstream.*

(JT National Park Comment Letter, page 2 in Scoping Report, POD Appendix I, emphasis added)

The EA has failed to provide the requested analysis regarding how the project will impact water flow and stormwater connectivity and therefore has no scientific support for the claim that the function of the microphyll woodlands will continue after project development.

The EA claims that there was no science behind the selection of the 200-foot buffer size.

B5-88

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-88 cont.

> • *The DRECP does not cite a scientific basis for the 200-foot buffer nor describe the reasoning for this distance; however, a buffer area is important.* (EA, page 101)

The failure of the DRECP to describe the reasoning behind the buffer in the context of microphyll woodlands does not mean that there is no science behind the selection buffer size. In fact, the DRECP Team studied differing buffer sizes within the context of impacts to Areas of Critical Concern (ACEC):

> *To evaluate how potential allowable ground disturbance caps might impact ACEC management goals and objectives, simulations of theoretical levels of different amounts of ground disturbance and applied **differing buffer sizes** were visually evaluated to estimate area of potential effect (direct and indirect). Based on literature for a variety of species and vegetative communities (e.g., riparian, sand dunes), buffers of edge effect ranged from 100 feet to 1 mile. When incorporating potential edge (indirect) effects into consideration of what would be meaningful disturbance to the biological and ecological systems, the higher level of disturbance caps (10-15-20%) rapidly resulted in potential impacts (direct and indirect) to 30-80% of the conservation areas. These higher disturbance caps were determined to not be sustainable, and not being able to achieve the conservation goals of the specific ACEC units or the DRECP conservation strategy in total. At this point in the evaluation process, only 5% or less disturbance levels were forwarded to the next level of evaluation.*
>
> (DRECP BLM Record of Decision APPENDIX 2. AREA OF CRITICAL ENVIRONMENTAL CONCERN RESPONSES TO COMMENTS, Appendix 2, page 20)

The research for ACEC buffer size no doubt informed the selection of buffers for the entire DRECP LUP.

B5-89

6. The EA Fails To Include A Clearly Understandable And Stable Project Description and Analysis of Impacts

In numerous areas, the EA is vague and fails to provide adequate data to understand the project. For example, although the EA indicates that only 60 acres of microphyll woodlands are impacted (EA, page 7 and Page 27), or alternately, 81.2 acres (EA, page 99 and 100), there is no quantification of the acreage of buffer area that would be lost as a result of the project. The EA claims that it is avoiding approximately 2,100 acres of desert dry wash woodland in the project area. (EA, page 102) However, the POD Appendix F: Biological Technical Report indicates that Area A only contains 1,182 acres of Desert Dry Wash Woodland, and Area G contains another 17 acres, bringing the total area of Desert Dry Wash Woodland to be 1,199 acres. This number does not match with the EA assertion that the project is avoiding 2,100 acres of desert dry wash woodland.

Using the numbers in the EA only leaves one frustrated and unsure about what is exactly the impact to microphyll woodland. For example, if we assume the difference between 2100 and 1199 is the additional acreage for the buffer area, then the buffer area that that should be provided

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is approximately 901 acres. Since the land use plan compliant alternative removes 600 acres from development, the assumption must be that at least 600 acres out of the total 900 acres of buffer is being lost/impacted by the project. (EA, Page 111). That amounts to more than half of the buffer that should be provided. Certainly 600 acres of impact cannot be determined to be a minor incursion[4] and are not unavoidable impacts. Mitigating for the additional 600 acres of lost buffer at 5:1 would mean that an additional 3000 acres should be set aside for off-site preservation. However, the EA is only proposing off-site preservation of 406 acres of desert dry wash woodland. (EA, page 102) Because the DRECP assumed compliance with the CMA except for minor incursions, no amount of offsite compensatory mitigation can reduce this adverse significant impact to a level of insignificance.

B5-89 cont.

The EA indicates that the BLM has separated the impacts from the solar arrays from the 24.6 acres of impacts from the collector lines, gen-tie line and access roads, which are apparently to be considered minor incursions. (EA, page 100) Although we do not take issue with the EA's quantification of the impacts for individual segments of the project, all of the project's impacts, including the collector lines, gen-tie line and access roads, must still be attributed to the Applicant, and given the total number of acres impacted, cannot be considered minor incursions. In addition, we note that the project is negotiating in ways that could increase the project impacts, and we question why the project gen-tie line is not co-locating with the Eagle Crest Gen-Tie Line.

B5-90

> *The proposed project would be located near Desert Center and would interconnect to SCE's existing Red Bluff Substation via a new 500 kV gen-tie line. The Applicant plans to collocate the Oberon gen-tie line with the proposed* ***Easley Solar*** *and Green Hydrogen project gen-tie line. Pursuant to 43 CFR §§ 2805.15(b) and 2805.14(b), the BLM may require other ROW holders to collocate with the Oberon solar facilities, should the BLM decide to issue IP Oberon, LLC, a ROW. Construction of the project would occur over approximately 15 to 20 months, concluding in or before the fourth quarter of 2023* (EA, page 9, emphasis added)
>
> *The Applicant is in negotiations to purchase a private inholding within the center of the project site. Should the property be acquired in advance of project construction, the current property owner would not need separate dedicated access east from SR-177 to the property. If the portion of the approved gen-tie ROW for the Eagle Mountain Pumped Storage Project that overlaps the Oberon Project application area is moved outside of the Oberon application area, then solar panels may be developed in this area* (see Figure 2-1, Project Area). (EA, page 14)
>
> *Should the southeastern substation location be developed, then the unused 500 kV gen-tie corridor from the central substation option (approximately 80 acres) would be developed with solar panels. Likewise, should the Eagle Crest gen-tie line be relocated outside of the*

[4] Minor incursion. Small-scale allowable impacts to sensitive resources, as per specific CMAs, **that do not** individually or cumulatively compromise the conservation objectives of that resource or rise to a level of significance that **warrants** development and application of more rigorous CMAs or a **DRECP LUPA amendment**. Minor incursions may be allowed to prevent or minimize greater resource impacts from an alternative approach to the activity. Not all minor incursions are considered unavoidable impacts. (DRECP BLM Land Use Plan Amendment xix September 2016)

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Oberon application area, then this area (approximately 60 acres) may also be developed with solar panels. (EA, page 21)

B5-90 cont.

Another area in which the EA is vague is the location and quality of the mitigation lands. The EA claims that the mitigation lands have been selected and are of higher quality than the existing site.

B5-91

Compensation for impacts to desert dry wash woodland and desert tortoise critical habitat would be mitigated at a ratio of 5:1 (MM BIO-6a and MM BIO-6b). In compliance with DRECP CMA LUPA-BIO-COMP-1, approximately 6,800 acres of habitat would have long-term protection to offset the habitat impacts under this alternative. The proposed compensation lands are within designated critical habitat and are of much higher quality than the designated critical habitat on the Oberon site, as described in the offsite habitat mitigation package. (EA, page 99)

POD Appendix AA in EA Appendix F (POD) presents the proposed compensatory mitigation
lands that would be permanently conserved under a durable conservation easement with an
endowment and management plan. Therefore, the quality of the habitat, including the microphyll woodlands, is evaluated in the EA. The quality of microphyll woodlands at the project site are of substantially inferior quality to those proposed to be protected at a 5:1 ratio,
so the conservation value of the impacts would be mitigated at a higher value than anticipated by the DRECP. (EA, page 102)

However, the offsite habitat mitigation package in POD Appendix AA, at least the version available to the public, only mentions "Potential Mitigation Properties" without any description of the properties at all. The map indicates numerous disjointed properties separated by several miles may be selected (POD Appendix AA, pages 1 and 2)

7. BLM's Stated Purpose And Need In The EA Do Not And Should Not Include Achieving An Applicant's Specific Megawatt Goal. In Fact, The BLM Expressly Has Discretion To Reject A Non-DRECP-Conforming Project.

B5-92

BLM's purpose is to respond to the IP Oberon, LLC, a subsidiary of Intersect Power, LLC, request …for a right-of-way (ROW) grant to construct, operate, maintain, and decommission a solar PV facility on public lands, while taking into consideration BLM's multiple-use mandate, and otherwise complying with FLPMA, the BLM ROW regulations, Energy Act of 2020 … and other applicable federal laws, as well as the need to promote the policy objectives (Executive Order 14008) described below. (EA, page 3)

The purpose and need statement should prioritize protecting microphyll woodlands, wildlife connectivity corridors, and tortoise habitat, and minimize the need for large-scale solar projects on public lands.

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The NEPA Handbook, page 46, recommends *that "the purpose and need statement be brief, unambiguous, and as specific as possible. Although the purpose and need statement cannot be arbitrarily narrow, you have considerable flexibility in defining the purpose and need for action. To the extent possible, construct the purpose and need statement to conform to existing decisions, policies, regulation, or law. The purpose and need for the action is usually related to achieving goals and objectives of the LUP; reflect this in your purpose and need statement."*

B5-92 cont.

Because the region has unique resources, the Purpose and Need statement is too vague and does not encourage the conservation of these resources, nor does it encourage following the guidelines of the DRECP.

The statement should focus on the need to follow the CMAs of the DRECP. The statement should make stronger commitments to adhering to the Land Use Plan without amending it, and without significantly impacting natural resources such as desert tortoise critical habitat and high-value microphyll woodland vegetation communities.

Alternative 2 (the Applicant's proposed project) is not a reasonable alternative under NEPA because it conflicts with the purpose of the DRECP. According to the DRECP LUPA ROD:

> *"BLM-authorized activities on public land must conform to the applicable land use plan. If the BLM receives an application for a project that does not conform to the land use plan, it may reject the application without additional analysis."* (ROD, page 16)

The Oberon Project proposes to destroy microphyll woodland habitat, multiple species habitat linkage area, desert tortoise critical habitat and desert pavement. What habitat is not destroyed will not be adequately buffered, and the "alleged" mitigation lands are undefined within the current documentation. Rather than rejecting the Oberon application for failure to comply with the DRECP LUP, BLM allowed Oberon's developer, Intersect Power, to relinquish 1500 acres of the original application to a separate Intersect Power application and also acquiesced to process Oberon's non-conforming application.

After relinquishing 1500 acres of its original application, the applicant now claims that compliance with the 200 foot buffer is *"infeasible"*.

B5-93

> *The project cannot achieve a 200 foot setback across the entire site, because Sonoran-Coloradan Semi-Desert Wash Woodland occurs throughout the project site making complete avoidance of its buffer area infeasible. (POD, Appendix C)*[5]

> *The panels have been designed to avoid desert dry wash woodland with the exception less than 60 acres of solar panel development in areas deemed to have little or no residual*

[5] This supports our claim that the EA does not adequately map the resources on site. We believe that the extensive Sonoran-Coloradan Semi-Desert Wash Woodland on site qualifies this area to be considered as a renewable energy exclusion zone to protect the resources, rather than an amendment that increases impacts to the resources.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

habitat value. If BLM determines that the small impact does not qualify as minor incursion, then a Land Use Plan Amendment would be required. (POD, Appendix C)

However, it is clear that the Oberon Solar Energy Project has been designed by Intersect Power to make the reduction in the 200 foot buffer appear necessary. The Oberon Project as presented in the EA, has gone through multiple permutations and manipulations before becoming the configuration presented in the EA. According to the EA:

B5-93 cont.

*The original POD for the Oberon Renewable Energy Project (CACA-58539) encompassed approximately 6,500 acres of BLM-administered land and was submitted to BLM in May 2020. Concurrently, biological resource surveys were conducted, as well as other feasibility constraint analyses (i.e., ROW acquisition, utility corridor needs, sensitive receptors, **DRECP CMA compliance**, etc.). This process resulted in revisions to the project as it is now defined in Section 2.3, Alternative 2: Proposed Action. (EA, Page 10, emphasis added)*

The assumption from the above EA text is that the project was revised to remove areas that were undevelopable for various reasons, including DRECP CMA compliance. In fact, the EA states the following:

2.7.3 Full Build Alternative

*Most often, when an agency is considering a utility solar project, the agency reviews the location proposed for the project, identifies the most substantial impacts, and develops a reduced footprint alternative to avoid these locations. To meet the requirements of the CDCA Plan, as amended by the DRECP, this process was completed prior to defining the Proposed Action and **resulted in the removal of approximately 3,800 acres from the original ROW application** (see Section 2.1, Back-ground). The larger sized project would have allowed for additional flexibility when siting the 500 MW project within the project site or could have accommodated more MW. While the amount of MW proposed for construction at the project site has not changed with the smaller footprint, the MW hours are fewer than originally proposed. This is because the proximity of the solar panels under the smaller footprint increases shading and other technical constraints compared with a more widespread layout.*

*The full build alternative would have greatly increased impacts to desert dry wash woodland, desert tortoise habitat, and wildlife connectivity habitat. Additionally, solar panels would be developed adjacent to I-10 further restricting the utility corridor in desert tortoise critical habitat, and a greater number of prehistoric cultural resources would be directly affected. **Given that this alternative would have much greater environmental impacts and would comply with the DRECP CMAs to a less extent than the project, this alternative was eliminated from consideration.** (EA, page 31, emphasis added)*

However, the truth is that the Intersect Power removed the northern property from this application so that the property could be added to a different Intersect Power development

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

application[6]. The EA lists this separate project as "H" in the cumulative project list. It is called the "Easley Solar & Green Hydrogen Project". B5-93 cont.

> *"The project on BLM land adjacent and north-northeast of the Oberon site would generate and store up to 650 MW of solar PV energy. The project would include a green hydrogen electrolyzer to convert water into hydrogen gas and oxygen."*
> (EA, Table 3.1-2)

The Applicant has an objective of constructing a 500MW facility, but gave up 1500 acres that it could have used towards reach its objective. By the EA's own admission "*The larger sized project would have allowed for additional flexibility when siting the 500 MW project within the project site or could have accommodated more MW." (EA, page 31, emphasis added.* The application is non-conforming because Intersect wants to squeeze 500 MW out of the smaller site, and lacks enough DRECP-compliant acreage to do so; yet Intersect relinquished 1500 acres that it could have used towards its megawatt goal for Oberon.

B5-94

The EA deliberately misleads the public into believing that the northern portion of the project would not have met the applicant's goal, when in fact, there is already another application on file to develop the northern portion as another solar project. The fact that Intersect Power is still proposing to develop the northern portion at some point is made clear in the Plan of Development Mitigation Package, Appendix AA, which clearly identifies that there are two projects (Oberon I and Oberon II):

> The applicant proposes a mitigation plan which includes approximately 6,800-acres of pre-identified private lands ("Preserve") (See attached map) selected as suitable to meet the **Oberon I** Solar Energy Project & **Oberon II** Solar Energy Project (POD, Appendix AA, emphasis added)

The reality is that the Applicant has piecemealed the project and manipulated the acreage of the proposed project described within the EA in order to claim that it cannot comply with the CMA's. Furthermore, the Applicant deliberately added microphyll woodland "fingers" to the project footprint:

> *Therefore, in coordination with BLM and USFWS, the Applicant refined the development footprint to avoid desert dry wash woodland areas by imposing a minimum 50-foot and average of 134-foot (rather than 200-foot) buffer between such areas and the nearest solar panels. After the 50-foot buffer was imposed, the Applicant combined some of the nearby avoidance areas to create larger swaths of higher quality dry wash woodland. To offset this acreage,* ***less than 60 acres of the smaller "fingers" of DDWW were added to the solar panel development footprint.*** (EA, page 10, emphasis added)

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[6] The original application, which was filed under a different name in 2019 was for 3470 acres as BLM Application Number CACA 58539. The application was amended, and the project acreage became 6920. In April of 2020, the acreage was reduced from 6920 acres to 4579.84 acres. Finally, the Application was again amended in November of 2020 to be 4584.84 acres. At this time, the northern segment became part of a distinct separate and larger project, called the Easley Project with Application Number CACA 57822. (See also, Figure 3.1-1)

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While both the Land Use Plan Compliant alternative (Alternative 3) and the Resource Avoidance alternative (Alternative 4) would result in less land being available for power generation (375 MW or 300 MW respectively, compared to 500 MW), the alternatives would still be consistent with the basic objective of the activity, which is for the BLM to respond to the ROW grant. The applicant may prefer to have a 500 MW facility, but there is nothing magic about the number 500 MW, and the BLM must make its decision to allow the facility on public land based on a variety of competing factors, including compliance with the DRECP LUP. B5-95

The EA cites the need to promote the policy objectives of Executive Order 14008. B5-96

> *Executive Order 14008, issued January 27, 2021, "Tackling the Climate Crisis at Home and Abroad" directs the Secretary of the Interior to identify steps that can be taken to increase renewable energy production on public lands and manage federal lands to support robust climate action (see sections 204 and 207).* (EA, Page 3, Purpose and Need)

The actual text of Executive Order 14008 reads as follows:

> ***Sec. 207. Renewable Energy on Public Lands*** *and in Offshore Waters. The* ***Secretary of the Interior*** *shall review* ***siting and permitting processes on public lands*** *and in offshore waters to identify to the Task Force steps that can be taken, consistent with applicable law,* ***to increase renewable energy production on those lands*** *and in those waters, with the goal of doubling offshore wind by 2030* ***while ensuring robust protection for our lands, waters, and biodiversity*** *and creating good jobs.* (Executive Order 14008, Emphasis added)

It is very clear that the Policy Objectives of Executive Order 14008 require that the Secretary of the Interior "ensure robust protection" for our lands and biodiversity. Therefore, Executive Order 14008 cannot be used as justification for issuing a right of way grant that violates the DRECP Land Use Plan despite the desire to increase renewable energy production on public lands. Furthermore, compliance with the DRECP LUP would also further the following BLM policy objectives: B5-97

> ***BLM's objectives for the DRECP, as reflected in the LUP, are to:***
>
> - ***Conserve*** *biological, physical, cultural, social, and scenic resources.*
> - *Promote renewable energy and transmission development, consistent with federal renewable energy and transmission goals and policies, in consideration of state renewable energy targets.*
> - *Comply with all applicable federal laws, including the BLM's obligation to manage the public lands consistent with the FLPMA's multiple use and sustained yield principles, unless otherwise specified by law.*
> - *Comply with Congressional direction regarding management of the CDCA in Section 601 of FLPMA, including to "****[p]reserve the unique and irreplaceable resources,*** *including archaeological values, and conserve the use of the economic resources" of the*

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CDCA (FLPMA 601[a][6]; 43 United States Code [U.S.C.]1781(a)(6).

B5-97 cont.

*»Identify and incorporate public lands managed for **conservation** purposes within the CDCA as components of the National Landscape Conservation System (NLCS), consistent with the Omnibus Public Land Management Act of 2009 (Public Law 111-11) ("Omnibus Act").*

»Amend land use plans consistent with the criteria in FLPMA and the CDCA Plan. (DRECP ROD, page 8, emphasis added)

B5-98

The EA also alludes to the Energy Act of 2020 as another facture regarding the decision to implement the DRECP LUP Change:

Energy Act of 2020, Subtitle B (Natural Resources Provision), section 3104. National goal for renewable energy production on Federal land. Requires the Secretary to set national goals for wind, solar, and geothermal energy production on Federal land no later than September 1, 2022. The Secretary shall seek to permit at least 25 GW of electricity from wind, solar, and geothermal projects by 2025. (EA, Page 3, Purpose and Need, Footnote 2)

However, the Energy Act of 2020 specifically excludes lands from solar development if the land has already been excluded from solar development by a Land Use Plan[7], such as the DRECP LUPA. Because the LUPA CMA excludes the 200 foot buffer lands from development, those lands are not "covered lands" under the Act:

SEC. 3101. DEFINITIONS.
In this subtitle:
(1) COVERED LAND.—The term ''covered land'' means land that is—
(A) Federal lands administered by the Secretary concerned;
and
*(B) **not excluded from the development** of geothermal, solar, or wind energy **under—***
***(i) a land use plan**; or (ii) other Federal law.* (Energy Act of 2020, emphasis added)

Furthermore,, it is not necessary to amend the Land Use Plan CMAs to meet the requirements of the Energy Act of 2020, as the Development Focus Areas in the DRECP LUP in California alone could meet the requirements for 25 gigawatts:

*(b) MINIMUM PRODUCTION GOAL.—The Secretary shall seek to issue permits that, in total, authorize production of not less than **25 gigawatts** of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws. (Energy Act of 2020, emphasis added)*[8] (Energy Act of 2020)

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[7] (A) for public land, a land use plan established under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

[8] 25 gigawatts = 25000 megawatts

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According to the DRECP, the development focus areas are capable of providing enough area for 27 gigawatts in California alone (DRECP ROD, page 32). However, the Energy Act of 2020 is nationwide, and the Secretary is not limited to California when approving projects to comply with the Act. B5-98 cont.

8. Instead Of Avoiding On-Site Critical Habitat For The Desert Tortoise, The Project Proposes To Develop The Critical Habitat B5-99

The applicant is seeking to construct an industrial energy facility and solar field in approximately 600 acres of US Fish and Wildlife Service-designated Critical Habitat for the Federally Threatened Agassiz's desert tortoise on the north side of Interstate-10 in Chuckwalla Valley.

When questioned about this unprecedented overlap, the applicant's contractor Aspen Environmental stated that the consulting company Ironwood Consulting was looking at the "value" of this tortoise habitat. Our field visits indicate this is excellent desert tortoise habitat, as it is on a slightly higher rise close to the adjacent Chuckwalla Mountains on the south side of the highway. It is higher elevation Colorado Desert with abundant ironwood trees, compared to lower portions of the DFA in Chuckwalla valley. The Critical Habitat site contains numerous washes flowing out of the nearby Chuckwalla Mountains, with desert ironwood trees (*Olneya tesota*)—the seed pods of which are a favored food item for tortoises. During rainy years, spring wildflower displays here are excellent, providing more sources of tortoise forage species. The current extreme drought in the southwestern deserts will bias any surveys in spring 2021, and will only show a snapshot of poor forage conditions on this usually biodiverse Colorado Desert ecosystem.

Simply eyeing a map of GIS layer will not be able to show the "value" of tortoise habitat, and tortoises often prefer habitats that to the untrained human eye appear low in value.

Building a large solar field inside and on top of a 600-acre block of Critical Habitat would set an example for future solar developers to disregard this important land management designation, one of the best tools for conserving the California Desert from further encroachment and disturbance. A precedent should not be set.

The EA cites to the Biological Opinion for the DRECP LUPA, which concluded that allowing renewable energy development to overlap the Critical Habitat designation

> *would not have a measurable effect on the ability of the [critical habitat unit] …to support viable populations or to provide or movement, dispersal, and gene flow… because the [BLM] (2015c, page II.3-169,* ***CMA LUPA-BIO-13****) will maintain substantial wildlife corridors in this region, the actual amount of disturbance to Chuckwalla CHU would be substantially less."* (EA, pages 99-100, emphasis added)

The EA claims that the Oberon Project design supports general wildlife movement through the B5-100

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

area, consistent with CMA LUPA-BIO-13.

B5-100 cont.

In fact, the project violates CMA LUPA-BIO-13, General Siting and Design which requires projects to avoid impacts to the maximum extent practicable to *"occupied habitat and suitable habitat for Focus and BLM Special Status Species (see "avoid to the maximum extent practicable" in Glossary of Terms)."* (DRECP LUP. Page 100)

The Oberon Biological Technical Report (POD Appendix F), documented that the project site is occupied by desert tortoise. (See Figure 7). The proposed project (Alternative 2) does not avoid occupied desert tortoise habitats. The Resource Avoidance Alternative (Alternative 4) does.

B5-101

Even though CMA LUPA-BIO-COMP-1 allows compensation acreage requirements to be fulfilled through non-acquisition (i.e., restoration and enhancement), land acquisition (i.e., preservation), or a combination of these options, the non-acquisition methods have failed to actually mitigate anything. Mojave desert tortoises continue to decline range wide, despite attempts to fence roads, close illegal routes, put of signs warning drivers of tortoises crossing roads, and other mitigation measures which are not efficacious in recovering the tortoise.

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year chan (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increas
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increas
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increas**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increas
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increas
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increas
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increas
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	***115***	***0.45***	***15.3 (6.0)***	***–26.57 decline***
Red Cliffs Desert	*115*	*0.45*	*15.3 (6.0)*	*–26.57 decline*
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**25,678**	**100.00**		**–32.18 decline**

Table 1.

The area of each Recovery Unit and Tortoise Conservation Area (TCA), percent of total

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habitat, density (number of breeding adults/km2 and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km2 (10 breeding individuals per mi2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red (after Desert Tortoise Council).

B5-101 cont.

Note that the Chuckwalla Critical Habitat Unit has declined 37.43% from 2004 to 2014, when the last population monitoring surveys were completed. Oberon Solar Project would pose a significant threat to this habitat and the desert tortoise. Mitigation Measure MM BIO-6b in the EA Appendix H-25 states that as compensation for desert tortoise habitat impacts, the Applicant will provide compensation to offset loss of 6,808.03 acres desert tortoise habitat. This figure uses a 5:1 multiplier for the acres of Critical Habitat impacted by proposed solar development. However, given the results above, there is no adequate assurance is given that mitigation measures will help stave off continued declines in this highly imperiled species.

In addition, the application of herbicides along will significantly impact tortoise Critical Habitat, reducing and elimination important food plants such as annual forbs and grasses. The disturbance of heavy machinery, solar panel installation, construction and operation activities will significantly impact soil surfaces, burrows, and vegetation important to tortoises, on Critical Habitat, setting a very bad precedent for the incursion of development into designated protected habitat zone.

Therefore, we request that a LUPA be included in the EIS to amend the DRECP and remove the existing overlaps of the DFA with all Critical Habitat units. This defect in the DFA boundary should be fixed during this federal action opportunity, sooner, rather than later.

9. **Instead Of Avoiding The On-Site Multi-Species Habitat Linkage Area As Required By The DRECP LUP, The Project Proposes To Develop Within The Linkage Area.**

B5-102

The EA at page 97 states that the project is located within the Palen McCoy Mountains–Chocolate Mountains linkage (see DRECP FEIS Figure III.7-26). Approximately 1,479 acres of the eastern portion of the project overlaps with the multiple-species linkage area identified in the DRECP LUP. The DRECP addressed the need to maximize microphyll woodlands and maintain the function of linkage connectivity.

> *The siting of projects along the edges (i.e. general linkage border) of the biological linkages identified in Appendix D (Figures D-1 and D-2) will be configured (1) to maximize the retention of microphyll woodlands and their constituent vegetation type and inclusion of other physical and biological features conducive to Focus and BLM Special Status Species' dispersal, and (2) informed by existing available information on modeled focus and BLM Special Status Species habitat and element occurrence data, mapped delineations of vegetation types, and based on available empirical data, including radio telemetry, wildlife tracking sign, and road-kill information. Additionally, projects will be sited and designed to maintain the function of F Special Status Species connectivity and their associated habitats in the following linkage and connectivity areas.*
>
> *Within a 1.5-mile-wide linkage across Interstate 10 to connect the Chuckwalla*

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Mountains to the Chuckwalla Valley east of Desert Center.

(DRECP LUP, pages 100 to 101, emphasis added)

B5-102 cont.

The Biological Technical Report appears to conflict with the EA. The POD Appendix F, written by Ironwood Consulting, states:

The DRECP identifies a wide multi-species linkage area that partially overlaps with the southern parcel of the Project site on its eastern boundary. (Figures 1 and 12). The final design of the Project will follow all CMA requirements and may avoid or have a reduced footprint within the multi-species linkage boundaries. (POD Appendix F at 28).

However, the EA states:

The project would have a long-term impact on approximately 598 acres of the western portion of the 3,480-acre multiple-species linkage. The proposed project would not impact approximately 881 acres of the biological linkage within the project area, including habitat leading to freeway underpasses to maintain connectivity under the I-10.
The project would be setback 300 feet from I-10 to preserve the Section 368 utility corridor. This
would also support wildlife movement north and south of the freeway and between the I-10
underpass crossings north of I-10, where the value of linkage habitat for some terrestrial wildlife
species is dependent on its width.

We see no evidence that BLM actually undertook an environmental review of how the loss of 598 acres of multi-species linkage will impact desert tortoise, Burro deer, bighorn sheep, and other species, much less did the EA demonstrate how the function of the corridor would be maintained. The narrowing of the linkage, in combination with other projects that also narrow the linkage would result in blocking and fragmenting genetic linkages, and indirectly causing impacts due to edge effects, construction and operation disturbance, altered surface hydrology of washes, invasive species, and facilitating raven predation.

B5-103

In our scoping comment letter, we asked that all I-10 underpasses be mapped, and impacts of the solar project analyzed to wildlife connectivity. Desert tortoises and other wildlife, including desert bighorn sheep, have been photographed in camera trap surveys as using freeway underpasses. This connectivity should be maintained in both the wildlife corridor and Critical Habitat.

Furthermore, "Wildlife permeable" fencing of solar fields in certain alternatives of the Project design are completely experimental, and have not been shown to successfully allow free passage of wildlife through a developed industrial energy project with mechanized activity, disturbed ground and vegetation.

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Finally, we know of no scientific support for the use of alleged "strategic avoidance" to maintain the function and value of the wildlife linkage. B5-104

> *The Applicant is proposing to maintain wildlife linkage functionality, and the Project would not compromise the long-term viability of the linkage through* ***strategic avoidance****. Therefore, the Oberon Project would comply with the CMA. The Resource Avoidance Alternative (Alternative 4) is being analyzed in the NEPA document and would avoid the wildlife linkage corridor. LUPA-BIO-IFS-1: Individual Focus Species (IFS): Desert Tortoise* (POD, Appendix C, emphasis added

10. Instead Of Minimizing Impacts To The Desert Pavement On-Site As Required Under The DRECP LUP, The Project Proposes To Destroy Most Of The On-Site Desert Pavement. B5-105

The EA does not adequately disclose that all of the on-site Desert Pavement is to be destroyed, in violation of the DRECP LUP. On our site visit, Basin and Range Watch found Desert Pavement natural soil types commonly interspersed with microphyll wash vegetation communities on portions of the project site. This important soil type in the California Desert district sequesters carbon in large quantities, in association with Biological Soil Crusts. DRECP LUP has a CMA for desert pavement which is intended to cap the amount of disturbance:

> *LUPA-SW-9*
> *The extent of desert pavement within the proposed boundary of an activity shall be mapped if it is anticipated that the activity may create erosional or ecologic impacts. Mapping will use the best available standards as determined by BLM. Disturbance of desert pavement within the boundary of an activity shall be limited to the extent possible. If disturbance from an activity is likely to exceed 10% of the desert pavement mapped within the activity boundary, the BLM will determine whether the erosional and ecologic impacts of exceeding the 10% cap by the proposed amount would be insignificant and/or whether the activity should be redesigned to minimize desert pavement disturbance.*

However, the Oberon Solar Project intends to impact approximately 71 acres[9] of desert pavement or 41% of the 175 acres of total desert pavement within the total project area, which is a violation of the DRECP LUP (EA, page 84)

11. The EA Fails To Analyze Several Potentially Significant Adverse Impacts. B5-106

a. Mitigation for Emory's Crucifixion Thorn is Deferred.

The project violates CMA LUPA-BIO-13, General Siting and Design, in not avoiding impacts to unique plant assemblages such as Emory's crucifixion thorn (*Castela emoryi*)

[9] Development of the Eagle Crest gen-tie line area with solar panels would add an additional 10 acres of disturbance
to desert pavement depending on final design.

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communities.). This unique plant assemblage is classified as Crucifixion Thorn Stand in Sawyer et al. (2008), scattered in the Colorado and Mojave Deserts, and the authors say more information is needed about this plant community. The EA in Appendix H-27-28 lists Mitigation Measures for the species that includes experimental procedures that have no guarantee of success (See MM BIO-7):

B5-106 cont.

> *Salvage. The Applicant will consult with Rancho Santa Ana Botanic Garden (RSABG) regarding the success of salvage efforts for this species at the Desert Sunlight Solar Farm project site. If the strategy has been shown to be feasible and certain individuals have been judged suitable for relocation, then the Applicant will prepare and implement an Emory's Crucifixion representative), CDFW, and BLM prior to disturbance of any occupied Emory's crucifixion thorn habitat. Emory's crucifixion thorn on private lands may also be subject to the provisions of the California Desert Native Plants Act. The Applicant will contract with RSABG or another entity with comparable experience and qualifications, to salvage at minimum 75 percent of Emory's crucifixion thorn individuals from the proposed project site and transfer them to a suitable off-site location.*
>
> *Horticultural propagation and off-site introduction. If salvage and relocation is not believed to be feasible for Emory's crucifixion thorn, then the Applicant will consult with RSABG or another qualified entity, to develop and implement an appropriate experimental propagation and relocation strategy.* (EA Appendix H, page 27)

BLM gives no assurance that any private lands with Emory's crucifixion thorn are even available, and could be purchased in this 1:1 mitigation scheme. As we have commonly seen with desert tortoise compensatory mitigation private land purchasers, there are vanishingly small opportunities to locate good quality habitat for species to purchase and protect, in order to compensate for the destruction of habitat on the solar project sites in the California Desert district.

BLM presents no analysis that Emory's crucifixion thorn salvage from other solar projects was successful, nor any reports from Rancho Santa Ana Botanic Garden (now California Botanic Garden) regarding success or failure of salvage and relocation efforts.

If these mitigation measures are based on failed past salvage attempts, and deferred future experimental strategies, this is again violating CMAs in the DRECP designed to conserve special desert resources. This is not balancing solar development with conservation, but defers analysis until a vague future date, in violation of NEPA.

b. Significant Impacts to Mojave Fringe-toed Lizard Are Not Avoided Or Mitigated.

B5-107

Kevin Emmerich, an expert in California desert herpetology, observed an adult Mojave fringe-toed lizard (*Uma scoparia*) on the Oberon Project site, on September 4, 2021. The lizard ran into a burrow. The substrate was not fine loose sand or dune habitat, as is typical for this species, but was former sand with more gravel and desert pavement. The metapopulation in Chuckwalla Valley may have differing habitat requirements than other populations of this species, and this needs more study. Maps, impacts of fences and sand piling up on fences, and impacts to the sensitive species Mojave fringe-toed lizard (*Uma scoparia*) should be analyzed. Cumulative

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impacts to this sand endemic lizard have been considerable in the Chuckwalla Valley, with the construction of the Desert Sunlight Solar Farm, Desert Harvest Solar Project, Palen Solar Project, Genesis Solar Energy Project, Blythe Solar Project, McCoy Solar Project, and proposed Crimson Solar Project, Arica and Victory Solar Projects, and Desert Quartzite Solar Project, along with new transmission and substation infrastructure.

B5-107 cont.

The cumulative significant impacts of these developments on removing fringe-toed lizard habitat, disturbance and blockage of sand flows, and the increase of invasive weeds, needs to be analyzed, as this group of populations could be a new undescribed taxon when finer genetic studies are undertaken in the future.

POD Appendix F indicated that the likelihood of observing this species was low, and that none were observed. Accordingly, no mitigation was provided. Therefore, impacts have not been analyzed and mitigation measures are wholly inadequate for this species.

c. Significant Impacts to Wildlife Are Not Adequately Analyzed or Mitigated.

B5-108

The EA at 96 discusses sensitive bat species found on the project site, including Townsend's big-eared bat, western mastiff bat, western yellow bat, California leaf-nosed bat, big free-tailed bat, and pocketed free-tailed bat. The EA claims that while any of these bat species may fly over the site to foraging or roosting sites, there is only limited roosting potential on the project site in the dry wash woodland habitat and in nearby areas such as freeway under-passes, yet the EA mentions that one inactive bat roost was observed in an Ironwood tree cavity with guano staining.

Concerning bats on the proposed Oberon Solar Project:

> **Special-status bats.** Seven special-status bat species may forage on or near the Project sites and gen-tie line, as described below and discussed further in Appendices E-1 and E-2. While any of these species may fly over the site to foraging or roosting sites, there is limited roosting potential on the sites for two special- status bat species in the dry wash woodland habitat. No active bat roosts were documented on the sites during surveys. Suitable bat roosts (e.g., rock ledges, cliffs, large tree hollows, mine shafts) occur a few miles from the Project sites in the mountain ranges surrounding the Chuckwalla Valley. Many bats, including special-status species, forage primarily on large insects such as moths, and tend to concentrate foraging activity around water sources such as the irrigation sources around nearby active agricultural areas. Suitable foraging habitat for common and special-status bats is found on the sites.
> **Draft EIR** 3.4-16 **August 2021**

Yet different information is presented about special status bats in adjacent solar project environmental eviews:

> **Arica Solar Project and Victory Pass Solar Project**
>
> **3.4 Biological Resource**

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[W]ithin desert dry wash woodland and near adjacent agricultural parcels where water may be available year-round. One live unidentified bat species was observed within an Ironwood tree cavity during surveys of the Victory Pass site. Acoustic surveys for the Palen Solar Power Project, 1 mile east of the Project sites, detected five special-status bats in the projects' vicinity.

❑*Townsend's big-eared bat (Corynorhinus townsendii); SSC, BLM S.* Foraging habitat in desert dry wash woodland. No roosting habitat.

❑ *California leaf-nosed bat (Macrotus californicus); SSC, BLM S.* Suitable foraging habitat, but no roosting habitat. ❑*Pallid bat (Antrozous pallidus); SSC, BLM S.* Marginal foraging habitat in desert dry wash woodland. No roosting habitat. Surveys for Palen Solar (1 mile east) detected pallid bat in project vicinity.

❑*Western mastiff bat (Eumops perotis californicus); SSC, BLM S.* Suitable foraging habitat, but no roosting habitat. Surveys for Palen Solar (1 mile east) detected western mastiff bat in project vicinity.

❑*Western yellow bat (Lasiurus xanthinus); SSC.* Potential marginal roosting habitat in desert dry wash woodland. Suitable foraging habitat. Surveys for Palen Solar (1 mile east) detected western yellow bat in project vicinity.

❑*Big free-tailed bat (Nyctinomops macrotis); SSC.* Marginal foraging and roosting habitat in desert dry wash woodland. Surveys for Palen Solar (1 mile east) detected big free-tailed bat in project vicinity.

❑*Pocketed free-tailed bat (Nyctinomops femorosaccus); SSC.* Suitable foraging habitat, but no roosting habitat. Surveys for Palen Solar (1 mile east) may have detected presence, but the result was not definitive[10].

B5-108 cont.

Couch's spadefoot toad was not observed during surveys, but eight areas were identified as potential breeding habitat where water may accumulate after rainfall. Golden eagles could forage at the site at any time of year, and one eagle was observed flying over the project site. Three burrowing owl burrows were observed; two of the burrows had a live individual and whitewash was observed at the third burrow.

B5-109

Additional notable CDFW special-status wildlife present in the project site include burro deer (CPGS) and desert kit fox (CPF). Suitable burrows for American badger (SSC) were identified, but no badgers were observed.

B5-110

Impacts to the California state endangered Gila Woodpecker were not well analyzed or mitigated. On page 18 of the bird and bat conservation strategy, the EA states that Gila woodpecker numbers would be low on the site due to the lack of palo verdes. There are some very

B5-111

[10] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=193734&inline

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large palo verde trees on the site. We also have data that confirms Gila woodpeckers nest in ironwood trees. The BBCS also states that potential nesting cavities were located on the project site.

B5-111 cont.

Gila woodpecker numbers have declined drastically in southern California. Breeding habitat consists of Columnar cactus, especially saguaro; less common in cottonwood, willow, paloverde, ironwood, mesquite, and residential shade trees, trees > 10 inches DBH, riparian patches > 50 acres (Arizona Bird Conservation Initiative and Sonoran Joint Venture. 2020). Softer woods are preferred for excavating nest cavities, such as saguaro and palo verde. We found several large palo verde trees on the Oberon site. Loss and fragmentation of riparian woodland is one of the main threats facing Gila woodpeckers (CDFW no date).

The bird diversity in this microphyll habitat has not been analyzed or mitigated. The importance of this intact habitat for Colorado Desert birds needs more study. Appendix D to the Biological Resources Technical Report, POD Appendix F lists over 80 species of birds observed at the Project site. Breeding birds may include Black-tailed gnatcatcher, Ladderback woodpecker, Verdin, Ash-throated flycatcher, Black-throated sparrow, Burrowing owl, Cactus wren, Common poorwill, Lesser nighthawk, Coast'a hummingbird, Gambel's quail, House finch, Lesser goldfinch, Loggerhead shrike, Mourning dove, Northern mockingbird, Say's phoebe, Western kingbird, and Vermilion flycatcher. This is important because the EA claims that the loss of microphyll woodland is not significant because the area does not support

> *The microphyll woodlands in the Desert Center area are not identified as Important Bird Areas*
> *in the DRECP or elsewhere (DRECP FEIS Figure III.7-15), whereas many of the other DRECP*
> *areas with microphyll are identified as important bird areas, and the environmental setting in*
> *the DRECP FEIS was focused on the value of these important bird areas as they relate to microphyll woodlands.* (EA, page 101)

d. The EA Fails to Adequately Analyze and Mitigate Avian-Solar Impacts.

B5-112

As other large-scale solar projects in the DFA have resulted in the mortality due to "lake-effect" impacts, resulting in collisions, this important concern should be fully analyzed and mitigation measures enumerated, including those not tiered to in the DRECP. This is a growing concern with waterbirds that fly across the desert from the Salton Sea and Gulf of California, to Colorado River water bodies.

The EA briefly discusses bird collision and monitoring studies of mortality done elsewhere in California. Yet Argonne National Laboratory (2016) summarized multiple agency findings of widespread impacts to birds from utility-scale solar projects. Mortality monitoring and reporting is required by lead agencies on many projects. Data from 7 projects in Southern California (4 Photovoltaic, 2 Solar Trough, 1 Power Tower), reported from 2012-April 2016 showed that significant bat and insect mortality, including Monarch butterflies was occurring on solar projects. A total of 3,545 mortalities from 183 species (2012-April 2016) were recorded, from a mix of

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

reports from incidental finds and systematic surveys. Many mortalities occur due to dehydration/heat stress after initial injury/stranding.

B5-112 cont.

Mortality to birds of Conservation Concern and Federal Endangered/Threatened species (including California Desert solar projects) impacted Yuma Ridgeway's (Clapper) Rail, Willow Flycatcher, Yellow-billed Cuckoo, Peregrine Falcon, Bank Swallow, Western Grebe, Horned and Eared Grebes, American White Pelican, Burrowing Owl, and Calliope Hummingbird. The environmental assessment admits that more of the common species could die from collision or Lake Effect. This is obvious. While the numbers of more sensitive species would be lower, they are recognized as sensitive for a reason. It is obvious that more common species will have greater numbers, but because Endangered and Species if Special Concern have traditionally lower numbers, the mortality of fewer individuals is significant. The EA concludes that the risk to avian populations is "minimal" while admitting that "uncertainty remains"(POD Appendix K, page 25)The Environmental Assessment and the Bird and Bat Conservation Strategy (BBCS) list no mitigation measures for avian collisions with solar panels, even though uncertainty remains. Why not? The EA should include required mitigation measures such as requiring the applicant to create a bigger space between solar panels, create an uneven, wavy surface for the panels to break up the lake effect and finally, surround each panel with a white rim to break up this lake effect.

On Page 22 of the BBCS:

> Bat roosts that occur in the vicinity of the project site include McCoy Mountains, Eagles Nest Mine approximately 20 miles east of the project site, within the Little Maria Mountains approximately 20 miles north east of the project site), and Paymaster Mine within the Pinto Mountains approximately 30 miles north west of the project site (Gannon, 2003; CEC, 2010). No active bat roosts were documented on the project site during any of the surveys to date. It is not expected that any special status bat species would have a substantial roost on the project site since habitat features most associated with these species (e.g., rock ledges, cliffs, large tree hollows, mine shafts) do not occur on the project site.

It appears that the Chuckwalla and Eagle Mountains were overlooked in this survey, and thus the survey cannot be used as a basis to conclude there are no bat roosts nearby. The Chuckwalla Mountain are about 3-4 miles from the project site while the Eagle Mountains are about 8 to 10 miles from the site. It is unlikely that these two ranges would have no bat roosts. A better study and analysis is needed.

e. Alternatives Are Not Fully Analyzed.

B5-113

The EA claims that development is a foregone conclusion:

> *Because the project site is located within a DFA near an existing substation with available capacity for additional energy transmission, if the project were not constructed, a different solar developer may apply to for a right-of-way to construct a similar solar project at this location.* (EA, page 11)

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This can easily be corrected by adding an alternative and by making the project site a Solar Exclusion Area with a land use plan amendment. The benefits of this would be a guarantee that microphyll woodlands, Critical Habitat, wildlife linkage and sand transport would be protected. Please consider a Solar Exclusion Zone alternative for the entire site in a Land Use Plan Amendment. B5-113 cont.

The EA at 12 states that in the Proposed Alternative:

> *On-site electric substation yard located within a 20-acre area centrally located on the project site. Electrical transformers, switchgear, and related substation facilities would transform 34.5 kV medium-voltage power from the project's delivery system to the 500 kV gen-tie system.*

How much microphyll habitat would be removed in this 20 acres and the 25 acre battery storage system? These types of facilities would both need 100 percent grading.

Nighttime security lighting is proposed to be constructed in coordination with California Department of Transportation (Caltrans) to ensure compliance with exterior lighting regulations along I-10. How would night lighting be mitigated for bat species, insects and migrating songbirds? Being this close to the Interstate would cause vehicle kills. B5-114

Herbicide use: The applicant proposes to use 6 herbicides. How will this impact microphyll woodlands, desert tortoise, migrating birds, insects and human health? B5-115

The Resource Avoidance Alternative would still impact 1,800 acres. This would still create a collision risk for birds, Birds could be attracted to adjacent microphyll woodlands and this could represent a collision trap. Avoiding microphyll with a buffer is the best way to protect it. That would be a No Action Alternative with an LUPA keeping solar out of the area. This would also alter the surface hydrology and create an influx of weeds like Sahara mustard. The applicant would have to use more herbicides to control the weeds. B5-116

Rejected Alternatives include the Distributed Energy alternative. The EA at 32 and following states that: B5-117

> *Although there is potential to achieve up to 500 MW of distributed solar energy throughout the greater California area, the limited number of existing facilities and location of BLM administered lands make it unlikely to be feasible or present environmental benefits.*

We did not ask for a distributed generation alternative on BLM lands. We asked for a No Action Alternative based on the vast distributed potential in California. It is not factual to state that California can only generate 500 MW of distributed energy. (*Rooftop Solar Photovoltaic Technical Potential in the United States: A Detailed Assessment*, Technical Report, National Renewable Energy Laboratory TP-6A20-65298, January 2016). This would eliminate the Need for the Oberon Solar Project. Under the National Environmental Policy Act, agencies are required to consider alternatives outside of the lead agency jurisdiction (Section 1506.2(d)).

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State officials assume that California will nearly quadruple its current rooftop solar capacity – from 10.5 gigawatts to 39 gigawatts (GW) – as it seeks to reach its 2045 climate and clean energy goals. This is in addition to even larger amounts of utility-scale solar[11]. The entire nation of Vietnam generated 9 GW of rooftop solar in the year of 2020[12]. Distributed Generation is a viable alternative to best avoid significant resource impacts.

B5-117 cont.

f. Visual Resources Are Not Adequately Analyzed.

B5-118

There are not enough KOP visual contrast simulations with this landscape. We asked for KOPs from nearby Wilderness Areas, as well as night-time visual impact assessments that could harm night-sky viewing. A KOP from Joshua Tree National Park should also be included. These were not included in the EA, and therefore the Visual Resources were not adequately analyzed.

g. Environmental Consequences Not Analyzed.

B5-119

The Heat Island Effect was not analyzed in the EA. A recent study (Lu et al. 2020) showed that covering 20 percent of the Sahara Desert with solar farms raises local temperatures in the desert by 1.5 degrees Celsius, according to a model. At 50 percent coverage, the temperature increase is 2.5 degrees Celsius. This warming is eventually spread around the globe by atmosphere and ocean movement, raising the world's average temperature by 0.16 degrees Celsius for 20 percent coverage, and 0.39 degrees Celsius for 50 percent coverage. The global temperature shift is not uniform, though — the polar regions would warm more than the tropics, increasing sea ice loss in the Arctic. This could further accelerate warming, as melting sea ice exposes dark water which absorbs much more solar energy.

The Oberon Solar Project would be 2,700 acres or 4 square miles. A possible temperature increase could impact the public health of Desert Center. It could also impact the microphyll ecosystem. Temperatures are already on the increase due to climate change. Geoengineering the landscape with millions of solar panels could make the area's average temperatures even hotter.

Conclusion:

B5-120

The BLM must conclude that the Oberon project will result in new significant impacts not previously analyzed and disclosed in the previous DRECP FEIS, as conceded in the EA. Accordingly, the BLM cannot issue a Finding of No New Significant Impact (FONNSI). We urge the BLM to require an EIS for review of this right of way request in order to analyze the significant adverse impacts that would result if the project is implemented. We ask that the EIS include an alternative that designates this area as an exclusion zone in order to protect the valuable resources onsite.

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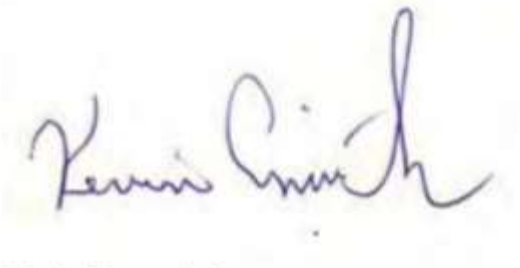
[11] https://environmentcalifornia.org/reports/cae/environmental-case-rooftop-solar-energy#:~:text=State%20officials%20assume%20that%20California,amounts%20of%20utility%2Dscale%20solar.

[12] https://www.pv-magazine.com/press-releases/scaling-up-rooftop-solar-in-vietnam-more-than-9gw-installed-in-2020/#:~:text=Vietnam%20installed%20a%20record%206.71,in%20the%20country%20in%202020.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Thank you for considering these comments. Western Watersheds Project and Basin and Range Watch thank you for this opportunity to assist the BLM by providing scoping comments for this project. Please keep Western Watersheds Project and Basin and Range Watch informed of all further substantive stages in this and related NEPA processes and documents by contacting us at lcunningham@westernwatersheds.org and atomicquailranch@gmail.com.

Sincerely,



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Appendix—Photographs September 4, 2021, by Kevin Emmerich.

Figure 1. Desert ironwood on site of proposed Oberon Solar Project. September 4, 2021, by Kevin Emmerich.

B5-121

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B5-121 cont.

Figure 2. Large desert ironwood on the project site, September 4, 2021. Photo: Kevin Emmerich.

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Figure 3. Large desert ironwoods on the project site, September 4, 2021. Photo: Kevin Emmerich.

B5-121 cont.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

Figure 4. Desert ironwoods and palo verde on the project site, September 4, 2021. Photo: Kevin Emmerich.

B5-121 cont.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 5. Large desert ironwood on the project site, September 4, 2021. Photo: Kevin Emmerich.

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B5-121 cont.

Figure 6. Dense microphyll and desert ironwoods on the project site, September 4, 2021. Photo: Kevin Emmerich.

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B5-121 cont.

Figure 7. Desert ironwoods and palo verde trees on the project site, September 4, 2021. Desert Harvest Solar farm/Desert Sunlight Solar Farm projects can be seen lower in Chuckwalla valley in the distance. Photo: Kevin Emmerich.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 8. Scattered microphyll trees and wash woodlands are widespread and common on the project site, September 4, 2021. Photo: Kevin Emmerich.

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Figure 9. Undercrossings with wash, I-10, September 4, 2021. Photo: Kevin Emmerich.

B5-121 cont.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 11. View of wildlife connectivity across Chuckwalla Valley blocked and fragmented by Desert Sunlight and Desert Harvest Solar Farm projects, in operation. The cumulative impacts to wildlife connectivity were not touched on at all by the BLM. View looking northwest at Oberon Project site, September 4, 2021. Photo: Kevin Emmerich.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 12. View of wildlife connectivity across Chuckwalla Valley blocked and fragmented by Desert Sunlight and Desert Harvest Solar Farm projects, in operation. View looking northwest at Oberon Project site, September 4, 2021. Photo: Kevin Emmerich.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 13. A large palo verde tree on the site of the proposed Oberon Solar Project in microphyll woodland, field visit September 4, 2021.

Comment Set B5 – Basin & Range Watch / Western Watersheds Project (cont.)

B5-121 cont.

Figure 14. Very large, old-growth palo verde tree on the project site—good nesting habitat for Gila woodpeckers. September 4, 2021.