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RE: Comments on the Draft Interim Mitigation Strategy as Required by SB X8 34 – July 2010 and the Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account - Table of Estimated Costs July 9, 2010

Dear Mr Hunting and Mr. Gonzalez

Thank you for the presentation on the Draft Interim Mitigation Strategy (DIMS) at the DRECP meeting of July 14, 2010. While we provided some comments in that public forum, we appreciate the opportunity to provide more comprehensive written comments and hope you find them useful and incorporate them into subsequent strategies. Our comments relate to specific Sections of the DIMS.

Estimated Compensatory Mitigation Actions is Unreasonably Low (Pg 13-14) & the Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account - Table of Estimated Costs July 9, 2010

We support estimating a reasonable cost for mitigation per acre, however, we note that the costs included in Table 1 are confusing at best and generally too low to achieve the goals of compensatory mitigation. As I am sure you would agree, the costs should to the extent possible be based on actual comparable acquisitions. The $1000 per acre estimate appears to be unreasonably low. While we understand that such "comps" may be difficult to find in recent years, there are some. For example, the acquisition of the former Rice airport site in 2009 could be a useful comparable acquisition for some purposes and our understanding is the price for that purchase alone was over $5,000 per acre. There was also information provided by local realtors in the Palen process before the CEC showing that per acre costs could range up to more than $4,000 per acre. (Attached).

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It appears from the existing information that we have seen that the total costs for mitigation in the DRECP are more likely to be accurately reflected in the costs in the CVMSHCP rather than the WRMSHCP. For example the cost for monitoring in the WRMSHCP is only $10/acre – way too low to actually be able to adequately monitor the numerous species that will occur on the mitigation lands consistently over the life of the DRECP plan. Additionally WRMSHCP had no costs attributed to enhancement/restoration and the CVMSHCP only required $100/acre for these. While $250/acre cost referenced in the Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account is an improvement, we still question if it will meet the short-term goals of initial site work – clean-up, enhancement, restoration. As you know, tortoise fencing, which is an important component of enhancement/restoration for desert tortoise is expensive because of its structural requirements (buried well below the soil surface), installation of culverts to maintain connectivity etc. Even $250/acre is too low for fencing the many miles of roads or other hazards to tortoises on or near the acquired conservation lands, much less the other activities included in the enhancement/restoration category. Additionally, we fail to see how a $1,450/acre LTMM fund will cover all of the conservation needs on the site in perpetuity.

Based on fair market value we question the "average" cost of an acre of land for acquisition/conservation easement – again we think it is inadequate to actually cover all of the costs attributed to this category. We urge you to incorporate adequate costs into the draft estimates to cover the real costs of the proposed activities for acquisition/conservation easements, based to the extent possible on recent comps from the general area where the impacts will occur.

Habitat Enhancements (Pg 14-15)

Many of the "enhancement activities" seem inappropriate and are actually minimization measures. For example, mowing or cutting vegetation is NOT a habitat enhancement (pg. 14 a.) – it is actually an impact. The only place the Center has seen mowing or cutting vegetation suggested as a proposed minimization measure for soil stabilization impacts in the Ivanpah solar project. However, the Center and CNPS raised concerns about the efficacy this measure and it is likely that most of the plants will not survive and this proposed "minimization" measure will provide little if any benefit. Mowing and cutting vegetation is an impact to desert plant communities, and as such should be deleted from habitat enhancements.

Salvage and relocation of cactus and yuccas is also a minimization measure NOT enhancement (pg 14 b.). Additionally not all cactus and yuccas can be successfully transplanted without mortality – typically the larger the specimen, the less likely successful transplantation. It should also be deleted from habitat enhancement.

While the Center supports removal of invasive weeds and non-native plants (pg. 14 c.) – weed abatement should be a desert wide strategy, not a piecemeal project-by-project effort. In fact, weed abatement performed in small patches outside of a landscape approach generally only guarantees re-infestation (and thus, an unending need for continual mitigation). A DRECP-wide invasive weed abatement plan needs to be identified prior to implementing this DIMS. Additionally stringent measures need to be put in place to prevent re-infestations from other

activities. For example, recent studies have quantitatively evaluated the impact of off-road vehicles (ORVs) as a vector for seed distribution. Results indicate at the highest productivity time for seeds, ORVs picked up 4200 seeds per mile, of which roughly 750 were noxious weed seeds[1]. Unfortunately in the desert, the highest seed productivity time often coincides with high ORV visitation.

Regarding removal of non-native species (pg 15 d.), this enhancement must include actual permanent retirement of grazing allotments and elimination of Herd Management Areas under BLM land management plans.

Both e. and f. (Pg.15) are again NOT enhancement measures, but minimization measures for construction projects.

While we support fencing to prevent mortality, as written it is unclear what "individuals" refer to. Additionally, fencing can also fragment and isolate wildlife populations in the absence of connectivity corridors and structures. If fencing is used as an enhancement technique it must go hand-in-hand with culverts, land bridges and other species dependent treatments.

Restoration (Pg. 15)

While we support "restoring vegetation cover, composition, and diversity" we do not support the substandard revegetation criteria adopted by the most recent BLM land use plans (NEMO, NECO, WEMO) because they fail to capture the diversity and cover of the pre-disturbance conditions. Much more rigorous success criteria need to be developed and used for revegetation efforts.

The California Essential Habitat Connectivity Corridor with Mitigation Target Areas (Figure 5 -pg 29)

This Figure visually represents the "primary acquisition conceptual areas" superimposed on proposed wildlife connectivity. While we support connectivity in the desert, the proposed connectivity corridors fall short of necessary connectivity. There is no wildlife connectivity connecting the California desert with adjacent states and countries, which are part of the larger desert ecosystems. The Colorado River provides a natural corridor which needs to be included. Furthermore, even within the California deserts additional connectivity corridors need to be included. A corridor needs to be established between the Mojave National Preserve and points both north and south, otherwise the California desert will unacceptably be split in half. While we support the southwest target area around Edward Air Force Base, that acquisition area needs to connect with habitat to the south. Los Angeles County has identified this area as a Significant Ecological Area (SEA) in their existing General Plan – the Desert Montane Transect SEA. In the current update of L.A. County's General Plan this area is also proposed as part of a much larger SEA called the Antelope Valley SEA. This target area should also connect to the west through Antelope Valley where feasible, capitalizing on the existing conservation investments and proposed and existing SEA designations including the Poppy Preserve.

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1 www.weedcenter.org/newsletter/docs/2010-04-seed-dispersal.pdf

In the very southwest corner, additional connectivity needs to be identified from the U.S./Mexico border and northwards along the base of the Cuyamaca Mountains and west of the Salton Sea. This linkage is key to protecting habitat for the state endangered Peninsular bighorn sheep and the imperiled flat-tailed horned lizard. Another essential corridor that is already formidably intact is the Little San Bernardino Mountains to the San Bernardino Mountains. Existing conservation investments of Joshua Tree National Park, BLM lands and private conservation lands has already provided significant conservation values in this area. Connectivity between the Coso/Inyo Mountains and the Sierra Nevada Mountains across the Owens Valley also needs to be including d.

Conceptual Conservation Areas – *Primary Acquisition Conceptual Areas* (Pg. 17-18)

In general other species that will benefit from conservation (in addition to desert tortoise and Mohave ground squirrel) need to be identified as targets for the "primary acquisition conceptual areas".

a) Northwestern San Bernardino County – we agree that connectivity in the area is essential for both desert tortoise and Mohave ground squirrel, as well as other rare species.

b) Central San Bernardino County – while we support substantial conservation in this area, we also note that two off-road vehicle (ORV) open areas are currently designated by the BLM in this general area. Additionally parts of this area are proposed as a western expansion of Twenty Nine Palms Marine Air Corps Base. This acquisition area should also include the connectivity corridor going south to the San Bernardino Mountains.

While this area was historic Mohave ground squirrel (MGS) habitat, we are not aware of any recent occurrences in this area, however we are generally supportive re-establishment of MGS in this area.

c) Eastern San Bernardino County – While we are supportive of this acquisition area in the "keyhole" of the Mojave National Preserve, the document incorrectly identifies this area as "critical habitat for MGS" as MGS have never been present in this area. While we agree that this area may be connectivity habitat for desert tortoise, the area itself is fairly high in elevation for tortoise. Based on existing information, the Center does not believe this area would provide adequate or proper mitigation for the loss of high-quality occupied desert tortoise habitat that is expected from many of the solar projects. However, this area is rich in other biological resources, including a nice swath of native grasslands. When acquisitions occur, they need to offset and mitigate impacts to the species that are being impacted by projects. Therefore, careful assessment of the resources on these lands and how they would mitigate impacts of solar projects elsewhere will need to be done.

d) East-Central Riverside County – It is imperative to establish a robust corridor between the Chuckwalla Bench and Joshua Tree National Park and the Palen/McCoy as represented by this acquisition area. However, the identified acquisition area also includes numerous applications for solar projects, some of which are eligible for this interim mitigation strategy which would undermine the corridor from the outset. Furthermore, much of this area was proposed as a Solar Energy Study Area (SESA) in BLM's Draft Programmatic Environmental Impact Statement. These overlapping proposals confuse the amount of land that will actually be available for conservation in an unfragmented landscape.

***Primary Enhancement and Restoration Conceptual Areas* (pg. 19-20)**

The document references the Draft Revised Recovery Plan as the basis for enhancement of habitat in critical habitat. First, enhancement of tortoise habitat should occur not only within critical habitat, but ALL areas of tortoise habitat that are targeted for conservation. The Draft Revised Recovery Plan has not been finalized and there is an existing Desert Tortoise Recovery Plan (1992) in place currently, which already has substantial enhancement activities identified that should be included in the DIMS including preserve level management and removal of grazing and ORVs from DWMAs. Additionally for the flat-tailed horned lizard (FTHL), the more recent range-wide management strategy (2003) includes additional information on actions to benefit this species. We note however, that despite the FTHL Range-wide management strategy being in place for years, the number of FTHL continue to decline and the U.S. Fish and Wildlife Service (FWS) is proposing to list the species, indicating that the actions in the management strategy may not have been adequate or adequately implemented in order to protect this imperiled species.

We also note that the Mojave fringe-toed lizard (MFTL) is not currently a listed species, although the FWS is currently considering listing the Amargosa River population. Because this is not a listed species, there is no recovery plan for it. In fact, many additional endangered species have recovery plants and could be affected by the DRECP other than the California condor, the desert tortoise, the Peninsular bighorn sheep, and the Coachella Valley fringe-toed lizard. The recommendations for enhancement and restoration in these recovery plans should also be incorporated into the strategy.

IMS Implementation – *Approach* (pg. 21)

The bulleted list of activities that to date have been required of project applicants in order to comply with CEQA/NEPA is included, and these activities should continue to be required – in other words "applicants may be required to" should be changed to "applicants will be required to". Additionally clear concise actions on implementation need to be included.

Conclusion

The DIMS as proposed has numerous factual errors that need to be corrected to more accurately reflect the issues. The compensatory mitigation costs are too low to achieve the goals of the DIMS. The Habitat Enhancement section needs to be re-worked to include only enhancements, not project design impact avoidance and minimization measures. "Mitigation target areas" should be expanded to include other areas within the connectivity matrix to assure that the desert stays connected. Additional connectivity corridors need to be included especially connecting the California deserts to their parts in other states and countries. The IMS implementation needs to be more comprehensively addressed.

Lastly, your powerpoint presentation at the DRECP included more detailed information that was useful and that we would also like to review and provide comments. We look forward to receiving that additional information as discussed at the meeting.

We look forward to working with the Department to create an effective IMS. Please feel free to contact us with any questions.

Sincerely,

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Genesis Project 09-AFC-8

INTRODUCTION:
On behalf of over 50 clients who are stakeholders by virtue of their property ownership in environmentally sensitive areas, we would like to offer comments the SA/EIS of NextEra Genesis project, and Solar Millennium Blythe and Palen projects. We assume these comments will also to apply to First Solar Desert Sunlight project, however we have not seen their application or EIS. We will discuss Mitigation Security and Selection Criteria for Compensation Lands.

On Monday, May 10, 2010, I will participate in a review of a Market Study prepared for the Coachella Valley Conservation Commission, as part of their Nexus review over the approximately 1.2 million acres protected by the Coachella Valley Multiple Species Habitat Conservation Plan. As you know, a Market Study is not an appraisal but is prepared by an appraisal company, in this case, Capital Realty Analysts, a highly respected firm on our area. The facts presented in the Market Study should offer insights to the C.E.C. on Mitigation Security as outlined in BIO-12, Section 3, and elsewhere. We have done our own analysis as well. The Market Study should confirm two overarching points. 1.) Real Estate Markets are local. We believe the MS will show a wide variety of price ranges across all the various habitat/conservation communities. We believe staff's intention in quoting a per acre price for Chuckwalla Bench was not intended to extend that price estimate over the entire potential mitigation area, which stretches about 100 miles east to west, and 20 miles north to south. 2.) There is a distinct difference between appraised value sales, and open market sales. That difference will affect the success of solar mitigation.

3. Mitigation Security deposit from BIO-12, section 3. pg. C.2-177 .

While this would seem to be a relatively benign discussion, we believe the details merit examination. In referring back to Calculation of Security for Desert Tortoise Compensatory Mitigation from page C.2-74 (389 .pdf), it states in part that: "These costs include acquisition fees of $500 per acre, a figure that reflects recent land sale in the Chuckwalla Bench." We believe $500/acre is an accurate representation of sales in the Chuckwalla Bench area that were based on appraised value. We do not believe that is an accurate representation of value for all the privately owned land in the Colorado Desert Recovery Unit—a very large area. We have identified 22 sales-based-on-appraised-value in the Mecca Hills and Orocopia Wilderness areas since 2007. Of those sales, there were 4 sales at $500/acre or less totaling 2,070 acres. For the three-year period covered, that is an acquisition average of 690 acres per year. Thus, at $500/acre it would statistically take 15.94 years to actually conserve the mitigation acreage required in the three SA/EIR reports already issued.

A survey mailed to 49 property owners in the subject area (out of a database of 1,100 parcels) revealed only 2 owners willing to sell at $500 per acre. Both had experienced financial distress in the recent recession.

We also searched for sales that were not influenced by appraised value, open market sales, and located eleven, which accounted for 254 acres sold. The average price per acre of those sales was $1,029.

Along with the sales mentioned above, there have been sales in 2008 and 2009 along the power corridor that ranged from $600 per acre to $4,200 per acre. There was also a 2010 transaction in Palm Springs for freeway overpass mitigation in a sand dune/transport area at about $3,500 per acre (for the areas prone to flooding, the average per acre price for all land included in that sale was higher).

An appraiser could make the argument that these were not arms length sales, however, that misses the point. The point being that without eminent domain, the task of find enough willing sellers to accomplish the mitigation goals will be challenging without using appraised value, and if appraised value is the benchmark, it may take the 16 years estimated above—regardless of who the eventual buyer becomes.

The three projects now before CEC require about 11,000 acres of mitigation. The section, Calculation of Security for Desert Tortoise Compensatory Mitigation from page C.2-74, goes on to add (underline added): "It is important to note that these are estimates based on current costs; the requirement is defined in terms of acres, not dollars per acre, and actual costs may vary." That may be a critical statement. The statistics we outlined seem to show that if the Mitigation Security amount is viewed solely as a deposit, then it may be too low. If it has to be converted for acquisition or become a basis for fees related to acquisition, it appears to be inadequate to achieve the goal of over 11,000 acres conserved and will necessitate use of the "cost overrun" language from C.2-74.

Note: The last line in BIO-12 Section 3. is somewhat unclear as written. It says, "The final amount due will be determined by the PAR analysis conducted pursuant to this condition." The PAR is only one of the three associated costs, thus the language should include all three components for clarity. We suggest the language used in

BIO-22 2. beginning at, "These amounts may change based on changes in land costs or the estimated cost of enhancement and endowment."

We feel strongly that mitigation land acquisition is necessary to compensate for disturbance. We think that the Market Study undertaken by CVCC will provide a greater degree of certainty in pertinent areas and should be consulted as soon as it is approved and enters the public record.

While we are not qualified to factually discuss restoration or endowment, we do feel that there are certainly areas that would benefit from restoration, however, thousands of desert acres are still pristine. Also, long-term management on this cumulative scale could present opportunities for efficiencies that may lower the $1,450 per acre amount.

Selection Criteria for Compensation Lands. from BIO-12, Section 1. pg. C.2-177.

a. We think the limitation on Desert Tortoise mitigation land to be purchased within the Colorado Desert Recovery Unit leaves out opportunities to fortify Joshua Tree DWMA and potential linkages at the western most protrusion of NECO that may become critical as climate change warms the area.

c. It should be noted that the Coachella Valley Multiple Species Conservation Plan is in place to protect most of the NECO area land from Berdoo Canyon Road in Joshua Tree, south across the Mecca Hills Wilderness, and east to approximately Red Cloud Road. This area should be highlighted for compensation mitigations due to its protected status. Also worth noting is that as the climate warms, tortoises and other species will tend to migrate upslope, so higher elevation habitat will become important to the future of those species. We think higher elevations deserve inclusion now.

We hope this has been informative and look forward to a response.

Respectfully Submitted,

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